FUNDUDZI

NATIONAL TREASURY

Final Report: Forensic Investigation into Various Allegations at Transnet And Eskom: Tender Number NT 022-2016 RFQ 026-2017

CHAPTER II: MCKINSEY, TRILLIAN AND REGIMENTS

NOVEMBER 2018

PUBLIC ENTITIES CAPTURED AS A RESULT OF DYSFUNCTIONAL GOVERNANCE STRUCTURES

Executive Summary

1. Appointment of McKinsey, Regiments and Trillian at Transnet

1.1. During the period 2012 to 2016, Transnet appointed McKinsey for the following project through a confinement process:

1.1.1. Advisory services for the 1064 locomotives;

1.1.2. SWAT 1;

1.1.3. GFB Breakthrough Contract (sub-contractor);

1.1.4. Coal Contract;

1.1.5. Kumba Iron Ore;

1.1.6. Manganese Contract;

1.1.7. NMMP; and

1.1.8. SWAT 2.

1.2. Transnet presented the same reasons for confining the projects to McKinsey.

1.3. McKinsey and Singh compromised the integrity of the procurement process by sharing pointers of a procurement to be initiated prior to the approval of the confinement by Molefe.

1.4. McKinsey and Regiments commenced with work relating to the above projects before the conclusion of the procurement process. McKinsey used the Letters of Intent issued by Singh as the basis to commence with the said projects.

1.5. McKinsey commenced with the above mentioned projects without concluding an MSA.

1.6. McKinsey, Regiments and Trillian were paid out of pocket expenses without producing supporting documents.

1.7. McKinsey, Regiments and Trillian were paid R1.5 billion in respect of the contracts awarded through a confinement during the period 2012 to 2016.

1.8. There is no evidence that Trillian performed work in respect of the Financial Structuring Advisory Services to support the invoice of R11.4 million approved by Jiyane.

1.9. Ramosebudi made a misrepresentation stating that Trillian assisted Transnet to negotiate with Nedbank, Bank of China, Absa and Libfin in the memorandum dated 17 September 2015. The said misrepresentation resulted in Transnet making an irregular payment of R93 480 000.00 to Trillian Asset Management.

2. Appointment of McKinsey, Regiments and Trillian at Eskom

2.1. The appointment of McKinsey for the Eskom Top Engineer Programme was initiated by Singh at the time that he was still a GCFO at Transnet.

2.2. Eskom cancelled the MSA with McKinsey and negotiated a settlement resulting in a payment of R1.6 billion to McKinsey and Trillian six months into the contract.

2.3. The appointment of McKinsey for the Top Engineer Programme was not in line with the provisions of Section 217 of the Constitution of Republic of South Africa.

2.4. Payments made to Trillian Management Consulting were irregular as Trillian did not have a contract with Eskom.

2.5. Singh misled the Parliament Portfolio in his submission that Eskom had not paid Trillian for the Duvha 3 Power Station Insurance claim negotiations.

TABLE OF CONTENTS

Heading No.	Description	Page No.
1.	Introduction	1
2.	Limitations	3
3.	Scope and Methodology	3
4.	Legislations, Policies and Procedures	6
5.	Findings	10
5.5.	Background	10
5.7.	McKinsey, Regiments and Trillian's appointment at Transnet	11
5.8.	RFP:GSM/12/05/0447- Advisory services for the 1064 locomotives tender	11
5.9.	Investigations relating to the Club Loan	57
5.10.	Investigations relating to SWAT 1-GSM/12/05/0445	76
5.11.	Investigations relating to GFB Breakthrough Contract	91
5.12.	Investigations relating to Coal Contract	108
5.13.	Investigations relating to the Kumba Iron Ore Contract	122
5.14.	Investigations relating to the Manganese Contract	131
5.15.	NMPP Contract – GSM/1404/10040	141
5.16.	Capital Optimisation and Implementation Support – SWAT2	156
5.17.	11 Million invoice approved by Jiyane	179
5.18.	Liquid fuels and gas demand - GSM/14/10/1167	183
5.19.	Lack of administrative and political support frustrates the fight against corruption	195

Heading No.	Description	Page No.
6.	Department of Public Enterprise	207
7.	Eskom	213
7.1.	Appointment of McKinsey for the development of Top Engineers Program	213
8.	Anoj Singh's overseas trip facilitated by McKinsey	243

ROLE PLAYERS IDENTIFIED

Name	Description
Gama	Siyabonga Gama, Group Chief Executive, Transnet
Essa	Salim Essa: Director Elgasolve (Pty) Ltd
Jiyane	Thamsanqa Jiyane: Group Chief Procurement Officer, Transnet
Khumalo	Nokuthula Khumalo: Group Company Secretary, Transnet
Mahomedy	Mohamed Mahomedy: Acting GCFO, Transnet
Mdletshe	Lindiwe Mdletshe: Executive Manger Sourcing , Transnet
ME Mkwanazi	ME Mkwanazi: Former Board Member, Transnet
Minister Gigaba	Minister Malusi Gigaba: Former Minister, Department of Public Enterprises
Minister Gordhan	Minister Pravin Gordhan in his capacity as the then Minister of Finance
Molefe	Brian Molefe: Former Group Chief Executive, Transnet and Eskom
Moropa	Sithokozile Moropa: Head of Forensics, Transnet
Pita	Garry Pita: Former Group Chief Financial Officer, Transnet
Shiceka	Cleopatra Shiceka: General Manager; office of the Chief Executive Officer,

Name	Description
	Transnet
Singh	Anoj Singh: Former Group Chief Financial Officer, Transnet and Eskom
Thomas	Edward Thomas: Group Chief Procurement Officer; Transnet
Ramosebudi	Phetolo Ramosebudi: Group Treasurer, Transnet

TERMINOLOGY USED

AC	Acquisition Committee
BADC	Board Acquisition and Disposal Council
BBBEE	Broad-Based Black Economic Empowerment
BIS	Business Intelligent Searches
BOD	Board of Directors
CAPIC	Capital Planning and Investment Committee
CE	Chief Executive
CEO	Chief Executive Officer
CFET	Cross Functional Evaluation Team
CFET	Cross Functional Evaluation Team
CFO	Chief Financial Officer
CNR	China North Rail
COS	Chief of Staff
CPO	Chief Procurement Officer
CSR	China South Rail
DAF	Delegation of Authority Framework
DG	Director- General

DPCI	Directorate of Priority Crime Investigations
ETC	Estimated Total Cost
EXCO	Executive Committee
EY	Ernst & Young
FRC	Future Recognition Criteria
GCE	Group Chief Executive
GCSCO	Group Chief Supply Chain officer
GESAT	General Electric South Africa Technology (Pty) Ltd
GF	General Freight
GFB	General Freight Business
GM	General Manager
iSCM	Integrated Supply Chain Management
JV	Joint Venture
LC	Local Content
MARS	Mitsui & Co African Railway Solution (Pty) Ltd
MDS	Market Demand Strategy
MRS	Materials and Reliability Support
NT	National Treasury
OD	Operational Division
OD’s CE	Operational Division Chief Executive
OD’s CPO	Operational Division Chief Procurement Officer
PFMA	Public Finance Management Act, 1999 (Act 1 of 1999)

PED	Primary Energy Division
PPM	Procurement Procedure Manual
PPPFA	Preferential Procurement Policy Framework Act; 2000 (Act 5 of 2000)
RFP	Request for Proposal
SAPS	South African Police Service
SCS	Supply Chain Services
SD	Supplier Development
SOC	State Owned Company
TCO	Total Cost of Ownership
TE	Transnet Engineering
TFR	Transnet Freight Rail
TFRIC	Transnet Freight Rail Investment Committee
	Transnet Internal Audit
TRE	Transnet Rail Engineering
VAT	Value Added Tax

Exhibit list

ANNEXURE	**DESCRIPTION**
	Advisory services 1064 Locomotives
D 1	Copy of an RFP GSM/12/05/0447 for advisory services on 1064 Locomotives dated 30 May 2012
D 2	Copy of a Confinement memorandum from Pita to Molefe and Singh dated 7 May 2012
D 3	Copy of Proof of Payment for tender documents

D 4	Copy of McKinsey submission dated 07 June 2012
D 5	Copy of Bouwer declaration of interest
D 6	Copy of Gillman declaration of interest
D 7	Copy of 2009 Procurement Procedure Manual
D 8	Copy of stage 3 of technical evaluation report
D 9	Copy of stage 4 of evaluation report
D10	Copy of a memorandum dated 22 August 2012
D11	Copy of the TAC minutes of meeting held 26 July 2012
D12	Copy of a memorandum from Singh to Molefe dated 22 August 2012
D13	Copy of an LOI dated 30 November 2012
D14	Copy of Letsema's response in relation to the alleged conflict of interest
D15	Copy of McKinsey's response
D16	Copy of the Supply Chain Policy effective 1 May 2012
D17	Copy of a letter dated 22 May 2013 from Singh to Kloss informing him about a potential conflict of interest
D18	Copy of McKinsey's letter dated 12June 2013 to Singh responding to the alleged conflict of interest
D19	Copy of Singh's reply letter to Mckinsey dated 19 November 2013
D20	Copy of a letter/agreement dated 20 January 2014 sent by Niven Pillay to Singh
D21	Copy of a memorandum by Singh to Molefe dated 17 April 2014
D22	Copies of two invoices totalling to R9 194 049.46 dated 11 April and 19 December 2014
D23	Copy of Ningiza Horner Inc Invoices totalling R 4 707 630.0 issued 31

	March and 12 December 2014
D24	Copy of the third addendum signed between Transnet and McKinsey on 4 February 2014
D25	Copies of eight invoices issued by Regiments to Transnet between February 2014 and March 2014
D26	Copy of the Letter from Regiments to Singh dated 6 February 2014
D27	Copy of an agreement between Transnet and McKinsey led Consortium
D28	Copy of a letter by Vikas Sagar to Singh dated 16 April 2014 (Cession of contract)
D29	Copy of Memorandum by Singh to Molefe dated 16 April 2014
D30	Copy of an addendum between Transnet and Regiments dated 24 April 2014
D31	Copy of Regiments invoice of R79 million dated 27 March 2014
	CDB Loan Background
D32	Copy of a Business cased dated 25 April 2013
D33	Copy of memorandum from Mathane Makgatho to Molefe and Singh dated 29 April 2014
D34	Copy of a letter from Singh to Zheng Zhijie dated 11 June 2014
D35	Copy of a memorandum from Singh to Transnet Executive Committee signed by Makgatho 21 July 2014
D36	Copy of a letter from Singh to Wood, prepared by Makgatho dated 31 July 2014
D37	Copy of an email from Wood to Singh sent on 12 August 2014 at 8:18 AM
D38	Copy of an email from Wood to Stephanie S.Zhou on the 12 August 2014 at 09:18
D39	Copy of an email sent by Maatla Hlapolosa copied Stephanie S. Zhou on

	June 2015
D40	Copy of a document similar to Annexure D36
D41	Copy of an email communication between Dorothy Kobe, Makgatho, Deva Sathee and Reon Louw
D42	Copy of an email communication between Dorothy Kobe to and Deva Sathee on 19 August 2014
D43	Copy of an email from Makgatho to Molefe and Singh copied Yusuf Mahomed and Kobe, sent on 21 August 2014 at 12:45
D44	Copy of the minutes of the board meeting held on 28 August 2014 – Approval of the US Exim and CDB transactions
D45	Copy of Mandate letter concluded on 16 April 2015
D46	Copy of a Memorandum dated 18 April 2015 – Appointment of JP Morgan and Regiments to conclude the CDB Loan
D47	Copy of an email from Wood to Singh and Copied Ramosebudi, noting the role and benefits provided by Regiments in the 1064 funding
D48	Copy of an email from Gebreselasie to Singh and Ramosebudi, attached an updated version of the document sent by Wood on 17 April 2015
D49	Copy of a memorandum dated 19 May 2015 from Pita and Singh to Gama "Contract addendum"
D50	Copy of Regiments Invoice issued on 3 June 2015 "Invoice no. TRXFR00001"
D51	Copy of a payment advice signed by Singh on 11 June 2015
D52	Copy of Extract of the minutes of the board meeting held on 28 August 2014
D53	Copy of an agreement between Transnet and Regiments signed on 16 July 2015 (Second addendum to the Master Services Agreement)
D54	Copy of a letter written by Singh to Zheng Zhijie dated 11 June 2014

D55	Copy of a Cross Currency Swap service invoice raised by Regiments on 3 June 2015
D56	Copy of an email from Stephanie S Zhou to Eric Wood, copied Tewodros Gebreselasie dated 30 January 2015 at 09:09
D57	Copy of an email sent by Tewodros Gebreselasie to Singh and copied Indheran Pillay and Wood on 30 January 2015 t 19:36 (Subject: Letter from SA Finance Minister to CDB 20150156(7)
D58	Copy of a letter addressed to Chairman, China Development bank dated 26 January 2015
D59	Copy of a letter found on Mimecast sent to Singh by Gebreselasie on 30 January 2015
D60	Copy of email from Singh to Wood , copied Gebreselasie and Zhou sent on 3 February 2015
D61	Copy of an email from Wood to Singh sent on 6 February 2015 at 16:24 Subject "Letter from Minister of Finance", with attached PDF letter to Regiments Capital
D62	Copy of a communication from Transnet Corporate and Public Affairs to announcing Ramosebudi's appointment as Transnet's Group Treasurer sent
D63	Copy of an email from Takane to Joule sent on 31 March 2014informing Joule that Transnet delegation would arrive in Beijing on Monday 6 April 2015
	Investigations Relating to the Club Loan
D64	Copy of a memorandum dated 25 August 2014, compiled by Singh to the Board to request the Board to approve funding initiative
D65	Copy of the Minutes of the BOD meeting held on 28 August 2014
D66	Copy of Regiments proposal dated January 2015
D67	Copy of a memorandum sent by Gama to the ADC dated 28 April 2015

D68	Copy of the minutes of the ADC meeting held on 29 April 2015 (Resolution to Confine appointment to JP Morgan and to extend the contract with Regiments)
D69	Copy of JP Morgan Co-ordination letter dated 18 May 2015
D70	Copy of a Memorandum from Ramosebudi to GCE (Gama) dated 19 May 2015
D71	Copy of an email by Frank Vein to Ramosebudi and Wood on 12 May 2015 detailing the progress of the ZAR syndication loan
D72	Copy by JP Morgan to Singh dated 29 May 2015 informing him of various investigations against JP Morgan
D73	Copy of termination letter of JP Morgan's appointment issued by Singh to Marc Hussey dated 9 June 2015
D74	Copy of Regiments discussion document sent to Regiments dated June 2015
D75	Copy of an email by Wood sent to Singh on 17 July 2015 with subject " matter "1064 Funding Mandate – ZAR Club loan"
D76	Copy of a memorandum by Gama to ADC dated 22 September 2015 " Request to appoint Trillian as lead manager in US$1 billion ZAR equivalent club loan"
D77	Copy of the minutes of the ADC meeting held on 1 October 2015
D78	Copy of Garry Pita's written response
D79	Copy of an engagement letter issued by Trillian Boutique Asset Management to Transnet dated 18 November 2015
D80	Copy of Trillian Invoice dated 18 November 2015 of an amount of R82 million in respect of lead arranger for the R12 billion club loan
D81	Copy of a memorandum compiled by Ramosebudi to Gama, Pita and Silinga dated 24 November 2015 titled " ZAR Club Mandate", with attached invoice of R8 million (Excluding VAT)

D82	Copy of an email dated 5 August 2015 from Mswana Nwangu or Regiments to Wood, Gebreselasie, Mothepu and Raymond John detailing Regiments plan of action in respect of the club loan.
D83	Copy of an email sent by Mothepu to Wood requesting Wood to review the "ZAR funding pricing motivation" dated 15 September 2015, sent an email
D84	Copy of an email by Madale to Mothepu, Wood and officials from Nedbank, Liberty, Absa Capital and Bank of China dated 17 September 2015
D85	Copy of an email from Ramosebudi to officials from Nedbank, Liberty, Absa Capital and Bank of China, Wood, Mothepu and copied Pita on 6 October , Titled "Club Loan"
D86	Copy of email sent on 18 November 2015 with attached media statement announcing the club loan from Mothepu to Mboniso Sigonyela and copied Ramosebudi, Yusuf Mahomed and Wood, titled "Press statement Club loan 17 November 2015", Ramosebudi then forwarded the communication to Pita and copied Dorothy Kobe on 19 November 2015.
D87	Copy of an email sent on 19 November 2015 from Mothepu to Pita and copied Wood and Ramosebudi, titled: " Club Loan Media pack"
D88	Copy of email communication between Pita and Niven dated 12 September 2016, attached a letter raising concerns about the payment of 93 million to Trillian in respect of the club loan.
D89	Copy of Novum asset management (Pty) Ltd T/A Trillian asset Management (Pty) Ltd
	Investigations Relating to SWAT 1 – GSM/12/05/0445
D90	Copy of RFP GSM/12/05/0445 issued 28 May 2012
D91	Copy of Transnet Acquisition Council resolution/Minute 201/2012TAC
D92	Copy a memorandum by Singh to Molefe dated 14 August 2012
D93	Copy of the minutes of the TAC meeting held 12 October 2012

D94	Copy of a confinement memorandum from Singh to Molefe dated 18 October 2012
D95	Copy a Revised RFP GSM/12/10/0578 issued on 4 December 2012 with a closing date of 18 December 2012
D96	Copy of McKinsey submitted proposal dated 18 December 2012 in respect of RFP GSM/12/10/0578
D97	Copy of a letter of intent issued by Transnet to McKinsey on 23 January 2013 (LOI signed on 1 March 2013)
D98	Copy of First Addendum in respect of RFP GSM/12/10/0578 signed on 23 April 2013
D99	Copy of a letter by Singh to Koss of McKinsey dated 22 May 2013 titled " Potential Conflict of Interest identified –PD Naidoo and Associates"
D100	Copy of a second Addendum in respect of RFPGSM/12/10/0578 signed on 31 October 2013)
D101	Copy of a third Addendum in respect of RFPGSM/12/10/0578 signed on 20 November 2013)
D102	Copy of a memorandum by Singh to AC dated 27 October 2014
D103	Copy of an agreement between Transnet and McKinsey signed on 21 February 2014
D104	Copy of SAP Payment history report provided by Transnet
	Investigations relating GFB breakthrough contract GSM/15/1255
D105	Copy of a memorandum from Molefe to ADC dated 24 March 2015
D106	Copy of HVT report dated 24 October 2016
D107	2013 PPM
D108	Copy of Delegation of Authority effective 1 June 2013
D109	Copy of minutes of the BADC meeting held 30 March 2015

D110	Copy of an email from Suellen Du Plessis to Wood on 2 April 2015,
D111	Copy of a proposal submitted by Regiments in relation to RFP GSM/15/1255 signed on 29 April 2015
D112	Copy of a letter of intent dated 18 may 2015
D113	Copy of a memorandum from Pita to Gama dated 14 September 2015 requesting him to sign the LOI extension
D114	Copy of a Memorandum from Thomas to dated 26 October 2015 requesting amendment of scope
D115	Copy of a minutes of the ADC meeting held on 5 November 2015
D116	Copy of a memorandum from Thomas to Gama dated 27 November 2015 – "Requesting the conclusion of the contract"
D117	Copy of a Contract between Transnet and Regiments for the provision of services related to RFP GSM/15/03/1255
D118	Copy of a letter from Niven Pillay to Pita dated 15 March 2016
D119	Copy of a Cession of Regiments contract letter sent by Wood to Thomas dated 13 April 2016
D120	Copy of a memorandum compiled by Thomas to ADC dated 9 May 2016
D121	Copy of the minutes of the ADC meeting held 10 May 2016
D122	Copy of an addendum concluded between Transnet and Trillian dated 18 may 2016
D123	Copy of a letter sent by Niven Pillay to Pita dated 19 August 2016 "Restructuring of Regiments"
D124	Copy of a letter From Niven Pillay to Pita Dated 12 September 2016
D125	Copies of Trillian Invoices signed by Pita (Invoice Numbers TCP-GFB01, TCP-GFB02 and TCP-GFB03
D126	Copy of Trillian invoices cover letter dated 31 May 2016

D127	Copy of SAP Payments made to Trillian
D128	Copy of the excerpt of the minutes of ADC meeting held 20 October 2016
D129	Copy of an email from Viola Arjuun from Werkmans attorneys to Thomas and Pita, containing various termination letters of GSM/15/1255 contract
	Investigation relating to Coal Contract GSM/14/04/1037
D130	Copy of a Memorandum from Singh to Molefe dated 31 March 2014
D131	Copy of a letter of intent dated 9 April 2014
D132	Copy of a memorandum from Mossa to Pita dated 9 May 2014
D133	Copy of RFP GSM/14/04/1037 issued on 28 May 2014 and Closing 10 June 2014 at 12:00
D134	Copy of McKinsey submitted proposal dated 17 June 2014
D135	Copy of a memorandum from Singh to Molefe dated 20 November 2014
D136	Copy of a contract signed between Transnet and Mckinsey on 6 March 2015 and 10 March 2015 respectively
D137	Copy of McKinsey first invoice No. 5755 dated 2 June 2014 (For the work done from 28 April – 30 May 2014)
D138	Copies of McKinsey and Regiments Invoices
D139	Copy of letter of authority issued by Parbhoo to Transnet dated 9 February 2016
D140	Copy of letter from Lohini Moodley on behalf of McKinsey to Singh dated 15 January 2015
D141	Copy of letter from Indheran Pillay on behalf of Regiments to Singh dated 30 April 2015 attached an invoice TRXCOAL012
	Investigations relating to the Kumba Iron Ore Contract
D142	Copy of a memorandum from Singh to Molefe dated 31 March 2014

	"Renegotiating the Kumba contract"
D143	Copy of letter of intent dated 9 April 2014
D144	Copy of a memorandum from Moosa to Pita dated 9 May 2014
D145	Copy of an RFP GSM/14/04/1038 issued 28 May 2014 and closing 10 June 2014
D146	Copy of McKinsey submitted proposal dated 17 June 2014
D147	Contract between Transnet and McKinsey in terms of RFP GSM/14/14/1038 signed on 6 march 2015 and 1 April 2015 respectively
D148	Copy McKinsey and Regiments SAP payment history report
D149	Copies of two invoices (5757 and (5807) in the amount of R6.9 million each
D150	Copies of McKinsey and Regiments invoices
D151	Copy of letter of Authority to pay subcontractors from Parbhoo on behalf of McKinsey to Transnet dated 9 February 2016
	Investigations relating to Manganese Contract
D152	Copy of a Memorandum from Singh to Molefe dated 21 March 2014, "Manganese Execution Support"
D153	Copy of a letter of intent dated 9 April 2014 titled "Initial discussions on consulting services required"
D154	Copy of a memorandum submitted by Moosa to Pita title dated 8 may 2014
D155	Copy of RFP GSM/14/04/1039 issued on the 28 May 2014 with a closing date dated of 10 June 2014 at 12:00
D156	Copy of McKinsey submitted RFP dated 24 June 2014
D157	Copy of Mckinsey Transnet's SAP payment history report
D158	Copy of Regiments invoice dated 19 Nov 2013 of R1.8 million for services

	rendered from 1 Sept 2012 to 12 November 2013.
D159	Copies of Regiments an McKinsey invoices
D160	Copy of a contract signed between Transnet and McKinsey 6 March 2015 and 10 March 2015
	NMPP Contract – GSM/1404/1040
D161	Copy of an email dated 14 March 2012 from Fabio Pedrazzi of McKinsey to Singh "NMPP – memo for Brian.doc".
D162	Copy of a word document attached on the email 14 March 2012 " NMPP – memo for Brian"
D163	Copy of a memorandum compiled by Singh to Molefe dated 3 April 2014 titled "NMPP Acceleration – De – risking the way forward"
D164	Copy a letter of intent dated 9 April 2014 "Initial discussions on Consulting services required"
D165	Copy of a memorandum complied by Luqmaan Moosa to Pita dated 8 May 2014
D166	HVT Report
D167	Copy of an email sent by Luqmaan to Ashvin Sologar of McKinsey titled: CSM.14.01.1040-RFP-NMPP De-risking and Acceleration.pdf; Annexures.zip;Appendices.zip"
D168	Copy of McKinsey submitted proposal in respect of the NMPP dated 24 June 2014
D169	Copy of McKinsey invoice no 5806 for R14.7 million dated 30 June 2014
D170	Copy of McKinsey invoice dated 1 July 2014 for an amount ofR18,6 million in respect of professional fees for May 2014
D171	Copy of an invoice for an amount of R3.6 million dated 30 May 2014 in respect of professional fees for May 2014
D172	Letter of intent dated 9 April 2014

D173	Copy of a memorandum from Singh to Molefe dated 30 November 2014 "Extension of value and scope…"
D174	Copy of a contract signed by McKinsey and Transnet on 10 march 2015 and 06 May 2015
D175	Copy of a letter issued by Parbhoo to Transnet giving Authority to pay Regiments directly dated 9 February 2016
D176	Copy of an email sent by Parbhoo to Singh and Msagala on 15 June 2015 "NMPP close out memorandum"
D177	Copy of SAP summary report for all payments made to McKinsey and Regiments
D178	Copies of McKinsey and Regiments invoices
	Capital Optimisation and Implementation Support – SWAT 2
D179	Copy of an email sent on 17 September 2013 at 11:36 am from Mahomedy to Fabio pedrazzi@mcKinsey.com, and Prakash Parbhoo@mcKinsey.com subject "Action list"
D180	Copy of an email sent on 7 October 2013 at 02:31 from Mahomedy to Singh (This is the same email forwarded above on Annexure D179)
D181	Copy of Sagar response to Singh's e-mail on 7 October 2013 at 7:59 PM in relation to detailed scope of SWAT2
D182	Copy of a memorandum from Singh to Molefe dated 7 October 2013 "Capital optimisation and Implementation support"
D183	Copy of letter of intent issued by Singh to McKinsey on 4 February 2014
D184	Copy of a memorandum issued by Luqmaan Noor Moosa (Senior Buyer) to Pita dated 20 June 2014
D185	Copy a memorandum compiled by Moosa on 20 June 2014 and recommended by Thomas on 30 June 2014.
D186	Copy of RFP issued to McKinsey on 10 July 2014, with closing date on 22 July 2014

D187	Copy of McKinsey submitted proposal for the RFP closing 9 September 2014
D188	Copy of McKinsey invoice number 5705 dated 31 March 2014
D189	Copy of HVT report dated 16 July 2014
D190	Copy of a memorandum compiled by Mahomedy and recommended by Pita and Singh on 20 November 2014
D191	Copy of Appendix A: Scope and Pricing that the cost for the project "Scope Split: Engagement model between GCiA, McKinsey and Implementation partners"
D192	Agreement between Transnet and McKinsey in relation to RFP GSM/14/04/1052 signed 9 April 2014
D193	Copies of McKinsey and Regiments Invoices
D194	Copies of invoices submitted before submission of proposals, Invoice for R19 845 811.81, R 10 871 736.77 and R23 696 798.04 VAT inclusive
D195	Copy of a letter issued by Wood dated 7 March 2016 to Pita informing him of the restructuring process within Regiments
D196	Copy of a Cession of Regiments contracts to Trillian. "Letter from Wood addressed to Thomas dated 13 April 2016 to Thomas stating that in terms of the separation agreement between himself, Wood, and Regiment"
D197	Copy of a Letter from Niven Pillay dated 12 September 2016
	R11 Million approved by Jiyane
D198	Copy of an email sent on 17 February 2016 by Clive Angel from email address clive@tcp.co.za to Jiyane titled "Trillian Financial Advisory proposal" and copied Wood and Mothepu
D199	Copy of Trillian Financial Advisory proposal dated 15 February 2016 attached to Clive Angel email stated above on Annexure D198
D200	Copy of an email sent by Angel to Jiyane using a different email address

	styled clive@integratedcapital.co.za. Attached to the e-mail was an invoice in the amount of R11 400 000.00
D201	Two invoices issued by Trillian financial advisory and Trillian Capital Partners dated 19 February 2016 in the amount of R11 400 000.00 each (incl. VAT)
D202	Questions sent to Jiyane dated 30 August 2018
	Liquid fuels and gas demand –GSM/14/10/1167
D203	Copy of a memorandum from Makoma Mabitsela to Krishna Reddy dated 3 December 2014
D204	Copy of an RPF GSM/14/10*1067 issued 13 January 2015 closing 3 February 2015
D205	Copy of tender evaluation and Recommendation report recommended by Suellen Du Plessis on 19 February and approved by Walsh on 2 March 2015
D206	Copy of tender briefing session register (Held 23 January 2015)
D207	Copy of McKinsey submitted proposal
D208	Copy of a letter of intent issued to McKinsey, signed by Suellen Du Plessis and Sagar on 12 March 2015 and 24 March 2015
D209	Copy of Authority to pay Subcontractor letter sent by Parbhoo to Transnet 9 February 2016
D210	Copy of a letter by Thomas addressed to Sagar and Wood " Contract performance review and verification"
D211	Copy of McKinsey invoice number 6370 dated 28 October 2015 for R1 903 800.00 Vat Inclusive)
D212	Copies of McKinsey Invoices
	Lack of administrative and political support frustrates the fight against corruption
D213	Copy of a letter from Tshitangano to Gama dated 25 January 2016

	"Request for documents"
D214	Copy of Gama's response to Tshitangano letter dated 27 January 2016
D215	Copy of Gama's letter to national Treasury dated 10 February 2016
D216	Copy of a letter from Kenneth Brown to Gama dated 3 March 2016
D217	Copy of a letter from Gama to Kenneth Brown dated 10 March 2016
D218	Copy of a letter from Brown to Gama dated 7 April 2016
D219	Copy of a letter from Seleke to NT DG, Lungisa Fuzile dated 8 March 2016
D220	Copy of a letter from Gama to Seleke dated 15 March 2016
D221	Copy of a letter from Fuzile to Seleke dated 11 April 2016
D222	Copy of a letter from Seleke to Fuzile dated 9 May 2016
D223	Copy of letter dated 8 December 2016 from Gama to the Chief procurement officer
D224	Copy letter from Gama to Director General NT Dondo Mogajane dated 18 August 2017
D225	Copy of a letter from Tshitangano to Frans Matlala dated 3 November 2015 "Request of Documents" and Matlala's response dated 4 November 2015
D226	Copy of a letter from Tshitangano to GCE Mathews dated 23 November 2015, and Mathew's response dated 25 November 2015
D227	Coy of a letter from Tshitangano to Acting DG Department of communication, Mr Norman Munzhelele dated 2 December 2015
D228	Copy of a letter from Tshitangano to Mathews dated 3 December 2015
D229	Copy of a letter dated 9 December 2015 of a response by Mathews on a letter dated 9 December 2015
D230	Copy of a letter from Minister of Communications Muthambi sent to

	Minister Finance Gordhan dated 23 December 2015
D231	Copy of a letter from Brown to prof M O Maguvhe dated 12 April 2016
D232	Copy of a letter from Minister of Finance Gordhan to Minister of Communication “Muthambi” dated 27 June 2016
D233	Copy of a letter from the Chief Procurement Officer to the Acting Chief procurement Officer of SASSA dated 15 June 2016
D234	Copy of a letter from Minister of Social Development “Bathabile Dlamini” to Minister of Finance “Gordhan” dated 15 July 2016
D235	Copy of a letter dated 30 June 2016 from Minister Brown to Minister Gordhan “ Requesting that Minister Gordhan should exempt Eskom and Transnet from NT instruction notes”
D236	Copies of communications between Chairperson of SCOPA, Themba Godi and Minister of Finance, Mr Gigaba, Dated 17 May 2017 and 11 July 2017
D237	Copy of NT media statement issued on 4 August 2017
D238	Copy of a letter from Tshitangano to Ms Octavia Matloa (NT Chairperson of the Audit Committee) dated 6 February 2018
	Department of Public Enterprise
D239	Copy of Transnet Board members nomination form completed by Kgomongwe nominating Richard Seleke dated 16 October 2014
D240	Copy of a letter dated 24 November 2015 sent by Seleke to DPE requesting that Kgomongwe be transferred to DPE
D241	Copy of a memorandum prepared by Mokholo to Cabinet dated 2 December 2014
D242	Copy of a memorandum dated 25 November 2015 signed by Kgathatso Tlhakudi Acting Director General DPE
D243	Copy of a memorandum signed on 25 November prepared by Baloyi and George Malatsi

D244	Copy of a decision memorandum dated 8 March 2016 "Motaung Transfer"
D245	Copy of McKinsey submitted preliminary proposal dated 20 Aril 2015 'Top Engineers programme"
D246	Copy of Minutes of the special EXCO Procurement Committee meeting held 30 March 2015
D246	Copy of a memorandum dated September 2015 from Eskom to DG National Treasury
D247	Copy of national Treasury Instruction 01 of 2013/2014
D248	Copy of a memorandum prepared by Mabelane to Molefe approved on 15 May 2013
D249	Copy of a memorandum dated 18 May 2015 from Prish Govender "Request from approval of appointment of McKinsey as a sole source
D250	Copy of a memorandum dated 29 may 2015 from Mabelane to GM Finance
D251	Copy of a letter dated 29 June 2015 from Nonkululeko Veleti to Mabelane
D252	Copy of the extract of the approved minutes of the BTC meeting held on 21 October 2015
D253	Copy of a communication from Mckinsey to Eskom Officials including Ntombizodwa Mokoatle, and Prish Govender dated 30 October 2015
D254	Copy of service level agreement entered into between McKinsey and Eskom for the development of a Top Engineer's programme signed on 7 January 2016 and 11 January 2016 respectively
D255	Copy of the minutes of the Top Consulting Programme Steering Committee meeting held 9 February 2016
D256	Copy of a Letter from Singh to Weiss of Mckinsey dated 19 February 2016

D257	Copy of a letter dated 9 February 2016 issued by Sagar to Govender
D258	Copy of a letter dated 8 April 2016 issued by Govender to Khomola
D259	Copy of a letter dated 10 march 2016 – From McKinsey to Wood
D260	Copy of a submission to the BTC approved 6 June 2016
D261	Copy of the minutes of the special Eskom BTC meeting held on 8 August 2016
D262	Copies of the two invoices dated 11 August 2016 with invoice no. 6595 and 17 February 2017 with invoice no.6730
D263	Copy of the findings of Eskom's Assurance and Forensic department report issued 12 December 2016
D264	Copy of extract of the draft minutes of the BTC meeting held 13 December 2016
D265	Copy of the termination letter issued by Mabelane dated 16 June 2016 to McKinsey
D266	Copy of the extract of the minutes of Eskom BTC meeting held on 8 February 2017
D267	Copy of a memorandum dated 27 September 2017 issued by Wawa Xaluva to Jaybalan Pillay
D268	Copy of the Factual finding report into MSA between Eskom and McKinsey issued by Molefi Nkhabu during July 2017
	Anoj Singh overseas trip facilitated by McKinsey
D269	Copy of a memorandum dated 1 February 2012 prepared by Pita to GCE
D270	Copy of an email from McKinsey e-mail address CFO-forum 2012@McKinsey.com to Singh sent on 2 February 2012 at 12: 09
D271	Copy of an email sent on 19 September 2011 from CFO forum email to Vikas Sagar and Adam
D272	Copy of a memorandum from Singh to Gama requesting authorisation

	to travel
D273	Copy of an email provided by McKinsey sent from CFO Forum Christiane Stuehler – Churr to Sigh and Takane on 31 may 2012 at 11:55
D274	Copy of an email sent on 12 June 2012 by Sagar to Singh congratulating him for securing a VISA
D275	Copy of communication between Takane and Germaine Walker about Singh travel Visa on 7 June 2012
D276	Copy of a letter from McKinsey dated 11 June 2012 to German Embassy requesting a VISA for Singh
D277	Copies of Singh's travel itineraries to CFO forum in 2012 (Flight to London, Accommodation in London, Flight to Frankfurt, Accommodation in Frankfurt, cancellation of Frankfurt accommodation by Transnet)
D278	Copy of McKinsey 's response relating to the bookings from Frankfurt
D279	Copies of Singh's travel itinerary to Dubai for a meeting with McKinsey
D280	Copies of Singh's travel itinerary from Dubai to Johannesburg
D281	Copies of Sagar's itinerary 2012 CFO Forum
D282	Copy of an email of invitation to Singh by McKinsey to the CFO Forum to be held on 6 to 7 June 2013 in London. The email was sent from CFO-Forum2013@mckinsey.com to Singh on 15 March 2013
D283	Copy of a memorandum from Singh to Molefe requesting authorisation to travel to 2013 CFO forum in London
D284	Copies of Singh's travel itinerary to London for the 2013 CFO Forum(Flight to London, Accommodation in London – Wings travel hotel accommodation bookings, Travel to Dubai, Accommodation in Dubai, Flight from Dubai to Frankfurt, Accommodation in Frankfurt, Travel from Frankfurt to Moscow, accommodation in Moscow, Flight from Moscow to Frankfurt, Travel from Frankfurt to Johannesburg
D285	Copies of Singh's itinerary trip to Russia booked by McKinsey outside

	CFO forum on 8 May 2013 (e-Ticket Number 220-3906006854),
D286	Copy of an email sent on 27 May 2013 from Gounder to Takane and Copied Sagar
D287	Copy of an email sent on 4 June 2016 by Walker to Takane requesting confirmation for hotel bookings in respect of Singh's travel to the 2013 CFO Forum

1. INTRODUCTION

1.1. National Treasury issued a request for quotation with reference number RFQ 026-2017, for the appointment of a forensic audit firm to investigate issues raised on Eskom-Tegeta Exploration and Resources (Pty) Ltd ("Tegeta") report, as well as the National Treasury's preliminary investigations at Transnet.

1.2. We understand that National Treasury conducted a preliminary investigation into various allegations at both Eskom and Transnet. Based on National Treasury's preliminary findings, they sought to appoint a forensic audit investigation firm to conduct a thorough and detailed investigation into the issues raised at the two state owned companies.

1.3. Fundudzi Forensic Services was appointed to conduct investigations into allegations at Transnet and Eskom regarding the Locomotives tender and Tegeta, respectively.

1.4. This report is privileged and confidential and was prepared solely for purpose of our findings to National Treasury and should therefore not be utilised for any other purpose without our prior written consent.

ESKOM INVESTIGATIONS

1.5. It is our understanding based on National Treasury report that during 2013, there were negotiations with Eskom regarding the supply of coal to Eskom. We further understand that after the negotiations, Tegeta subsequently submitted a proposal to Eskom during September 2014. We further understand that after the proposal was submitted Eskom entered into a Coal Supply Agreement ("CSA") with Tegeta.

1.6. The issues raised on the Eskom-Tegeta <u>contract </u>relate to Eskom's processes followed in the appointment of Tegeta for the supply of coal for a period of ten years.

1.7. National Treasury further indicated that there could be issues of fruitless and wasteful expenditure relating to the CSA which may include inter alia the advance payment of funds to Tegeta. Linked to the advance payment, questions were raised on whether there were possibilities of corruption on the part of Eskom officials involved in the said payment. In this regard, it was indicated that two of Eskom's officials, Anoj Singh, Chief Financial Officer ("Singh") and Matshela Koko, Executive Director of Generation ("Koko") undertook trips to Dubai, which trips were allegedly paid for by the Gupta Family.

1.8. National Treasury further indicated that the investigation should establish the role played by the former Chief Executive Officer of Eskom, Mr Brain Molefe ("Molefe") regarding the CSA entered into between Eskom and Tegeta.

TRANSNET INVESTIGATIONS

1.9. It is our understanding that National Treasury conducted initial investigations relating to various issues of alleged irregularities at Transnet. The said allegations, which National Treasury appointed us to conduct investigations on, related to appointment of suppliers for the following locomotive tenders:

1.9.1. 95 locomotives;

1.9.2. 100 locomotives; and the

1.9.3. 1 064 locomotives.

1.10. The request for investigation relating to the locomotives tender was to focus on the appointment of China South Rail ("CSR") as there were allegations that the company's appointment and involvement of the Group Chief Executive ("GCE") and Group Chief Financial Officer ("GCFO") in the said appointment may have been irregular.

1.11. We understand that Molefe was employed at Transnet as GCE for the period February 2011 to March 2015. Molefe was appointed Acting GCE of Eskom and later GCE from 1 March 2015 until early 2017.

1.12. We further understand that Singh was appointed as GCFO at Transnet for the period 1 July 2012 to 30 September 2015. Singh was later appointed GCFO at Eskom on 25 October 2015 until January 2018.

1.13. We were further mandated to investigate allegations of irregularities pertaining to the following appointments:

1.13.1. Appointment of McKinsey and Company South Africa ("McKinsey");

1.13.2. Regiments Capita Management ("Regiments"); and

1.13.3. Trillian Capital Partners or Asset Management ("Trillian").

1.14. We have prepared three separate reports relating to the allegations discussed above. The said reports were issued as follows:

1.14.1. Chapter 1: Acquisition of 95, 100 and 1064 locomotives for Transnet Freight Rail;

1.14.2. Chapter 2 Appointment of McKinsey, Regiments and Trillian at Eskom and Transnet

1.14.3. Chapter 3 Investigations relating to Tegeta

1.15. This report relates to investigations conducted in respect of allegations of irregularities pertaining to the appointment of McKinsey, Regiments and Trillian at Transnet and Eskom.

DETAILED ALLEGATIONS RELATING TO THE APPOINTMENT OF MCKINSEY, REGIMENTS AND TRILLIAN

1.16. Our scope of work included *inter alia* independently investigating the following:

1.16.1. Investigate whether Singh facilitated the appointment of McKinsey, Trillian or Regiment Capital in Eskom and Transnet and whether such facilitation amount to abuse of a position of authority, a breach of trust or violation of legal duty or set of rules in terms of the PRECCA;

1.16.2. Establish whether Tegeta or its associates influenced Singh, Koko or any other person in any organ of state to improperly influence certain decisions and whether that amounted to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or set of rules in terms of the PRECCA; and

2. LIMITATIONS

2.1. Our mandate is limited to investigations relating to compliance issues at both Transnet and Eskom. Issues relating to any criminal investigations, where identified, will be highlighted and referred to the relevant state organs for further investigations.

2.2. The majority of the critical role players at both State Owned Companies either resigned or were suspended or dismissed prior to or during our investigations. Where possible, we consulted with some of the said individuals and their versions are contained in the report.

2.3. We issued questions to various individuals who in our view may have had information relevant to the investigation. We received most of the responses however we noted that some our questions were not addressed. As at date of this report we had not received responses from Brian Molefe.

3. SCOPE AND METHODOLOGY

3.1. The scope and methodology performed during the course of our investigation is discussed below**.**

SCOPE

3.2. The objective of our appointment was to conduct investigations into alleged transgressions identified by National Treasury.

3.3. Based on the terms of reference provided to us by National Treasury, we understand that the scope of the forensic investigation will include *inter alia* the following:

3.3.1. Investigate allegations of irregularities in the appointment and management of work done by the following companies both at Eskom and Transnet:

3.3.1.1. McKinsey;

3.3.1.2. Regiments; and

3.3.1.3. Trillian.

3.3.2. Enable the process of conducting further investigations, detection and prosecution, in terms of prevailing legislation and procedures;

3.3.3. Refer any matter to the National Treasury if it is assessed and found not to be a forensic matter;

3.3.4. Safeguard evidence uplifted and/or confiscated, through any processes including evidence collected from any computers and/or IT systems;

3.3.5. Issue reports arising from the forensic investigation to enable the Shareholder to effectively manage incidents and take appropriate steps to prevent recurrences thereof;

3.3.6. Refer matters of a criminal nature, after consultation with the National Treasury, to the South African Police Services (SAPS) for further investigation;

3.3.7. Identify weaknesses and gaps within the internal control environment;

3.3.8. Communicate risks identified during the investigation to National Treasury;

3.3.9. Conduct investigation/s and/or review of any other issues that may be pertinent, relevant and/or critical to the forensic investigation; and

3.3.10. Provide National Treasury with a report on our factual findings which will include our conclusions and recommendations.

METHODOLOGY

3.4. The nature of the assignment included consultation with various parties, review of documentation, background intelligence services and other investigative procedures deemed necessary to address the scope of our mandate as reflected in paragraph 3.3 above.

General procedures performed

3.5. In order to address the objectives mentioned above, we conducted the following procedures:

Consultations conducted

3.6. The investigation team consulted with the following role players:

3.6.1. Bianca Goodson;

3.6.2. Cleopatra Shiceka;

3.6.3. David Newman;

3.6.4. Eddie Thomas;

3.6.5. Garry Pita;

3.6.6. Herbet Msagala;

3.6.7. Mathane Makgatho;

3.6.8. Mosilo Mothepu;

3.6.9. Nomfanelo Magwentshu;

3.6.10. Phetolo Ramosebudi ;

3.6.11. Prakash Parbhoo;

3.6.12. Siyabonga Gama;

3.6.13. Thamsanqa Jiyane;

3.6.14. Xandra Blacklaws

Review of documentation

3.7. We reviewed, *inter alia* the following documentation provided to us by individuals we consulted with and members of staff at Transnet:

3.7.1. Business Case relating to the acquisition of 95, 100 and 1064 locomotives at Transnet;

3.7.2. Various proposals submitted by McKinsey to Transnet and Eskom;

3.7.3. Various RFP issued by Transnet

Computer Imaging

3.8. We imaged computers and apple devices belonging to the following Transnet and Eskom individuals:

3.9.1. Anoj Singh – Eskom only;

3.9.2. Ayanda Nteta;

3.9.3. Brian Molefe – Eskom only;

3.9.4. Matshela Koko;

3.9.5. Susan Daniels; and

3.9.6. Garry Pita.

Mimecast E-mail Review

3.9. During our review, we were given remote access to Mimecast e-mails for the following individuals:

3.9.1. Anoj Singh;

3.9.2. Brian Molefe;

3.9.3. Gary Pita;

3.9.4. Siyabonga Gama;

3.9.5. Thamsanqa Jiyane; and

3.9.6. Lindiwe Mdletshe.

4. LEGISLATION, POLICIES AND PROCEDURES

4.1. We received and reviewed the policies and prescripts reflected below for the purpose of our investigation.

4.2. **The Constitution of the Republic of South Africa Act 108 of 1996 ("the Constitution")**

In terms of section 217 of the Constitution, "when an organ of state in the national or local sphere of government or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective".

4.3. **Public Finance Management Act, of 1999 ("the PFMAN")**

4.3.1. Section 51 - General responsibilities of accounting authorities, provides that:

ss(1) (b) (ii) "An accounting authority for a public entity must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity".

4.3.2. Section 54 - Information to be submitted by accounting authorities *, provides that"*

" An official in a public entity—

ss(2) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

(d) acquisition or disposal of a significant asset"

4.3.3. **Section 57 - Responsibility of other officials**

(c) "An official of a public entity must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;

4.3.4. **Section 83 - Financial misconduct by accounting authorities and officials of public entities**

ss (*1) "The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently:*

(a) fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55; or

(b) makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

ss (2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

ss(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

ss(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation."

4.3.5. **Section 84 - Applicable legal regime for disciplinary proceedings**

"A charge of financial misconduct against an accounting officer or official referred to in section 81 or 83, or an accounting authority or a member of an accounting authority or an official referred to in section 82, must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority, or member or official, and any regulations prescribed by the Minister in terms of section 85."

4.3.6. Section 86 - Offences and penalties

(1) "An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40.

(2) An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section 50, 51 or 55."

4.4. Transnet Group Limits of Authority

Section 5.1 - Capital Expenditure

Capital expenditure may only be authorised if the project has been so approved by CAPIC or the relevant divisional CAPIC in accordance with the limits set out in this Delegation of Authority Framework and capital funds have been allocated in the annual Budget of the Company"

Section 5.1.1 - CAPEX in approved budget/Corporate Plan: To commence projects

"If the set limit (currently 1% of total assets) is exceeded then the Board to consider and recommend to Shareholder Minister for approval. Approval limits are per individual project, reported on a monthly basis to Group Financial Planning".

Section 5.1.3 - Increase in Estimate Total Cost (ETC) of Existing/Approved Projects

"Increase in Estimated Total Cost (ETC) of Existing/Approved Projects…up to but not exceeding R500m" must be approved by Group EXCO/GCE".

4.5. Transnet Delegation of Authority Framework approved by the Board on 29 August 2012 effective from 1 September 2012

Section 5.1.3 - Increase in Total Estimated Cost (ETC) of Existing/Approved Projects

"Increase in ETC of projects already approved by the Shareholder Minister must be reported to the Shareholder Minister if the increase is in excess of 15%"

4.6. **National Treasury Instruction and Practice Notes**

Instruction Note

"Only bids that achieve the minimum stipulated threshold for local production and content may be evaluated further. The evaluation must be done in accordance with 80/20 or 90/10 preference point system prescribed in Preferred Procurement Regulations, 2011."

4.7. **Transnet Procurement Procedures Manual Version 1 -August 2012**

Section 17.1.8 - Amendment before the closing date

(a) "Transnet is entitled to amend any bid condition, validity, period, specification or plan, or extend the closing date before the closing date, or in case of a compulsory briefing session, before the scheduled session". However, such amendments or extension must be advertised and/or all bidders who obtained bid documents must be advised in writing per fax or e-mail of such amendments or extension a minimum of three working days before schedule date. The new closing date and time must be clearly reflected".

4.8. **PRECCA**

Section 3 of PRECCA provides that any person who, directly or indirectly:

"(a) Accepts or agree or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) Gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner-

(i) that amounts to the –

(aa) illegal, dishonest, unauthorised, incomplete, or biased; o

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to or not to do anything,

is guilty of the offence of corruption.

Section 34 (1) (b) of PRECCA provides that – *"any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed - the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000.00 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official."*

Section 34 (2) of PRECCA, subject to the provisions of section 37(2), any person who fails to comply with subsection (1), is guilty of an offence.

5. FINDINGS

5.1. The findings discussed below are based on various consultations and review of documentation made available to us during the course of our investigation.

5.2. In line with Fundudzi Forensic Services practice, due care was taken to confirm the factual accuracy of the findings in this report. This includes consultations with individuals who in our opinion had information relevant for our investigation.

5.3. The findings in this report should be addressed decisively by National Treasury. We believe that corrective action limited to the specific individual findings alone would likely address symptoms but not the underlying causes. The approach carries the risk of deficiencies recurring in the future.

5.4. It is therefore imperative that the underlying causes contributing to the deficiencies be properly understood and addressed as part of the corrective actions to be taken in response to our report.

5.5. Background

5.5.1. It is our understanding that following allegations of irregularities levelled against certain companies and individuals relating to contracts at Eskom and Transnet, National Treasury conducted an investigation to determine the veracity of the said allegations.

5.5.2. We further understand that National Treasury produced a report of their factual findings at the end of the said investigations.

5.5.3. Part of the recommendations of National Treasury's report was that a forensic investigation company be appointed to conduct a full investigation on the said allegations.

5.5.4. The investigations which National Treasury sought to be conducted related to inter alia the following:

5.5.4.1. Investigate whether Singh facilitated the appointment of McKinsey/Trillian or Regiment Capital in Eskom and Transnet and whether such facilitation amounts to abuse of a position of authority, a breach of trust or violation of legal duty or set of rules in terms of PRECCA.

5.5.5. We discuss below the procurement process followed by Transnet and Eskom in the appointment of McKinsey, Regiments and Trillian for various contracts within the two SoEs.

INVESTIGATIONS INTO MCKINSEY, REGIMENTS AND TRILLIAN

5.6. McKinsey, Regiments and Trillian's appointments at Transnet

5.7. RFP: GSM/12/05/0447 - Advisory services for the 1064 locomotives tender

5.7.1. Based on documentation reviewed, we determined that during 2012, Transnet issued RFP GSM/12/05/0447 in respect of advisory related services on the 1 064 locomotives tender (**Annexure D1**).

5.7.2. We discuss below the procurement process followed in the appointment of McKinsey led consortium for the provision of advisory services in respect of RFP GSM/12/05/0447.

Memorandum dated 7 May 2012

5.7.3. We determined that Pita sent a memorandum to Molefe and Singh dated 7 May 2012 in respect of the confinement of advisory services related to the acquisition of the 1 064 locomotives tender. We further determined that the purpose of the memorandum was to obtain approval to confine business to any one or a combination of the following entities (**Annexure D2**):

5.7.3.1. KPMG;

5.7.3.2. PWC;

5.7.3.3. Letsema;

5.7.3.4. McKinsey;

5.7.3.5. Webber Wentzel;

5.7.3.6. David Potter;

5.7.3.7. Ledwaba Mazwai; and

5.7.3.8. MAC consulting.

5.7.4. Furthermore, the purpose of the memorandum was to approve procurement strategy that would be used to access the above mentioned companies and to delegate authority to the Acting CFO (Singh) to award business to the said companies after completion of the adjudication process.

5.7.5. According to the memorandum, KPMG, Aurecon, Letsema and McKinsey had been selected based on prior Transnet experience and extensive working knowledge and experience in the project finance.

5.7.6. We determined that the reason for the confinement was indicated as urgency of the 1 064 tender being awarded by December 2012.

5.7.7. According to the memorandum, the successful bidder was required to partner with a black firm and subcontract a minimum of 30% of the business awarded.

5.7.8. We determined that the estimated cost of the confinement was R50 million.

5.7.9. We further determined that the memorandum was submitted by Shantell Mackay and recommended by Wynand Esterhuizen, Thomas, Singh, Volmink, and Pita.

5.7.10. We determined that an unknown official signed on Molefe's behalf approving the request for confinement.

Request for proposal GSM/12/05/0447

5.7.11. The memorandum dated 7 May 2012 gave effect to a request for proposal to service providers identified by Transnet including the following:

5.7.11.1. KPMG;

5.7.11.2. PWC;

5.7.11.3. Letsema;

5.7.11.4. McKinsey;

5.7.11.5. Webber Wentzel;

5.7.11.6. David Potter;

5.7.11.7. Ledwaba Mazwai; and

5.7.11.8. MAC Consulting.

5.7.12. We determined that on 30 May 2012, Transnet issued RFP GSM/12/05/0447 for the appointment of Advisory Services related to the acquisition of the 1064 locomotives tender to the entities referred to above. The tender was for a period of nine months.

5.7.13. The tender was available for a purchase price of R5000.

5.7.14. We determined that the following entities bought the tender document (**Annexure D3**):

5.7.14.1. McKinsey;

5.7.14.2. KPMG;

5.7.14.3. Letsema;

5.7.14.4. Webber Wentzel;

5.7.14.5. Ledwaba Mazwai Attorneys; and

5.7.14.6. PWC.

5.7.15. The closing date for the submission of proposals from prospective bidders was 7 June 2012 at 12:00.

5.7.16. **Submission of proposal by McKinsey**

5.7.17. We determined that the following service providers submitted their bid documents in respect of 1064 Advisory Services

5.7.17.1. KPMG;

5.7.17.2. PWC;

5.7.17.3. McKinsey/ Letsema; and

5.7.17.4. Webber Wentzel.

5.7.18. The McKinsey led consortium comprised the following entities:

5.7.18.1. Advance Rail Technology (David Potter);

5.7.18.2. Edward Nathan Sonnenburgs (“ENS”);

5.7.18.3. Koikanyang;

5.7.18.4. Letsema Consortium;

5.7.18.5. Nedbank Capital; and

5.7.18.6. Utho Capital.

5.7.19. We determined that the McKinsey led consortium proposed R80.1 million in respect of the 1064 Advisory Services proposal (**Annexure D4**).

Transnet Acquisition Council meeting of 12 July 2012

5.7.20. On 12 July 2012 Transnet Acquisition Council ("TAC") held a meeting for the evaluation of RFP GSM/12/05/0447. We further determined that TAC comprised the following members:

5.7.20.1. L Gillman;

5.7.20.2. W Esterhuizen;

5.7.20.3. L Moosa;

5.7.20.4. E Thomas;

5.7.20.5. J Bouwer;

5.7.20.6. F Van der Walt;

5.7.20.7. Y Mahomed; and

5.7.20.8. C Felix (TIA);

5.7.21. We determined that the following TAC members declared an interest as follows:

5.7.21.1. Gillman declared in an e-mail to Luqmaan Noor Moosa that he knew Sam Gumede of Webber Wentzel. Gillman indicated that Sam Gumede was a social acquaintance and a best friend to his future brother in law (**Annexure D5**); and

5.7.21.2. Bouwer declared that he knows David Potter of Advance Rail Solutions (One of the bidders) on a personal level, however he had no business interests. Bouwer further declared that he had previous business dealings with McKinsey and Webber Wentzel (**Annexure D6**).

5.7.22. Paragraph 1.5.2 (d) of the 2009 PPM states that employees who have a competing personal direct or indirect interest in a specific tender, quotation or offer, must declare such interest in writing and recuse themselves from the adjudication or tender evaluation process, as such competing interests can make it difficult for such employee to fulfil his/her duties impartially. Conflicts of interest may occur in cases where an employee is a shareholder/director. We however determined that Gillman and Bouwer proceeded with the evaluation of the tender even though they declared personal and business interests with some of the bidders (**Annexure D7**).

5.7.23. Gillman and Bouwer contravened paragraph 1.5.2 (d) of the 2009 PPM in that they failed to recuse themselves from the evaluation process after declaring their conflict of interest.

Evaluation of Bids

5.7.24. According to the RFP, stage 1 and 2 of the evaluation criteria comprised administrative and substantive responsiveness which included the following:

5.7.24.1. Returnable documents and schedules; and

5.7.24.2. Pre-qualification.

5.7.25. We determined that the above mentioned bidders met the minimum requirements for stage 1 and 2 and progressed to stage 3 (technical evaluation) of the evaluation process.

5.7.26. The evaluation criteria for stage 3 (technical evaluation) was categorised into the following (**Annexure D8**):

5.7.26.1. Business case;

5.7.26.2. Technical Optimisation;

5.7.26.3. Deal structuring and Finance for large capital investment project;

5.7.26.4. Procurement; and

5.7.26.5. Legal.

5.7.27. The following is a summary of the evaluation criteria stated above:

Stage 3 evaluation Technical results per category	**KPMG JV**	**PWC JV**	**McKinsey JV**	**Webber Wentzel**
Business Case	59.88%	75.60%	89.42%	N/A
Technical Optimisation	63.96%	61.58%	90.74%	N/A
Deal Structuring and Financing	61.32%	82.32%	77.44%	N/A

Stage 3 evaluation Technical results per category	KPMG JV	PWC JV	McKinsey JV	Webber Wentzel
Procurement and Legal	58.54%	70.09%	81.43%	70.34%

5.7.28. We determined that KPMG failed to meet the minimum threshold of 70% for stage 3 of the evaluation process and was eliminated. We further determined that PWC JV, McKinsey JV and Webber Wentzel progressed to stage four of the evaluation process.

5.7.29. According to the RFP, stage four of the evaluation process included price and BBBEE score card. The RFP further indicated that the price would be evaluated per service based on the following:

5.7.29.1. Rate per hour;

5.7.29.2. Rate per resource level;

5.7.29.3. Rate for overtime;

5.7.29.4. Disbursements; and

5.7.29.5. Entity's financial stability.

5.7.30. The table below reflect a summary of stage four of the evaluation process in respect of price and B-BBEE (**Annexure D9**):

Stage 4 evaluation Price and BBBEE scorecard (per category)	PWC JV	McKinsey JV	Webber Wentzel
Business Case	68.20%	86.24%	Not evaluated
Technical Optimisation	Not evaluated – threshold not met	86.24%	Not evaluated
Deal Structuring and	65.51%	86.24%	Not evaluated

Stage 4 evaluation Price and BBBEE scorecard (per category)	PWC JV	McKinsey JV	Webber Wentzel
Financing			
Procurement and Legal	28.50%	86.24%	29.60%

5.7.31. We noted that the price quoted by each of the bidders was not reflected in the summary for stage four of the evaluation process.

5.7.32. According to the memorandum, McKinsey's scores are the same as they scored the same for price and B-BBEE in respect of all categories. The memorandum further indicated that PWC JV and Webber Wentzel scored 0 for pricing as their pricing was double the price compared to McKinsey and the scores reflected above for both PWC JV and Webber Wentzel were for B-BBEE only (**Annexure 10**).

5.7.33. We determined that TAC recommended that consideration be given to:

5.7.33.1. The tender being awarded to the overall highest ranking bidder *i.e.* McKinsey & Company and Letsema Joint Venture;

5.7.33.2. That approval be obtained from the GCE to confine the award of business for category 4; and

5.7.33.3. Go on open tender for item 4/5.

5.7.34. We determined that the said minutes of the TAC were signed by the Secretary and Deputy Chairperson on 20 July 2012 respectively. The minutes did not indicate who the Secretary and Deputy Chairperson of TAC were.

Transnet Acquisition Council meeting of 26 July 2012

5.7.35. We determined that on 26 July 2012, TAC held a meeting and approved the split award of the procurement component of category 4 to McKinsey Consortium and legal services within category 4 to Webber Wentzel, as recommended during the TAC meeting of 12 July 2012. (**Annexure D11**)

5.7.36. We were not provided with the minutes of the TAC meeting of 12 July 2012 in order to confirm the said recommendations.

5.7.37. According to the minutes of the TAC meeting of 26 July 2012, the following was provided as reasons for appointing Webber Wentzel for legal services within category 4 instead of ENS (a member of the McKinsey Consortium):

5.7.37.1. A risk had been identified that Transnet would have a problem in the final contract negotiation on the locomotive tender should Webber Wentzel sit on the opposing side of the table; and

5.7.37.2. Webber Wentzel was involved in the transaction of locomotive procurement events for various classes' of locomotives in the past

5.7.38. The minutes of the TAC meeting of 26 July 2012 did not indicate who was in attendance during the said meeting.

Memorandum dated 22 August 2012 (Approval of McKinsey consortium)

5.7.39. We determined that Singh sent a memorandum dated 22 August 2012 to Molefe in respect of the appointment for transaction advisor on the 1 064 locomotives tender. (**Annexure D12)**

5.7.40. We further determined that the purpose of the memorandum was to request approval from the GCE for the appointment of the McKinsey Consortium in respect of the complete advisory services and Webber Wentzel for the legal advisory work as Transaction advisors on the 1064 locomotives tender.

5.7.41. The memorandum recommended to the GCE that McKinsey would be advised to partner with another firm with equal or better credentials than Letsema, for the procurement elements, due to the potential conflict with Barloworld and Letsema.

5.7.42. We noted that the memorandum did not indicate the reasons for the conflict of interest between Letsema and Barloworld.

5.7.43. We determined that the potential conflict with Barloworld and Letsema referred to in Singh's memorandum of 22 August 2012 was not discussed during the TAC meeting of 12 July 2012 and 26 July 2012.

5.7.44. It is not clear what informed Singh's recommendation to exclude Letsema from McKinsey's consortium as the conflict was not identified during the evaluation process.

5.7.45. It should be noted that Singh was not a member of TAC. Singh was not part of the meeting of 12 July 2012.

5.7.46. We were not presented with the attendance register for the TAC meeting of 26 July 2012 and therefore cannot confirm whether Singh attended the meeting or not.

5.7.47. According to the memorandum, the scope of the engagement for the transaction advisors *inter alia* included:

5.7.47.1. Developing and augmenting the business case for the approval of the locomotives by Transnet Board and DPE;

5.7.47.2. Setting up the tender process in line with all requirements applicable to SOC's;

5.7.47.3. Developing a shortlist of potential suppliers;

5.7.47.4. Developing the contracts for the tender; and

5.7.47.5. Developing finance and funding options.

5.7.48. According to the memorandum, McKinsey's consortium scored the highest followed by the PWC consortium and Webber Wentzel third. As indicated above, the KPMG consortium was eliminated from the evaluation process after it was alleged to have failed to achieve the technical threshold of 70%.

5.7.49. We noted that Webber Wentzel was subsequently appointed to be legal advisors during the negotiations of the 1064 locomotives despite them not being the highest scoring bidder. We determined that McKinsey's consortium scored the highest in respect of legal requirements. We further determined that the legal entities representing the consortium were Edward Nathen Sonnenburgs and Koikanyang Inc.

5.7.50. According to memorandum, the estimated value for the locomotives advisory services was R50 million and the following percentage (%) split was anticipated:

5.7.50.1. McKinsey – 35%;

5.7.50.2. Procurement partner- (Letsema replaced due to conflict with Barloworld) – 20%;

5.7.50.3. Utho and Nedbank – 10%;

5.7.50.4. Webber Wentzel – 20 %; and

5.7.50.5. Advanced Rail Technologies – 15%

5.7.51. We determined that Koikanyang and ENS were not included in the percentage (%) split as the legal advisory services were awarded to Webber Wentzel.

5.7.52. We determined that Molefe approved the memorandum for the appointment of McKinsey led consortium on 22 August 2012. The approval of McKinsey led consortium by Molefe was within his delegated authority.

Letter of Intent to appoint McKinsey led Consortium

5.7.53. According to the PPM of August 2012, a letter of intent is issued when a Bidder is selected as the Preferred Bidder. The Letter of Intent ("LOI") informs the Preferred Bidder of Transnet's intention to negotiate and conclude a contract with it.

5.7.54. Paragraph 21.7.1 (a) of the PPM states that if a contract cannot be agreed upon, Transnet reserves the right not to award the business to the Bidder. The PPM further states that no contractual or other legal rights are vested in a Bidder purely by virtue of having been issued a LOI.

5.7.55. We determined that Singh sent an LOI dated 30 November 2012 to Michael Kloss ("Kloss") of McKinsey titled "*RE: Letter Of Intent for the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender over a period of 9 months.* The tender scheduled to commence on 15 January 2013 and expire on 15 October 2013 (**Annexure D13**).

5.7.56. According to the LOI, the parties to the agreement were:

5.7.56.1. Transnet SOC Ltd together with; and

5.7.56.2. McKinsey Inc. and other members of the consortium, namely Regiments Capital, Advanced Rail Technologies, Nedbank Capital and Utho Capital.

5.7.57. According to the LOI, McKinsey's RFP was accepted and its consortium was awarded the contract for the provision of Advisory Services related to the acquisition of the 1064 locomotives tender to Transnet. ()

5.7.58. The purpose of the LOI was to document the intention of the parties in respect of the required service for the required services for the provision of advisory services related to the acquisition of the 1064 locomotives tender.

5.7.59. The conditions precedent in the LOI reflected that, McKinsey was required to agree to relinquish all legal services to Webber Wentzel, a firm that was not part of the original consortium but appointed by Transnet for the delivery of legal services.

5.7.60. According to the LOI, McKinsey would be required to oversee all work and deliverables supplied by Webber Wentzel and manage the deliverables of the entire transaction advisory services in an integrated manner.

5.7.61. We determined that paragraph 1.5 of the LOI indicated that *"the supplier agrees to partner with Regiments Capital, for the procurement and supplier development elements of this project".*

5.7.62. We determined that Transnet had already reflected Regiments as one of the members of the consortium. There is however no indication that Transnet engaged with McKinsey and communicated the decision to replace Letsema and ENS with Regiments and Webber Wentzel respectively.

5.7.63. We determined that the LOI was contrary to what was approved by Molefe as Molefe's approval dated 22 August 2012 did not include Regiments as one of the consortium members. The inclusion of Regiments as one of the consortium members in the LOI was therefore irregular as it was not approved by TAC or Molefe.

5.7.64. We enquired from Letsema regarding their alleged conflict of interest with Barloworld as reflected in Singh memorandum of 22 August 2012. In their response, Derek Thomas of Letsema indicated that the conflict of interest was described as follows by Transnet (**Annexure D14**):

5.7.64.1. Isaac Shongwe was at the time a senior executive at Barloworld (a major JSE listed entity) and a non-executive chairman and shareholder of Letsema;

5.7.64.2. Barloworld, a licenced distributor of Caterpillar products in South Africa and other regions had at the time recently purchased EMD (a USA based manufacturer of locomotives);

5.7.64.3. It was conceivable that Barloworld would potentially seek to represent EMD in South Africa and EMD would submit a tender to supply locomotives as part of the anticipated locomotive procurement by Transnet.

5.7.65. According to Derick Thomas, he did not know whether EMD considered or in fact tendered for any locomotive supplied to Transnet.

5.7.66. We determined that EMD submitted a proposal to Transnet for the supply in respect of the 465 diesel locomotives however their bid was not successful.

5.7.67. We determined that Letsema were removed prematurely from the McKinsey consortium in that it was not known at the time whether EMD would submit a proposal for the 1064 locomotives tender. As indicated in the 1064 section of our report, the tender documents for the 1064 locomotives tender were only available on 10 August 2012. The removal of Letsema took place 12 days after issuing the tender document.

5.7.68. The anticipation by Transnet that EMD would submit a proposal which would result in a conflict between Barloworld and Letsema could not be substantiated at the time it was verbally communicated to Letsema.

5.7.69. Derick Thomas indicated that he felt there was no conflict of interest as alleged by Transnet.

5.7.70. Derick Thomas further indicated that the alleged conflict of interest was verbally communicated by Pita.

5.7.71. According to Derick Thomas, he did not recall whether McKinsey communicated the alleged conflict of interest with Letsema.

5.7.72. In their response, McKinsey indicated that they "*did not introduce Regiments to Transnet. Rather, in 2012, Regiments had been suggested by Transnet as a possible B-BBEE partner, based on the fact that Regiments was already a registered supplier for Transnet and the positive regard for its prior work for Transnet's treasury department* (**Annexure D15**)*.*

5.7.73. During our consultations with McKinsey, they indicated that Regiments was suggested to McKinsey by Singh.

5.7.74. According to McKinsey, they conducted a basic due diligence on Regiments prior to working with them at Transnet.

5.7.75. There is no evidence detailing how Regiments were evaluated to determine whether they met the criteria in the RFP. As indicated above, Letsema was evaluated as part of the McKinsey consortium.

5.7.76. According to the LOI, the proposed fees and related costs exclusive of Value- Added Tax ("VAT") was capped at R35.2 million excluding disbursements.

5.7.77. Furthermore, the expenses were capped at 10% of the value of the engagement for the supplier and its sub-contractors.

5.7.78. We determined that the LOI stated that the agreement may take longer at no extra cost to Transnet if the deliverables were not executed as the engagement was output based as opposed to time based.

5.7.79. We determined that the cost breakdown of the R35.2 million fees was allocated as follows:

No	Description	Entity Responsible	Amount
1	Contracting Strategy	Nedbank/Utho/Regiments/Burlington	R1.4m
2	Business Case Validation	McKinsey	R6.1m

No	Description	Entity Responsible	Amount
3	Technical evaluation and Execution	McKinsey and Advanced Rail Technologies	R13.5m
4	PMO, Integration and stakeholder management	Regiments/Burlington and McKinsey	R7.6m
TOTAL			**R35.2m**

5.7.80. As indicated above, the PPM states that the purpose of the Letter of Intent ("LOI") is to inform the Preferred Bidder (McKinsey) of Transnet's intention to negotiate and conclude a contract with it.

5.7.81. We however noted that the LOI had already concluded on the members of the consortium that McKinsey would work with. We further noted that the LOI reflected entities that were initially not part of McKinsey's proposal to Transnet *i.e*. Regiments and Burlington.

5.7.82. The LOI further reflected an amended fee of R35.2 million instead of the R80.1 million reflected in McKinsey's proposal as though negotiation between McKinsey and Transnet had already taken place.

5.7.83. As indicated above, we were not provided with evidence that post tender negotiations took place between Transnet and McKinsey that would have informed the LOI dated 30 November 2012.

5.7.84. We determined that McKinsey's key deliverables in respect of the advisory services were as follows:

5.7.84.1. *"Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Public Enterprises;*

5.7.84.2. *TFR GFB 7 year end to end business case understanding impact of the following based on validated volume expectations:*

5.7.84.2.1. *Wagons*

5.7.84.2.2. *Locomotives*

5.7.84.2.3. *Infrastructure*

5.7.84.2.4. *Optimisation*

5.7.84.2.5. *Profitability of each sector- link into efficiencies and capacity*

5.7.84.2.6. *Clear capital volume link;*

5.7.84.3. *Any work done in relation to the above is to be carried forward and used as part of the SWAT team's project.*

a) Procurement and Legal - Supplier Development and Localisation strategy:

5.7.84.3.1. *Design and Setting up tendering process in line with requirements applicable to State-owned-companies (SOC's)*

5.7.84.3.2. *Request for proposal documentation;*

5.7.84.3.3. *Supplier evaluation criteria*

5.7.84.3.4. *Request for Information /Quotation documentation*

5.7.84.3.5. *Short listed selection of bidders based on criteria*

5.7.84.3.6. *Template contract for awarding of the tender*

5.7.84.3.7. *Negotiation fact packs and capability building*

5.7.84.3.8. *Claims procedure and OEM management approach post award*

5.7.84.3.9. *creation of a loco industry in South Africa*

5.7.84.3.10. *Integrate this into the transaction and commercial process*

5.7.84.3.11. *Execution of transaction process (RFP, process orchestration, adjudication capacity)*

5.7.84.3.12. *Develop contracting strategy for programmatic approach;*

5.7.84.4. *Technical/Operations:*

5.7.84.4.1. *Reduce loco lifecycle costs through technical (specifications) and commercial lever optimisation with short-listed suppliers*

5.7.84.4.2. *Technical evaluation levers and estimated value*

5.7.84.4.3. *Optimisation approach for joint value optimisation between Transnet and the selected suppliers*

5.7.84.4.4. *Improved outcome through value engineering with shortlisted suppliers - optimising for main objectives of procurement strategy (e.g., highest local content at best value for money)".*

5.7.85. According to the LOI, McKinsey were expected to develop the Supplier Evaluation Criteria and responsible for the Request for Proposal documentation. We determined that the Supplier Evaluation criteria applied during the 1064 tender was part of the SC Policy effective 1 May 2012. The said evaluation was in place before the LOI dated 30 November 2012 was issued (**Annexure D16**).

5.7.86. It is evident that a portion of the work awarded to McKinsey was already part of Transnet's existing SC Policies and the tender process had already commenced which deemed some of the deliverables irrelevant.

5.7.87. We further determined that the tender procurement process was performed in house by Transnet.

5.7.88. We determined that the LOI required people from Transnet to be part of the different stages during the advisory assignment. Below are the different advisory stages and the number of people required:

No	Advisory services	People required from Transnet
1	Transactional advisory and execution	• 1 full time project manager from Group legal for 2.6 weeks planning/projects), business planning • 1 full time TFR procurement specialist to own the procurement process for 26 weeks • Ad hoc time from Group finance (treasury), procurement;
2	Technical evaluation and optimisation	• 2 work stream leads (1 diesel and one electric)- full time for two weeks and then as needed for adjudication; they will drive technical evaluation and optimisation; from TFR
3	Business case integration and re-write	• 1 planning/ GFB business case lead full time for 16 weeks full time; from TFR • 1 fleet planning specialist full time for 16 weeks; from TFR
4	PMO and stakeholder management	• 1 full time PMO lead full time for 26 weeks; tracks critical path activities, prepares templates/reporting and action; TFR or Group

5.7.89. We determined that the said LOI was signed by Singh and Kloss on 4 December 2012 and 6 December 2012 respectively.

McKinsey signed the LOI without questioning the decision of Transnet of Replacing Letsema with Regiment and ENS with Webber Wentzel. This raises the suspicion that the removal of Letsema and ENS may have been discussed by McKinsey and Singh (as the Transnet official who issued the LOI to McKinsey).

Removal of Nedbank Capital from the McKinsey consortium

5.7.90. As indicated above, Nedbank was one of the members of the McKinsey led consortium.

5.7.91. We determined that Singh sent a letter to Kloss dated 22 May 2013, informing him of a potential conflict of interest with Nedbank Capital in respect of the 1 064 locomotive transaction advisory services.

5.7.92. In the said letter, Singh suggested that McKinsey should source an alternative service provider as it relates to the original scope envisaged for Nedbank Capital which was funding advisory services.

5.7.93. Singh requested that McKinsey provide him with a response by 15 June 2013 to enable Transnet to evaluate the credentials and scope of work of the alternative service provider.

5.7.94. We determined that on 12 June 2013, McKinsey responded to Singh's letter dated 22 May 2013. McKinsey indicated in their response that to resolve the conflict of interest identified, they proposed that Regiments took over the responsibility for the scope of work originally designed for Nedbank (**Annexure D18**).

5.7.95. McKinsey further requested that the agreed changes in the consortium be reflected in the letter of intent. We determined that Shrey Viranna, Sagar and Kloss did not sign the said letter.

5.7.96. We further determined that in the said letter, Singh confirmed Transnet's agreement to McKinsey's request for Regiments to provide the required services in place of Nedbank Capital.

5.7.97. Based on the letter, McKinsey requested Transnet to make use of Regiments after the conflict of interest with Nedbank Capital was identified by Singh.

5.7.98. We determined that Singh sent a reply letter to Kloss dated 19 November 2013 in respect of the conflict of interest of Nedbank Capital. According to the letter, Singh indicated that it was in the best interest of Transnet and McKinsey to confirm the proposed alternative of Regiments (**Annexure D19**).

5.7.99. The reasons provided by Singh to confirm the proposed involvement of Regiments was that the 1064 locomotives tender was entering phase 2 which would include the funding and deal structuring for the acquisition of the 1064 locomotives.

5.7.100. As indicated above, McKinsey stated that "*Regiments had been suggested by Transnet as a possible B-BBEE partner, based on the fact that Regiments was already a registered supplier for Transnet and the positive regard for its prior work for Transnet's treasury department*".

We determined that McKinsey did not object to the recommendations by Singh to appoint Regiments as a Business Partner to replace Nedbank for funding advisory services.

Increase of agreement duration from 9 months to 12 months and additional scope

5.7.101. We determined that Niven Pillay (Director at Regiments) sent a letter/agreement to Singh dated 20 January 2014. We determined that the letter was an agreement between Transnet and Regiments extending the duration of the contract from 9 months to 12 months, increasing the scope and proposing a fee structure. (**Annexure D20**)

5.7.102. As indicated above, McKinsey was the lead partner in the consortium. We however noted that Regiments had suddenly taken a role of a lead partner without any indication of a cession.

5.7.103. We determined that the said letter did not conform to other Transnet agreements reviewed as part of the investigation as this document contained both Transnet and Regiments logo.

5.7.104. During our consultation with Thomas, he confirmed that the document dated 20 January 2014 was prepared by Regiments. Thomas indicated that documents can be prepared by clients in instances where Transnet does not have capacity.

5.7.105. The purpose of the document was to clarify the updated scope that regiments would perform in respect of the acquisition of the 1064 locomotives.

5.7.106. There is no evidence to suggest that Transnet did not have capacity to compile the document which resulted in Regiments compiling the document.

5.7.107. According to the document, the fee structure for the services to be rendered as understood by Regiments and Transnet would involve a retainer applicable every month and the performance fee on the funding raised at interest rates below the benchmark.

5.7.108. The letter further indicated that the deliverables would be executed for a fee of R15 million over a period of 12 months.

5.7.109. The deliverables reflected in the document were *inter alia* the follows:

5.7.109.1. Determining the development and sustainability impact of the acquisition by:

5.7.109.1.1. Conducting socio-economic impact studies;

5.7.109.1.2. Determining the acquisition's impact on the environment; and

5.7.109.1.3. Examining the project's contribution to regional integration

5.7.109.2. Conducting a collateral assessment.

5.7.110. We determined that the document was signed by Niven Pillay and Singh on 20 January 2014 and 23 January 2014 respectively.

5.7.111. We noted that Thomas made a note on the document that read as follows:

"The contract for the supply of these services is with McKinsey and Regiments Capital is contained to them. I terms of section 2 there will not be a performance fee for fundraising thus 2.1.2 will be removed as well. Expenses will be capped at 10% and paid on approved actual costs in terms of Transnet's policies and procedures. Payment will be made to McKinsey Costs and payment against this scope may not be made above R9 million without specific approval by Transnet".

Payments made to the McKinsey led consortium

5.7.112. As indicated above, RFP GSM/12/05/0447 commenced on 15 January 2014 with an initial expiry date of 15 October 2013 which was subsequently extended to 31 March 2014. The approved budget was R35.2 million.

5.7.113. We were not provided with invoices submitted and paid to the McKinsey led consortium in respect of the initial scope before the contract was ceded to Regiments.

5.7.114. According to McKinsey, they worked on the 1064 business case and were paid R9 652 095.62 (exclusive of VAT) for its work related to the 1064 Locomotives. According to a memorandum dated 17 April 2014 compiled by Singh to Molefe, McKinsey were paid R6.7 million in respect of the rewrite and validation of the business case approved by the Board and a further R3.3 million for the life cycle costs savings from technical improvement levers, and price reduction of locomotives (**Annexure D21**).

5.7.115. As indicated above, Webber Wentzel was appointed for legal services in respect of the 1064 transactional advisory contract. According to the LOI McKinsey was required to oversee all work deliverables supplied by Webber Wentzel. It should be noted that the costs for legal services were not included in the approved budget of R35.2 million allocated to McKinsey consortium. We determined from the memorandum dated 17 April 2014 that Webber Wentzel was allocated a budget of R10 million which was concluded in a separate LOI.

5.7.116. We were provided with two invoices totalling R9 194 049.46. The invoices were issued on 11 April 2014 and 19 December 2014 for professional fees relating to the procurement of 1064 locomotives. We noted that the invoices were issued after McKinsey ceded the contract to Regiments (**Annexure D22**).

5.7.117. We were further provided with invoices from Ningiza Horner Inc. in the amount of R4 707 630.00. The said invoices were issued on 31 March 2014 and 12 December 2014 for drafting, negotiation and settlement of commercial agreement relating to the procurement of 1064 locomotives respectively. We determined that Ningiza Horner Inc. was appointed by Webber Wentzel as a subcontractor. We further determined that Transnet paid Ningiza Horner Inc. directly (**Annexure D23**).

Addendum to McKinsey Agreement – dated February 2014

5.7.118. We determined that Transnet and McKinsey represented by Singh and Wood concluded an addendum on 4 February 2014 (referred to as the third addendum), in respect of 1 064 advisory services. (**Annexure D24).**

5.7.119. We determined that Wood was a representative of Regiments and not McKinsey at the time of signing the addendum. We further determined that McKinsey's name was cancelled out and replaced by Regiments name next to Wood's signature. According to the addendum, the signature warranted that Wood was duly authorised to sign the third addendum. Singh and Wood initialled their signatures next to the said cancellation.

5.7.120. Based on the said findings, Wood signed McKinsey's addendum whilst he was a Regiments representative.

5.7.121. We were not provided with any evidence to support that Wood was authorised to sign the addendum on behalf of McKinsey.

5.7.122. We determined that at the time that Wood signed the third addendum in respect of RFP GSM/12/05/0447, McKinsey had not ceded the contract to Regiments as the cession was effective on 5 February 2014.

5.7.123. In their response to our second draft report, McKinsey indicated that they did not authorise Wood to sign the third addendum.

5.7.124. We determined that the purpose of the addendum was to revise the deliverables to include *inter alia* the following:

5.7.124.1. Conducting socio-economic impact studies;

5.7.124.2. Determine the acquisition's impact on the environment; and

5.7.124.3. Examining the projects contribution to regional integration.

5.7.125. According to paragraph 4.1 of the addendum, as a result of the additional scope required on the financial phase, the initial contract price of R35.2 million increased by R6 million. The additional scope resulted in an increase of the total contract value to a fixed amount of R41.2 million.

5.7.126. Paragraph 4.2 of the addendum indicated that the work performed as per the deliverables in the addendum would be a fixed price of R15 million, utilising the contract allocated to other deliverables that were no longer required. According to the addendum once the R9 million had been reached, Transnet was meant to approve the continuation of the work from R9 million to R15 million.

5.7.127. Paragraph 4.3 of the addendum indicated that expenses related to the work performed would be kept at 10% of the contract value and based on actual expenses incurred and in terms of Transnet policies and procedures.

5.7.128. Based on documentation reviewed, we determined that Regiments issued eight invoices during February 2014 and March 2014 in respect of professional fees for transaction advisory services for the acquisition of 1064 locomotives (**Annexure D25**).

The table below reflects the invoice issued by Regiments during February 2014 to March 2014:

Invoice date	Invoice number	Description	Amount (incl. VAT) and out of pocket expenses
13 Feb 2014	TRX1064TCO01	TCO work done to date	R4 902 000.00
13 Feb 2014	TRX1064FRM01	FRM work done to date	R7 353 000.00
24 Feb 2014	TRX1064TE01	TE work done to date	R2 451 000.00
24 Feb 2014	TRX1064TCO02	TCO work done to date	R3 676 500.00
24 Feb 2014	TRX1064FRM02	FRM work done to date	R7 353 000.00
31 Mar 2014	TRX1064TCO03	TCO work done to date	R1 225 500.00
31 Mar 2014	TRX1064FRM03	FRM work done to date	R3 676 500.00

Invoice date	Invoice number	Description	Amount (incl. VAT) and out of pocket expenses
31 Mar 2014	TRX1064TA01	Financial modelling escalation calculation, pricing and contract negotiation support	R6 127 500.00
Total			**R36 765 000.00**

5.7.129. We noted that the invoices reflected in the table above were issued after McKinsey ceded the contract to Regiments. We noted that the remainder of the budget of R35.2 million (after payment of R9.6 million to McKinsey) was paid to Regiments.

5.7.130. We determined that the out of pocket expenses were not based on actual costs incurred as required by paragraph 4.3 of the addendum.

Letter from Regiments dated 6 February 2014

5.7.131. We determined that Regiments wrote a letter dated 6 February 2014 to Singh indicating that Regiments was expected to carry out tasks that include Financial Risk Management Framework and funding proposal outlining the funders suited for the type of transaction to be undertaken by Transnet (**Annexure D26**).

5.7.132. The mandate included the analysis of performance guarantees provided by bidders and the analysis of cost of hedging provided by the suppliers.

5.7.133. In the letter, Regiments proposed a success fee of 25% of the value created (savings achieved).

5.7.134. We determined that Woods signed the letter on 6 February 2014. We noted that provision was made for Transnet to sign the letter, however we were not provided with a signed copy.

Agreement between Transnet and McKinsey led consortium

5.7.135. We determined that the agreement between Transnet and McKisney for the provision of services related to the acquisition of the 1064 locomotives tender was only concluded in March 2014, at least a year after the McKinsey led consortium commenced with the project. We further determined that Fine and Singh signed the said contract on 21 February 2014 and 11 May 2014 respectively**. (Annexure D27**).

Cession of McKinsey transaction advisory contract to Regiments dated 16 April 2014

5.7.136. We determined that Vikas Sagar ("Sagar") sent a letter to Singh dated 16 April 2014 titled "*RE: Transaction advisory services related to the acquisition of the 1 064 locomotives ("the mandate")"* indicating that McKinsey ceded all rights and obligations to Regiments. In the said letter, Sagar stated the following :

"*Pursuant our discussion and agreement on February 5, 2014 we hereby confirm that the mandate awarded to McKinsey Incorporated and all rights and obligations created hereby was, on February 5, 2014 ceded and/or delegated to Regiments Capital in accordance with such discussion and agreement. On account of, and pursuant to, the aforementioned cession and delegation, all work related to, and in respect of, the mandate was conducted by Regiments Capital and not by McKinsey Incorporated*". *(**Annexure D28**)*

5.7.137. McKinsey informed us that on 5 February 2014 they ceded the 1064 advisory services contract to Regiments as they could no longer add value at the late stage of the project.

5.7.138. According to McKinsey, they worked on the 1064 business case and were paid R9 652 095.62 (exclusive of VAT) for its work related to the 1064 Locomotives.

5.7.139. As indicated above, McKinsey were paid R6.7 million in respect of the rewrite of the business approved by the Board and a further R3.3 million for the life cycle costs savings from technical improvement levers, and price reduction of locomotives.

5.7.140. McKinsey indicated that on 5 February 2014, Transnet and McKinsey representatives met and agreed that as the consortium lead partner, McKinsey would transfer the remaining work and contract to Regiments.

5.7.141. According to McKinsey, the above letter dated 16 April 2014 was to memorialize the February 2014 transfer of the remaining work to Regiments.

Memorandum from Singh to Molefe dated 17 April 2014

5.7.142. We determined that on 16 April 2014, Singh compiled a memorandum addressed to Molefe titled *"1064 locomotive transaction – advisory services*". The purpose of the memorandum was to request the GCE to:

5.7.142.1. Note the deliverables executed by the transaction advisor on the locomotive transaction compared to the original scope per LOI;

5.7.142.2. Ratify the amendment in the allocation of scope of work from McKinsey to Regiments;

5.7.142.3. Ratify the amendment in the make-up in the transaction advisor consortium from Nedbank Capital with Regiments;

5.7.142.4. Approve the a change in the remuneration model of the transaction advisor compared to the original remuneration model; and

5.7.142.5. Delegate power to the GCFO to give effect to the above approvals.

5.7.143. The memorandum indicated that Regiments assisted Transnet in computing the effects of hedging and escalations based on the original delivery schedule compared to an accelerated/revised schedule as well as optimising the foreign exchange hedge and guarantee bond pricing.

5.7.144. In his memorandum, Singh recommended an additional fee of R78.4 million excluding VAT to be paid to Regiments in respect of 0.042% of the total savings.

5.7.145. We determined that Molefe approved the memorandum on 17 April 2014 (**Annexure D29**).

Addendum to Regiments agreement dated 24 April 2014

5.7.146. We determined that an addendum in respect of GSM/12/05/0447 agreement was concluded between Transnet and Regiments on 24 April 2014. The addendum was referred to as the first addendum.

5.7.147. We further determined that on 24 April 2014, Singh and Wood signed the addendum on behalf of Transnet and Regiments respectively. (**Annexure D30)**

5.7.148. According to the preamble of the addendum, McKinsey and Transnet signed a MSA on 21 February 2014 in respect of the advisory services.

5.7.149. It is unclear why McKinsey persisted and concluded the agreement with Transnet on 21 February 2014 whilst, according to Sagar, Transnet and McKinsey had ceded the contract on 5 February 2014.

5.7.150. According to the addendum dated 24 April 2014, McKinsey appointed Regiments as a partner in executing the financing aspects of the agreement, with McKinsey being the principal lead.

5.7.151. We determined that the scope was amended to include the following:

5.7.151.1. Assist Transnet with negotiations to accelerate the delivery schedule that would result in savings in future inflation related escalation costs and savings in foreign hedging costs;

5.7.151.2. Compute the effects of hedging and escalations based on the original delivery schedule compared to an accelerated/revised delivery schedule; and

5.7.151.3. Optimise and reduce the foreign exchange hedge costs and guarantee bonds.

5.7.152. We determined that the fee was revised to a fixed amount of R78 400 000.00.

Invoice issued before conclusion of the addendum dated 24 April 2014

5.7.153. We determined that Regiments issued an invoice dated 27 March 2014 in the amount of R79 230 000.00 (inclusive of VAT) in respect of the "*Risk Share – 1064 Locomotives Foreign Exchange and warranty bonds*". We further determined that the said invoice was approved by Singh on 29 April 2014 and added the following comment "*approved for payment per GCE memo"(***Annexure D31***).*

5.7.154. The invoice was issued by Regiments before the addendum was concluded between Transnet and Regiments on 24 April 2014. The rendering of a service by Regiments and issuing of an invoice of R79 million without an agreement was irregular.

Background to CDB Loan

5.7.155. It is our understanding that the acquisition of the 1064 locomotives would require Transnet to source funding from Financial Institutions. This is reflected in the Business Case dated 25 April 2013 (**Annexure D32**).

5.7.156. Subsequent to the award of the tender for the 1064 locomotives on 17 March 2014, Transnet initiated various funding initiatives discussed below.

Makgatho's memorandum requesting to negotiate with CDB – 29 April 2014

5.7.157. Based on documentations reviewed, we determined that Mathane Makgatho ("Makgatho") prepared a memorandum dated 29 April 2014 to Molefe and Singh requesting permission to proceed with negotiations with China Development Bank in respect of the funding for the acquisition of 1064 locomotives (**Annexure D33**).

5.7.158. According to the memorandum, the purpose of the submission was to request the Group Chief Executive (Molefe) and the Group Chief Financial Officer's (Singh) approval for the Group Treasury to proceed with negotiations with China Development for the funding of 359 Dual Voltage Electric locomotives from CSR and 232 Diesel locomotives from CNR.

5.7.159. Paragraph 6 of the memorandum reflected that the Group Treasury proposed to approach CDB to revise their pricing downwards and negotiate the terms and conditions of the proposed funding for the locomotives with CDB.

5.7.160. We determined that the recommendation paragraph of the memorandum reflected that "*It is recommended that the Group Chief Executive and the Group Chief Financial Officer grant Group Treasury approval to proceed with negotiations with CDB for funding of the Locomotives subject to acceptable terms and conditions*".

5.7.161. We determined that Makgatho signed the memorandum on 29 April 2014. Singh and Molefe recommended and approved Makgatho's request on 5 May 2014 and 6 May 2014 respectively.

Letter dated 11 June 2014 from Singh to CDB

5.7.162. Based on documentation reviewed, we determined that Singh wrote a letter dated 11 June 2014 to Zheng Zhijie ("Zhijie") of CDB confirming a meeting that took place between Transnet and CDB on 10 June 2014 in respect of the proposed loan facility. In his letter, Singh suggested the terms for the CDB loan facility that would be used to fund the locomotives (**Annexure D34**)

5.7.163. Singh further proposed to Zhijie that Transnet was available to fly to Beijing for negotiations and finalisation of the loan agreement by 30 June 2014 and sign on 15 July 2014 at BRICS Head of State Summit in Brazil.

5.7.164. The letter from Singh to Zhijie is a confirmation that Transnet had internally commenced with the negotiations of the CDB loan facility as early as 10 June 2014.

Memorandum prepared by Makgatho for Singh to submit to Transnet Exco – 21 July 2014

5.7.165. We determined that Makgatho prepared a memorandum which she signed on 21 July 2014. The said memorandum reflected that it was from Singh to the Transnet Executive Committee to obtain recommendation from the said Exco of financing initiatives of the 1224 locomotives (**Annexure D35**).

5.7.166. The memorandum reflected that the 1224 locomotives comprised the 1064 locomotives (559 electric locomotives and 465 diesel locomotives), 100 China South Rail locomotives and 60 General Electric Locomotives procured through a confinement process.

5.7.167. The memorandum was prepared for submission to the Transnet Board of Directors for approval for the said financing initiatives.

5.7.168. Paragraph 7 of the memorandum prepared by Makgatho reflected the following: *"Group Treasury has applied to the Import Export Bank of the United States ("US Exim") for a preliminary Commitment for a Long Term Guarantee for the financing of the GE Portion of the* *project that has US content and is waiting for a proxy of the 35 day congressional notice period and US Exim's final board approval at the end of July 2014…"*

5.7.169. Paragraph 10 of the memorandum reflected the following *"China Development Bank ("CDB") have indicated their willingness to fund the CSR and CNR locomotives and have proposed a 15 year bullet loan of up to USD2.5 billion at a rate of 3m Libor + 275bps. This pricing is above Transnet's weighted cost of debt and Transnet will continue to engage with CDB to further revise the pricing downward. In addition, Transnet has requested that CDB approach and partner with the Industrial and Commercial Bank of China ("ICBC") with a view to bringing the pricing within acceptable levels"*

5.7.170. We noted that under the recommendations paragraph it was recommended that Transnet's Executive Committee recommend to the Board of Directors that Group Treasury conclude and execute the following funding initiatives:

5.7.170.1. USD531 million guarantee from Export-Import Bank of United States;

5.7.170.2. USD600 million loan facility from Export Development Canada and Investec;

5.7.170.3. Up to USD1 billion A/B loan facility from African Development Bank; and

5.7.170.4. USD2.5 billion 15 year Facility with CDB, subject to further price negotiations.

5.7.171. We noted that Singh and Molefe did not sign the memorandum of 21 July 2014.

Regiments' Letter of appointment for the CDB loan negotiations dated 31 July 2014

5.7.172. We determined that just 10 days after Makgatho prepared a memorandum for Singh and Molefe to present to Transnet Group Exco which they failed to sign; on 31 July 2014 Singh wrote a letter to Wood relating the 1064 locomotives (**Annexure D36**).

5.7.173. In his letter to Wood, Singh wrote that the letter served to confirm that Transnet Appointed Regiments Capital as the Transaction advisors on the 1064 Locomotive Transaction. In his letter, Singh further reflected that in terms of the aforesaid mandate, Regiments Capital is required to advise on deal structuring, financing and funding options to minimise risk for Transnet.

5.7.174. In paragraph 3 of his letter Singh stated that *"accordingly, Regiments Capital will negotiate with CDB to successfully conclude a ZAR funding facility of $5 billion, at a ZAR cost not exceeding 9,3% for a tenor not less than 15 years"*.

5.7.175. The contents of paragraph 3 of Singh's letter to Wood are in direct conflict with Makgatho's memorandum which she signed on 29 April 2014 requesting authorisation to negotiate with CDB for the funding now reflected on Singh's letter to Wood.

5.7.176. Both Singh and Molefe recommended and approved Makgatho's request on 5 May 2014 and 6 May 2014 respectively.

5.7.177. Singh's letter to Wood further contradicts Makgatho's other memorandum to Singh and Molefe dated 21 July 2014 which both Singh and Molefe did not sign.

5.7.178. The appointment letter did not indicate the fee due to Regiments.

Wood emailed a marked up term sheet to Singh

5.7.179. Wood sent an e-mail to Singh on 12 August 2014 at 8:18 AM. Attached to the said e-mail is what was reflected as a marked up term sheet. Wood indicated in the e-mail that he had attached the marked up spreadsheet as discussed with Singh (**Annexure D37**).

5.7.180. We determined that at 10:18 of the same date Singh forwarded the e-mail from Woods with the marked up term sheet to his Personal Assistant, Takane. The marked up spread sheet that was attached in Wood's earlier e-mail to Singh is titled *"Indicative Terms for Term Loan Facility Arranged by China Development Bank Corporation for Transnet SOC Ltd for the Acquisition of Locomotives".*

5.7.181. The marked up term sheet reflected *inter alia* the information reflected in Makgatho's memorandum to Singh and Molefe dated 21 July 2014 wherein she requested authorisation to negotiate with CDB for the sourcing of the loans for the locomotives acquired through CSR and CNR.

E-mail from Wood to Stephanie Zhou on 12 August 2014

5.7.182. We determined that Wood forwarded an e-mail to Singh on 12 August 2014 at 09:26 AM. The subject of the e-mail is reflected *as "second mail about Transnet loan from CDB. The e-mail reflected that there was an attachment referred to as Transnet CDB term sheet (marked up). Wood's e-mail to Singh reflected that "Hi Anoj, This is my latest response to CDB regarding their latest information request. (I have purposefully not cc'd you as discussed) Regards Eric".*

5.7.183. The e-mail Wood forwarded to Singh was an earlier e-mail he, Wood, sent to Stephanie S Zhou ("Zhou") on the same date, i.e. 12 August 2014 at 09:18 AM. Further details relating to Zhou's involvement in the negotiation of the CDB loan are discussed below (**Annexure D38**).

5.7.184. In his e-mail to Zhou, Woods wrote the following: *"Thank you for your e-mail response and further requests for information. I understand the time pressure on this transaction and I am happy to assist in this regard. I am happy to facilitate a face to face meeting with Transnet, however they have indicated to me that we should have agreement on the outstanding matter on the term sheet (the loan pricing) before we meet with them again. I wish to make the following points in response to your request for information ….."*

5.7.185. What would appear from Wood's e-mail to Zhou is that she appears to be a CDB representative. This is from how Woods addresses her throughout the e-mail. One example is where Woods wrote *"Regiments is preparing the proposed draw down schedule for the CDB loan, which will be provided to yourselves later today…" "Notwithstanding the fact that the CNR and CSR locomotive contracts were supplied to CDB (Helen), I have asked Transnet for additional copies which i will forward to you as soon as i have received them"*.

5.7.186. We determined that Zhou has two e-mail addresses which are StephanieZ@regiments.co.za and Stephanie.xy.zhou@gmail.com. We determined that in 2015 Zhou was copied on various emails relating to the Transnet Engineering Bogie Castings Project. One such e-mail was sent by Maatla Hlapolosa to what is referred to as the CSR negotiation team on 5 June 2015 (**Annexure D39**).

5.7.187. Wood's e-mail to Singh as reflected above appears to suggest that Regiments was appointed to negotiate the loans with CDB on behalf of Transnet. The e-mail further confirms that there were behind the scenes communications between Wood and Singh which the two did not want to be known. This is evident in the words *"I have purposely not cc'd you as discussed* "used by Wood in his e-mail to Singh.

Implementation by Transnet officials

5.7.188. We determined that there was a similar document, with the similar heading *"Indicative Terms for Term Loan Facility Arranged by China Development Bank Corporation for Transnet SOC Ltd for the Acquisition of Locomotives"* as the one on the marked up term sheet send to Singh by Wood (**Annexure D40**). The second document is contained in the e-mail communication amongst Dorothy Kobe ("Kobe") Head of Structured Finance at Transnet, Makgatho, Deva Sathee and Reon Louw all of whom were Transnet officials (**Annexure D41**).

5.7.189. Some of the e-mail communication reflected the following from Dorothy Kobe to Deva Sathee on 19 August 2014 at 09:29 AM: *"Hi Deva, We are having a conference call with a potential funder at 10:00. I was only told now. Please work out the floating and fixed rate ZAR equivalent to 5.125%, 10 year and 5.625%, 15 year"* (**Annexure D42***)*.

5.7.190. We determined that Kobe sent a further e-mail to Deva at 09:35 AM and stated the following: *"Hi Deva, These are the bullets with semi-annual coupons. I believe Anoj had asked you to price a 10 or 15 year USD bond, Mathane requested that you re-price because she thinks you might have forgotten to add Transnet's credit spread.*

5.7.191. Deva Sathee responded to Kobe's e-mail on 19 August 2014 at 09:54 and stated the following: *"I priced 15yr indication for Anoj. My mail to Anoj as per attached. I priced according to my expectation of USD coupon for 15yr"(***Annexure D43***)*

5.7.192. We noted that the differences in the marked up term sheet sent to Singh by Wood and the one attached in the communication between Deva Sathee and Kobe is that, while the marked up term sheet sent to Singh by Wood was a draft with tracked changes, the one in the communication between the Transnet officials was a final document that incorporated the tracked changes.

5.7.193. The possibility exists therefore that the document was finalised by Takane as it was emailed to her by Singh after he received it from Wood.

5.7.194. What is also clear from the Transnet officials communications is that they were the ones who were implementing Singh's as per the said emails.

Makgatho complains about the process of funding from CDB

5.7.195. Based on various consultations we had with Sukati and Mathane Makgatho ("Makgatho"), we determined that Transnet's Treasury department, headed by Makgatho, was the one that did the negotiations with the two financial institutions (US Exim and CDB) to source funding for the 1064 locomotives on behalf of Transnet.

5.7.196. Makgatho confirmed to us that she was Head of Transnet Treasury during the time of the negotiations with the two financial institutions. She further indicated that at some point during her negotiations with CDB she was approached by Singh who indicated that he was going to appoint Regiments to take over the negotiations with CDB. Makgatho indicated that she was surprised at Singh's decision as she had already covered all areas of negotiations with CDB.

5.7.197. We determined that on 21 August 2014 at 12:45 Makgatho sent an e-mail to Molefe and Singh which she copied Yusuf Mahomed and Kobe. The subject of Makgatho's e-mail is reflected as China Development Bank.

5.7.198. In paragraph 2 of her e-mail, Makgatho stated the following: *"This email is a follow up of various discussions I had with yourselves and in some instances with Regiments included where I had indicated my discomfort and disagreement on how the China Development bank facility* *negotiations are being handled, Regiment's pricing methodology as well as my disagreement of the appointment of Regiments as the Transaction advisor for the facility. For the avoidance of doubt I would like to bring the following to your attention:*

5.7.199. Makgatho further raised the following concerns to Singh and Molefe: *"I respect your Executive Authority and powers that go with it, but I also believe that it is my responsibility as the current Transnet Group Treasurer to advise you on matters relating to Treasury activities. As I indicated, I was not consulted nor was I aware that Regiments was appointed as the Transaction advisor and lead negotiator for the facility as I believe there was no need for them to be appointed given progress that we had made. I do not support that a R26 billion facility be negotiated and led by a transaction advisor, as we cannot and should not negotiate a loan facility in isolation of Transnet's current R90 billion debt portfolio. When we negotiate and enter into agreement with lenders and investors, we make certain undertakings and covenants that should apply to future facilities as well. The fact that Transnet's biggest ever transaction, is negotiated and decided by outsiders (Regiments) is a cause for concern as it exposes the Company to undue risk. When we negotiate a facility of this magnitude, we assemble a multi-disciplinary team that includes legal, tax, accounting, structured finance and risk management team members. This is to ensure that all potential risks relating to the facility are identified and mitigated to the extent possible.*

5.7.200. Makgatho concluded her e-mail to Singh and Molefe by writing the following: *"It is my believe that the CDB facility in its current form is not in the best interest of the Company or the country given potential **capital leakage** of up to **R3.7 billion** in excessive interest expense and excessive arrangement fees which may be classified as PFMA violation given information at our disposal. The additional interest expense will have a negative impact on the already fragile cash interest cover ratio. I therefore recommend that we terminate discussions with China Development Bank and explore other sources of funds. Transnet has proved its ability to raise funds from diverse funding sources even under trying circumstances. In 2008-09, we were able to raise over R22 billion even when the market was "closed" for other issuers. The latest example is our ability to raise R8 billion for the locomotive deposit at short notice. As indicated in the Company's June 14 going concern document, the Company has sufficient facilities to meet all its obligations as they fall due. The resuscitation of Transnet's domestic bond program and availability of short term facilities will assist in alleviating any potential cash flow problems. Even if domestic spreads can widen, overall pricing will still be much better that the CDB facility.*

5.7.201. From the above it is evident that Makgatho had on various occasions raised her concerns in the appointment of Regiments and had indicated to Singh and Molefe that the

Transnet Group Treasury was well equipped to deal with the required negotiations with CDB.

5.7.202. We determined that Singh responded to Makgatho's e-mail on the same date, *i.e.* 21 August 2014 at 14:14. In his response to Makgatho, which he copied Molefe, Singh indicated that he would consider Makgatho's comments and respond accordingly. We noted that Singh did not dispute the contents of Makgatho's e-mail.

5.7.203. We conducted searches on both Singh and Molefe's emails from 21 August 2014 the end of their employment at Transnet in 2015 and could not find any indication that either of them responded to Makgatho's comments of 21 August 2015. As indicated in the Eskom part of the investigations in this report, both Singh and Molefe appointed as Group CFO and Group CE at Transnet on 25 October 2015. We further determined that Molefe did not respond to Makgatho's e-mail.

5.7.204. As indicated in her e-mail of 21 August 2014, part of Makgatho's communication to Molefe and Singh was a recommendation to terminate the discussions with CDB and explore other sources of funding.

5.7.205. From the discussion below it is apparent that Molefe and Singh did not agree with Makgatho as they did not terminate the negotiations with CDB. We further determined that not only did Molefe and Singh ignore Makgatho's recommendation to terminate the negotiations with CDB, Molefe and Singh continued with the negotiations and approved a payment of R166 million to Regiments for work already done by Transnet Treasury.

Board approval of the China Development Bank Corporation loan

5.7.206. We determined that a Board meeting was held on 28 August 2014 and the Board approved the US Exim and CDB transactions, subject to negotiating better rates on the US Exim facility. **(Annexure D44)**

Mandate letter with China Development Bank dated 16 April 2015

5.7.207. We determined that on 16 April 2015, Molefe concluded a mandate letter with CDB in respect of a $2.5 billion loan facility to finance the acquisition of the 232 diesel locomotives and the 459 electric locomotives. **(Annexure D45)**

5.7.208. According to the mandate letter, Regiments was the Transaction Advisor to Transnet and JP Morgan was the Hedge Counterparty.

5.7.209. We further determined that the 459 locomotives consisted of the 100 locomotives confined to CSR and the 359 locomotives procured from CSR as part of the 1 064 tender.

5.7.210. We noted that the facility amount of $2.5 billion was split into a term facility of $1.5 billion and a standby facility of $1 billion.

5.7.211. According to the mandate letter, "ZAR Facility" referred to the ZAR facility (in an amount approximately equivalent to US$1 billion) arranged by JP Morgan Chase & Co or its affiliate.

Memorandum dated 18 April 2015 - Appointment of JP Morgan and Regiments to conclude the CDB loan

5.7.212. We determined that Gama sent a memorandum to the ADC dated 28 April 2015 to approve the following:

5.7.212.1. The confined appointment of JP Morgan to hedge the financial risk (interest rate, credit and currency risk) emanating from the US$ 1.5 billion CDB loan back to ZAR;

5.7.212.2. The confined appointment of JP Morgan to lead and underwrite the equivalent syndicated ZAR loan of $1.5 billion;

5.7.212.3. Approve the contract extension from R99.5 million to R265.5 million for the appointment of Regiments for the transaction advisory services and support Transnet on the 1 064 locomotives transaction; and

5.7.212.4. Delegate authority to the Acting GCE to approve all documentation related to this confinement.

5.7.213. The memorandum further stated that a genuine enforceable urgency has risen which was not attributable to bad planning.

5.7.214. According to the said memorandum, Regiments was due a success fee of risk based fee of 15bp on yield payable by Transnet or JP Morgan (or a portion thereof) subject to a maximum of R166 million. Furthermore, JP Morgan's fee would be part of the market related cost to hedge the exposure to ZAR.

5.7.215. We determined that the memorandum was compiled by Phetolo Ramosebudi ("Ramosebudi") and recommended by Pita, Singh and Gama. We further noted that Singh was the only executive who initialled the memorandum. The document deals extensively on financial issues and therefore it made sense that the GCFO at the time, Singh, would have checked it thoroughly before it was submitted to the various state holders for signatures and submission to the Acquisition and Disposal Committee for approval (**Annexure D46**).

5.7.216. During our review of Singh's Mimecast emails, we determined that on 17 April 2015, Wood sent an email to Singh and copied Ramosebudi stating that "*Hi Anoj*

As discussed, I have attached a short note detailing the role and benefits provided by Regiments in the 1064 funding.

Regards

Eric Wood"

5.7.217. Attached to the email was document titled "Regiments 1064 locomotive mandate". We determined that the contents of the attached document contained similar paragraphs in the memorandum dated 28 April 20145 compiled by Ramosebudi (**Annexure D47**).

5.7.218. We further determined that on 21 April 2015, Gebreselasie of regiments sent an email to Singh and Ramosebudi attaching an updated version of the document sent by Wood on 17 April 2015 (**Annexure D48**).

5.7.219. Based on our review of both documents prepared by Regiments, it is evident that Regiments prepared the information that was factored into Ramosebudi's memorandum to Gama.

5.7.220. During our consultation with Ramosebudi's, he indicated that he had never seen the emails from Gebreselasie and Wood. Ramosebudi indicated that even though the memorandum indicated that he was the compiler, Yusuf Mohamed was the author of the memorandum.

5.7.221. We determined that the memorandum was compiled and recommended to the ADC on 28 April 2015 whilst the loan mandate letter was concluded with CDB on 16 April 2015 by Molefe.

5.7.222. At the date of the report, we were not provided with the minutes of the ADC minutes approving the above mentioned recommendations.

5.7.223. In paragraph 10 under the heading "*DISCUSSION* "we determined that it reflected the following *"10. Transnet has signed a MOU with CDB during 2014 for the provision of funding of up to $5 billion; however this was non-binding on either party."* The memorandum does not reflect who from Transnet's side concluded the discussions to sign the MOU with CDB.

5.7.224. We determined that the recommended fees for JP Morgan were reflected as "the fees for JP Morgan will be part of the market related cost to hedge the exposure to ZAR. We further determined that the memorandum recommended that the ADC approved the contract extension from R99.5 million to R265.5 million for the appointment of

Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotives transaction.

Memorandum dated 19 May 2015

5.7.225. We determined that a memorandum dated 19 May 2015 titled "*Contract addendum to Regiments Capital for transaction advisory and support services on the 1064 locomotive transaction – GSM/12/05/0447*" was sent by Pita and Sigh addressed to Gama. We further determined that the purpose of the memorandum was to request the Acting GCE to approve the contract addendum to Regiments Capital for transactional advisory and support services on the 1064 locomotive transaction (**Annexure D49**).

5.7.226. According to the memorandum, Regiments Capital was entitled to a success fee or risk based fee of 15bp on yield payable by Transnet subject to a maximum of R166 million. Furthermore, we determined that the amended contract value would increase to a capped limit of R265.5 million to allow for the remuneration of the success or risk based fee payable upon successful completion of funding and hedging agreements with CDB and JP Morgan.

5.7.227. We determined that the memorandum was compiled by Kevin Weir and recommended by Pita and Singh on 18 and 19 May respectively. We further determined Gama signed the memorandum on 16 July 2015.

Invoice issued for securing the CDB loan

5.7.228. We determined that on 3 June 2015 Regiments issued an invoice number TRXFR00001 for an amount of R189,240,000,00 incl. VAT (R166 000 000,00 excl. VAT) for what is reflected as originating debt of $1.5 billion with China Development Bank (**Annexure D50**).

5.7.229. The said invoice did not have any Purchase Order or contract linked to it. We determined that the date of the said invoice was when Singh was in Cape Town attending a World Economic Forum conference.

5.7.230. We determined that on 11 June 2015 Singh singed the payment advice and further that on 12 June 2015, Transnet made payment to Regiments as per SAP report for an amount of R189 240 000.00 based on invoice number TRXFR00001 dated 03 June 2015 for originating debt of $1.5 billion with China Development. Regiments made arrangement of cross currency Swap and credit default Swap with JP Morgan, and in turn charged Success Contingency Fee (**Annexure D51**)

5.7.231. We noted that the payment of R189 240 000.00 to Regiments was made less than two months after Gama, Singh, Pita and Ramosebudi signed the recommendation to ADC to appoint Regiments to provide the services reflected in the invoice. This turn of events strengthens the version provided by Makgatho who indicated that Transnet had already conducted the necessary facilitation with CDB and therefore Regiments did not perform the work for which they were paid the R189 240 000.00.

5.7.232. Attached to the China Development Bank funding facility is an extract of the minutes of the Board resolution taken 28 August 2014 (**Annexure D52**).

5.7.233. The said minutes which were signed by the then Company Secretary, Ceba on 16 April 2015 indicated that the "*resolved that the Board approved the US Exim and China Development Bank transactions, subject to negotiating better rates on the Us Exim facility*".

5.7.234. We determined that Ceba signed the said minutes on the same day Molefe signed the China Development China funding facility mandate letter.

5.7.235. Regiments was brought in for *inter alia* the "*debt origination $1.5 billion – China Development Bank, arrangement of the cross currency swap and credit default swap with JP Morgan*".

5.7.236. As discussed below, we determined that a month later, on 16 July 2015 Transnet and Regiments signed an agreement (the second addendum to the Master Service Agreement) mandating Regiments to do *inter alia* the following (**Annexure D53**):

5.7.236.1. Cross Currency Swaps; and

5.7.236.2. Assist Transnet in the negotiations with all the identified Chinese potential funders and in particular the CDB.

5.7.237. We determined that paragraph 3.1.3 of the addendum reflected the following "*the Service Provider shall be entitled to a success or risk based fee of 15bps on yield payable by Transnet which translates to a monetary value equivalent to R166 000 000.00 (one hundred and sixty six million rand)*".

5.7.238. We further determined that Transnet had already paid the said R166 million before the addendum was concluded between Transnet and Regiments on 16 July 2015.

5.7.239. The said addendum was signed by Gama on 16 July 2015 as Acting Group CE

5.7.240. As discussed above, Transnet went through a process to acquire diesel and electric locomotives as part of the company's strategy to replace its ageing locomotive fleet.

5.7.241. In 2013/2014 Transnet awarded various contracts to various locomotive OEMs which included inter alia CSR and CNR. CSR and CNR were awarded contracts to supply a total of 459 and 232 locomotives respectively.

5.7.242. We further determined that the 459 locomotives consisted of the 100 locomotives confined to CSR and the 359 locomotives procured from CSR as part of the 1 064 tender.

5.7.243. Various consultations with Sukati and Makgatho indicated that Transnet's Treasury department, headed by Makgatho, was tasked with the negotiations with the two financial institutions (US Exim and CDB to source funding for the 1064 locomotives) on behalf of Transnet.

Singh's letter to China Development Bank

5.7.244. We determined that on 11 June 2014 Singh wrote a letter to Zheng Zhijie ("Zhijie"), Chief Executive Officer, China Development Bank. The subject matter of the letter referred to *"PROPOSED LOAN FACILITY BETWEEN TRANSNET AND CDB TO FINANCE CRS AND CNR LOCOMOTIVES"(***Annexure D54***).*

5.7.245. Singh's letter to Zhijie referred to a meeting between Transnet and CDB led by Wang Dong Chun held on 10 June 2014 at Transnet offices regarding the locomotives supplier contract referred to above. The letter further referred to an attached copy of a draft facility agreement to be used for negotiations. Singh stated in the said letter that Transnet was available to travel to Beijing for negotiations *"…so that we can finalise and agree the terms and conditions by the 30 June 2014 so that the loan can be ready for signature on the 15 July 2014 at BRICS Heads of State Summit in Brazil".*

5.7.246. Makgatho confirmed that she was Head of Transnet Treasury during the time of the negotiations with China Development Bank.

Addendum to Regiments agreement dated 16 July 2015

5.7.247. We determined that Transnet and Regiments concluded an addendum to 1064 transaction advisory services contract on 16 July 2015, 3 months after Molefe signed the loan agreement with CDB. The conclusion of an addendum after the invoice of R189 million was paid is irregular. (**Annexure D53**)

5.7.248. We further determined that Gama signed the addendum on 16 July 2015 and Pita and Mokae witnessed the addendum on behalf of Transnet.

5.7.249. We determined that Wood signed the contract on behalf of Regiments, however no date was penned next to his signature.

5.7.250. According to the addendum, the scope of the agreement was amended to include *inter alia* the following:

5.7.251. Assist Transnet in the negotiations with all the identified Chinese potential funders and in particular the CDB;

5.7.251.1. Develop a detailed funding plan for the acquisition of the 1 064 locomotives from GE, Bombardier, CNR and CSR;

5.7.251.2. Assist Transnet in negotiating with a number of potential Chinese sources of ZAR funding; and

5.7.251.3. Recommendation, advice and assistance post the successful conclusion of the negotiations on the following aspects:

5.7.251.3.1. Amortization durations;

5.7.251.3.2. Interest rates;

5.7.251.3.3. Cross Currency Swaps;

5.7.251.3.4. Calculations and forecasts; and

5.7.251.3.5. Blended funding models.

5.7.252. We determined that the Cross Currency Swap services had already been invoiced by Regiments on 3 June 2015 before the addendum with the amended scope was signed and concluded on 16 July 2015 (**Annexure D55**).

5.7.253. We further determined that the addendum indicated that Regiments was entitled to a success or risk based of R166 million. The addendum further indicated the MSA value would be increased to an amount not exceeding R265 million.

5.7.254. We determined that the singing of the addendum by Gama after the services were invoiced and paid for was in contravention of the PPM paragraph 15.8.7 (c) and (d) which states that:

"(c) There should be a proper contract management and oversight process to prevent differences between the approved bid prices and the signed contract amounts. If changes in the scope of a project necessitate a change in the contract, it should be properly motivated, documented and approved in accordance with the same rules that apply to amendments to contracts awarded via Confinement as detailed in paragraph 22.5.7.

(d) Contracts and payments should be monitored properly to ensure that the work done meets the contractual deliverables. This includes monitoring compliance with service level agreements,

detailed payment advices and supporting evidence. All contracts of consultants must include penalty clauses for poor performance and in this regard, these clauses must be invoked where deemed necessary."

5.7.255. We determined that at the time Regiments rendered the service for the CBD loan, Regiments had no contractual obligations with Transnet as the addendum was signed after the invoice was issued and paid by Transnet.

Payments made to Regiments following the removal of Letsema and Nedbank

5.7.256. The table below illustrates the contracts awarded to Regiments (without following any competitive bidding process) flowing from the appointment of McKinsey for the transaction advisory services on the 1 064 locomotives tender:

Date	**Contract**	**Amount Incl. VAT**
30 November 2012	Initial contract	R36 767 000.00
27 March 2013	Risk Share	R79 230 000.00
16 July 2013	Negotiation of the CDB Loan	R189 240 000.00
Total paid to Regiments for advisory services relating to the 1064 tender		**R305 237 000,00**

5.7.257. As discussed above, Singh recommended Regiments to McKinsey as a B-BBEE partner following the removal of Letsema and Nedbank from the McKinsey led consortium due to an alleged conflict of interest identified by Transnet.

5.7.258. McKinsey later ceded the contract to Regiment as the lead Partner in the Consortium. The initial approved budget awarded to the McKinsey led consortium was R35.2 million (excl. VAT). Subsequent to the cession of the contract to Regiment, Molefe approved recommendations by Singh to extend Regiments' scope resulting in an increase in budget by more than R200 million.

5.7.259. We determined that Regiments issued invoices relating to the increased scope before Molefe approved the said increases. We further determined that Singh and Gama signed addenda relating to the increased scope after Regiments had already invoiced Transnet.

Various communications relating to the CDB Loan

5.7.260. From an analysis of Singh's Transnet emails we determined that there were various e-mail communications relating to the China Development Bank loan for the funding of part of the 1064 locomotives.

E-mail of 30 January 2015

5.7.261. There was an e-mail of 30 January 2015 sent at 09:09 AM to Eric Wood (ericw@regiments.co.za) from Stephanie S Zhou (stephaniez@regiments.co.za). Zhou copied Tewodros Gebreselasie ("Gebreselasie") (tewodrosg@regiments.co.za) in her e-mail to Wood (**Annexure D56**).

5.7.262. The e-mail reflected the following: *"Hi Eric, I had a call with CDB yesterday afternoon and this morning. I've brought the information of Finance Minister's correspondence to them. And they also gave me feedback about the correspondence from CFO. As per the justification of the price for the loan, CDB South African working team compiled a report which still cast some doubt on the analysis provided by Transnet. They stated that 200bps margin was a huge challenge for them. Now the report is under review by CDB headquarter. Kind regards, Stephanie"*.

5.7.263. We noted that Stephanie Zhou referred to the information of the Finance Minister's correspondence. There was however no indication as to what the said communication related to.

5.7.264. We determined that Wood forwarded Zhou's e-mail to Singh on the same date at 10:08. There was no content in Wood's e-mail to Singh.

5.7.265. We determined that on 30 January 2015 at 19:36 Tewodros Gebreselasie sent an e-mail to Singh and copied Indheran Pillay and Wood.

5.7.266. The subject of the e-mail is reflected as "Letter from SA Finance Minister to CDB 20150126(7) (**Annexure D57**). Attached to the e-mail is a word document of a letter dated 26 January 2015 addressed to Chairman, China Development Bank. Tewodros Gebreselasie wrote the following in his e-mail to Singh: "*Dear Anoj, Apologies for the delay. I needed to wait for Niven's input before I send you the document. I appreciate your valuable inputs. Kind regards and wish you a wonderful weekend. Ted (***Annexure D58***)*

5.7.267. The introductory sentence of the letter reflected that *"I would like to thank you for the constructive meeting held in December 2014*

5.7.268. Paragraph 5 of the letter reflected the following: "*It was in the spirit of this cooperation that Transnet, as the government owned freight rail operator in South Africa, decided to award the bulk of its major locomotive acquisition programme to CNR and CSR. This is one of the areas that demonstrates South Africa's full commitment to the cooperation that our leaders have foreseen in their Sanya Declaration, Sanya, Hainan, China, April 14, 2011".*

5.7.269. We noted that the last paragraph of the letter reflected the following: *"We would therefore like to urge CDB to re-consider the pricing of this strategic funding transaction in light of its merit, the credit enhancement provided by Transnet, and above all, the spirit of partnership and cooperation envisioned by the leaders of our Great Nations".* The letter ends by reflecting: Minister of Finance, South Africa at the end. There is no signature to the letter.

5.7.270. The document's metadata reflected that it was authored by Tewodros Gebreselasie on 30 January 2015 at 19:31.

Similar letter found on Singh's Mimecast documents

5.7.271. During the search of Singh's Mimecast documents we determined that there was a similar copy of the letter sent to him by Gebreselasie on 30 January 2015. The said document is similar to the one Gebreselasie sent to Singh on 30 January 2015 (**Annexure D59**)

5.7.272. We however identified that there were some major differences in the two letters.

5.7.273. We determined that the letter found on Singh's documents is a word document of a letter dated 26 January 2015 addressed to Hu Huaibang, Chairman of the Board of Directors, China Development Bank.

5.7.274. The subject heading of the attached letter referred to *"Funding for major infrastructure projects to be rolled out in South Africa"* Paragraph 1 of the letter refers to a meeting that supposedly took place *"in December 2014 attended by South Africa's high level delegation led by His Excellency Jacob Zuma, the President of the Republic of South Africa".*

5.7.275. Paragraph 7 of the letter reflected the following: *"It was in the spirit of this cooperation that Transnet, as the government owned freight rail operator in South Africa, decided to award the bulk of its major locomotive acquisition programme to Chinese suppliers (China North Railways and China South Railways). This is an example of South Africa's full commitment to the cooperation that our leaders have foreseen in their Sanya Declaration, Sanya, Hainan, China, April 14, 2011. We expect all institutions from both China and South Africa to exhibit similar commitment towards the strong cooperation envisioned by our Leaders.*

5.7.276. We noted that the last paragraph of the letter reflected the following: *"We would therefore like to urge CDB to re-consider the pricing of this strategic funding transaction in light of its merit, the credit enhancement provided by Transnet, and above all, the spirit of partnership and cooperation envisioned by the leaders of our Great Nations"*. The letter bears the names Nhlanhla Musa Nene, Minister of Finance, South Africa at the end. There is no signature to the letter.

5.7.277. The document's metadata reflected that it was authored by Gebreselasie on 27 January 2015 at 14:01.

E-mail from Singh to Wood dated 3 February 2015

5.7.278. From Singh's emails we determined that on 3 February 2015 he sent an e-mail to Wood and copied Gebreselasie and Zhou. Singh wrote "Thx, A" in the said e-mail. We determined that Singh's e-mail was a reply to an e-mail Wood sent him on 3 February 2015 at 08:18 in which Wood wrote "*Hi Anoj I chatted to Stephanie, I think the translation seems to be the problem. She states that the team still suggest it is a challenge for them to get to the 200bp without head-office directive, not that our letter or analysis is somehow flawed. Still think we need to organised a conference call and I will ask Stephanie to arrange Regards Eric"((***Annexure D60***).*

5.7.279. Wood's e-mail to sing was in response to an earlier e-mail Sing sent to Wood on the same date, i.e. 3 February 2015 at 07:43 in which Singh wrote the following: "*Hi E What doubts are they talking about surely they should engage with us first in case there has been any mistakes in interpretations? I think we should insist on a call with them to get official feedback to our submission. Thx A.*

5.7.280. We noted that Zhou was copied in most of the communication discussed above. We do not know who she is except the fact that she appears to be the individual who was being used to interpret the communication between the Chinese and Transnet and regiments officials who were discussing the matters relating to the China Development Bank Loan. This can be deduced from Woods' e-mail when he indicated "*Hi Anoj I chatted to Stephanie, I think the translation seems to be the problem…..*

5.7.281. What is worrying however is the fact that Singh, a Transnet employee at the time, appears to be playing an active role in the communication with Regiments and the China Development Bank, as well as playing a role in the drafting of a letter to be submitted to the Minister of Finance to influence the decision of the CDB. As discussed below, Regiments was eventually paid an amount of R166 million excluding VAT for the said negotiations.

The letter from the Minister of Finance

5.7.282. From Singh's emails we found an e-mail thread which reflects that on 6 February 2015 at 17:35 Wood forwarded to Singh an e-mail with the subject heading "Letter from Minister of Finance". Attached to the said e-mail is what is reflected as *"Response Letter to Regiments Capital pdf"(***Annexure C61***)*

5.7.283. We determined that Wood received the said e-mail from Mary Marumo ("Marumo") (mary.marumo@treasury.gov.za). We determined that Marumo sent the e-mail to Wood on 6 February 2015 at 16:24 and copied Betty Tsheole (betttyT@regiments.co.za), Marlon Geswint (Marlon.Geswint@treasury.gov.za) and Ministry Registry (Minreg.Registry@Treasury.gov.za). Marumo wrote the following in her letter to Woods: "*Dear Mr Wood, On behalf of Hon. Nhlanhla Nene, Minister of Finance, I wish to thank and acknowledge receipt of your letter with regards to the South Africa/China relationship with thanks. Please find the attached letter, which serves as a response to your letter. Trusting that you will find the above in order.*

5.7.284. Attached to Marumo's e-mail to Wood was a letter signed by Minister Nene on 6 February 2015, the same date Marumo sent it to Wood. The Minister's letter, addressed to Wood, does not make mention of the China Development Bank, China South Rail or China North Rail.

5.7.285. The letter refers to the decision taken by both South Africa and the People's Republic of China in strengthening the ties between the two countries.

5.7.286. We further noted that in closing, the letter reflected the following: *"It is imperative that we allow the consultative process to be concluded and if at some point there is a need for a government to government discussion I am confident that such a discussion will be initiated and undertaken to ensure that we are able to reach an amicable solution to the matters to be resolved".*

5.7.287. As reflected above, we determined that after receiving the letter from Marumo, Wood forwarded it to Singh.

Appointment of Ramosebudi for a second stint at Transnet

5.7.288. During our consultations with Makgatho, she indicated that she took a decision to leave Transnet after her various communications with Singh and Molefe without any action from them. Makgatho left Transnet at the end of November 2014.

5.7.289. During our consultations with Phetolo Ramosebudi ("Ramosebudi"), he indicated that he was appointed to work as the Transnet Group Treasurer on 1 March 2015.

Ramosebudi indicated that he was head hunted by Singh as he had worked with the latter at Transnet prior to leaving the State owned Company.

5.7.290. We determined that on 2 March 2015 Transnet Corporate and Public Affairs sent a communication announcing Ramosebudi appointment as Transnet's Group Treasurer (**Annexure D62**).

Mandate letter with China Development Bank

5.7.291. We determined that on 16 April 2015, Molefe concluded a mandate letter with CDB in respect of a $2.5 billion loan facility to finance the acquisition of the 232 diesel locomotives and the 459 electric locomotives.

5.7.292. We further determined that the 459 locomotives consisted of the 100 locomotives confined to CSR and the 359 locomotives procured from CSR as part of the 1 064 tender.

5.7.293. According to the mandate letter, "*ZAR Facility*" referred to the ZAR facility (in an amount approximately equivalent to $1 billion) arranged by JP Morgan Chase & Co or its affiliate.

The Beijing Trip undertaken by Transnet and Regiments

5.7.294. From a review of Singh's emails and documentation, we determined that Transnet, Regiments and JP Morgan undertook a trip to Beijing in April 2015 to meet with *inter alia* The China Development Bank officials.

5.7.295. Based on the discussions above, we determined that the trip was undertaken two months after the communication sent to Wood from Minister Nene's office.

5.7.296. An e-mail sent on 31 March 2014 from Takane to an individual addressed as Joule indicated that Singh and the Transnet delegation would arrive in Beijing on Monday 6 April 2015 and further that the meeting would start on 7 April 2015. Takane's e-mail further reflected that the following individuals undertook the trip to Beijing:

5.7.296.1. Anoj Sing – Transnet;

5.7.296.2. Phetolo Ramosebudi – Transnet;

5.7.296.3. Eric Wood – Regiments;

5.7.296.4. Tewodros Gebreselasie – Regiments; and

5.7.296.5. Frank Vein – JP Morgan. (**Annexure D63**)

5.7.297. The trip to Beijing was undertaken a month after Ramosebudi started his second stint at the state owned company after he was called back to Transnet by Singh.

5.7.298. Ramosebudi stated that the reason JP Morgan was represented in the said trip was because CDB wanted to meet the entity that was going to be responsible for hedging as Transnet did not want CDB to do the hedging. Ramosebudi could not give us any documentation that indicated that this version was correct.

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

Evaluation of tender GSM/12/05/0447

5.7.299. TAC recommended that consideration be given to tender GSM/12/05/0447 being awarded to the overall highest ranking bidder *i.e.* McKinsey & Company and Letsema Joint Venture;

5.7.300. The appointment of Webber Wentzel over ENS was unjustifiable as ENS (81.43%) scored more than Webber Wentzel (70.34%) for technical evaluation.

5.7.301. Gillman and Bouwer contravened paragraph 1.5.2 (d) of the 2009 PPM in that they failed to recuse themselves from the evaluation process after declaring their conflict of interest;

5.7.302. **Removal of Letsema from the McKinsey led consortium**

5.7.303. Molefe approved a recommendation from Singh and not TAC that McKinsey's B-BBEE partner (Letsema) be replaced due to a perceived conflict of interest

5.7.304. Letsema were removed prematurely from the McKinsey consortium in that it was not known at the time whether EMD would submit a proposal for the 1064 locomotives tender;

5.7.305. Molefe and Singh deviated from the recommendation of the TAC,

5.7.306. The removal of Letsema from the Mckinsey led consortium compromised the integrity of the procurement process resulting in the contravention of section 217 of the Constitution of the Republic of South Africa.

Letter of Intent

5.7.307. Singh contravened the provisions of the PPM relating to the LOI in that he issued an LOI with amendments to McKinsey's Consortium members as well as the scope and fees for the advisory services before negotiating with the latter;

5.7.308. There is no evidence that post tender negotiations took place between Transnet and McKinsey that informed the LOI dated 30 November 2012;

5.7.309. A portion of the work awarded to McKinsey as per the LOI was already part of Transnet's existing SC Policies and the tender process for the acquisition of 1064 locomotives had already commenced which deemed some of the deliverables irrelevant i.e. technical evaluation and execution;

5.7.310. Mckinsey signed the letter of intent without questioning the changes in its consortium, which raises the suspicion that Singh and Mckinsey discussed this matter before the LOI was issued

5.7.311. The inclusion of Regiments into the McKinsey consortium was irregular as Regiments were not assessed by TAC.

5.7.312. **Amendments to RFP GSM/12/05/0447**

5.7.313. Wood signed McKinsey's third addendum to revise the scope in terms of RFP GSM/12/05/0447 whilst he was a Regiments representative without any authority from McKinsey;

5.7.314. Wood signed the third addendum in respect of RFP GSM/12/05/0447, before McKinsey ceded the contract to Regiments which was supposed to be effective on 5 February 2014; and

5.7.315. The third addendum was unlawful as it was signed by a person without authority.

Payments to Regiments

5.7.316. Out of pocket expenses charged by Regiments in the amount of R2 565 000.00 were not based on actual costs incurred as required by paragraph 4.3 of the addendum. The payment of R2 565 000.00 constitutes fruitless and wasteful expenditure as it was not in line with the policy.

5.7.317. The rendering of a service by Regiments and issuing of an invoice of R79 million before the conclusion of an addendum is irregular;

5.7.318. Payment of R189 million made to Regiment for the negotiation of the CDB loan was excessive as substantial work was done by Transnet;

CDB negotiations by Regiments

5.7.319. Regiments rendered the service for the CBD loan before the addendum was signed;

5.7.320. Transnet Treasury had the capacity to conclude on the CDB loan negotiations without the involvement of Regiments;

5.7.321. Molefe and Singh side lined Transnet Treasury and appointed Regiments to negotiate and conclude the CDB loan;

5.7.322. Pita acted negligently as he failed to ensure that the contract was concluded before Regiments commenced work on the CDB negotiations;

5.7.323. Pita contravened section 57 (c) of the PFMA in that he failed to take effective and appropriate steps to prevent, within his area of responsibility, any irregular expenditure;

5.7.324. Singh contravened section 57 (c) of the PFMA in that he failed to take effective and appropriate steps to prevent, within his area of responsibility, any irregular expenditure when he approved Regiments invoice of R189 million without a valid contract in place.

5.7.325. McKinsey accepted terms and conditions in the LOI without questioning them;

5.7.326. Singh, McKinsey, Regiments and other role players may have received gratification and contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend the following:

5.7.327. Transnet Board consider recovering the R2 565 000.00 (Excl. VAT) paid to Regiments in respect of the out of pocket expenses.

5.7.328. DPCI to investigate if Molefe, Singh, Gama, Pita and any other role player received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

5.7.329. DPCI to investigate if Molefe, Singh, Gama, Pita, McKinsey, Regiments and any other role player contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act.

5.8. INVESTIGATIONS RELATING TO THE CLUB LOAN

R12 billion Club Loan

5.8.1. It is our understanding that the Club Loan arose from the funding requirements for the acquisition of 1064 locomotives. Transnet had raised funding of $2.5 billion with CDB where they would exercise $1.5 billion initially and had an option to exercise the remaining $1 billion.

5.8.2. It is further our understanding that Transnet was of the view that the funding deal was expensive and would consider looking at the local market for the remaining $1 billion but to fund in South African Rand at more effective rates.

Memorandum dated 25 August 2014

5.8.3. We determined that Singh compiled a memorandum dated 25 August 2014 for submission to the Board. The purpose of the memorandum was to request the Board to *inter alia* approve the funding initiatives that would be undertaken including the following(**Annexure D64**):

5.8.3.1. USD 2.5 billion loan facility from CDB;

5.8.3.2. ZAR 6 billion funding supported by the guarantee from Export – Import bank of the United States.

5.8.4. We determined that Molefe approved the memorandum on 25 August 2014.

5.8.5. We determined that on 28 August 2014, the Board approved the US Exim and CDB transactions subject to negotiating better rates on the US Exim (**Annexure D65**).

Proposal for the evaluation of funding and risk hedging for locomotives acquisition

5.8.6. Based on documentation reviewed, we determined that Regiments submitted a proposal dated January 2015 in respect of the evaluation of funding and risk hedging for locomotives acquisition. In their proposal, Regiments recommended to Transnet a combination of USD and Syndicate ZAR funding to achieve an optimal funding cost.

5.8.7. Regiments indicated that the ZAR funding would be equivalent to R12 billion.

5.8.8. We noted that Regiments did not include a fee structure/costs for the proposed services (**Annexure D66**).

Request for appointment of JP Morgan and Regiments to underwrite the Club Loan

5.8.9. As discussed above under the 1064 advisory services section, we determined that Gama sent a memorandum to the ADC dated 28 April 2015 to *inter alia* approve the following:

5.8.9.1. The confined appointment of JP Morgan to lead and underwrite the equivalent syndicated ZAR loan of $1.5 billion; and

5.8.9.2. Approve the contract extension from R99.5 million to R265.5 million for the appointment of Regiments for the transaction advisory services and support Transnet on the 1 064 locomotives transaction (**Annexure D67**).

5.8.10. We determined that on 29 April 2015, the ADC held a meeting where the committee resolved to approve the following:

5.8.10.1. Confined appointment of JP Morgan to hedge the financial risk (interest rate, credit and currency risk) emanating from the US$1.5 billion CDB loan into South African Rands; and

5.8.10.2. Contract extension of the appointment of Regiments for the transaction advisory services and support to Transnet on the 1064 locomotives transaction from R99.5 million to R265.5 million (**Annexure D68**).

5.8.11. It is evident that at the time that Gama requested the ADC to approve the memorandum dated 28 April 2015, one of the requests related to the confinement of JP Morgan to lead and underwrite the ZAR club loan.

Co-ordination letter by JP Morgan dated 18 May 2015

5.8.12. We determined that JP Morgan prepared and submitted a co-ordination letter to Singh dated 18 May 2015 and titled *"Up to ZA18 billion delay draw term facilities for Transnet SOC Ltd (the "Facilities")" (***Annexure D69***)*.

5.8.13. According to the co-ordination letter, the scope of work for JP Morgan and co-ordinators related to *inter alia* the following:

5.8.13.1. Assisting Transnet in its approach to an ongoing dialogue with prospective lenders; and

5.8.13.2. Assisting the co-ordination of the production of appropriate information material for the prospective lenders, including due diligence requirements and bank presentation, where appropriate.

5.8.14. The co-ordination letter was accompanied by an indicative timesheet which indicated that JP Morgan were the underwriters for a facility amount up to US$1.5 billion which would be translated in Rand (ZAR currency).

5.8.15. The co-ordination letter was signed by Singh and Gama, however the date of signature is not reflected.

5.8.16. We determined that on 19 May 2015, Ramosebudi compiled a memorandum titled *"JP Morgan- Co-ordination letter" (***Annexure D70***)*.

5.8.17. The purpose of the memorandum was to request the acting GCE Gama to approve and sign the enclosed co-ordination letter for the appointment of JP Morgan as a co-ordinator for the ZAR equivalent of a $1.5 billion syndicated loan.

5.8.18. We determined that the memorandum was recommended by Singh on 19 May 2015 and approved by Gama on 20 May 2015.

Memorandum dated 19 May 2019

5.8.19. As discussed above under the 1064 advisory services, we determined that Singh and Pita sent a memorandum to Gama dated 19 May 2015 to approve the contract addendum to Regiments for the transactional advisory contract.

5.8.20. Paragraph 9.7 of the said memorandum indicated that Regiments had assisted Transnet in negotiating with a number of Chinese potential sources of ZAR funding for the syndicated loan facility, including:

5.8.20.1. ICBC (R2 billion funding);

5.8.20.2. Bank of China (R6 billion);

5.8.20.3. China Construction Bank (Potential of R2 billion); and

5.8.20.4. Sinosure.

5.8.21. The memorandum further indicated Regiments had recommended that Transnet utilize $1.5 billion of the CDB facility and blend it with a $1 billion (R12 billion) ZAR syndicated loan issue.

Work done by JP Morgan relating to the Club Loan

5.8.22. We determined that on 12 May 2015, Frank Vein ("Vein") sent an e-mail to Ramosebudi and Wood detailing the progress of the ZAR syndication loan. In his e-mail, Vein confirmed that he had received the following indications for unsecure loans:

5.8.22.1. *"ICBC: Have provided a TS for R2bln at 270bps margin*

5.8.22.2. *BoC: Have provided a TS for R7bln at 270bps margin with the intention to sell down R4bln of that.*

5.8.22.3. *CCB: Have indicated an appetite for R1bln – R3bln and will match ICBC and BoC terms*

5.8.22.4. *Nedbank: Have indicated appetite for R2bln, but no indication of pricing yet."*

5.8.23. It is evident from the above e-mail that JP Morgan had commenced with the execution of their mandate on the ZAR club loan (**Annexure D71**).

Letter dated 29 May 2015

5.8.24. We determined that on 29 May 2015, JP Morgan submitted a letter to Singh informing him of various investigations against JP Morgan conducted by the US Department of Justice as well as the South African Reserve Bank and Competition Commission.

5.8.25. According to the letter, JP Morgan had pleaded guilty on an anti-trust charge relating to the investigation conducted by the US Department of Justice.

5.8.26. JP Morgan indicated that the two South African regulatory investigations conducted by the South African Reserve Bank and Competition Commission were ongoing and were therefore not in a position to provide comment.

5.8.27. It is our understanding that the purpose of the letter was to notify Transnet of the pending investigations and not to withdraw from the contract (**Annexure D72**).

Consultation between Transnet's legal representative and JP Morgan

5.8.28. As discussed below, we determined that in June 2015 Transnet terminated their contract with JP Morgan following various consultations relating to an early termination.

5.8.29. In his response to our questions relating to the above, Pita indicated that he was not party to the discussion between Transnet and JP Morgan. Pita stated that he was advised by Ramosebudi that the proposal received from JP Morgan was not at the required tenor, pricing and currency.

Termination of JP Morgan's appointment

5.8.30. We determined that Singh issued a letter dated 9 June 2015 to Marc Hussey ("Hussey) of JP Morgan terminating their services in respect of the ZAR loan.

5.8.31. In his letter, Singh stated that JP Morgan indicated that they were unable to underwrite the planned syndication ZAR loan (**Annexure D73**).

Regiments discussion document of advisory support for the funding of 1064 – June 2015

5.8.32. Based on documentation reviewed, we determined that Regiments submitted a discussion document dated June 2015 to Transnet for advisory support for the funding of 1064 locomotives and executing risk hedging strategy (**Annexure D74**).

5.8.33. We noted that the discussion document gave an overview of the work undertaken by Regiments.

5.8.34. According to the discussion document, subsequent to the award of the 1064 locomotives tender, Regiments was tasked with developing a detailed funding plan for the acquisition of the 1064 locomotives from GE, Bombardier, CNR and CSR. During the assessment of the suitable funding model, it was established that the cost of hedging the currency risk associated with securing a US dollar loan would be higher than comparative locally sourced South African funding.

5.8.35. The discussion document indicated that in light of the above, the GCFO required strategy and execution support in order to secure the right type of funding and a cost efficient innovative hedging solution to achieve an optimal all-in funding for the resulting ZAR loan.

5.8.36. According to the discussion document, Regiments claimed that they provided an execution support that included the evaluation and comparative analysis of a number of funding sources including CDB, Sinosure, China Exim funding for the Chinese locomotives (CNR and CSR). Regiments further indicated in their discussion document that assistance was provided to Transnet during the negotiation process with all of the identified Chinese potential funders, and in particular with the detailed and protracted negotiations with CDB.

5.8.37. According to the discussion document, the blending of the ZAR syndicate loan and the raising of the ZAR portion of the funding as a club loan had *inter alia* allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flow.

5.8.38. In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, the discussion document reflected that Transnet implemented Regiment's recommendations to only utilise $1.5 billion of the CDB facility, and blend that with a $1 billion (R12 billion) ZAR syndicated loan issue. The ZAR syndicated loan would allow for a reduction on the blended rate paid by Transnet resulting in a saving of R36 million.

5.8.39. Regiments indicated that they had led the effort to negotiate with a number of potential Chinese and local sources of the ZAR funding which amongst others included Nedbank/Old Mutual (R6 billion funding).

5.8.40. According to the discussion document, Regiments had completed the bulk of the work to raise additional funding of R12 billion to R18 billion (in place of the unutilised USD 1 billion stand – by facility from CDB). In light of the above, Transnet had decided to pursue, with the support and guidance of Regiments, the procurement of the required funding in a club platform as opposed to loan syndication. The discussion document indicated that Regiments was due a success based fee of R166.3 million.

5.8.41. We determined from the above discussion document that by June 2015, Regiments had performed some work in respect of the club loan. The success based fee of R166.3 million referred to above include the fee for both the CDB and the ZAR club loan.

E-mail dated 17 July 2015 from Wood

5.8.42. We determined that on 17 July 2015, Wood sent an e-mail to Singh with subject matter *"1064 Funding Mandate – ZAR Club Loan"(***Annexure D75***)*

5.8.43. According to the email, Regiments had been allocated full responsibility for the execution of the R18 billion club loan following the termination of JP Morgan's contracts as lead manager for the "issue". The e-mail indicated that Regiments had picked up the full responsibility for the issue as lead managers, with all the incumbent work being performed by Regiments.

5.8.44. In light of the above, Regiments requested an opportunity to discuss with Singh the possibility of market related compensation for the lead manager role as performed by the latter.

5.8.45. In his written response to our questions relating to the above, Pita confirmed that Regiments proposed to take over the Lead Arranger role which Singh declined advising them that they needed to fulfil supplier development requirements and transfer skills to other smaller firms.

5.8.46. According to Pita his understanding was that Regiments agreed to engage an SD Partner to continue working at risk with their support. Pita indicated in his response that he was not sure of the exact date as he was not part of the transaction or the discussions until just before Singh left Transnet to be seconded to Eskom.

Memorandum dated 22 September 2015 – from Gama to ADC

5.8.47. We determined that on 22 September 2015 Gama recommended a memorandum to the ADC titled "*REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE US$1 BILLION ZAR EQUIVALENT CLUB LOAN*". We further determined that the memorandum was compiled by Ramosebudi on the 17 September 2015 and recommended by Thomas, Pita and Gama on the 17 and 15 September 2015 respectively.

5.8.48. According to the memorandum, the purpose of the memorandum was to request ADC to:

5.8.48.1. Approve the appointment of Trillian in the place of JP Morgan as a Lead Manager of the US$1 billion ZAR equivalent club loan which was previously confined to JP Morgan.

5.8.48.2. Approve the termination of JP Morgan on the ZAR syndication loan.

5.8.48.3. Delegate authority to the GCE to approve all documentation related to this confinement.

5.8.49. According to the memorandum, JP Morgan was appointed through a confinement approved by ADC to lead the ZAR Club as a substitute for the US $1 billion standby facility. Furthermore, the memorandum indicated that JP Morgan's confinement was terminated for the following reasons:

5.8.49.1. *"JP Morgan would not be to deliver the ZAR loan;*

5.8.49.2. *Regiments engaged with its SD beneficiary to see if there were options available to Transnet.*

5.8.49.3. *It became apparent that Trillian would be able to deliver on Transnet's requirement for a Club loan deal at a price and tenor which was most comparable to both the CDB loan and JP Morgan proposal."*

5.8.50. The memorandum indicated that Transnet had signed a mandate letter and Term sheet for the US$2.5 billion 15-year amortizing loan from China Development Bank ("CDB") to finance 232 and 359 locomotives from CNR and CSR, respectively.

5.8.51. According to the memorandum, Regiments were appointed as the 1064 locomotive funding advisor and had SD obligations to Transnet on their contract. The memorandum further indicated that one of Regiments SD initiatives was the development of other black owned organisations in the industry and Trillian was the beneficiaries of the SD initiative.

5.8.52. In his memorandum, Ramosebudi stated that "*When it became apparent that JP Morgan would not be able to deliver the ZAR loan Regiments engaged with its SD beneficiary to see if there were options available to Transnet. It became apparent that Trillian would be able to deliver on Transnet's requirement for the Club loan deal at a price and tenor which was most comparable to both the CDB loan and JP Morgan Proposal"*.

5.8.53. According to the memorandum, Trillian had assisted Transnet in negotiating with a number of potential funding sources of ZAR funding, including the following firm commitments:

5.8.53.1. Nedbank group(R6 billion);

5.8.53.2. Bank Of China (R3 billion);

5.8.53.3. ABSA Bank (R3 billion); and

5.8.53.4. Libfin (R1 billion).

5.8.54. We determined that a success based fee of R82 million, 10% of the savings payable by Transnet was due to Trillian.

5.8.55. We determined prior to the finalisation of the memorandum, Thomas sent an e-mail dated 16 September 2015 to Ramosebudi and Pita raising the following concerns:

5.8.55.1. *"If the fees for the Lead and underwriting is not included in the market related costs of the funding and there is a specific fee (as the one that we want to pay to Trillian) then that will also have to be disclosed to the ADC as an omission from the first submission.*

5.8.55.2. *Does Trillian have the capacity and capability to underwrite the loan.*

5.8.55.3. *Is Trillian going to provide the exact same services that JP Morgan was going to provide and why is their potentially different than that of JP Morgan?*

5.8.55.4. *The Regimens fee was for the successful conclusion of the funding Transaction, thus I would interpret that being the hedging and loan, based on how I am seeing Trillian being paid is that not duplicate to what was paid to Regiments?"(***Annexure D76***)*

5.8.56. It is unclear how Trillian was considered if they may not have had capacity and capabilities to underwrite a loan as queried by Thomas.

1 October 2015 ADC meeting

5.8.57. We determined that the ADC held a meeting on 1 October 2015 to discuss inter alia the club loan. According to the minutes of ADC meeting, management took the Committee through the submission as contained in the meeting pack. We determined that the purpose of submission was to request the Committee to approve the following:

5.8.57.1. The appointment of Trillian in the place of JP Morgan as a Lead Manager of the US$1b ZAR equivalent Club loan which was previously confined to JP Morgan;

5.8.57.2. The termination of JP Morgan on the ZAR Syndication Loan;

5.8.57.3. Delegation of authority to the GCE to approve all documentation related to this confinement;

5.8.57.4. The committee noted that Transnet decided to split the transaction into 2 trenches, namely the US$1.5 billion tranche and the standby facility of US$1 billion tranche. According to the minutes, JP Morgan was appointed through a confinement approved by the Committee to lead the ZAR club loan as a substitute for the US$1 billion standby facility to lower the cost of the transaction, and to avoid foreign exchange and exposure and the need for cross currency swaps;

5.8.57.5. The minutes indicate that the Committee further noted that Trillian was a Black Owned Company, and supplier development partner of Regiments Capital, the funding advisor for the 1064 locomotives transaction;

5.8.57.6. According to the minutes of the ADC, Trillian was found capable of delivering on the required club loan deal at a more favourable price to the JP Morgan proposal, resulting in savings of JP Morgan fees of approximately R820m, with 10% of the savings being payable to Trillian as a fee for transaction (R82 million); and

5.8.57.7. Responding to the question whether Transnet had a contractual relationship with JP Morgan which would be terminated, and whether such termination would result in a contractual breach, management clarified that there was no contract signed for the second tranche. The Committee was reminded that the initial confinement approval which was split into two trenches was with JP Morgan.

5.8.57.8. The first tranche was concluded, whilst the second tranche was separate by way of an option and had not yet been contracted. The Committee commended the team for its successful cost saving.

5.8.58. We determined that the ADC resolved the following:

5.8.58.1. The appointment of Trillian to replace JP Morgan as a lead Manager of the US$1bn (ZAR equivalent) club loan which was previously confined to JP Morgan;

5.8.58.2. The termination of JP Morgan on the ZAR syndication loan; and

5.8.58.3. The delegation of authority of the Group Chief Executive to approve and sign all the documentation related to this confinement. (**Annexure D77**)

5.8.59. As indicated above, JP Morgan and Regiments were appointed to facilitate the $2.5 billion CDB loan.

5.8.60. In his written response to the above, Pita indicated that the memorandum presented to ADC was compiled by Ramosebudi. Pita further indicated that based on what he had been told and shown by Ramosebudi, he had no reason to believe that facts stated in the memorandum were anything other than bona fide (**Annexure D78**).

5.8.61. Pita indicated in his response that he was advised by Ramosebudi that Trillian had requested 20% of savings which he felt was excessive and asked for the market related benchmark. According to Pita, Ramosebudi indicated that the 20% was market related. Pita indicated that he asked that the fee be reduced and Trillian agreed on 10% subject to Transnet signing the loan on the terms required.

5.8.62. Pita indicated that once the Club loan deal was approved, Ramosebudi provided a contract for signature which he, Ramosebudi, had been negotiating for a while. Pita further indicated that he and Gama signed the contract based on the facts provided by Ramosebudi which facts he and Gama had no reason to believe were anything other than bona fide.

Trillian Boutique Asset Management proposal dated 18 November 2015

5.8.63. We determined that on the 18 November 2015, Trillian Boutique Asset Management issued an engagement letter to Transnet and addressed it to Ramosebudi detailing the terms of engagement and scope in respect of R12 billion club loan.

5.8.64. We further determined the engagement letter was signed on 18 November 2015 by Daniel Roy ("Roy") and Gama and Pita on behalf of Trillian and Transnet respectively. We noted the Pita signed the letter of engagement as a witness.

5.8.65. The engagement letter articulated the following:

5.8.65.1. *"This letter (the Engagement Letter) sets out the terms and conditions on which Trillian (as defined below) is engagement by Transnet SOC Ltd (the Client) to act as Co – originating mandated lad arranger, in relation to a proposed ZAR 12,000,000,00 facility, to enable the client to fund its payment obligations in connection with (the prospective) contract between the client and (The original Equipment) for the supply of locomotives and general banking (the Transaction).*

5.8.65.2. *It is important to indicate that Transnet as a principal was supposed to be setting out the conditions and engaging Trillian to act on its behalf, at this point, the indication is that Trillian is engaging Transnet while the Transnet will be the party carrying the cost.*

5.8.65.3. *Scope: the client hereby appoints Trillian (acting through its investment banking division or any Associate or other division thereof as it determines appropriate to perform the services described in this engagement letter) on an exclusive basis as Originating and Co-ordinating mandated lead Arranger, in connection with the Transaction. Accordingly, and subject to the terms of this engagement Letter,* *Trillian acting through its Associates shall perform he following services in connection with the Transaction:*

5.8.65.3.1. *Acting as the principal and primary point of contact for the Client in respect of the structuring and documentation of the club Loan Financing subject to the client being included in all correspondence with Trillian;*

5.8.65.3.2. *Leading negotiations on behalf of the client (including co-ordination of lenders' positions) on full documentation suite for the club loan Financing*

5.8.65.3.3. *Liaising on behalf of the Client with appropriate legal counsel, subject to the clients' review and approval (with caps if required by the client), co-ordination of lenders requests for advice and approval of legal;*

5.8.65.3.4. *such other services as Trillian considers expedient and reasonable for the efficient management and completion of the documentation process for the Club loan financing; and*

5.8.65.3.5. *Acting as Lead arranger and coordinator in accordance with the executed documentation for club loan financing.*

5.8.66. Based on our review of the proposal, we determined that the scope of work outlined on the letter of engagement was already performed by Regiments. The work performed by Regiments is discussed in detail below (**Annexure D79**).

Trillian invoice dated 18 November 2015

5.8.67. We determined that on the same day that Trillian issued the letter of engagement i.e. 18 November 2015, Trillian invoiced Transnet an amount of R82 million in respect of the Lead Arranger for the R12 billion club loan. As indicated above, the letter of engagement was signed by Roy on 18 November 2015 (**Annexure D80**).

5.8.68. We determined that Ramosebudi compiled a memorandum titled "*ZAR Club Mandate*" on the 24 November 2015 addressed to Gama, Pita and Silinga. The memorandum was recommended by Silinga and Pita on 26 November 2015 and 2 December 2015 respectively (**Annexure D81**).

5.8.69. The purpose of the memorandum was to request that the GCE and GCFO sign off on Trillian Asset management ("TAM") invoice for services rendered to and on behalf of

Transnet in its capacity as Transnet's originating and Co-ordinating mandated lead arranger for the ZAR12 billion club facility.

5.8.70. Attached to the memorandum was an invoice of R82 million (Excluding Vat). We determined that the invoice was issued by Trillian on the 18 November 2015.

5.8.71. The request as reflected on the above memorandum was approved by Gama on 3 December 2015.

5.8.72. We further determined that Trillian was paid an amount of R82 million excluding Vat on 4 December 2015.

5.8.73. It is unclear what work could have been performed by Trillian by 18 November 2015, the same day that the letter of engagement was signed.

5.8.74. In his response relating to the club loan, Pita indicated that Ramosebudi provided him with a memorandum he, Ramosebudi had signed on 24 November 2015 requesting to sign off the invoice. Pita indicated that he could not recall whether the contract was also attached for signature however it was reasonable to assume that the contract, payment advice and invoice were signed in early December based on the dates in the documents. Pita confirmed that the invoice was paid In December 2015.

5.8.75. Pita indicated that he did not have knowledge of the detailed work performed other than what was represented to him by Wood, who was with Regiments at the time, and Ramosebudi who both advised that work was performed by Trillian on the Club Loan. Pita further indicated that Ramosebudi advised that Trillian were Regiments SD Partner and being supported by them.

5.8.76. During the course of our investigation, we found a copy of Kennedy Phuti Ramosebudi's curriculum vitae in one of the proposals submitted by Regiments to Transnet in respect of Kumba Iron Ore project. According to the curriculum vitae, Kennedy Ramosebudi's position is reflected as Business Analyst. The employment history reflects that Kennedy Ramosebudi was employed by Regiments since 2013. It is our understanding that Kennedy Ramosebudi is related to Phetolo Ramosebudi.

5.8.77. At the time that Regiments submitted a proposal in respect of Kumba Iron Ore project, Ramosebudi had not started working for Transnet. We however determined that the Kumba Iron Ore contract was still in place when Ramosebudi was appointed as Group Treasurer. There is no indication that Ramosebudi declared that his brother works for Regiments, a service provider to Transnet.

Consultation with Mosilo Mothepu

5.8.78. During our consultation with Mothepu, she indicated that Trillian was not involved in the facilitation of the ZAR club loan. According to Mothepu, Regiments assisted Transnet with the said club loan.

5.8.79. Mothepu indicated that she personally worked on the club loan whilst in the employ of Regiments. To substantiate her statement, Mothepu referred us to her parliamentary submission which contained various email communication between her and Transnet officials namely Ramosebudi and Rhulani Madale ("Madale") in respect of the club loan.

5.8.80. Based on the various email communication provided by Mothepu, it is evident that Mothepu conducted the work relating to the club loan whilst in the employ of Regiments and not Trillian.

5.8.81. We noted a copy of an email dated 5 August 2015 from Nswana Nwangu of Regiments to Wood, Gebreselasie, Mothepu and Raymond John ("John") detailing Regiments plan of action in respect of the club loan (**Annexure D82**).

5.8.82. We determined that on 15 September 2015, Mothepu sent an email to Wood requesting Wood to review the "*ZAR funding pricing motivation*" document. As indicated above, on 17 September 2015, Ramosebudi compiled a memorandum recommending the appointment of Trillian as Lead Manager of the US$1.5 billion ZAR equivalent club loan (**Annexure D83**).

5.8.83. We determined that on 17 September 2015, Madale sent an email to Mothepu and Wood and officials from Nedbank, Liberty, Absa Capital and Bank of China. We further determined that Ramosebudi was copied in the said email. It is unclear why Ramosebudi would compile a memorandum to appoint Trillian as the lead Manager of the club loan on 17 September 2015, the same day Regiments were communicating with different financial institutions in respect of the Club Loan and he had knowledge of the work being performed by Regiments (**Annexure D84**).

5.8.84. We determined that on 6 October Ramosebudi sent an email titled "*Club Loan*" to the above mentioned financial institutions, Wood, Mothepu and copied Pita stating that "*Colleagues*

I know that you have revert back to credit to present the changes on credit rating down grade. Can we finalize the legalities by Friday this week. To do this can we have a call to touch base in daily basis to check any outstanding issues from Tnet and lenders.

Rhulane will set calls

Regards

*Phetolo"(***Annexure D85***)*

5.8.85. It is evident that the preparation of the memorandum by Ramosebudi was a misrepresentation to the Acting GCE, Gama.

5.8.86. During our consultation with Ramosebudi, he indicated that Trillian performed the work in respect to the club loan. This assertion by Ramosebudi that Trillian performed the work on the club loan was a clear misrepresentation to the investigation team as he was copied in various email communication between Transnet and Regiments in respect of the club loan.

5.8.87. As indicated above, Pita and Thomas recommended Ramosebudi's memorandum on 17 and 18 September respectively. During our consultation with Mothepu, she stated that Pita was aware that Regiments performed the work in respect of the club loan. This is evident in email communication dated 6 October 2015.

5.8.88. Based on the email communication dated 6 October 2015, the time Pita signed Trillian's letter of engagement on 18 November 2015, he was aware of the involvement of Regiments in the club loan.

5.8.89. In his written response to our questions, Pita indicated that he does not have knowledge of the detailed work performed by Trillian other than what was represented to him by Wood who was with Regiments at the time and Ramosebudi who both advised that work was performed by Trillian on the club loan. According to Pita, Trillian was supported by Regiment as their SD Partner.

Media statement announcing the club loan

5.8.90. We determined that on 18 November 2015, Mothepu sent an email titled "*Press statement Club loan 17 November 2015*" to Mboniso Sigonyela ("Sigonyela") and copied Ramosebudi, Yusuf Mahomed and Wood stating that " *Hi Mboniso,*

Attached please find the revised Club loan press statement. Kindly note that Phetolo and Eric have submitted their amendments to the document.

Kind regards

Mosilo Mothepu

Principal"

5.8.91. On 19 November 2015, Ramosebudi forwarded the above mentioned email to Pita and copied Dorothy Kobe ("Kobe").

5.8.92. The said email communication further suggests that Ramosebudi was dealing with Regiments and not Trillian in respect of the club loan (**Annexure D86**).

5.8.93. On 19 November 2015, Mothepu sent an email titled "Club Loan Media Pack" to Pita and copied Wood and Ramosebudi. Attached to the email was a PowerPoint presentation detailing the R12 billion club loan funding. According to the presentation, the funding was obtained from following entities (**Annexure D87**):

Institution	**Amount**
Nedbank	R3 billion
Futuregrowth Asset Management	R1,5 billion
Old Mutual Specialised Finance	R1,5 billion
ABSA/Barclays	R3 billion
Bank of China (BOC)	R3 billion
Total ZAR funding to date	**R12 billion**

5.8.94. The above table contradicts Ramosebudi's memorandum dated 17 September which indicates that Trillian assisted Transnet to negotiate with Nedbank, Bank of China, Absa and Libfin.

5.8.95. We noted the following disclaimer at the end of the presentation "*This material was prepared by Regiments Capital (Pty) Ltd ("Regiments"). This material is based upon information that Regiments considers reliable as of the date hereof, but Regiments does not represent or warrant that it is accurate, complete or necessarily sufficient for Transnet's purposes……………………….*"

5.8.96. The said presentation sent to Pita and Ramosebudi further suggests that the club loan was facilitated by Regiments and not Trillian.

Communication between Pita and Niven Pillay dated 12 September 2016

5.8.97. We determined from Pita's Mimecast emails that on 12 September 2016 Niven Pillay sent an email to Pita attaching a letter raising concerns *inter alia* about the payment of R93 million to Trillian in respect of the Club loan. In his letter to Pita, Niven Pillay stated the following:

5.8.97.1. *"This fee relates to work done by Regiments for the capital raising, transaction management and hedging advisory services related to the 1064 locomotive funding together with the club loan, for which Regiments invoiced and was paid the relevant fee in June 2015.*

5.8.97.2. *While it was originally anticipated that JP Morgan would be the appointed lead managers for the club loan and Regiments would assist JP Morgan in the execution thereof, as you are aware, Regiments at the request of Transnet ultimately took over full responsibility as lead managers, with all the incumbent work being performed by Regiments.*

5.8.97.3. *This work was completed by Regiments in December 2015.*

5.8.97.4. *It now emerges from the article, however, that a fee of (ultimately) R 93 million or R 93.5 million was paid by Transnet to Trillian for the R 12 billion club loan. A corresponding invoice is not attached thereto. Please would you let us have same?*

5.8.97.5. *This amount does indeed appear to be excessive when compared with the amount Regiments has invoiced for the same work."*

5.8.98. The email communication is further evidence that the work in respect of the Club loan was indeed performed by Regiments and not Trillian as invoiced (**Annexure D88**).

NOVUM ASSET MANAGEMENT (PTY) LTD T/A TRILLIAN ASSET MANAGEMENT (PTY) LTD

5.8.99. We determined from background searches conducted that Novum Asset Management (Pty) Ltd with registration number 2008/023108/07 was registered on 2 October 2008 (**Annexure D89**).

5.8.100. The entity had seven (7) registered directors *(as per the databases used for the purposes of this investigation*). As reflected in the table below, five (5) directors have since resigned from the company.

Name	Status	Appointment date	Resignation date
Faure, Jan Johannes	Active	19 May 2010	Still Active
Roy, Daniel Benjamin	Active	19 May 2010	Still Active
Jonker, Tania Michelle	Resigned	02 October 2008	28 April 2010
Leballo, Tebogo	Resigned	01 March 2016	25 July 2017
Swartz, Ben Graham	Resigned	01 March 2010	01 May 2015
Swartz, Rowan Bradley	Resigned	01 March 2010	01 September 2015
Wood, Eric Anthony	Resigned	01 March 2016	25 July 2017

5.8.101. A search on the directors reflected common links relating to some of the directors as follows:

Director	Other business interests / Links
Leballo, Tebogo	• Trillian Capital Partners (Pty) Ltd • Trillian Financial Advisory (Pty) Ltd • Trillian Management Consulting (Pty) Ltd
Wood, Eric Anthony	• Regiments Capital (Pty) Ltd • Trillian Capital Partners (Pty) Ltd • Trillian Financial Advisory (Pty) Ltd • Trillian Management Consulting (Pty) Ltd

5.8.102. We noted that at the time of that the invoice was issued, Trillian Asset Management had two active directors namely Daniel Roy and Johannes Faure.

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

5.8.103. Ramosebudi contravened section 57 (b) of the PFMA in that he recommended for the appointment of Trillian knowing that they had not performed work in respect of the club loan resulting fruitless and wasteful expenditure of R82 million (Excl. VAT).

5.8.104. Ramosebudi contravened section 57(c) of the PFMA in that he failed to take effective and appropriate steps to prevent fruitless and wasteful expenditure

5.8.105. JP Morgan had commenced with work on the ZAR club loan as early as May 2015 prior to the termination of its contract with Transnet.

5.8.106. There is no evidence that Trillian negotiated with Absa, Bank of China, Libfin and Nedbank as reflected in Ramosebudi's memorandum dated 17 September 2015.

5.8.107. There is no evidence that Transnet performed any due diligence on Trillian before appointing the entity as a Lead Arranger for the ZAR club loan.

5.8.108. Ramosebudi made a misrepresentation stating that Trillian assisted Transnet to negotiate with Nedbank, Bank of China, Absa and Libfin in the memorandum dated 17 September 2015.

5.8.109. Pita contravened section 57 (c) of the PFMA in that he signed Trillian's letter of engagement dated 18 November 2015 knowing that the work in respect of the Club loan was performed by Regiments.

5.8.110. Trillian issued a letter of engagement in respect of the Club loan and an invoice amounting to R82 million (Excl. VAT) on 18 November 2015 knowing that work was done by Regiment Capital.

5.8.111. Trillian was paid R82 million (excl. VAT) for work not done.

RECOMMENDATIONS

Based on the conclusion discussed above, we recommend as follows:

5.8.112. Transnet Board should consider recovering the R82 million (Excl. VAT) unlawfully paid to Trillian in respect of the club loan.

5.8.113. DPCI to investigate if Ramosebudi, Thomas, Pita and Singh and other role players received gratification for facilitating the appointment of Trillian and payment of R82 million.

5.8.114. DPCI to investigate possible criminal conduct for fraud against Ramosebudi, other Transnet executives and the directors of Trillian Asset Management (Daniel Roy and Johannes Faure of Trillian Asset).

5.9. INVESTIGATIONS RELATING TO SWAT 1 – GSM/12/05/0445

Appointment of SWAT teams to assist with the Roll out of capital

5.9.1. It is our understanding that on 28 May 2012, Transnet issued RFP GSM/12/05/0445 for the appointment of the capital and procurement of SWAT Teams. The closing date for the submission of the RFP was 19 June 2012 (**Annexure D90**).

5.9.2. We were however not provided with the procurement documents relating to this tender including the advertisement, submission by the bidders and evaluation reports.

5.9.3. The evaluation process was discussed in memorandums and minutes of meetings.

5.9.4. We determined that the estimated value for all the SWAT Teams was R100 million for a duration of 9 months.

5.9.5. It is our understanding that as at closing date of the tender, six proposals were received from the following bidders:

5.9.5.1. Deloitte – Deloitte and sub-contractors PD Naidoo and Associates and Procurement Solutions;

5.9.5.2. Accenture;

5.9.5.3. PWC and Isambulo Ami JV (Joint Venture);

5.9.5.4. McKinsey and Company- McKinsey and Company and sub-contractors Letsema;

5.9.5.5. Boston Consulting Group; and

5.9.5.6. Volition Consulting Services.

5.9.6. **Evaluation Process followed in the appointment of SWAT Teams**

Stage 1 Administrative responsiveness

5.9.7. We determined that all bidders passed the test for administrative responsiveness and progressed to Stage two for further evaluation.

5.9.8. As indicated above we were not provided with tender documents to confirm whether all bidders met the administrative responsiveness.

Stage 2 – Substantive Responsiveness

5.9.9. Based on documentation reviewed, we determined that all bidders passed substantive responsiveness and progressed to Stage three for further evaluation.

Stage 3 – B-BBEE and SD Evaluation

5.9.10. Bidders were required to obtain a minimum threshold of 60% for stage 3 evaluation criteria in order to progress to stage four for further evaluation. The weighting for B-BBEE Scorecard was 80%. The weighting for Supplier Development was 10% each for New Skills Development and Technology and Skills Transfer respectively.

5.9.11. We determined that five bidders met the minimum threshold of 60% and progressed to stage four of the evaluations process. We further determined that Boston Consulting Group was disqualified as they failed to meet the minimum threshold of 60%.

5.9.12. The table below reflects a summary of stage 3 of the evaluation process:

Bidder's name	Stage Score	Results
PricewaterhouseCoopers/ Isambulo Ami JV (Joint Venture)	82.00%	Progress to stage 4
Volition Consulting Services	62.80%	Progress to stage 4
Accenture	70%	Progress to stage 4
The Boston Consulting Group	46.40%	Disqualified
Deloitte Consulting	80.80%	Progress to Stage 4
McKinsey and Company	68.00%	Progress to Stage 4

Stage 4 -

5.9.13. We determined that only two bidders namely McKinsey and Deloitte Consulting met the minimum threshold of 70% for stage four evaluation and proceeded to stage five for final evaluation.

5.9.14. The table below reflects a summary of stage four of the evaluation process:

Bidder's name	Stage 4 Score	Results
PricewaterhouseCoopers/Isambulo Ami JV (Joint Venture)	58.99%	Disqualified
Volition Consulting Services	50.05%	Disqualified
Accenture	57.10%	Disqualified
Deloitte Consulting	70.08%	Progress to stage 5
McKinsey and Company	80.92%	Progress to stage 5

Stage 5-

5.9.15. The table below reflects a summary of stage five of the evaluation process:

Stage Five evaluation – Final	Weighting	Deloitte Consulting	McKinsey and Company
Technical	30%	21.02	24.28
Price	30%	27.05	30.00
B-BBEE Scorecard	10%	9.15	8.00
B-BBEE Further Recognition Criteria	20%	2.55	0.53
Supplier Development	10%	3.80	2.00
Total	**100**	**63.57**	**64.81**
Ranking		**2**	**1**

5.9.16. We determined that following the conclusion of the tender evaluation process, TAC recommended that Transnet award the complete advisory services from both procurement and capital SWAT Teams and enters into negotiation with McKinsey as the preferred vendor. We determined that TAC approved the award of the tender to McKinsey on 30 July 2012 (**Annexure D91**).

Splitting of the tender to McKinsey and Deloitte

5.9.17. We determined that during the TAC meeting of 12 October 2012, it was indicated that during the post tender negotiations, Molefe raised a concern that Transnet had been awarding business excessively to McKinsey & Company and as a result this would expose Transnet to insurmountable risks should any unsavoury circumstances occur (**Annexure D91**).

5.9.18. According to the TAC minutes of meeting, a decision was then taken to award a portion of the business to Deloitte Consulting.

5.9.19. It was recommended that the work be split as follows:

Light house projects	**Deloitte**	**McKinsey**
Stream 1: Re-cut the portfolio and develop prioritisation methodology		100% including procurement component to Letsema as the McKinsey subcontractor
Stream 2: Launch a Project Factory	65%	10% oversight from McKinsey 25% procurement component Letsema as the McKinsey subcontractor
Stream 2: Set up Group Capital office to develop and roll out platinum standard		100% McKinsey and Company including procurement component to Letsema as the McKinsey subcontractor

5.9.20. TAC approved the split of the award for the appointment of the capital and procurement SWAT teams to McKinsey and Company and Deloitte Consulting respectively.

Memorandum dated 14 August 2012 -

5.9.21. Based on documentation reviewed, we determined that Singh addressed a memorandum dated 14 August 2012 to Molefe requesting approval to split the award for the appointment of the capital and procurement SWAT Teams McKinsey and Deloitte (**Annexure D92**).

5.9.22. The memorandum was compiled by Mahomed on 14 August 2012.

5.9.23. According to the memorandum, the estimated value for all the SWAT teams was R100 million for a duration of 9 months.

5.9.24. We determined that Pita and Singh recommended the approval of the memorandum on 15 August 2012 and 20 August 2012 respectively. We further determined that Molefe approved the recommendation by Pita and Singh on 22 August 2012.

5.9.25. It is our understanding that subsequent to the approval of the split between McKinsey and Deloitte, McKinsey objected to the split award raising intellectual property concerns.

TAC meeting held on 12 October 2012

5.9.26. We determined that TAC held a meeting on the 12 October 2012 to consider the approval of the non-award of tender GSM/12/05/0445. The reasons for the non-award of business were deliberated by TAC as contained on the Resolution/Minute 201/2012TAC and considered to be valid reasons (**Annexure D93**).

5.9.27. We noted from the minutes of the TAC meeting that one of the reasons for the non-award was that it was identified that there was a conflict of Intellectual property between McKinsey and Deloitte Consulting as they were two international competitors.

5.9.28. According to the minutes, Deloitte's sub-contractor, PD Naidoo and Associates had no intellectual property related issues and McKinsey was willing to work with them to ensure that the NGP objectives were met.

Change in Scope of work

5.9.29. The minutes of the meeting indicated that Transnet and McKinsey had spent a considerable amount of time on the scope of work, deliverables and allocation of responsibilities amongst the Consortium members.

5.9.30. According to the minutes, the process resulted in the finalisation of clearly defined and amplified scope and deliverables for the engagement to ensure better implementation and management of both internal and external resources. In addition, the scope and deliverables were structured to ensure key skills transfer to Transnet at the end of the engagement.

5.9.31. The revision of the scope had resulted in an expected project cost of R200 million for the initial R100 million.

5.9.32. During the said meeting, TAC considered it prudent to highlight the following important issues:

5.9.32.1. *"The aspect of the intellectual property disputes will presumably be addressed in the new RFP document.*

5.9.32.2. *The revised scope for the services be confirmed before issuing a new RFP.*

5.9.32.3. *The revised budget be finalized before issuing of the new RFP.*

5.9.32.4. *Consideration be given to refunding the R7 500.00 tender fee to the bidders who submitted the proposals.*

5.9.32.5. *That it be stated that Transnet reserves the right to do a spilt award of the business, at their sole discretion (standard disclaimer)."*

5.9.33. According to the minutes of the meeting, TAC resolved that due to significant change in scope, fees and the intellectual property disputes, the procurement processes required that the previously approved tender process (GS/12/05/0445) be non-awarded and a new tender process be issued with the revised scope and budget.

5.9.34. We determined that the TAC consisted of the following members:

Name	**Designation**
Luqmaan Noor Mossa	Senior Buyer
Christopher Govender	Commodity Manager
Shantell Mackay	Chief Procurement Manager: Corporate Centre
Yusuf Mahomed	Executive Manager: Special Projects
Luis Gillman	Executive Manager: Group financial planning
Helen Walsh	Chair Person

Confinement memorandum dated 18 October 2012

5.9.35. We determined that on the 18 October 2012, Singh prepared a memorandum to Molefe. The purpose of the memorandum was:

5.9.35.1. to obtain approval for the confinement and award of services, capabilities and resources to support the Market Demand Strategy for procurement and capital excellence and productivity to McKinsey & Company; and

5.9.35.2. to request approval for an increase in budget by R100 million due to finalization of the scope and deliverables, to R200 million.

5.9.36. The memorandum was requested and signed but undated by Thabo Lebelo "Lebelo" (General Manager: Group Financial Planning). The signature date was however not reflected.

5.9.37. The memorandum confirmed that Molefe approved the appointment of McKinsey and Deloitte to provide resources, services and capabilities to support MDS for procurement and capital.

5.9.38. Singh indicated that "*during post tender negotiations (PTN), McKinsey & Company claimed that there was a conflict of intellectual property between McKinsey & Company and Deloitte Consulting as they are two international competitors. The intellectual property issue raised from the fact that Deloitte's would be exposed to McKinsey methodologies and practices [practices] which constitute McKinsey's proprietary information. However, Deloitte's sub-contractor, PD Naidoo and Associates has no intellectual property related issues and McKinsey is willing to work with them to ensure the skills transfer objectives are met. The Transnet Acquisition Council has therefore been requested to approve a non-award of the business as originally proposed.*" *(***Annexure D94***)*

5.9.39. Paragraph 19.1.2 of the October 2012 PPM provides that in order to ensure that Post Tender Negotiation is conducted in a fair manner, shortlisted Bidders should be negotiated with individually. The negotiation process should follow the same agenda for all Bidders.

5.9.40. The PPM further indicates that after negotiation the Bidders should submit their best-and-final offers, in the relevant tender box, by a specified closing date and time. After proper evaluation of all best-and-final Bids received, business is ultimately awarded to the highest rank Bidder, based on these offers.

5.9.41. There is no evidence that Deloitte was approached by Transnet to discuss the intellectual property concerns raised by McKinsey.

Revised McKinsey Consortium

5.9.42. According to the memorandum, the revised SWAT team would comprise of the following entities with their percentage split:

5.9.42.1. McKinsey – 58%;

5.9.42.2. Letsema Consulting – 14%;

5.9.42.3. Regiments - 14%; and

5.9.42.4. PD Naidoo - 14%.

5.9.43. There is no information detailing how the consortium was formed and how the percentage split was derived. We further determined the Regiments were not part of the initial consortium that tendered for RFP GSM/12/05/0445.

5.9.44. The memorandum indicated the overall objective of the SWAT teams was to enable Transnet to deliver its capital project portfolio in an effective and efficient manner by ensuring that:

5.9.44.1. *"Project are aligned with the overall strategy and properly prioritised across the portfolio;*

5.9.44.2. *Each project within portfolio is the right one, addressing the right business need, in the most cost and resource-effective way;*

5.9.44.3. *Reduce the quantum of the unfunded capital by scrubbing and optimizing the portfolio;*

5.9.44.4. *Each project is executed in the most effective and efficient way through application of a revised organizational structure;*

5.9.44.5. *Setting up the required structures and governance to ensure capital projects are appropriately supported.*

5.9.44.6. *Capital procurement is not a bottleneck to project deliver by supporting a subset of high value procurement events; and*

5.9.44.7. *The right tools and systems are available in a sustainable way".*

Reasons for the confinement

5.9.45. The memorandum indicated that the grounds for confinement were in line with paragraph 15.1.2 (a) and (d) of the latest PPM which states that:

"Where a genuine unforeseeable urgency has risen which is not attributable to bad planning;

5.9.46. According to the memorandum, there was a definite urgency for the SWAT project to proceed as it was key to rapidly fulfil the MDS strategy.

5.9.47. The reasons for confinement further indicated that Transnet had previously gone out on open tender for this work but due to factors listed above were not able to award.

5.9.48. According to the memorandum the assignment was of a professional nature (as opposed to the tendering for a simple product purchase, for example), and as such a number of issues including detailed scope, intellectual property concerns, were only fully clarified, illuminated and identified during the open tender.

5.9.49. According to the memorandum, McKinsey supported Transnet during 2012/13 Corporate Plan approval process by refining the MDS, developing supporting documentation and communicating with stakeholders. The memorandum further stated that McKinsey assisted with the scrubbing and prioritization of areas for consideration in the plans. Furthermore developed the MDS implementation framework and the principles.

5.9.50. The memorandum indicated that the framework and principles would be executed in the procurement event.

5.9.51. Singh argued that another open tender would not address the intellectual property issue; on the other hand, a confinement would eliminate fruitless and wasteful expenditure of money both from a Transnet perspective and supplier perspective. Singh further argued that if Transnet chose another supplier at that stage, time would be required for the new supplier to adequately come to understand the scope and Transnet business, thus extending the start and the end date of the assignment.

5.9.52. Contrary to the confinement reasons provided, we identified the following in respect of the procurement process followed:

5.9.52.1. The initial RFP went through an open tender process.

5.9.52.2. TAC resolved to a non-award after intellectual issues were raised.

5.9.52.3. TAC further resolved that a new RFP should be issued due to the significant change in scope and fees.

5.9.52.4. When TAC made the recommendation to reissue the tender, urgency was not highlighted.

Extension of Scope and increase Project Fee

5.9.53. The memorandum further indicated that the estimated cost of the final scope for the resources, services and capabilities to support MDS for procurement and capital (SWAT) was R200 million, against the initial approved amount of R100 million. Accordingly, an additional amount of R100 million was required to achieve the deliverables.

5.9.54. Budget implications were articulated as follows:

5.9.54.1. S*ufficient funds are available in the 2012/13 budget as it is estimated that only third to a half of the R200 million will be expensed in the 2012/13 budget. The 2013/14 budget will need to be updated within the current budget cycle to account for the 2013/14 expenditure. It should be noted that there is a possibility that a portion of this R200 million may be eligible for capitalisation to specific assets rather than being expensed.*

5.9.54.2. *Any carry over into the 2013/14 year will be budgeted for in the next budgeting cycle.*

5.9.54.3. *R100 million was set aside and previously approved by the GCE in the memorandum: source of Funding for strategic project for 2012/13*

5.9.55. We determined that the memorandum to confine to McKinsey was recommended by Esterhuizen "Esterhuizen" (Manager (policy, Standards & Governance), Volmink, Thomas and Singh on the 19 October 2012. We further determined that memorandum was approved by Molefe on 22 November 2012 (**Annexure D94**).

Issue of revised RFP GSM/12/10/0578

5.9.56. Subsequent to the approval of the confinement of SWAT 1 to McKinsey, we determined that on 4 December 2012 Transnet issued an RFP for the provision of services capabilities and resources to support to the market demand strategy (MDS) for procurement and capital excellence and productivity for a period of nine (9) months. The RFP had a closing date of 18 December 2012 (**Annexure D95**).

5.9.57. We determined that the RFP was based on the revised scope and increase in project fees. As indicated in the minutes of TAC meeting of 12 October 2012, indicated that Transnet and McKinsey had spent a considerable amount of time on the scope of work, deliverables and allocation of responsibilities amongst the Consortium members. The process resulted in an amplified scope and deliverables.

Submission of proposal by McKinsey

5.9.58. We determined that McKinsey submitted a proposal on 18 December 2012 in respect of RFP GSM/12/10/0578.

5.9.59. In their RFP McKinsey indicated that the fees to execute the SWAT 1 project would be R154.6 million.

5.9.60. McKinsey further confirmed that the split of the work would be as follows:

5.9.60.1. McKinsey – 58%;

5.9.60.2. Letsema Consulting – 14%;

5.9.60.3. Regiments - 14%; and

5.9.60.4. PD Naidoo - 14%.

5.9.61. Based on McKinsey's proposal confirming the split, it is evident that the split information was communicated to Transnet prior to the compilation of the memorandum dated 18 October 2012 requesting a confinement to McKinsey (**Annexure D 96**).

Letter of Intent

5.9.62. We determined that on the 23 January 2013 Transnet issued an LOI to McKinsey for "*the provision of Services, Capabilities and Resource to support the Market Demand Strategy (MDS) for procurement and capital excellence and productivity (the Services) to Transnet*".

5.9.63. The LOI was signed on 1 March 2013 by Pita on behalf of Transnet and Kloss and Parbhoo on behalf of McKinsey.

5.9.64. The purpose of the LOI was to document the intentions of the parties in respect of the required services for the provision of Services, Capabilities and Resources to Support the Market Demand Strategy (MDS) for procurement and Capital Excellence and productivity. The LOI would remain in effect until the agreement is signed by both parties, or until 90 (ninety) days have elapse from date of issue of this LOI, whichever event should occur first.

5.9.65. The parties agreed towards concluding the agreement for the provision of Services, Capabilities and Resources to Support the Market Demand Strategy (MDS) for procurement and Capital Excellence and productivity, over a period of 9 (nine) months, commencing 1 February 2013 and expiring 31 October 2013 (or sooner if completed).

5.9.66. The LOI indicated that the contract timeline may be for a longer period, at no extra cost to Transnet. According to the deliverables were output based and not time based.

5.9.67. We determined there are notes written with a pen under the space were the parties signatures are penned, *"subject to conditions in addendum 1 and addendum 2"* (**Annexure D97**).

First addendum dated 23 April 2013

5.9.68. We determined that on the 23 April 2013 McKinsey and Transnet signed the first addendum in respect of RFP GSM/12/10/0578. The addendum was signed by Parbhoo and Pita on behalf of McKinsey and Transnet respectively.

5.9.69. The purpose of the addendum was to address certain variation to be affected on the LOI as follows:

5.9.70. *"The original LOI with the validity date commencing on the 23 January 2013 and thus expiring on the 23 April 2013 is hereby amended by the resolution of this addendum,*

5.9.71. *The LOI validity date shall be extended from the 24 April 2013 to the 31 October 2013, to further conclude the MSA.*

5.9.72. *The fixed contract price of R154 600 000.00 (one hundred and fifty four million and six hundred thousand Rands only) is no affected by the extension of the timeline as indicated in clause 1.1 of the original LOI, as the engagement is output based as opposed to time based"(***Annexure D98***).*

Removal of PD Naidoo and Associates from the McKinsey Consortium

5.9.73. We determined that on 22 May 2013, Singh wrote a letter titled "*Potential Conflict of Interest Identified – PD Naidoo and Associates*" to Kloss of McKinsey.

5.9.74. The purpose of the letter was to inform McKinsey of the potential conflict of interest identified between one of its subcontractors for the tender award GSM/12/10/0578, namely PD Naidoo and Associates (PDN&A) and their most recent merger with Mott Macdonald Group.

5.9.75. The letter indicated that *"Transnet is of the view that given the current scope of work for PDN&A envisaged on project factory, this will provide them and their merged entity, with unfair advantage on Transnet's capital program and future capital work that may be tendered for".*

5.9.76. Singh suggested that McKinsey identify and source an alternative service provider, with a similar or higher B-BBEE accreditation that could render services of the same or better quality and expertise as envisaged on the project factory.

5.9.77. We determined that PD Naidoo was the only service provider that was removed from the consortium due to a perceived conflict of interest.

5.9.78. At the time of the removal of PD Naidoo, there was no indication that Letsema was also removed from the McKinsey consortium (**Annexure D99**).

Second addendum dated 31 October 2013

5.9.79. We determined that a second addendum was signed on the 31 October 2013 by McKinsey and Transnet. The addendum was signed by Parbhoo and Pita on behalf of McKinsey and Transnet respectively.

5.9.80. The purpose of the addendum was to address certain variation to be affected on the LOI as follows:

5.9.81. *The LOI, including all addenda had a validity date expiring on the 31 October 2013. The LOI validity period shall be extended from the 31 October 2013 to the 24 November 2014 to further conclude the MSA.*

5.9.82. *The contract time line shall be extended to accommodate for the completion of the deliverables. The revised expiry date will be the 31 March 2015.*

5.9.83. *The fixed contract price of R154 600 000.00 (One hundred and fifty four million and six hundred thousand Rands only) is not affected by the extension of the timeline as indicated in clause 1.12 of the original LOI, as the engagement is output based as opposed to time based(***Annexure D100***).*

Third addendum dated 20 November 2013

5.9.84. We further determined that a third addendum was signed on the 20 November 2013 by McKinsey and Transnet. The addendum was signed by Parbhoo and Pita on behalf of McKinsey and Transnet respectively.

5.9.85. The purpose of the addendum was to address certain variation to be affected on the LOI as follows:

5.9.86. *The LOI, including all addenda had a validity date expiring on the 24 November 2013. The LOI validity period shall be extended from the 24 November 2013 to 31 March 2014 to further conclude the MSA.*

5.9.87. *The contract time line shall be extended to accommodate for the completion of the deliverables. The revised expiry date will be the 31 March 2015.*

5.9.88. *The fixed contract price of R154 600 000.00 (One hundred and fifty four million and six hundred thousand Rands only) is not affected by the extension of the timeline as indicated in clause 1.12 of the original LOI, as the engagement is output based as opposed to time based (***Annexure D101***).*

Memorandum dated 27 October 2014

5.9.89. We determined that Singh approved a memorandum dated 27 October 2014 requesting approval from the Acquisition Council for the extension of the LOI with an original contract value of R154.6 million by R15.3 million or the rapid review of the Manganese business case.

5.9.90. We further determined the memorandum was prepared by Mahomedy on 21 October 2014.

5.9.91. The memorandum indicated that McKinsey led consortium had been appointed to assist Transnet to deliver its capital project portfolio in an effective and efficient manner.

5.9.92. The memorandum proposed amendments to the LOI. The memorandum further proposed that the additional fee of R15.3 million be split amongst the consortium members. According to the memorandum the additional fee was less than 10% of the contract value.

5.9.93. Singh further indicated that the amount falls under the project factory optimisation fees at risk.

5.9.94. We determined that the memorandum was recommended by Pita and Singh on the 27 October 2014. We further determined that the memorandum was not signed and/or approved by the Chairman of the Acquisition Council as provided for in the memorandum (**Annexure D102**).

Agreement between Transnet and McKinsey dated 21 February

5.9.95. We determined that on 21 February 2014, Transnet and McKinsey signed an agreement in terms of RFP GSM 12/08/0578 ("SWAT TEAMS"). The commencement date of the project was reflected as 1 February 2013 with an expiry date of 31 March 2015.

5.9.96. The contract was signed by Fine on behalf of McKinsey on the 21 February 2014 and by Singh on behalf of Transnet on the 11 August 2014.

5.9.97. We determined that the contract was signed by McKinsey on the 21 February 2014, however the commencement date of the contract was 1 February 2013. We determined that McKinsey commenced with the project before the conclusion of the contract. The commencement of the project by McKinsey before the conclusion of the agreement was irregular in that there were no contractual obligations between McKinsey and Transnet (**Annexure D103**).

5.9.98. We determined from the analysis of payments to McKinsey and Regiments on the SAP payment history report that McKinsey issued invoices in respect of SWAT 1 as early as May 2012. It should be noted that McKinsey's first invoice number 4959 in the amount of R8.1 million which was referenced Professional Fees May 2012 was issued before RFP GSM/12/04/0445 was advertised on 28 May 2012.

5.9.99. The value of the contract was capped at R154.6 million (one hundred (100) and fifty four (54) million and 600 thousand) excluding expenses and VAT (**Annexure D104**).

Payments to McKinsey, Regiments and Letsema

5.9.100. We were not provided with hard copy invoices issued by McKinsey, we therefore placed our reliance on the SAP payment history report provided by Transnet .

5.9.101. We were however provided with copies of invoices submitted by Regiments.

5.9.102. We determined that out of the approved contract price of R169.9 million (R154.6 million + R15.3 million), McKinsey and Regiments were paid R120 million and R49 million respectively.

5.9.103. Based on the review of the SAP payment history report, we determined that McKinsey was paid R31.1 million before the issuing of the LOI which was concluded on 1 March 2013. The payments made to McKisney before the conclusion of an LOI were therefore irregular.

5.9.104. We determined that Regiments were paid separately from McKinsey whereas Letsema's invoice was paid to McKisney.

5.9.105. We determined that the work initially allocated to PD Naidoo (14%) was allocated to Regiments following the former's removal from the consortium. This resulted in Regiments allocation of work being increased from 14 % to 28%.

CONCLUSIONS

Based on the findings above, we conclude as follows:

5.9.106. The initial scope of R100 million was increased to R200 million and confined to McKinsey and its sub-contractors without following a fair and transparent process.

5.9.107. McKinsey included Regiments as a sub-contractor even though it was not part of the initial consortium that tendered for RFP GSM/12/05/0445.

5.9.108. The reasons provided by Singh for the removal of PD Naidoo were unjustifiable as it was not known at the time whether PD Naidoo and Associates would submit a proposal in respect of Transnet's future capital programmes.

5.9.109. Singh and other Transnet officials who facilitated the appointment of McKinsey and its sub-contractors contravened section 57(c) of the PFMA.

5.9.110. McKinsey and its sub-contractors commenced with the work before the conclusion of the procurement process.

5.9.111. McKinsey was paid R31.1 million before the issuing of the LOI which was concluded on 1 March 2013.

5.9.112. Some of the role players may have received gratification in terms the Prevention and Combating of corrupt Activities Act.

RECOMMENDATIONS

Based on the conclusion discussed above, we recommend the following:

5.9.113. Transnet Board provides the report to DPCI to investigate whether any role player received gratification for irregular awarding of this contract.

5.9.114. Transnet Board provides the report to DPCI to investigate possible contravention of section 34(1) of the Prevention and Combating of Corrupt Activities Act by any role player.

5.9.115. Transnet Board consider taking appropriate action against the officials who are still employed by Transnet

5.10. INVESTIGATIONS RELATING TO GFB BREAKTHROUGH CONTRACT

Professional services to GFB with breakthrough to reach planned volume targets – RFP: GSM/15/1255

Background

5.10.1. We noted that after a series of contracts were awarded to McKinsey as the main contractor and Regiments as an SD partner, Transnet was of the view that Regiments had gained sufficient experience from McKinsey and in turn could take the lead role in the GFB.

Memorandum dated 24 March 2015

5.10.2. We noted a copy of a memorandum from Molefe to the Acquisitions and Disposals Committee dated 24 March 2015 titled *"Request for the confinement and award for the provision of professional services to support Transnet in increasing General Freight Business with Breakthrough to reach the planned volume targets for the financial year 2015/2016 and 2016/2017"*. (**Annexure D105**)

5.10.3. We determined that the memorandum was compiled by Gama and signed on 23 March 2015.

5.10.4. The purpose of the memorandum was to approve the confinement and award for the GFB breakthrough to Regiments Capital for R375 million. Furthermore the memorandum recommended to the ADC to delegate authority to the GCE to approve all documentation and contract amendments related to the transaction including the approval and award.

Reasons for confinements

5.10.5. The memorandum outlined the grounds for confinement as per PPM and provided justifications for the confinement as follows:

Grounds for Confinement per 15.1.2	**Confinement considerations**
a. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning	• Genuine unforeseeable urgency had arisen as Transnet is not meeting its planned GFB targets due to economic circumstances
d. When goods or services being procured are highly specialized and largely identical to those previously executed by supplier and it is not in the interest of the public or organisation to solicit other tender offers as it would result in wasted money and/or time for Transnet.	• The work required is highly specialised and the supplier, working as subcontractor on the coal programme, has developed tools in the rail industry that is currently in use at Transnet. The coal programme awarded to McKinsey and Regiments Capital is the appointed SD subcontractor on a 60:40 split. As discussed in point 10 above the coal programme is proving to be successful. • It is not in the public interest as there would be additional cost and time

Grounds for Confinement per 15.1.2	Confinement considerations
	wasted to develop the required tools and also to gain a deep understanding of Transnet Freight Rails infrastructure and operating model.

5.10.6. We noted that the reasons provided for confining the GFB breakthrough contract to McKinsey were the same reasons provided in terms of RFP GSM 12/10/0578 (SWAT1).

5.10.7. According to the said memorandum, Regiments, a black owned business, was appointed as the sub-contractor to the coal programme through the SD program with the aim of the main contractor (McKinsey) transferring skills and knowledge for Regiments to potentially lead future programmes for Transnet.

5.10.8. Furthermore, the memorandum indicated that Regiments had gained the necessary experience to be able to perform the services as the lead contractor (75%) for GFB, with McKinsey being a sub-contractor (25%) to ensure continuity based on the lessons learnt on the coal programme.

5.10.9. According to the memorandum, the appointment of Regiments as the main contractor for GFB programs indicated that Transnet SD was delivering on the Transformation and Empowerment objectives.

5.10.10. The memorandum indicated that Regiments was a level two contributor with 68% black ownership and McKinsey, the subcontractor was a level two contributor with 26% black ownership.

Financial Implication

5.10.11. As indicated above, the estimated costs for the GFB breakthrough contract was estimated at a cost of R375 million. We determined that the estimated cost of R375 million was set out as follows:

5.10.11.1.1. Fixed fee 2015/2016 – R50 million;

5.10.11.1.2. Outcomes based fee – R155 million;

5.10.11.1.3. Probable Fixed fee 2016/2017 – R20 million; and

5.10.11.1.4. Probable outcomes based fee 2016/2017 – R150 million.

5.10.12. According to the memorandum, the fixed costs for the GFB breakthrough project had been budgeted for and outcome based fee would be funded from additional revenue received.

5.10.13. Based on the budget implications indicated in the memorandum, Transnet had budgeted R70 million in respect of the fixed fee for breakthrough project and R305 million for the outcomes based fee was not budgeted for. We determined that R70 million of the estimated budget related to the fixed fee. The memorandum indicated that fixed fee was based on tariffs that are in line with the National Treasury Instruction note on professional fees.

5.10.14. We determined that the above mentioned estimated fees were for a period of two years.

5.10.15. We determined that there was no detailed breakdown in the memorandum indicating how the amount of R375 million was derived. We noted that the HVT report also highlighted that TIA requested the budget breakdown and it was not provided to them (**Annexure D106**).

5.10.16. The memorandum was recommended by Singh and Molefe on 23 March 2015 and 24 March 2015 respectively and submitted to the BADC for approval.

5.10.17. As discussed below, BADC approved the confinement of the GFB breakthrough contract on 30 March 2015.

Approval of RFP: GSM/15/1255

5.10.18. Paragraph 6.4 (b) of the October 2013 PPM indicates that *"depending on the value of the transaction, only the GCE, BADC and the Transnet Board have authority to authorise a confinement" (*__Annexure D107__*)*.

5.10.19. We determined that the relevant monetary thresholds for authorising confinements are as follows **(Annexure 108**):

5.10.19.1. GCE – up to but not exceeding R250 million;

5.10.19.2. BADC – up to but not exceeding R1000 million (R1 billion); and

5.10.19.3. The Board – exceeding R1 000 million (R1 billion).

5.10.20. Based on the PPM, the approval of the confinement in respect of the GFB breakthrough project to Regiments in the amount of R375 million was the responsibility of the BADC.

5.10.21. We determined that a BADC meeting was held on 30 March 2015 and the Committee resolved the following(**Annexure D109**):

5.10.21.1. *"the confinement and award for the General Freight Business breakthrough to achieve the volumes targets initiative, which included an initiative for sales and commercial capabilities, processes and solutions, to Regiments Capital for the maximum amount of R375m; and*

5.10.21.2. *Authority is delegated to the Group Chief Executive to approve all documentation and contract amendments related to this transaction including the process approval and award".*

5.10.22. Based on the excerpt of the above meeting, there was no tender process in respect of the award of the GFB breakthrough contract to Regiments.

Request for proposal

5.10.23. We determined on 2 April 2015, Suellen Du Plessis ("Du Plessis") sent an email titled "*GSM/15/03/1255 – The Provision of Professional Services to support Transnet in Increasing GFB Business*" to Wood. Attached to the email sent to Wood were various tender documents relating to the GFB RFP. The email indicated that the closing date for the RFP was 8 April 2015 at 12:00. (**Annexure D110**)

Request for extension of closing date for submission of proposal

5.10.24. We determined that subsequent to Du Plessis' e-mail of 2 April 2015, Regiments requested various extensions (four times) which resulted in the closing date of the RFP being extended to 30 April 2015.

Proposal submitted by Regiments

5.10.25. During our review of Regiments proposal, we determined that the RFP documents were signed on 29 April 2015 and stamped as received by Transnet on 30 April 2015 (**Annexure D111**).

5.10.26. We determined that Regiments proposed R300 million for the execution of the GFB project.

Letter of Intent dated 18 May 2015

5.10.27. We determined that an LOI dated 18 May 2015 was sent Regiments informing the latter that they had been identified as the preferred supplier in respect of the provision of professional services to support Transnet in increasing GFB with a breakthrough to reach its planned volume targets for the 2015/2016 and 2016/2017 financial years.

5.10.28. We further determined that Transnet intended to enter into a 2 year contract with Regiments, commencing on 19 May 2015 and expiring on 18 May 2017.

5.10.29. According to the LOI, Regiments would be responsible for the following key deliverables:

5.10.29.1. Realisation of the GFB volume targets for 2015/2016 and 2016/2017;

5.10.29.2. Implementation of the process and tools to ensure sustainability and capacity building; upgrade and embed operational capabilities on key flows to ensure execution as per plan (Replicate Coal line approach);

5.10.29.3. Validate long term demand as basis for the GFB business case;

5.10.29.4. Build key account plans, commercial capabilities and technology solutions to drive road to rail shift beyond 2015/2016;

5.10.29.5. Identification of new markets and commodities that can be leveraged to produce additional GFB volumes including new markets identified by TFR such as FMCG; and

5.10.29.6. Sales, marketing and commercial initiatives.

5.10.30. We further determined that the LOI confirmed that fee for the contract was R375 million over a period of 2 years.

5.10.31. We noted that the contract amount of R375 million awarded to Regiments was contrary to the proposed fee of R300 million reflected in Regiment's proposal. The additional amount of R75 million was not quoted by Regiments.

5.10.32. According to the LOI, 30% of the contract value was committed to Supplier Development ("SD") initiatives. Furthermore, the LOI indicated that at least 20% of the 30% SD commitment would be directed to subcontracting preferably black owned, black woman owned, black youth owned and/or people with disabilities owned enterprises.

5.10.33. We determined that the LOI was signed by Gama on 20 May 2015 and witnessed by Pita on behalf of Transnet . We further determined that Wood signed the letter of intent on 2 June 2015 on behalf of Regiments (**Annexure D112**).

Memorandum dated 14 September 2015

5.10.34. We determined that Pita sent a memorandum dated 14 September 2015 to Gama requesting him to sign the LOI extension in respect of the Regiments GFB contract. (**Annexure D113**).

5.10.35. According to the memorandum, the first LOI expired on 15 September 2015 and contract negotiations had taken place. We determined that the memorandum was signed by Thomas and Pita on 14 September 2015 and by Gama on 15 September 2015.

5.10.36. The LOI extension dated 14 September 2015 was signed by Gama and witnessed by Pita in respect of the GFB breakthrough contract. We noted that the LOI extension did not change the commencement date and expiry date of 19 May 2015 and 18 May 2017 respectively. Furthermore, the contract fee of R375 million remained unchanged.

Memorandum dated 26 October 2015 requesting amendment of scope

5.10.37. We determined that Thomas compiled a memorandum dated 26 October 2015 in respect of the request for approval of the amendment of scope of work on the GFB breakthrough contract. The memorandum was recommended by Pita on 28 October 2015 and Gama. We noted that Gama did not attach a date next to his signature. (**Annexure D114**).

5.10.38. According to the memorandum, Regiments submitted a revised proposal on 8 August 2015 with the total fees for the engagement being reduced to R300 million. As indicated above, the original proposal submitted by Regiments in 30 April 2015 was for R300 million. It is therefore unclear why Thomas would indicate that Regiments fees reduced from R375 million to R300 million. Furthermore the fee of R375 million was requested in Molefe's request for confinement dated 24 March 2015.

5.10.39. Contrary to the statement made in the memorandum that the fee had reduced to R300 million, we determined that financial implications according to the memorandum remained unchanged at R375 million.

5.10.40. The indication that Regiments reduced their fee from R375 million to R300 million was a misrepresentation by Thomas. It is not clear why Gama signed the LOI reflecting the R375 million whereas the proposal from Regiment indicated R300 million.

5.10.41. The additional scope as proposed by Transnet entailed the following:

5.10.41.1. Cost Sweep and Cash Lab including the procurement analytics contribution to cash and EBITDA;

5.10.41.2. Procurement advisory;

5.10.41.3. Driver based budgeting; and

5.10.41.4. Project Management Office (Love Factory).

5.10.42. According to the memorandum, the following fee structure was applicable after the amendment:

Previously approved		Consortium priced offer
Fixed fee (2015/2016)	R50m	R100m
Contingent fee (2015/2016)	R155m	R135m
Fixed fee (2016/2017)	R20m	R30m
Contingent fee (2016/2017)	R150m	R110m
Total	**R375m (Incl. expenses, excl. VAT)**	**R375m (Incl. expenses, excl. VAT)**

5.10.43. We further determined that split of work was revised and Regiments and McKinsey would be paid on a 50/50 split as opposed to the 75/25 proposed in the memorandum dated 24 March 2015. Below is the breakdown of the revised split of work:

Previously approved				Consortium Proposal			
Fee Structure				Fee Structure			
Fixed fee		Contingent fee		Fixed fee		Contingent fee	
Regiments	McKinsey	Regiments	McKinsey	Regiments	McKinsey	Regiments	McKinsey
75%	25%	75%	25%	50%	50%	50%	50%

5.10.44. According to the memorandum, given the scale of the programme and broader scope, it was difficult for Regiments to resource up to 75% immediately. The memorandum indicated that McKinsey provided more resources in the initial phase, while Regiments built its capacity.

ADC meeting held on 5 November 2015

5.10.45. We determined that an ADC meeting was held on 5 November 2015 and it was resolved that the Committee approve the amendment to the GFB breakthrough to achieve the volume targets initiatives in terms of the following (**Annexure D115**):

5.10.45.1. Amendment to the scope of work;

5.10.45.2. Amendment to the split in the fee structure (fixed and Contingent fee); and

5.10.45.3. Amendment to the split of work between Lead Contract and Sub-contractor.

Memorandum dated 27 November 2015 –requesting the conclusion of the contract

5.10.46. We determined that a memorandum dated 27 November 2015 was compiled by Thomas and addressed to Gama requesting him to sign the contract for the Regiments GFB breakthrough contract (**Annexure D116**).

5.10.47. According to the memorandum, the approved value and final contract value was R375 million.

5.10.48. We further determined that Pita and Gama signed the memorandum on 28 November 2015 and 30 November 2015 respectively.

Contract dated 30 November 2015

5.10.49. We determine that Transnet and Regiments signed a contract on 30 November 2015 for the provision of services related to RFP GSM/15/03/1255. The contract related to the provision of professional services to support Transnet in increasing general freight business with a breakthrough to reach the planned volume targets for the financial year 2015/2016 and 2016/2017 (**Annexure D117**).

5.10.50. The contract was signed by Wood and Gama on 30 November 2015 with the total project fees of R375 million (Including expenses and excluding VAT)

5.10.51. The breakdown of the contract value was as follows:

5.10.51.1. Fixed fee 2015/2016 – R125 million;

5.10.51.2. Outcome based fee 2015/20146 – R130 million;

5.10.51.3. Fixed fee 2016/2017 – R10 million; and

5.10.51.4. Outcome based fee 2015/2017 – R110 million.

Letter dated 15 March 2016

5.10.52. We determined that Niven Pillay sent a letter to Pita dated 15 March 2016 informing him of Regiments restructuring plans. In the said letter, Pillay indicated that Wood would be relinquishing his shareholding at Regiments Capital (**Annexure D118**).

5.10.53. Furthermore, the letter indicated that Wood would acquire shareholding at Trillian Capital.

5.10.54. We further determined that Niven Pillay indicated in the letter that the GFB breakthrough contract, GSM/15/03/1255 would be ceded to Wood and Trillian and that

Trillian was authorised by Regiments to execute the work and services relating to the contract.

5.10.55. According to the letter, the legal agreements giving effect of the restructuring had not yet been signed.

5.10.56. At the time of the restructuring, Regiments had been paid professional fees in the amount of R55.9 million. According to the LOI, the expiry date of the contract was 18 May 2017.

5.10.57. **Cession of Regiments Contracts**

5.10.58. We determined that Wood sent a letter dated 13 April 2016 to Thomas informing him that in terms of the separation agreement between himself and Regiments, Transnet contracts previously awarded to Regiments were ceded to him (**Annexure D119**). Wood further indicated that the said contracts were in turn ceded to Trillian with effect 1 March 2016.

5.10.59. We determined that Gama sent a memorandum to ADC requesting approval to cede the abovementioned contract from Regiments to Trillian in respect of the GSM/15/03/1255 GFB Contract.

5.10.60. It is not clear why Gama prepared this memo because there was no agreement between Trillian and Regiments provided to him.

Memorandum dated 9 May 2016

5.10.61. Based on documentation reviewed, we determined that Thomas compiled a memorandum dated 9 May 2016 for submission to ADC in respect of a request for approval of a material amendment (cession agreement) to the GFB contract.

5.10.62. The purpose of the memorandum was to request the ADC to approve the following:

5.10.62.1. Cession of the GFB contract from Regiments to Trillian;

5.10.62.2. Increase in the scope for the detailed capital optimization support services; and

5.10.62.3. Increase in the contract value from R375 million to R463.3 million and the extension of the end date from 30 September 2016 to 31 March 2018.

5.10.63. We further determined that the memorandum was signed by Gama and Pita on 9 May 2016 respectively (**Annexure D120**).

ADC meeting of 10 May 2016

5.10.64. We determined that a special ADC meeting was held on 10 May 2016 and the Committee resolved the following:

5.10.64.1. The cession of the GFB contract from Regiments to Trillian, being satisfied that the B-BBEE status was not affected;

5.10.64.2. The increase in the scope for the detailed capital optimization support services;

5.10.64.3. The increase in the contract value from R375 million to R463.3 million and the contract extension from 30 September 2016 to 31 March 2018, subject to zero budget implications for the Company.

5.10.64.4. It is not clear why the ADC approved the cession as the agreement between Trillian and Regiment was not provided (**Annexure D121**).

Addendum dated 18 May 2016

5.10.65. We determined that an addendum in respect of the GFB breakthrough contract was concluded between Transnet and Trillian. We further determined that Wood signed the addendum on 18 May 2016. We noted that Gama's name was typed on the addendum; however no signature was penned next to his name (**Annexure D122**).

5.10.66. According to the addendum, Regiments ceded the contract to Trillian with effect from 1 March 2016.

5.10.67. Furthermore, the addendum indicated the following:

5.10.67.1. An increase in scope of work to include full ambit of the Capital Optimization Program;

5.10.67.2. An increase in the contract value by R56 million resulting in an increase in the contract value frim R375 million to R431 million; and

5.10.67.3. The duration of the agreement would be extended by 10 months and 13 days from 18 May 2017 to 31 March 2018.

Letter dated 19 August 2016

5.10.68. We determined that Niven Pillay sent a letter to Pita dated 19 August 2016, informing him that the restructuring of Regiments had not taken place and further that Wood through his family trust, The Zara Share 1 was still a shareholder at Regiments (**Annexure D123**).

5.10.69. Niven Pillay further indicated that Regiments contracts had not been ceded to Wood, Trillian or any other party and that Regiments still retained all rights under contracts.

Letter dated 12 September 2016

5.10.70. We determined that Niven Pillay wrote another letter to Pita dated 12 September 2016 raising concerns about payments made to Trillian in respect of the GFB breakthrough contract and other contracts (**Annexure D124**).

5.10.71. Paragraph 4 of the said letter states the following concerns: "*An article by amaBhungane on the internet on 28 August 2016 has come to our attention. In the article it is stated, that "Gupta-linked advisory group, Trillian is sucking cash out of Transnet at a furious rate despite (sic) a reported Treasury investigation into deals between the two companies". Copies of Trillian invoices totalling R74 million allegedly signed off by you at the end of June 2016 were attached to the article. We have downloaded copies of those invoices which indeed appear to bear your signature. We know from our dealings with Transnet that your signature is the final step to the process of payment. We are most concerned to learn of these invoices and the apparent payment thereof by Transnet, if this is the case, as the work invoiced by Trillian is in respect of work done by Regiments, or Trillian or its employees on behalf of Regiments, for which Regiments is entitled to be paid at the agreed commercial rate*".

5.10.72. We determined that indeed Pita signed Trillian invoices on 29 June 2016 in respect of the GFB breakthrough contract. Below is list of Trillian invoices signed by Pita in respect of the GFB breakthrough contract (**Annexures D125**):

No	Invoice date	Invoice No	Invoice Description	Amount
1	23 May 2016	TCP-GFB01	Transnet GFB Breakthrough Professional fees: Work done to date (31 March 2016)	R7 980 000.00
2	23 May 2016	TCP-GFB02	Transnet GFB Breakthrough Professional fees: Work done to date (30 April 2016)	R7 980 000.00
3	7 June 2016	TCP-GFB03	Transnet GFB Breakthrough Professional fees: Work done to date (31 May 2016)	R7 980 000.00

No	Invoice date	Invoice No	Invoice Description	Amount
TOTAL				**R23 940 000.00**

5.10.73. We determined that Pita signed invoices amounting to R23 940 000.00 in respect of the GFB breakthrough contract.

5.10.74. According to Niven Pillay's letter of concern, Regiments retained all rights including the right to invoice Transnet in respect of the GFB agreement. Furthermore, Niven Pillay indicated that there was no legitimate basis for Trillian to have submitted invoices to Transnet in respect of the work done by Trillian on behalf of Regiments or for Transnet to have paid Trillian.

5.10.75. We determined that Trillian attached a covering letters dated 31 May 2016 to the above mentioned invoices (**Annexure D126**). According to the covering letters, the invoices related to work conducted on the cost sweep and cash lab, driver based budgeting, capital restructuring, GFB optimization and the project office.

5.10.76. Furthermore, the covering letter indicated that invoice TCP-GFB01 was the first invoice for Trillian since the cession of the contract from Regiments.

5.10.77. According to the covering letter, the invoice represented the continued work flow under the Optimization of the GFB and related work streams.

5.10.78. We determined that all three invoices submitted by Trillian provided the same supporting documents for work done. We further determined that the work done for March 2016 was the same work done for April 2016 and May 2016 respectively.

5.10.79. Based on the three covering letters, Trillian charged Transnet for the same work in March, April and May 2016.

5.10.80. The amount of R23 940 000.00 for work already done should be regarded as fruitless and wasteful expenditure

Payments to Trillian

5.10.81. Based on the SAP payment history report, Trillian was paid R23 million subsequent to the cession of the contract from Regiments (**Annexure D127**).

5.10.82. We noted that invoice number TE2016-CP01 (Financial Structuring) and TFA2016-FA07 (Property database) totalling R46 million excluding VAT were paid from the approved GFB budget of R375 million. We further noted that the said invoices did not relate to the professional fees for the GFB contract.

5.10.83. During our consultation with Mothepu, she indicated that invoice TE2016-CP01 and TFA2016-FA07 were paid without any services being rendered. A detailed discussion on the said invoices is reflected under the relevant sections.

5.10.84. The amount of R46 million paid to Trillian should be regarded as fruitless and wasteful expenditure.

Reports issued by Trillian

5.10.85. According to the covering letter, Trillian indicated that reports were submitted in file print and electronically by means of a flash drive.

5.10.86. We determined that Trillian submitted 5 1st quarter reports in support of the 3 invoices in respect of the GFB breakthrough project. We have summarised the said reports below:

No	Report period	Description	Signed off by
1	March – May 2016	Cost and budgeting work stream All OD’s (More in-depth at TFR and TE)	No signature attached to report
2	March – May 2016	Transnet Freight Rail – Business Unit Mineral mining and Chrome	Maria Mzimela: Executive Manager (Commercial)
3	March – May 2016	Transnet Freight Rail – Business Unit Agriculture and bulk liquids	Martin Terblanche: Engagement Manager, ABL business unit Ulrico Davids: General Manager, ABL business unit
4	March – May 2016	Transnet Freight Rail – Business Unit Steel and Cement	Thandekile Mfeka: Executive Manager Commercial (20 June 2016) Siyanda Mba: Executive Manager, ODP (20 June 2016)

No	Report period	Description	Signed off by
5	March – May 2016	Transnet Freight Rail – Business Unit Export & Domestic Coal	Name unclear: Senior Manager: Coal BU Sales (26 September 2016

5.10.87. We determined that the export and domestic report was signed off in September 2016 whilst the invoices were paid in June 2016.

HVT report 24 October 2016

5.10.88. We determined that TIA issued an unsatisfactory Post-Review HVT report raising various concerns in the manner the procurement process was conducted in respect of the GFB tender evaluations.

5.10.89. Amongst other concerns, TIA raised concerns that they were not involved in the HVT review from the onset of the procurement process as required by paragraph 15.3.2 of the PPM.

5.10.90. The HVT report further raised concerns with the lack of minutes for the evaluation and negotiation of the tender.

5.10.91. We determined that the concern raised by TIA for the lack of negotiation minutes was valid in that Regiments quoted R300 million however were awarded a contract for the value of R375 million. There are no minutes to support the additional R75 million awarded to Regiments.

5.10.92. The fact the Transnet had budgeted R375 million for the project was not reason enough to award Regiments the contract of R375 million whereas Regiments only quoted R300 million.

5.10.93. The non-involvement of the HVT was irregular in that the PPM requires their involvement.

5.10.94. We determined that Thomas as Acting Group Chief Supply Chain Officer had the responsibility to ensure that an HVT was appointed from the commencement of the tender process.

5.10.95. We further determined that Thomas had the responsibility to ensure that the minutes of the evaluation and negotiations are recorded. The non-recording of minutes in respect of the evaluation and negotiations was in contravention of paragraph 15.4.6 of the PPM.

5.10.96. It is not clear why Gama signed the LOI before he was provided with negotiation minutes.

Cancellation of the GFB Contract

5.10.97. We determined that an ADC meeting was held on 20 October 2016 and the committee resolved to cancel the GFB contract. According to the excerpt of the meeting the committee further resolved the following (**Annexure D128**):

5.10.97.1. *"the subsequent events after the Committee approved the cession of the GFB contract and the payments made on the GFB and SWATII contracts; and*

5.10.97.2. *The legal opinion obtained with regards to the payments made to Trillian for the services rendered in this regards".*

5.10.98. We determined that on 26 October 2016, Viola Arjun ("Arjun") from Werkmans Attorneys sent an e-mail to Thomas and Pita containing various termination letters of contracts between Transnet, Regiments and Trillian. We further determined that one of the letters was in respect of the termination of the GSM/15/1255 contract (**Annexure D129**).

5.10.99. We determined that the termination letter was addressed to Wood of Trillian Capital Proprietary Limited.

5.10.100. According to the termination letter, Transnet had elected to invoke its rights in terms of clause 20.6 of the contract and cancelled the agreement on 30 days written notice.

5.10.101. We further determined that a similar letter was prepared and addressed to Niven Pillay of Regiments Capital Proprietary Limited.

5.10.102. We determined that Gama signed the termination letter to both Regiments and Trillian on 27 October 2016.

Payments made to McKinsey, Regiments and Trillian

5.10.103. We determined that Transnet made payments in the amount of R197.4 million to McKinsey, Regiment and Trillian collectively in respect of the GFB contract. Below is a breakdown of the payments to the three entities in respect of the GFB contract:

5.10.103.1. McKinsey – R74.5 million;

5.10.103.2. Regiments – R55.9 million; and

5.10.103.3. Trillian – R67 million.

5.10.104. We determined that the contract was cancelled before McKinsey, Regiments and Trillian could be paid the full value of the contract of R375 million.

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

5.10.105. The reasons provided for confining the GFB breakthrough contract to McKinsey were the same reasons provided in terms of RFP GSM 12/10/0578 (SWAT1);

5.10.106. The procurement process in respect of the GFB was irregular in that the HVT was not involved as required by paragraph 15.3.2 of the PPM;

5.10.107. The non-recording of minutes in respect of the evaluation and negotiations was in contravention of paragraph 15.4.6 of the PPM.

5.10.108. The R375 million contracted to Regiments was above proposed fee of R300 million reflected in Regiment's proposal.

5.10.109. Payments totalling R46 million excluding VAT in respect of invoice number TE2016-CP01 and TFA2016-FA07 should be regarded as fruitless and wasteful expenditure because there is no evidence that Trillian rendered any service.

5.10.110. Transnet officials and other role players who facilitated the inflated amount of R75 million acted negligently

5.10.111. Transnet officials who facilitated the cession between Regiments and Trillian before receiving documentary proof from both entities acted negligently

5.10.112. Suppliers contracted to render these services received preferential treatment as other potential suppliers were not invited to submit proposals.

5.10.113. Regiments and other role players acted unlawfully by accepting a R375 million contract whereas it tendered for only R300 million.

5.10.114. Some of the role players may have received gratification and contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend the following**:**

5.10.115. Transnet Board should consider instituting disciplinary action against Transnet officials who facilitated the irregular contract and fruitless and wasteful expenditure of R75 million.

5.10.116. Transnet Board provides the report to DPCI to investigate if any role player received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

5.10.117. Transnet Board provides the report to DPCI to investigate if any role player contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act.

5.10.118. Transnet Board provides the report to DPCI to investigate an offence of fraud/theft with regards to the inflated amount of R75 million.

5.10.119. Transnet Board should consider recovering R75 million from Regiments or other role player.

5.11. INVESTIGATIONS RELATING TO COAL CONTRACT

The provision of professional services to support Transnet in increasing the Coal Line with a breakthrough of 2MT per week - GSM/14/04/1037

Memorandum dated 31 March 2014

5.11.1. We determined that on 31 March 2014 Singh compiled a memorandum to Molefe with the subject "*Coal-Breakthrough of 2 MT*".

5.11.2. The purpose of the submission was to request approval from the GCE to approve:

5.11.2.1. The resourcing strategy and remuneration model for the Coal Line – breakthrough of 2MT initiative to mitigate the EBITDA at risk; and

5.11.2.2. Confine and award services for support to the internal team to McKinsey and Company and its BBBEE consortium partners (**Annexure D130**).

Grounds for Confinement

5.11.3. According to the memorandum, McKinsey had the intellectual property, experience and knowledge to provide the services required by Transnet. The memorandum further indicated that McKinsey had a detailed knowledge of Transnet, its operating divisions and MDS.

5.11.4. Singh's memorandum reflected the following reasons for the confinement of the project to McKinsey:

Grounds for Confinement per para 15.1.2 of PPM	Confinement considerations
b. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning	• The EBIDA at risk was only identified after the 2014/2015 Corporate plan had been

Grounds for Confinement per para 15.1.2 of PPM	Confinement considerations
	completed; taking into account the impact of the locomotive deposits
e. When goods or services being procured are highly specialized and largely identical to those previously performed. Approaching the market would result in wasted money and time for Transnet.	• Managing and optimising the Coal line is highly specialised skill • This skill requires knowledge of Coal rail equipment and environment, as well as technical limitations of the infrastructure. • McKinsey has propriety Coal demand and supply models as well as key operating philosophies that Transnet can use • A new service provider would have to develop its own methodologies and tools as well as obtain operational experience within a coal rail environmental • Due to the specialised nature of the work a new service provide would be required to understand the intricacies of Transnet's operations, capital programme and overall MDS.

5.11.5. We noted that the same grounds for confinement were applied on the SWAT1 and GFB Breakthrough contracts.

Financial implication

5.11.6. The memorandum stated that the work could be carried out internally and supported with a team of consultants (McKinsey & Company and its Consortium partners). The external consultant's fees for the scope above would be based on a fixed fee of R20 million.

5.11.7. The memorandum further stated that there would be a contingency fee of R110 million excluding VAT. The contingency fee of R110 million would be shared on a 40/60% split between McKinsey and its consortium partners respectively.

5.11.8. The financial implication as per the memorandum indicated that:

5.11.8.1. The total fees will be capped at R130 million excluding VAT and expenses

5.11.8.1.1. *"The fixed fee will be R20 million excluding VAT and expenses*

5.11.8.1.2. *If the engagement is successful and the risks are mitigated, the service provider will be remunerated at 20% of increment net revenue benefit generated by the delivering net revenue/volumes above the agreed baseline, this portion of the fee will be capped at R110 million"*

5.11.9. According to the memorandum, Transnet's interpretation of contingent fees paid to consultant's was that contingent fees only become due once a predetermined event had occurred. The predetermined event would be based on Transnet earning additional net revenue or receiving net cost savings less the contingent fee that Transnet would not have had unless the consultant was engaged. Thus Transnet will always be in net cash positive position.

5.11.10. We determined that Molefe approved the memorandum on 31 March 2014.

Letter of Intent dated 9 April 2014

5.11.11. We determined that Singh sent an LOI to Fine titled "*Initial discussions on Consulting services required*" and dated 9 April 2014. The LOI indicated that the GCE, had approved a number of consulting assignments to a McKinsey led consortium, subject to the successful conclusion of the Master Services Agreement.

5.11.12. In the said LOI, Singh further indicated that Transnet was bound by regulatory policies, procedures and processes in respect of procurement. These processes required amongst others, a request for proposal to be issued for approved transactions, evaluation of the final bid proposals and subject to meeting Transnet's requirements in terms of the full scope set out in the request for proposal, a final Master Service Agreement may be concluded.

5.11.13. According to the LOI, the GCE approved the following consulting services:

5.11.13.1. Maximisation of the Coal Line – Breakthrough of 2 MT per week initiative;

5.11.13.2. Manganese Execution Support to provide critical support that the Programme Director;

5.11.13.3. NMPP Acceleration including de-risking of schedule and cost escalations, risk management and resolution management; and

5.11.13.4. Assessing the options to renegotiate the Kumba Iron Ore (1a) contract.

5.11.14. In his letter, Singh requested McKinsey to mobilise their team to have initial discussions with Transnet teams.

5.11.15. During our consultation with McKinsey, they informed us that Singh's LOI dated 9 April 2014 initiated McKinsey to work on the Coal project before the signing of an MSA.

5.11.16. According to McKinsey, "Singh specifically underscored the very real "urgency of the services required" and accordingly directed McKinsey to begin work immediately even in advance of the execution of a formal contract."

5.11.17. McKinsey indicated that the following paragraph in Singh's LOI dated 9 April 2014 prompted them to commence on the project: "*while our teams expedite the issuing of the request for proposals for the above assignments, due to the urgency of the services required, I kindly request that you mobilise a McKinsey led consortium to have initial discussions with our teams. In the unlikely event that we may not successfully conclude the above-mentioned assignments, Transnet SOC Ltd will reimburse all costs incurred by yourselves.*"

5.11.18. The letter of intent instructed McKinsey to have initial engagements with Transnet, there was therefore no mandate from Transnet to McKinsey to commence with work on the project (**Annexure D131**);

Memorandum dated 9 May 2014

5.11.19. On 9 May 2014, Moosa submitted a memorandum to Pita and the purpose of the memorandum was to:

5.11.19.1. "*Obtain approval to go to market on a confined basis for the provision Of professional services to support Transnet in increasing the Coal Line with a breakthrough of 2MT per week; and*

5.11.19.2. *Obtain approval for the RFP".*

5.11.20. The memorandum was recommended by Thomas on 19 May 2014 and approved by Pita on 25 May 2014 (**Annexure D132**).

Issuing of RFP GSM /14/04/1037

5.11.21. We reviewed a copy of RFP number GSM/14/04/1037 and noted that the RFP was issued on 28 May 2014 and closed on 10 June 2014 at 12:00.

5.11.22. The RFP related to "*the Provision of professional services to support Transnet in increasing the Coal Line with a Breakthrough of 2mt (2 million tonnes) per week for the period of 12 month*".

5.11.23. The invitation to the bid stated the following:

5.11.23.1. *"The RFP is issued free of charge,*

5.11.23.2. *The RFP will be emailed to potential bidders, and*

5.11.23.3. *A formal/compulsory/non-compulsory briefing session will not be held".*

5.11.24. We determined that that RFP was only issued to McKinsey since they were the only entity identified by Singh (**Annexure D133**).

Submission of RFP

5.11.25. We determined that McKinsey submitted a proposal dated 17 June 2014 in respect of the Coal line breakthrough project. As indicated above, the closing date of the RFP was 10 June 2014 at 12:00 (**Annexure D134**).

5.11.26. We were not provided with any documentation indicating that the closing date of the Coal line breakthrough RFP was extended from 10 June 2014 to 17 June 2014.

5.11.27. According to the RFP, bidders must ensure that the bids are submitted timeously to the correct address. As a general rule, if a bid is late or submitted to the incorrect address, it will not be accepted for consideration.

5.11.28. McKinsey's late submission should not have been accepted for consideration.

5.11.29. The acceptance of McKinsey's proposal after the closing date of 10 June 2014 was irregular in that the proposal should not have been accepted for consideration.

McKinsey's Fee proposal

5.11.30. We noted that McKinsey proposed R185 504 250.00 in respect of the professional fees for the Coal line breakthrough project.

5.11.31. We determined that McKinsey indicated that Regiments resources would form part of its team.

5.11.32. According to McKinsey's proposal, phase 1 of the project was estimated at R43 505 000. Based on our analysis of McKinsey's pricing schedule, we determined that McKinsey had estimated the total hours at 20 016 and it would utilise 43 resources for phase 1 of the project. According to the pricing schedule, McKinsey charged a per diem rate of R2173.51 per hour.

5.11.33. The table below reflects a summary of McKinsey's proposed fee in respect of the Coal line breakthrough project:

No	Phase	Total hours	Total fees (ZAR)
1	Shutdown support Rapid re-baselining	20 016	R43 505 000.00
2	First wave of operational improvement interventions	13 068	R15 848 510.00
3	Second wave of operational improvement interventions	36 432	R44 183 726.00
4	Sustaining improvements as handover	67 584	R81 964 014.00
Total		**137 100**	**R185 501 250.00**

5.11.34. Based on the above table, it is evident that McKinsey proposed 137 100 hours for the project. During our consultation with McKinsey they stated that their fees invoiced to Transnet were not time based they were input based.

5.11.35. In their written response relating to the above quotation, McKinsey indicated the following *"in keeping with our dedication to achieving successful outcomes for our clients and to shift risk away from our clients, McKinsey's standard approach is to perform its work on a fixed and all-inclusive price basis (including at-risk engagements inclusive of expenses) for deliverables rather than to invoice clients on the basis of time spent on the project by our personnel. This gives the client clear line of sight into the total cost of the project from the outset. Importantly, this is McKinsey's policy globally for both public and private sector clients around the world and is by no means limited to South Africa. This approach reflects McKinsey's commitment to meeting milestones and making the project successful regardless of the time, energy, hours or expenses needed. Accordingly, McKinsey did not generate the invoices about which you asked on the basis of time sheets and does not have such time sheets available"*.

5.11.36. McKinsey indicated that the parties agreed to a fee for the achievement of certain deliverables and that McKinsey could invoice Transnet on a monthly basis for a portion of the total fee based on the percentage of deliverable completed.

5.11.37. It is unclear why McKinsey issued a proposal with resources linked to a specific rate when their fee structure is not based on the number resources allocated to a project.

Memorandum dated 20 November 2014

5.11.38. We determined that on 20 November 2014, Singh compiled a memorandum to Molefe with subject "*RFP proposal overview – GSM/14/01/1037 confinement for the provision of professional services to support Transnet in increasing the coal line with a breakthrough of 2MT (Two million tonnes) per week for a period of 12 Months*".

5.11.39. The purpose of the submission was to request the Group Chief executive's ("GCE") approval of the Coal Line – breakthrough of 2 MT initiative of the: -

5.11.39.1. Extension of value for the original confinement value from R130 million to R216.7 million including expenses as follows:

5.11.39.1.1. Fixed fee from R20 million to R43.5 million, including expenses;

5.11.39.1.2. Contingent fee from R110 million to R143.2 million, including expenses; and

5.11.39.2. Amending the period for measurement of any contingency fee to commence from 07 July to 06 July 2015 to achieve 77mt for export coal.

5.11.40. According to the memorandum, the cost breakdown of the R216.7 million was as follows:

5.11.40.1. Fixed fee of R43.5 million

5.11.40.2. Payment of the contingency fee as follows:

5.11.40.2.1. 31% (R44.4 million including expenses) upon achievement of quarterly volumes targets to deliver 77 MT, payable quarterly based on cumulative year to date volumes delivered;

5.11.40.2.2. 19% (R27.2 million including expenses) on sliding scale for achievement of volumes from 75 MT to 77 MT, payable in July 2015;

5.11.40.2.3. 50% (R71.6 million including expenses) on a monthly basis from 7 July 2014 to 6 July 2015 for the value add in increasing weekly tempos as well as the implementation of sustainability measures.

5.11.40.2.4. Extending the contract period to 30 September 2015 to implement the sustainability measures which will assist in Transnet achieving the 2015/16 volumes of 81MT for an additional R30 million.

5.11.41. Amending in split of work and fees of McKinsey and company and its B-BBEE Consortium partners.

5.11.42. We determined that Pita recommended the confinement of the contract to McKinsey on 20 November 2014.

5.11.43. We determined that Molefe approved the confinement on 30 November 2014 (**Annexure D135**).

5.11.44. According to the Delegation of authority framework effective 1 June 2013, the approval of confinement of R216 million was within the GCE approval authority (**Annexure D108**).

Conclusion of GSM/14/04/1027 contract dated 10 March 2015

5.11.45. Based on documentation reviewed, we determined that Transnet concluded a contract with McKinsey for Provision of Professional Services to Support Transnet in Increasing the Coal Line with a breakthrough of 2Mt (two million tonnes) per week for a period of 17 months.

5.11.46. The contract was signed by Singh and Sagar on 6 March 2015 and 10 March 2015 respectively. The effective date of the contract was 9 April 2014. The expiry date of the contract was reflected as 30 September 2015 (**Annexure D136**)

5.11.47. According to the contract, the total value of the project was R216.7 million (two hundred and sixteen million seven hundred thousand Rand). The fees breakdown would be subject to conditions of payment as follows:

5.11.47.1. *"Fixed fee of R43,5 million, including expenses shutdown and baselining,*

5.11.47.2. *Contingent fee of R143.2 million including expenses payable*

5.11.47.3. *Fixed fee of R30 Million including expenses to monitor and embedded sustainability measures. For the period from 1 April 2015 to 30 September 2015".*

5.11.48. We noted that Thomas assisted in editing various contracts between Transnet and McKinsey. We further determined that tracked changes made on the Coal agreement RFP GSM/14/04/1037 were sent to Thomas to finalise the said agreement.

5.11.49. We determined that Thomas sent an e-mail to Sagar and Parbhoo on 23 January 2015 with the final version of the coal contract. We further determined that Thomas had made various tracked changes on the contract. Furthermore, the e-mail sent by Thomas stated that "*Dear Prakash and Vikas, Here is the final marked up contract, please review and return ASAP.I will be sending the other contracts with the same changes marked up during the course of the morning*".

5.11.50. We determined that the contract was meant to be split between McKinsey and Regiments as follows:

Fixed Fee (May-June 2014)		**Contingent Fee (July 2014-March 2015)**		**Fixed fees (March 2015-September 2015)**	
McKinsey	Subcontractor	McKinsey	Subcontractor	McKinsey	Subcontractor
60%	40%	45%	55%	45%	55%

5.11.51. Paragraph 12.6 of the MSA states that *"should the Service Provider require that Transnet pay the subcontractor directly, the Service Provider must request this from Transnet in writing. If Transnet agrees to pay the Subcontractor directly the Service Provider still remains responsible for all obligations related to the contract including management of, and the performance of the subcontractor. The Service Provider shall verify the correctness of the Subcontractors invoices and confirm that all deliverables have been delivered."*

5.11.52. We determined that Regiments, the Subcontractor to McKinsey issued invoices directly to Transnet from May 2014 and were paid directly by Transnet before a letter was issued by McKinsey to Transnet authorising them to pay Regiments directly.

5.11.53. We further determined that Parbhoo issued a letter dated 9 February 2016 and titled "*Authority to pay Subcontractor*". In the letter Parbhoo gave Transnet authority to Regiments directly. The letter further indicated that the notice given by Parbhoo was effective from 1 April 2014.

5.11.54. Parbhoo issued the authority letter to Transnet 1 year and 7 months after Regiments started invoicing Transnet.

5.11.55. We determined that McKinsey did not confirm invoices submitted by Regiments as required by the MSA.

Signing of contract after commencement

5.11.56. We determined that Thomas requested Sagar and Parbhoo to review the coal contract on 23 January 2015, 9 months after commencement of the contract on 9 April 2014.

5.11.57. We further determined that McKinsey started billing Transnet for the work done from the 28 April 2014 (**Annexure D137**).

5.11.58. McKinsey provided services in respect of the Coal contract and issued invoices to Transnet without a signed MSA.

5.11.59. We determined that McKinsey issued an invoice to Transnet dated 2 June 2014 for services purportedly done between 28 May 2014 and 30 May 2014 at least 6 days before the RFP for the same services was issued.

5.11.60. We determined that McKinsey and Regiments issued invoices in the amount of R55 million and R56.1 million respectively in respect of professional fees for work done after the issuing of the LOI and before the conclusion of the contract on 10 March 2015 (**Annexure D138**).

McKinsey out of pocket expenses

5.11.61. The contract of R216.7 million including expenses and excluding VAT was broken down into fixed fee of R43.5 million and contingency fee of R143.2 million.

5.11.62. Based on the invoices reviewed, we determined that McKinsey billed Transnet R8 850 740.73 for out of pocket expenses.

5.11.63. We determined that McKinsey charged out of pocket expenses ranging from 7.5% to 15 % of the contract price.

5.11.64. We noted that McKinsey did not provide supporting documents in respect of the out of pocket expenses charged to Transnet.

5.11.65. According to McKinsey, out of pocket expenses would generally include the following:

5.11.65.1.1. External experts and other external services used to deliver the scope of services;

5.11.65.1.2. Visual aid, research and information services and administrative support for consultants involved in delivering the scope of services;

5.11.65.1.3. IT support, telecommunications and technical services for consultants involved in the delivery of the scope of services;

5.11.65.1.4. Air and surface travel for experts and consultants directly involved in delivery of consulting support; and

5.11.65.1.5. Lodging and meals for consultants in the event they travel to any Transnet site to deliver the scope of services and for overseas experts/consultants.

5.11.66. In their written response relating to out of pocket expenses McKisney indicated the following "*to be clear, to say that the relevant contracts with Transnet did not call for McKinsey to submit or charge back invoices based on our actual expenses is not to say that McKinsey did not incur very substantial actual expenses in connection with its work on the relevant projects. Indeed, a review of metrics used for internal tracking purposes bears out that McKinsey's actual expenses on these projects often matched or exceeded the percentage-based assumptions in the contract*".

5.11.67. McKinsey further stated that "*in keeping with our dedication to achieving successful outcomes for our clients and to shift risk away from our clients, McKinsey's standard approach is to perform its work on a fixed and all-inclusive price basis (including at-risk engagements inclusive of expenses) for deliverables rather than to invoice clients on the basis of time spent on the project by our personnel. This gives the client clear line of sight into the total cost of the project from the outset.*"

5.11.68. As indicated above, we determined that invoices issued by McKinsey did not have supporting documents i.e. timesheets to validate the exorbitant fees. According to McKinsey, their contracts were not time based but outcome based.

5.11.69. We further determined that their invoices did not provide supporting documents of the specific outcomes archived per invoice. Furthermore, the invoices did not distinguish between the fixed fee and contingent fee.

5.11.70. We determined that the LOI did not indicate the percentage allocated to McKinsey in respect of out of pocket expenses. However, the LOI indicated that it would reimburse McKinsey for all costs incurred for the initial engagement with Transnet officials.

5.11.71. As indicated above, McKinsey's invoices were no actual expenses incurred, however they were percentage based.

Regiments out of pocket expenses

5.11.72. Based on the review of Regiments invoices, we determined that the latter billed Transnet R10 504 550.00 for out of pocket expenses. We determined that Regiments charged out of pocket expenses ranging from 7.5% to 10% of the contract price.

5.11.73. We determined that Regiments did not provide supporting documents in respect of the out of pocket expenses charged to Transnet.

Letter of Authority to pay Subcontractors

5.11.74. We determined that Parbhoo issued a letter dated 9 February 2016 and titled "Authority to pay Subcontractor". In the letter Parbhoo gave Transnet authority to Regiments directly. The letter further indicated that the notice given by Parbhoo was effective from 1 April 2014 (**Annexure D139**).

5.11.75. We determined that Regiments were paid directly by Transnet from inception of rendering services to Transnet in June 2014 in respect of the Coal contract.

5.11.76. Paragraph 12.6 of the MSA states that "*should the Service Provider require that Transnet pay the subcontractor directly, the Service Provider must request this from Transnet in writing. If Transnet agrees to pay the Subcontractor directly the Service Provider still remains responsible for all obligations related to the contract including management of, and the performance of the subcontractor. The Service Provider shall verify the correctness of the Subcontractors invoices and confirm that all deliverables have been delivered*."

5.11.77. We determined that Regiments issued invoices directly to Transnet from May 2014 and were paid directly by Transnet before a letter was issued by McKinsey to Transnet authorising them to pay Regiments directly.

5.11.78. Parbhoo issued the authority letter to Transnet 1 year and 7 months after Regiments started invoicing Transnet.

5.11.79. The payments made directly to Regiments without an authority letter were in contravention of paragraph 12.6 of the MSA concluded between Transnet and McKinsey.

Inconsistencies in invoicing between McKinsey and Regiments

5.11.80. We determined that McKinsey and Regiments were R105 million and R110 million respectively in respect of the Coal contract.

5.11.81. We further determined that McKinsey were paid 48.77% of the total fees and Regiments were paid 51.23% of the total fees payment. Based on our review of the total fees paid to McKinsey and Regiments, Regiments were paid R5.3 million more than the main contractor, McKinsey.

5.11.82. As indicated above, a portion of the Coal contract was based on contingent fee. We determined that McKinsey invoiced Transnet R963 382.65 in respect of Quarterly volume linked fee for April 2015. We further determined that Regiments invoiced Transnet R8 million for the very same Quarterly volume linked fee for April 2015.

5.11.83. During our consultation with McKinsey, they indicated that they did not review Regiment's invoices submitted to Transnet. Paragraph 12.6 of the MSA states that "*The Service Provider shall verify the correctness of the Subcontractors invoices and confirm that all deliverables have been delivered.*"

5.11.84. It is unclear how Regiments would bill Transnet R8 million for the Quarterly Volume linked fee whilst the main contractor *i.e.* McKinsey billed R963 382.65.

5.11.85. We determined that Regiments Capital was brought into Coal contract by McKinsey as a subcontractor. The contract between Transnet and McKinsey specified that the service provider can bring in a subcontractor.

5.11.86. The above Regiments invoices did not distinguish between the fixed fee and the contingent fee as prescribed on the contract between Transnet and McKinsey.

Copy and paste on certain invoices

5.11.87. We determined that on 15 January 2015, Lohini Moodley on behalf of McKinsey wrote a letter to Singh. Attached to the letter was invoice number 6010 dated 15 January 2015 for professional fees and out of pocket expenses @10% and support services for the period 1 -31 December 2014 (**Annexure 140**).

5.11.88. The letter indicated that the engagement was requested by Transnet in the letter to McKinsey (David Fine) issued on April 10, 2014. Furthermore, it stated McKinsey resources allocated to the engagement for invoicing period.

5.11.89. We further determined that on 30 April 2015 Indheran Pillay on behalf of Regiments sent a letter to Singh, attached to the letter was invoice TRXCOAL012. Upon analysis of the said letters we identified the following(**Annexure D141**):

5.11.89.1. The letter is similar to McKinsey letter dated 15 January 2015; and

5.11.89.2. The alignment of the letter had the same mistakes.

5.11.90. Regiments resources were quoted as McKinsey resources, which is a clear indication of a copy and paste exercise.

5.11.91. In their response McKinsey indicated that *"none of the personnel listed below that reference are or were McKinsey personnel – and that all appear instead to be Regiments personnel. Our speculation is that Regiments may have used a previous McKinsey invoice as a template for its own invoicing and neglected to update the relevant sentence."*

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

5.11.92. Transnet used the same grounds for confinement to McKinsey on at least five contracts including:

5.11.92.1. GSM/15/03/1255;

5.11.92.2. GSM/12/10/0578;

5.11.92.3. GSM/14/04/1037;

5.11.92.4. GSM/14/04/1038; and

5.11.92.5. GSM/14/04/1039.

5.11.93. McKinsey received preferential treatment because its proposal was received after the closing date of 10 June 2014.

5.11.94. McKinsey and Regiment were paid R111.1 million before an MSA was signed.

5.11.95. McKinsey and Regiments irregularly issued invoices before the RFP was issued on 24 May 2014.

5.11.96. Pita, Singh, Thomas and other Transnet officials failed to ensure that the MSA was concluded before McKinsey and Regiments commenced work on the Coal Breakthrough project.

5.11.97. Transnet officials contravened section 57 of the PFMA in that they failed to take effective and appropriate steps to prevent, within their area of responsibility, irregular expenditure and ensure that McKinsey had a signed MSA prior to commencing with the project.

5.11.98. Payments in the amount of R110 million made directly to Regiments without Authority from McKinsey were irregular in terms of paragraph 12.6 of the MSA.

5.11.99. McKinsey received preferential treatment as they were allowed to commence with the project prior to the issuing of the RFP and the conclusion of the MSA.

5.11.100. Some role players may have received gratification and contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act.

5.11.101. Transnet paid out of pocket expenses which were not supported by any documentary evidence.

RECOMMENDATIONS

5.11.102. Transnet should consider recovering the out of pocket expenses paid to McKinsey (R8 850 740.73) and Regiments (R10 504 580.00) because payments were not supported by any documentary evidence.

5.11.103. Transnet provides the report to DPCI to investigate if any role player received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

5.11.104. Transnet provides the report to DPCI to investigate possible contravention of section 34(1) of the Prevention and Combating of Corrupt Activities Act.

5.11.105. Transnet consider taking appropriate disciplinary action against the officials who are still employed in Transnet.

5.11.106. Minister of DPE recommends to Cabinet to consider restricting former employees who abused the supply chain management from employment and doing business with any organ of state for a period of five years.

5.12. INVESTIGATIONS RELATING TO THE KUMBA IRON ORE CONTRACT

The provision of professional services to support Transnet with Renegotiating the Kumba Iron Ore contract - GSM/14/04/1038

Memorandum dated 31 March 2014

5.12.1. We determined that on 31 March 2014 Singh compiled a memorandum to Molefe titled "*Renegotiating the Kumba contract*". The purpose of the memorandum was to request approval of the GCE to:

5.12.1.1. *"Approve the resourcing strategy and remuneration model for the Iron Ore initiative to mitigate the EBITDA at risk by mobilising a team to:*

5.12.1.1.1. *Assessing the current Kumba Iron Ore contract to determine a collaborative approach that will yield benefits for both Transnet and Kumba by quantifying different negotiation levers and the reasons for revised tariff and impact for both parties (strategic, tactical)*

5.12.1.1.2. *Identifying negotiation levers and craft a negotiation strategy,*

5.12.1.1.3. *Renegotiating Kumba iron ore contact,*

5.12.1.1.4. *Confine and award services for support to the internal team to McKinsey and Company and its BBBEE consortium partners"(**Annexure D142**).*

Grounds for Confinement

5.12.2. Singh stated *inter alia* the following as grounds for confinement:

Grounds for Confinement per 15.1.2	Confinement considerations
c. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning	• The EBIDA at risk was only identified after the 2014/2015 Corporate plan had been completed; taking into account the impact of the locomotive deposits
f. When goods or services being procured are highly specialized and largely identical to those previously performed. Approaching the market would result in wasted money and time for Transnet.	• McKinsey had proprietary Iron Ore demand and supply model that Transnet had used previously to determine its pricing methodology. • The tool was only available from one supplier i.e. McKinsey • McKinsey had provided work relating to Iron Ore tariffs before. • Due to the specialised nature of the work a new service provider would be required to understand the intricacies of Transnet pricing strategy, capital programme and overall MDS

5.12.3. We further determined that Molefe approved the submission on 1 April 2014.

5.12.4. We noted that the same grounds for confinement were applied on the following contracts awarded to McKinsey:

5.12.4.1. GSM/15/03/1255;

5.12.4.2. GSM/12/10/0578;

5.12.4.3. GSM/14/04/1037;

5.12.4.4. GSM/14/04/1038; and

5.12.4.5. GSM/14/04/1039.

5.12.5. The scope for the above mentioned projects was however different.

5.12.6. We noted that there was no evidence to support Singh's assertion that McKinsey was the only supplier that has the proprietary Iron demand and supply model used to determine the pricing methodology.

Letter of Intent dated 9 April 2014

5.12.7. Based on documentation reviewed, we determined that Singh sent an LOI to Fine titled "*Initial discussions on Consulting services required*" and dated 9 April 2014. The LOI indicated that the GCE, had approved a number of consulting assignments to a McKinsey led consortium, subject to the successful conclusion of the Master Services Agreement.

5.12.8. According to the LOI, one of the consulting services approved for confinement by Molefe was the assessment of the options to renegotiate the Kumba Iron Ore (1a) contract. We determined that Singh sent a copy of the said LOI to Wood of Regiments.

5.12.9. We noted that the LOI sent to Regiments contained the same information in the LOI sent of Fine.

5.12.10. In the said LOI, Singh further indicated that Transnet was bound by regulatory policies, procedures and processes in respect of procurement. These processes required amongst others, a request for proposal to be issued for approved transactions, evaluation of the final bid proposals and subject to meeting Transnet's requirements in terms of the full scope set out in the request for proposal, a final Master Service Agreement may be concluded (**Annexure D143**). .

5.12.11. In his letters, Singh requested McKinsey and Regiments to mobilise their teams to have initial discussions with Transnet teams.

5.12.12. During our consultation with McKinsey, they informed us that Singh's LOI dated 9 April 2014 initiated McKinsey to work on the various projects including assessment of the options to renegotiate the Kumba Iron Ore before the signing of an MSA.

5.12.13. According to McKinsey, "Singh specifically underscored the very real "urgency of the services required" and accordingly directed McKinsey to begin work immediately even in advance of the execution of a formal contract."

5.12.14. We determined that Regiments and McKinsey issued invoices before Transnet issued a RFP in respect of the Kumba Iron Ore project.

5.12.15. The letter of intent instructed McKinsey to have initial engagements with Transnet, there was therefore no mandate from Transnet to McKinsey to commence with work on the project. There was no other formal or written instruction issued to McKinsey to commence with the project.

Memorandum dated 9 May 2014 to request approval to issue RFP GSM/14/04/1038

5.12.16. On the 9 May 2014 Moosa submitted a memorandum to Pita, and the purpose of the memorandum was to:

5.12.16.1. *"obtain approval to go to market on a confined basis for the provision of professional services to support Transnet with Renegotiating the Kumba Iron Ore contract; and*

5.12.16.2. *Obtain approval for the RFP"*

5.12.17. Moosa indicated in the memorandum that Group Commercial had a requirement for a service provider to support Transnet with negotiating the Kumba Iron Ore contract.

5.12.18. According to the memorandum, the expected value of the contract was R213 million. The contract value broken down into a fixed fee of R20 million and a contingent fee of R193 million that would be remunerated at 2% of the annualised additional net revenue.

5.12.19. The memorandum emphasised that the fees and expenses would be in accordance with the Instruction Note of 2013/2014 on actual costs incurred aligned to the instruction note.

5.12.20. We determined that at the time that Moosa compiled a memorandum requesting to go to market, McKinsey and Regiments had already commenced rendering services to Transnet. This is evident by the invoice raised by McKinsey and Regiments dated 30 May 2014 of R6.9 million and R4.3 million respectively.

5.12.21. The memorandum was recommended by Thomas on the 19 May 2014 and approved on behalf of Pita on 26 May 2014 (**Annexure D144**).

Issuing of RFP GSM/14/04/1038

5.12.22. We determined that Transnet issued an RFP GSM/14/04/1038 in respect of the provision of professional services to support Transnet with the renegotiating the Kumba Iron Ore contract for a period of 12 months. The RFP was issued on 28 May 2014 and had a closing date of 10 June 2014.

5.12.23. We determined that the RFP was issued two (2) days before McKinsey and Regiments issued the first invoices on 30 May 2014 (**Annexure D145**).

Submission of RFP by McKinsey

5.12.24. We determined that McKinsey submitted a proposal dated 17 June 2014 in respect of the Kumba Iron Ore project (**Annexure D146**).

5.12.25. We determined that McKinsey failed to submit the proposal on the specified closing date of 10 June 2014 at 12:00.

5.12.26. We were not provided with any documentation confirming that the closing date for submission of proposals in respect of Kumba Iron Ore project was extended from 10 June 2014 to 17 June 2014.

5.12.27. The RFP required that bidders submit their bids timeously and to the correct address. According to the RFP, late bids and bids submitted to the incorrect address would not be accepted for consideration.

5.12.28. McKinsey's late submission should not have been accepted for consideration.

5.12.29. The acceptance of McKinsey's proposal after the closing date of 10 June 2014 was irregular in that the proposal should not have been accepted for consideration.

McKinsey's Fee proposal

5.12.30. We determined that McKinsey proposed professional fees of R213 million excluding expenses. The proposed fee by McKinsey was the same fee *i.e.* R213 million in Moosa's memorandum dated 9 May 2014 requesting to issue an RFP.

5.12.31. Based on the proposed fee by McKinsey and the memorandum dated 9 May 2014, it is evident that McKinsey were privy to the approved budget.

5.12.32. We determined that McKinsey indicated that Regiments would be their Consortium partner in the Kumba Iron Ore Project.

5.12.33. McKinsey distinguished the allocation of professional fees between them and Regiments as follows:

Consortium Partner	Fee Bases	Professional Fees	Expenses	Total excluding VAT
McKinsey	Fixed (for work from 14 April to 4 July 2014)	R12 000 000.00	R1 800 000.00	R13 800 000.00
Regiments	Fixed (for work	R8 000 000.00	R800 000.00	R8 800 000.00

Consortium Partner	**Fee Bases**	**Professional Fees**	**Expenses**	**Total excluding VAT**
Capital	from 14 April to 4 July 2014)			
McKinsey	Fixed (for work from 4 July to 31 August 2014	R5 000 000.00	R750 000.00	R5 750 000.00
Regiments	Fixed (for work from 4 July to 31 August 2014	R5 000 000.00	R500 000.00	R5 500 000.00
McKinsey	Maximum Contingent (based on additional R/T achieved)	R73 200 000.00	R10 980 000.00	R84 180 000.00
Regiments	Maximum Contingent (based on additional R/T achieved)	R109 800 000.00	R10 980 000.00	R120 780 000.00
Total		**R213 000 000.00**	**R25 810 000.00**	**R238 810 000.00**

5.12.34. We determined that from the proposed fee, McKinsey were allocated R90 200 000.00 (exclusive of expenses and VAT). We further determined that Regiments was allocated R122 800 000.00 (exclusive of expenses and VAT) of the proposed fee.

Conclusion of the contract in terms of RFP GSM/14/14/1038

5.12.35. We determined that Singh and Sagar signed a contract for provision of professional services to support Transnet with renegotiating the Kumba Iron Ore on 6 March 2015 and 1 April 2015 respectively. We noted that the contract was witnessed by Pita and Thomas on behalf of contracts as well Magwentshu and Mohamed Bobat on behalf of McKinsey (**Annexure D147**).

5.12.36. The contract was for a period of twelve months with the commencement date of 9 April 2014 and expiry date of 8 April 2015.

5.12.37. The approved contract price was R239 million including expenses and excluding VAT. The fees breakdown was subject to conditions payable as follows:

5.12.37.1. *Fixed fee of R34 million (Including expenses, excl. VAT) for successful delivery phase 1.*

5.12.37.2. *Contingent fees of R205 million (Including expense, excl. Vat)for the successful delivery of phase 2 and 3 which shall be subject to the following conditions:*

5.12.37.3. *R20 million (Including expenses, excluding VAT) for satisfaction linked to deliver of levers negotiation war room and negotiation set up.*

5.12.37.4. *R165 million (Including expenses, excl. VAT) for successful signing of a revised tariff agreement*

5.12.37.5. *Success fee of R20 million (including expenses, excl. VAT) to deliver an operational plan signed by TPT and TFR to deliver/unlock 1 MT of additional iron ore capacity.*

5.12.38. According to paragraph 13.1 of the MSA, subject to clause 11.1, the fee was fixed for the duration of the agreement at a capped value as detailed in the relevant schedule or work order.

5.12.39. The description of services were as follows:

5.12.39.1. *Phase 1 of the project will create the fact base on the KIO 1a contract and will outline the overall renegotiation approach,*

5.12.39.2. *Phase 2 will set up for success and create alignment with Transnet Executive and the Shareholder on the overall negotiation strategy and mandate. Furthermore it will develop an operational improvement plan for creating additional throughout in the export iron ore channel.*

5.12.39.3. *Phase 3 will then support the actual negotiation preparation and negotiation.*

5.12.40. We determined that the contract was concluded at least 10 months after McKinsey and Regiments commenced with the project.

Payments made to McKinsey and Regiments

5.12.41. Based on our review of the SAP payment history report (**Annexure D148**), we noted that McKinsey issued 2 invoices (5757 and 5807) in the amount of R6.9 million each for professional fees rendered in May 2014. We determined that both invoices were paid on 14 July 2014 (**Annexure D149**).

5.12.42. The two invoices submitted by McKinsey were duplicate invoices as they both referred to payment fees for May 2014.

5.12.43. In their written response to questions relating to the two invoices referred to above, McKinsey indicated that *"according to our internal records McKinsey did not generate two invoices for the period May 2014 relating to this project – and rather issued two separate invoices for two separate periods: a. Invoice 5757 (dated 30 May 2014) relates to services provided during the period 16 April 2014 to 31 May 2014; and b. Invoice 5807 (dated 3 July 2014) relates to services provided from 1 June 2014 to 4 July 2014. While the version of Invoice 5807 that you provided states "professional fees: May 2014," a review of McKinsey internal records confirms that this invoice was generated in July 2014 and intended to cover June 2014 rather than May 2014. Specifically, from the screenshot below you will notice that the electronic version of invoice 5807 was last modified on 3 July 2014 and when opened states that the professional fees are for "June 2014" rather than "May 2014." It is possible that a near-final version of this document was errantly submitted in the first instance that included an incorrect date for the incursion of professional fees – and that this near-final version was what was retained by Transnet".*

5.12.44. During our consultation with McKisney, they provided two copies of the invoices discussed above. We noted that invoice number 5807 was amended to reflect that the professional fees rendered were for June. We further noted invoice 5757 remained unchanged and reflected professional fees rendered were for May 2014.

5.12.45. We noted that the invoices provided to us by McKinsey to us in support of invoice number 5757 and 5807 did not bear McKinsey logo.

5.12.46. We determined that McKinsey and Regiments were paid R31.5 million and R26.7 million respectively in respect of the Kumba Iron Ore contract (**Annexure D150**).

5.12.47. We further determined the McKinsey were paid 54.12% of the total fees and Regiments were paid 48.88% of the total fees payment.

5.12.48. We determined that McKinsey and Regiments issued invoices in May 2014, before the MSA was concluded. As indicated above, the MSA was signed by Singh and Sagar on 6 March 2015 and 1 April 2015 respectively. .

5.12.49. We further determined that the commencement date was backdated on the MSA to 9 April 2014 which was the date the LOI was issued to both McKinsey and Regiments.

5.12.50. We further determined that McKinsey and Regiments invoices included out of pocket expenses which ranged from 7.5% to 15% of the professional fees. The contract specified that the fees are inclusive of the expenses. During our review of McKinsey invoices, we determined that no supporting documents (i.e. deliverables and resources utilised) were attached to the invoices submitted to Transnet for payment.

5.12.51. We further determined that McKinsey and Regiments invoices did not split the fixed fees and Contingent fees as stipulated on the contract.

Regiments and McKinsey out of pocket expenses

5.12.52. As indicated above, the memorandum dated 9 May 2014 emphasised that the fees and expenses would be in accordance with the Instruction Note of 2013/2014 on actual costs incurred aligned to the instruction note.

5.12.53. We determined that McKinsey and Regiments did not invoice Transnet actual expenses incurred, however they invoiced Transnet various percentages of the professional fees invoice amount ranging between 7.5% and 15%.

5.12.54. We further determined that McKinsey invoiced Transnet R1.8 million for out of pocket expenses and Regiments invoiced Transnet R2.1 million.

5.12.55. Regiments and McKinsey failed to provide documentation in support of their out of pocket expenses.

Letter of Authority to pay Subcontractors

5.12.56. Paragraph 12.6 of the MSA states that *"should the Service Provider require that Transnet pay the subcontractor directly, the Service Provider must request this from Transnet in writing. If Transnet agrees to pay the Subcontractor directly the Service Provider still remains responsible for all obligations related to the contract including management of, and the performance of the subcontractor. The Service Provider shall verify the correctness of the Subcontractors invoices and confirm that all deliverables have been delivered."*

5.12.57. We determined that Regiments issued invoiced directly to Transnet in respect of the Kumba Iron Ore contract even though the latter was a subcontractor to McKinsey.

5.12.58. We determined that on the 9 February 2016 Parbhoo on behalf of McKinsey sent a letter to Transnet authorising Transnet with pay Regiments directly on the submission of undisputed invoices. In his letter, Parbhoo indicated that the authority to pay Regiments directly was effective from 1 April 2014 (**Annexure D151**).

5.12.59. .We determined that McKinsey sent the above letter of authority to Transnet after Regiments Capital was already paid an amount R26.7 million without the authority of the main contractor McKinsey.

Non-completion of the project

5.12.60. We determined that as at 3 July 2015, McKisney and Regiments were paid R58.2 million of the approved budget of R239 million. The expiry date of the contract was 8 April 2015.

5.12.61. We noted that McKinsey did not invoice Transnet the entire approved budget of R239 million on expiry of the project. It is not clear from documentation reviewed whether the project was completed by McKinsey or not.

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

5.12.62. The acceptance of McKinsey's proposal after the closing date of 10 June 2014 was irregular in that the proposal should not have been accepted for consideration.

5.12.63. McKisney were privy to the approved budget before they submitted the proposal, because they quoted the same professional fees as approved in the memorandum dated 9 May 2014.

5.12.64. The payments made to McKinsey and Regiment before the conclusion of the MSA were irregular in that there was no contractual agreement in place between Transnet, McKinsey and Regiments at the time.

5.12.65. The Kumba Iron Ore Contract is irregular because it was not concluded in a fair and transparent manner.

5.12.66. Pita and Singh failed to ensure that the MSA was concluded before McKinsey and Regiments commenced work on the Kumba Iron Ore project.

5.12.67. Transnet officials contravened section 57 of the PFMA in that they failed to take effective and appropriate steps to ensure that a fair and transparent bidding process is followed.

5.12.68. McKinsey compromised the integrity of the procurement process by providing services to Transnet before the RFP was issued.

5.12.69. There is no evidence to support Singh's assertion that McKinsey was the only supplier that had the proprietary Iron demand and supply model used to determine the pricing methodology.

5.12.70. Regiments and McKinsey failed to provide supporting documentation in respect of the out of pocket expenses.

5.12.71. McKinsey failed to provide satisfactory explanation on why they submitted two invoices in the amount of R6.9 million each for May 2014.

5.12.72. Transnet lost the benefit of securing the best price because confidential budget information was given to McKinsey.

5.12.73. Singh, Pita and other role players may have received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

5.12.74. All role players may have contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act.

RECOMMENDATIONS

Based on the findings discussed above, we recommend the following:

5.12.74.1. Transnet should consider recovering the duplicate invoice of R6.9 million paid to McKinsey for May 2014;

5.12.74.2. Transnet should consider recovering the out of pocket expenses paid to McKinsey without supporting documentation,

5.12.74.3. DPCI should investigate if Singh, Pita and other role player received gratification in terms of the Prevention and Combating of Corrupt Activities Act,

5.12.74.4. DPCI should investigate if any role player contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act,

5.12.74.5. Transnet to consider restricting McKinsey abusing and compromising the integrity of the procurement process.

5.13. INVESTIGATIONS RELATING TO THE MANGANESE CONTRACT

The provision of professional services to support Transnet with the Manganese execution initiative for a period of 30 Months - GSM/14/04/1039

Memorandum dated 21 March 2014

5.13.1. We determined that on 21 March 2014 Singh compiled a memorandum to Molefe with the subject "*Manganese Execution support*". The purpose of memorandum was to request approval from the Group Chief Executive to (**Annexure D152**):

5.13.1.1. " *Approve the resourcing strategy and remuneration model for the Manganese execution by accelerating and optimising thereby supporting the initiative to mitigate the EBITDA at risk by mobilising a team,*

5.13.1.2. *Confining and awarding the services to support the internal team to McKinsey and Company and its BBBEE Consortium partners*

5.13.2. The memorandum further indicated that Transnet believed that it would be critical to support the Programme Director to ensure that Transnet starts the programme successfully – Failure as the first mega project execution under MDS was not an option. The value proposition of the support was as follows:

5.13.2.1. *"Set up owner's team & manage performance;*

5.13.2.2. *Optimise procurement & contracting strategy for time and cost;*

5.13.2.3. *Optimise execution and transition to operations; and*

5.13.2.4. *Bring transparency and visibility that will allow management decisions and risk management through.*

5.13.3. We further determined that Singh indicated the following as grounds for confinement:

5.13.3.1. *" Where a genuine enforceable urgency has risen which is not attributable to bad planning:*

5.13.3.1.1. *The EBIDA at risk was only identified after the 2014/2015 Corporate plan had been completed; taking into account the impact of the locomotive deposits,*

5.13.3.1.2. *These risks were presented to Transnet Group EXCO in March 2014*

5.13.3.1.3. *If the mitigation plans are not put in place immediately the 2014/2015 Corporate Plan, capital plan and funding pre-requisites will not be met placing the entire MDS at risk.*

5.13.3.1.4. *Mitigating the impact of lower than plan throughout tempo requires an urgent and immediate mitigation action which has an opportunity to deliver the required results in the 2014/2015 corporate plan.*

5.13.3.2. *Goods and services being procured is highly specialised and largely identical to work done before;*

5.13.3.3. *A service provider to support the Manganese execution is needed immediately,*

5.13.3.4. *McKinsey has jointly worked with Transnet in creating and approving the business case and therefore understands all value drivers and risks contained therein. The time required for a new provider will delay the execution.*

5.13.3.5. *McKinsey has extensive understanding of the Manganese programme and its interdependencies in the context of Transnet broader capital portfolio, i. e locomotives, Eskom and common user facility*

5.13.3.6. *McKinsey has establish working relations with asset owners (TFR, TNP) and detailed understanding of their schedule and volume requirements*

5.13.3.7. *McKinsey has a proprietary iro ore and manganese demand and supply model that Transnet has used previously to determine its pricing methodology. This tool is available from only one supplier i.e. McKinsey.*

5.13.3.8. *Approaching the market would result in wasted money and time;*

5.13.3.9. *Any new service provider would have to develop its own methodologies and tools as well as obtain operational experience within a capital execution environment.*

5.13.3.10. *Due to the specialised nature of the work a new service provider will be required to understand intricacies of Transnet's operations, Capital programme and overall MDS.*

5.13.4. The above grounds for confinements are not valid as a reason for confinement as there is no evidence that Singh tested the market to establish whether there were no other service providers that the services provided by McKinsey in respect of the manganese project.

5.13.5. We determined that the grounds for confinement by Singh citing urgency and specialised services were the same reasons used for the Coal, NMPP, Kumba Iron Ore and SWAT II contracts.

Financial Implications

5.13.6. The memorandum indicated that the external service provider's fees for the scope of work reflected above would be based on a maximum potential fee of R150 million for a period covering 2014/2015 to the completion of the program.

5.13.7. The said financial implication was broken down as follows:

5.13.7.1. R100 million excluding VAT in fees estimated for the first 12 months; and

5.13.7.2. R50 million excluding VAT in fees for 18 months or until completion.

5.13.8. According to the memorandum, the total project fees of R150 million would be shared on a split of 40/60 between McKinsey and its B-BBEE consortium partners.

5.13.9. We identified that the B-BBEE consortium partner referred to on the memorandum was Regiments. Based on the memorandum, Regiments would be allocated 60% of the total fees and the spilt would be as follows:

Period	McKinsey	Consortium partner
First 12 months of support (till EPC contractor appointment) – larger team	R40m	R60m
Next 18 months or until the end of the project – smaller team	R20m	R30m
Total	**R60m**	**R90m**

5.13.10. We determined that the memorandum was approved by Molefe on the 3 April 2014.

Letter of Intent dated 9 April 2014

5.13.11. We determined that six days after Molefe approved the memorandum to confine through McKinsey, Singh issued an LOI to Fine titled "*Initial discussions on Consulting services required*" and dated 9 April 2014.

5.13.12. The LOI indicated that the Manganese Execution Support project was one of the projects approved by Molefe. According to the LOI, the confinement to McKinsey was subject to the successful conclusion of the Master Services Agreement.

5.13.13. We determined that Singh sent a copy of the said LOI to Wood containing the same information in the LOI sent to Fine.

5.13.14. In his letters, Singh requested McKinsey and Regiments to mobilise their teams to have initial discussions with Transnet.

5.13.15. During our consultation with McKinsey, they informed us that Singh's LOI dated 9 April 2014 initiated McKinsey to work on the various projects including assessment of the options to renegotiate the Manganese project before the signing of an MSA.

5.13.16. According to McKinsey, "*Singh specifically underscored the very real* "urgency of the services required" and accordingly directed McKinsey to begin work immediately even in advance of the execution of a formal contract."

5.13.17. We determined that Regiments and McKinsey commenced work relating to the Manganese project before Transnet issued an RFP on 28 May 2014.

5.13.18. The letter of intent instructed McKinsey to have initial engagements with Transnet, there was therefore no mandate from Transnet to McKinsey to commence with work on the project (**Annexure D153**).

Request for approval to issue RFP GSM/14/04/1039

5.13.19. On the 8 May 2014 Moosa submitted a memorandum to Pita titled "*Go to market approval –GSM/14/04/1039 confinement for the provision of professional services to support Transnet with the Manganese execution initiative for a period of 30 Months – R150 million*", and the purpose of the memorandum was to:

5.13.19.1. *" obtain approval to go to market on a confined basis for the provision of professional services to support Transnet with Manganese execution Initiative; and*

5.13.19.2. *Obtain approval for the RFP"*

5.13.20. We noted that the memorandum emphasised that the fees and expenses would be in accordance with the Instruction Note of 2013/2014 on actual costs incurred aligned to the instruction note.

5.13.21. The memorandum was recommended by Thomas on 19 May 2014 and approved by Pita on 26 May 2014.

5.13.22. As indicated above, Moosa prepared a memorandum to confine to McKinsey on 8 May 2014 (**Annexure D154**).

Issuing of RFP GSM/14/04/1039

5.13.23. We determined that an RFP in respect of the Manganese project was issued on the 28 May 2014 with the closing date of 10 June 2014 at 12:00. We further determined that the RFP was issued after McKinsey and Regiments started providing services to Transnet between September and November 2013 (**Annexure D155**).

Submission of proposal – GSM14/04/1039

5.13.24. We determined that on 24 June 2014, McKinsey submitted their RFP in respect of the Manganese project. The RFP was stamped as received by the Acquisition Council on 24 June 2014.

5.13.25. We noted that McKinsey's submission was after the closing date of 10 June 2014 as reflected on the RFP.

5.13.26. We were not provided with any correspondence reflecting that the closing date was extended to 24 June 2014.

5.13.27. The RFP required that bidders submit their bids timeously and to the correct address. According to the RFP, late bids and bids submitted to the incorrect address would not be accepted for consideration.

5.13.28. In the absence of an extension to the closing date, McKinsey's late submission should not have been accepted for consideration (**Annexure D156**).

McKinsey's Fee proposal

5.13.29. According to McKinsey's RFP, the engagement for the first 12 months was projected at R153 million inclusive of expenses and exclusive of VAT. McKinsey's RFP further indicated that Value Intervention Teams fees were projected at an additional fee of R92.9 million inclusive of expenses and exclusive of VAT.

5.13.30. In their RFP, McKinsey indicated that the fees would be split 55/45 between McKinsey and Regiments respectively.

5.13.31. The table below reflects a summary of McKinsey's proposed fee in respect of the Manganese project:

Consortium partner	**Phase**	**Professional fees**	**Expenses**	**Total (incl. expenses, excl. VAT)**
McKinsey	Fixed (for work from 5 May 2014 – 31 July 2014)	R15 601 163.00	R2 340 174.00	R17 941 337.00
Regiments	Fixed (for work from **1 May 2015 – 31 July 2016**)	R15 601 163.00	R1 560 116.00	R17 161 279.00
McKinsey	Milestone linked (for work from 1 Aug 2014 – 31 April 2015)	R52 644 900.00	R7 896 735.00	R60 541 635.00
Regiments	Milestone linked (for work from 1 Aug 2014 – 31 April 2015)	R52 644 900.00	R5 264 490.00	R57 909 390.00
TOTAL for 12 months		**R136 492 126.00**	**R17 061 515.00**	**R153553641.00**

5.13.32. McKinsey further proposed R93 million in respect of value intervention teams. The table below reflects a summary of McKinsey's fee in respect of value intervention teams:

Consortium partner	Phase	Professional fees	Expenses	Total (incl. expenses, excl. VAT)
McKinsey	Milestones and value delivery based (value intervention teams)	R30 751 875.00	R4 621 781.00	R35 364 656.00
Regiments	Milestones and value delivery based (value intervention teams)	R52 361 301.00	R5 236 130.00	R57 597 431.00
TOTAL for 12 months		**R83 113 176.00**	**R9 857 911.00**	**R92 962 087.00**

Payments made to Regiments and McKinsey

5.13.33. During our review of Transnet's SAP payment history report, we determined that McKinsey was paid R17.8 million for services rendered between 2 September 2013 – 29 November 2013 in respect of the Manganese Contract (**Annexure D157**).

5.13.34. We further determined that Regiments were paid R1.8 million for services rendered from 1 Sep [*2012*] to 12 November 2013. On their invoice dated 19 Nov 2013, McKinsey indicated that the work related to the Manganese project (**Annexure D158**).

5.13.35. In their response, McKinsey indicated that "*invoice dated 25 March 2014 (with invoice number 5563AA6) for services performed during the period 2 September 2013 to 29 November 2013 is unrelated to GSM/14/04/1039 (Manganese Execution Initiative). This invoice relates to work performed under the forerunner to GSM/14/04/1052 (Capital Optimisation and Implementation Support Services), known as SWAT I.*"

5.13.36. We however noted that the invoice in question was not invoice 5563AA6 dated 24 March 2014 as indicated by McKinsey but instead it was invoice 5772 dated 31 March 2014.

5.13.37. Contrary to McKinsey's claim that the invoice was not related to the Manganese project, Regiments issued an invoice dated 19 November 2013 reflecting that the invoice was for the Manganese project.

5.13.38. The invoices submitted by McKinsey and Regiments in the amount of R17.8 million and R1.8 million respectively without both parties receiving an RFP from Transnet and an official appointment are irregular.

5.13.39. We further determined that Transnet issued an RFP No. GSM/14/04/1039 "*for the provision of professional services to support Transnet with the Manganese execution initiative for a period of 30 months*".

5.13.40. We determined that McKinsey and Regiments were paid R78 million and R72 million respectively for the Manganese contract (**Annexure D159**).

5.13.41. We further determined that McKinsey were paid 52.04% of the total fees and Regiments were paid 47.97% of the total fees payment.

5.13.42. As indicated above, the approved split was envisaged to be 40/60 between McKinsey and Regiments respectively. We further determined that the split was however amended to 55/45 between McKinsey and Regiments. We determined that the payments to McKinsey and Regiments were not in line with the amended to 55/45 split.

5.13.43. According to the contract dated 10 March 2015, McKinsey would be entitled to 45% of fees. We further determined that McKinsey were paid more than the envisaged 45% split as per the contract.

Out of pocket expense paid to Regiments and McKinsey

5.13.44. We further determined that McKinsey and Regiments invoiced Transnet R6 million and R5.9 million for out of pocket expenses respectively.

5.13.45. We noted that the memorandum dated 8 May 2014 emphasised that the fees and expenses would be in accordance with the Instruction Note of 2013/2014 on actual costs incurred aligned to the instruction note.

5.13.46. Regiments and McKinsey failed to invoice Transnet actual costs incurred as stipulated in the memorandum dated 8 May 2014. We further determined that Regiments and McKinsey failed to provide documentation in support of their out of pocket expenses incurred.

Conclusion of the contract in respect of RFP GSM/14/14/1039

5.13.47. We determined that Singh and Sagar signed the contract on the 6 March 2015 and 10 March 2015 respectively.

5.13.48. The contract related to the provision of professional services to support Transnet with Manganese Execution initiative for a period of 30 months. The contract was expected to commence on 9 April 2014 and expire on 8 October 2015.

5.13.49. We determined that the contract was signed after McKinsey and Regiments had started providing services to Transnet in September 2013. The commencement of work by McKinsey and Regiments without an MSA was irregular.

5.13.50. According to the contract, the project fee was R179.9 million inclusive of expenses and exclusive of VAT.

5.13.51. We were not provided with minutes of the negotiations that took place before the finalisation of the contract (**Annexure D160**).

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

5.13.52. The reasons for confinement as presented by Singh were invalid as there was no evidence that Singh tested the market to establish whether there were no other service providers who may render such a service,

5.13.53. The grounds for confinement by Singh siting urgency and specialised services were the same reasons used for the coal, NMPP, Kumba Iron Ore and SWAT II contracts.

5.13.54. The payments made to McKinsey and Regiment before an MSA was concluded are irregular in that there was no contractual agreement in place between Transnet, McKinsey and Regiments at the time.

5.13.55. The Manganese Contract was irregular in that it commenced without a valid MSA being concluded.

5.13.56. Regiments and McKinsey failed to provide documentation in support of their out of pocket expenses.

5.13.57. Singh and other Transnet officials contravened section 57 of the PFMA in that they failed to procure services using a system which is fair and transparent.

5.13.58. Singh, Pita and other role players may have received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend the following:

5.13.59. Transnet should consider recovering the out of pocket expenses paid to McKinsey and Regiments in the amount of R6 million and R1.7 million.

5.13.60. DPCI should investigate if Pita, Singh and any other role player did not receive gratification in terms of the Prevention and Combating of Corrupt Activates Act.

5.13.61. DPCI should investigate if Pita, Singh and any other role player did not contravene section 34(1) of the Prevention and Combating of Corrupt Activities Act.

5.13.62. Transnet should consider taking appropriate disciplinary action against officials who are still employed by Transnet.

5.13.63. Minister of DPE should recommend that Cabinet consider restricting officials who abuse the supply chain management from employment or doing business with any organ of state for a period of five years.

5.14. NMPP CONTRACT – GSM/1404/1040

The provision of professional services to support Transnet with the NMPP de-risking and acceleration for a period of 18 months – GSM/14/04/1040

Email dated 14 March 2012

5.14.1. We determined that on 14 March 2012, Fabio Pedrazzi ("Pedrazzi") of McKinsey sent an email to Singh titled *"NMPP- memo for Brian.doc"*. We further determined that David Fine ("Fine"), Sagar and Parbhoo were copied in the said email. The email to Singh stated the following:

"Anoj,

Thanks for a good conversation. I have drafted a version of the memo - please read through carefully and make adjustments as you see fit. Tried to write it in a positive, supportive tone as agreed. Not sure about how you want to conclude the last paragraph - pay extra attention to this point.

I will be on my way to the airport shortly, please call me if you want to discuss.

David, Prakash - let me know if you have any further suggestions.

*Looking forward to speaking soon." (***Annexure D161***)*

5.14.2. Attached to the said email was a word document titled "*NMPP – memo for Brian*". As indicated in Pedrazzi's email, he referred Singh to the last paragraph of the attached document. We determined that the last paragraph of the attached document stated that "*I therefore ask for your endorsement to appoint an appropriate partner to assist the project team in their implementation of the above initiatives*." (**Annexure D162**)

5.14.3. We determined that the properties of the document indicated that Fabio Pedrazzi was the author of the document. According to the document properties, the document was created on 14 March 2012 at 01:58 PM and last modified on the same day at 02:33 PM. The properties of the document further indicated that the document was titled *"NMPP – accelerating delivery and managing risks"*

5.14.4. Based on our review of Pedrazzi's email to Singh, it is evident that McKinsey played a role in their appointment of the NMPP project which is discussed in detail below.

5.14.5. It is evident that McKinsey prepared pointers for Singh to enable him to convince Molefe to approve McKinsey's appointment on the NMPP project. The introduction on the letter is also an indication that McKinsey prepared the document on behalf of Singh which states that:

"In the light of MDS and delivering a 300bn capital spend over the next 7 years, I believe we need to support every opportunity to further improve the confidence in the markets of our ability to deliver. As CFO I also see my role to support any initiative that will positive effects on our balance sheet and improve our financial outlook for the future.

I wanted to share a thought with you that will help ensure NMPP gets delivered with reduced implications on cost and schedule. This is, if we get it right, a positive story for the board."

Memorandum dated 3 April 2014

5.14.6. We determined that Singh compiled a memorandum to Molefe titled "*NMPP Acceleration – De- risking the way forward*" and dated 31 March 2014. The purpose of the memorandum was to request Molefe to:

5.14.6.1. Approve the resourcing strategy and remuneration for the NMPP Acceleration initiative to mitigate the EBITDA at risk; and

5.14.6.2. Confine and award services for the support to the internal team to McKinsey and its BBBEE Consortium partners (**Annexure D163**).

Grounds for confinement

5.14.7. We noted that Singh supported his grounds to confine McKinsey as required by the PPM paragraph 15.1.2 by stating *inter alia* the following reasons:

5.14.7.1. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning.

5.14.7.2. When goods or services being procured are highly specialized and largely identical to those previously performed. Approaching the market would result in wasted money and time for Transnet.

The memorandum provided the following as reasons to confine to McKinsey:

5.14.7.3. McKinsey and Company have the Intellectual property, experience and knowledge to provide these services to Transnet. McKinsey and Company have a detailed knowledge of Transnet, its operating divisions and MDS;

5.14.7.4. McKinsey understands the underlying economics of the global and local industry in detail as well as the strategic trends in the oil and gas industry.

5.14.7.5. McKinsey understands Transnet's underlying infrastructure program in detail and have been an advisor to many clients to mitigate against similar risks experienced on the NMPP.

5.14.7.6. McKinsey has in its global practice supported many oil and gas experts and a tool kit of best practices that can be leveraged and has a proven track record at Transnet of reducing capital cost on large capital projects.

5.14.7.7. McKinsey has a proven track record of de-risking and improving outcomes of distressed projects in execution.

5.14.8. In his memorandum Singh further indicated the following as grounds for confinement of the NMPP project to McKinsey:

5.14.9. McKinsey has gathered an intimate understanding of NMPP on-site issues, stakeholder concerns and reputational risks since de-scoping of AWP in 2012. Since that time, McKinsey has concluded:

5.14.9.1. On-going coaching of Sue Govender in 2012, including best practice contractor selection / due diligence process and risk assessment prior to post AWP de-scoping (not implemented) ;

5.14.9.2. It facilitated conversations between NMPP and client teams in India (Cairn);

5.14.9.3. Lessons learned workshops with the NMPP owner's team;

5.14.9.4. Site visit to TM1 and observations made by international experts; and

5.14.9.5. McKinsey has an intimate understanding of the NMPP programme in the context of Transnet's broader capital portfolio and overall affordability.

5.14.10. The memorandum further indicated that approaching the market would result in wasted money and time and as a result, a service provider to support the NMPP project needs to be appointed immediately.

5.14.11. Every week of delayed operations significantly increases tariff risks due to non-recognition of capital. In addition every week of delay also significantly increases' the reputation' and credibility of executing the overall capital portfolio (which compounds into a risk for MDS)

5.14.12. Additionally, due to the confidential nature of the information, the engagement cannot be subject to an open tender process' especially from a reputational risk perspective. In terms of paragraph 15.1.4 (c) of the revised PPM, in instances where a confinement is confidential, the GCE may approve such confinement without it being routed via any other signatory.

5.14.13. We determined that Molefe approved the memorandum to confine the NMPP project to McKinsey on 3 April 2014.

5.14.14. We noted that the same grounds for confinement were applied on the following contracts awarded to McKinsey even though the scope for the projects differed:

5.14.14.1. GSM/15/03/1255;

5.14.14.2. GSM/12/10/0578;

5.14.14.3. GSM/14/04/1037;

5.14.14.4. GSM/14/04/1038; and

5.14.14.5. GSM/14/04/1039.

Letter of intent dated 9 April 2014

5.14.15. We determined that Singh sent a letter of intent titled "*Initial discussions on Consulting services required*" and dated 9 April 2014 to David Fine. The letter of intent indicated that the GCE had approved a number of consulting assignments to a McKinsey led consortium, subject to the successful conclusion of the Master Services Agreement.

5.14.16. In the said letter of intent, Singh further indicated that "*As you are aware, Transnet is bound by regulatory policies, procedures and processes in respect of procurement. These processes require amongst others, a request for proposal to be issued for approved transactions, evaluation of the final bid proposals and subject to meeting Transnet's requirements I terms of the full scope of set out in the request for proposal, a final Master Service Agreement may be concluded*".

5.14.17. According to the LOI, the GCE *inter alia* approved the NMPP Acceleration including de-risking of schedule and cost escalations, risk management and resolution management.

5.14.18. In his letter, Singh requested McKinsey to mobilise their team to have initial discussions with Transnet teams.

5.14.19. We further determined that Singh issued the same LOI to Wood dated 9 April 2014. Based on our review of the LOI to Wood, we determined that the only difference between the two LOI's was McKinsey and Regiments address respectively.

5.14.20. The letter of intent instructed McKinsey and Regiments to have initial engagements with Transnet, there was therefore no mandate from Transnet for the two entities to commence with the project (**Annexure D164**).

Memorandum dated 8 May 2014

5.14.21. We determined that Luqmaan Moosa ("Moosa") compiled a memorandum addressed to Pita dated 8 May 2014 and titled "*Go to market – GSM/14/04/1040 confinement for the provision of professional services to support Transnet with the NMPP de-risking and acceleration for a period of 18 months – R100 million*".

5.14.22. The purpose of the memorandum was to:

5.14.22.1. Obtain approval go to market on an confined basis for the provision of professional services to support Transnet with the New Multi- Product Pipeline (NMPP) Acceleration Programme; and

5.14.22.2. Obtain approval for the RFP.

5.14.23. According to the memorandum, Group Capital Integration had a requirement for a service provider to support Transnet with the NMPP Acceleration Programme. The memorandum indicated that the RFP was prepared and the review was performed by the following individuals:

5.14.23.1. Transnet Corporate Centre ("TCC") Senior Buyer – Luqmaan Noor Moosa;

5.14.23.2. TCC Procurement Manager – Cindy Felix;

5.14.23.3. Group Finance – Yusuf Mohamed;

5.14.23.4. Group Capital Integration – Mohammed Mahomedy;

5.14.23.5. Governance – Wynand Esterhuizen; and

5.14.23.6. Supplier Development – Lerato Tseke.

5.14.24. According to the memorandum, the expected contract value was R100 million which was split in phase and 1 and 2 amounting to R10 million and R90 million respectively.

5.14.25. The memorandum indicated that the amount of R10 million was budgeted for in the 2014/2015 Group Finance Capex budget however the additional R90 million was not budgeted for. According to the memorandum, the R90 million fees would be allocated to the project and capitalized.

5.14.26. The memorandum further indicated that the remuneration for phase 1 would be split on a 40/60 basis and phase 2 would be split on a 60/40 basis between McKinsey and the BBBEE consortium partners respectively.

5.14.27. As indicated above, we determined from the LOI that the BBBEE consortium partners referred to into the memorandum was Regiments.

5.14.28. The memorandum further indicated that fees and expenses would be in accordance with National Treasury's Instruction Note 01 of 2013/2014 on actual costs incurred.

5.14.29. We noted that Thomas recommended the memorandum on 19 May 2014 and Pita approved the memorandum on 26 May 2014 (**Annexure D165**).

HVT Report

5.14.30. The memorandum dated 26 May 2014 indicated that TIA was involved as the tender was above R50 million. We reviewed HVT report and noted that the HVT was satisfied with the process followed in respect of the confinement process followed. The HVT report confirmed that the GCE had the authority to approve the confinement to McKinsey.

5.14.31. The HVT however raised concerns that 4 projects including the NMPP were awarded to the same company i.e. McKinsey. The HVT report indicated that TIA consulted the GCFO, Singh and were satisfied with the Singh's response to their concern.

5.14.32. According to the HVT report, TIA concluded that the confinements were aligned to Transnet's objectives (**Annexure D166**).

Request for proposal - GSM/14/04/1040

5.14.33. We determined that on 28 May 2014, Luqmaan sent an email to Ashvin Sologar ("Sologar") of McKinsey titled "*CSM.14.01.1040-RFP-NMPP De-risking and Acceleration.pdf; Annexures.zip; Appendices.zip*" stating that Transnet intended to contract a service provider for the provision of professional services to support Transnet in De-risking and Acceleration of the NMPP.

5.14.34. The email further indicated that the RFP was a closed tender and that McKinsey had been invited to participate.

5.14.35. According to Luqmaan's email, the closing date of the RFP was 10 June 2014 at 12h00 (**Annexure D167**).

Proposal submitted by McKinsey dated 24 June 2014

5.14.36. We determined that McKinsey submitted a proposal in respect of the NMPP project which indicated that the closing date of the proposal was 24 June 2014 at 12:00.

5.14.37. We further determined that on 24 June 2014, Transnet's Acquisition Council stamped the proposal as confirmation of receipt (**Annexure D168**).

McKinsey's proposed fees

5.14.38. According to McKinsey's proposal, the professional fees and expenses for the NMPP project was R175 million and R21 million respectively. The memorandum further indicated that the professional fees of R175 million consisted of R90 million as a fixed fee and R85 million based on milestone delivery.

5.14.39. As indicated above, the memorandum dated 8 May 2014 indicated that the professional fees would be R10 million for phase 1 and R90 million for phase 2 of the project.

5.14.40. In their proposal, McKinsey further indicated the following:

5.14.40.1. Their standard expenses are 15% of the professional fees;

5.14.40.2. Regiments expenses would be 10% of their professional fees; and

5.14.40.3. The fixed fees would be apportioned 50% to McKinsey and 50% to Regiments.

5.14.41. The table below reflects the professional fees and expenses split as reflected in McKinsey's proposal:

Consortium Partner	Fee basis	Professional fees	Expenses	Total
McKinsey	Fixed (phases 1-3)	R45 000 000.00	R6 750 000.00	R51 750 000.00
Regiments	Fixed (phases 1-3)	R45 000 000.00	R4 500 000.00	R49 500 000.00
McKinsey	Milestone Delivery based (Phase 4)	R42 500 000.00	R6 375 000.00	R48 875 000.00
Regiments	Milestone Delivery based (Phase 4)	R42 500 000.00	R4 250 000.00	R46 750 000.00
TOTAL		**R175 000 000.00**	**R21 875 000.00**	**R196 875 000.00**

5.14.42. In their proposal McKinsey indicated that the fee allocation reflected above would change if both Transnet and the consortium partners felt that a different allocation of resources from the consortium members would materially improve for Transnet.

5.14.43. We determined that McKinsey indicated that the total hours allocated to the NMPP project was 59 465 hours at a per diem rate of R2 942 per hour. According to McKinsey's proposal, the rate per hour was based on the DPSA salary band 16.

5.14.44. The table below reflects the pricing and delivery schedule in respect of the project fees reflected in McKinsey's proposal:

Phase of project	Deliverable	Number of hours	Fees (ZAR)
Phase 1 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	9882	R29 072 844
Phase 2 (fixed)	As described in the Technical part of the	5724	R16 840 008

Phase of project	Deliverable	Number of hours	Fees (ZAR)
	proposal, chapter "Approach"		
Phase 3 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	14 985	R44 085 870
Phase 4 (Milestone)	Monthly progress report against criteria to be defined after phase 2	28 874	R84 946 918
Estimated Total cost of the project (excl. expenses and VAT)		**59 465**	**R174 945 640**

5.14.45. We determined that McKinsey indicated in their pricing and delivery schedule that they would use the following number of resources on the phase 1, 2 and 3 respectively:

5.14.45.1. Phase 1: 40 resources (29 McKinsey resources and 11 Regiments resources);

5.14.45.2. Phase 2: 20 resources (14 McKinsey resources and 6 Regiments resources); and

5.14.45.3. Phase 3: 31 resources (21 McKinsey resources and 11 Regiments resources).

5.14.46. Based on our view of McKinsey's proposal, it is evident McKinsey calculated the estimated professional fees of R174 945 640.00 using the DPSA rate of R2 942 multiplied by the projected hours of 59 465. We however noted a difference of R390 in our recalculation of the R174 946 030 and McKinsey's calculation of the R174 945 640.

5.14.47. In their proposal, McKinsey included the names of the following resources that would work on the project:

McKinsey:

5.14.47.1. Norbet Dorr;

5.14.47.2. Vikas Sagar;

5.14.47.3. Prakash Parbhoo; and

5.14.47.4. Peter Safarik.

Regiments:

5.14.47.5. Eric Wood;

5.14.47.6. Indheran Pillay; and

5.14.47.7. Vimal Ichharam.

Regiments subcontracting to Homix and Albatime

5.14.48. In their proposal, McKinsey indicated that Regiments would sub-contract work to the following consultants and services from the following entities:

5.14.48.1. Accompany Advisory;

5.14.48.2. Albatime; and

5.14.48.3. Homix.

5.14.49. McKinsey indicated that Regiments would support the above mentioned entities as their Supplier Development Partners.

5.14.50. In their response, McKinsey stated the following in respect of Homix and Albatime "*Specifically, the proposals indicate (in language drafted by Regiments) that Regiments "will sub-contract consultants and services from Accompany Advisory, Homix and Albatime, and provide them with skills development opportunities."*

a. McKinsey has since become aware of the purported ownership of Homix and Alabatime from press reports and of their alleged ties to state capture.

b. As David Fine noted in his parliamentary testimony, however, names such as Homix or Albatime would not have been significant in 2014 as the reports regarding these entities' alleged ties to the Guptas surfaced in mid-2015 for Homix and late 2016 for Albatime.

c. The fact that Regiments would subcontract some of its consulting work under these contracts would not have been cause for suspicion or concern.

d. McKinsey and Regiments were paid separately by Transnet on these projects. McKinsey had limited visibility into how Regiments used funds it was paid directly by Transnet to pay its subcontractors and other entities.

e. Albatime and Homix were not a part of the initial due diligence performed on Regiments in 2012, because they were not listed as by Regiments as its potential subcontractors at the time."

Invoicing of work prior to the closing date and submission of the RFP

5.14.51. We determined that McKinsey issued invoice 5806 for R14.7 million dated 30 June 2014 (6 days after the closing date of the proposal) in respect of professional fees for May 2014 (**Annexure D169**).

5.14.52. We further determined that McKinsey issued a second invoice dated 1 July 2014 for an amount of R18.6 million in respect of professional fees for May 2014 (**Annexure D170**).

5.14.53. Based on the invoices, McKinsey issued two invoices totalling R33.3 million referenced as professional fees for May 2014.

5.14.54. We further determined that Regiments issued an invoice for an amount of R3.6 million dated 30 May 2014 in respect of professional fees for May 2014. Attached to Regiments invoice was a letter indicating that the professional fees was for work done from 5 May 2014 to 30 May 2014 relating to Phase 1 of the NMPP acceleration mandate (**Annexure D171**).

5.14.55. During our consultation with McKinsey, they informed us that Singh's LOI dated 9 April 2014 initiated McKinsey to work on the NMPP project before the signing on an MSA (**Annexure D172**).

5.14.56. The letter of intent dated 9 April 2014 did not constitute a formal letter of appointment to prompt McKinsey to commence on the NMPP project.

5.14.57. It is unclear what services were rendered by McKinsey and Regiments in May 2014 whereas the closing date and acknowledgement of receipt of McKinsey's proposal was 24 June 2014.

5.14.58. In their written response to our questions relating to the above invoices, McKinsey indicated that *"On 30 June 2014 McKinsey issued invoice number 5806 for its services provided during the period 2 June 2014 and 30 June 2014 for work relating to the NMPP baselining, business case optimisation, and the initial stages of establishing a control tower.*

5.14.59. *We wish to point out that this was the second invoice issued for this particular engagement and the table below extracted from this particular invoice lists the deliverables and percentage completion.5 Please note that the column on the far right titled "% completed as of previous invoice" indicates the services performed in May 2014, while the column titled "% completed as of this invoice" indicates services performed in June 2014"*

Scope and value extension memorandum dated 30 November 2014

5.14.60. We determined that Singh sent a memorandum to Molefe dated 30 November 2014 and titled "*Extension of value and scope – de-risking and acceleration of the New Multi-Product Pipeline support*". The purpose of the memorandum was to request Molefe to approve the following:

5.14.60.1. Increase in value of the original request for proposal with original value of R100 million by R90 million to a contract value of R190 million including expenses for the de-risking and acceleration of the NMPP support until June 2015;

5.14.60.2. Extension of scope to include boosting on-site construction productivity, improving decision quality and transparency, and set up organisation to deliver and complete the project; and

5.14.60.3. Amending the split of work and fees of the consortium until June 2015.

5.14.61. We noted that the contract price was increased by 90% from R100 million to R190 million.

5.14.62. We determined that the memorandum was compiled by Msagala on 20 November 2014 and recommended by Pita and Singh on 20 November 2014. We further determined that Molefe approved the memorandum for extension on 30 November 2014 (**Annexure 173**).

5.14.63. We determined that at the time that Molefe approved the scope extension and the increased contract value, McKinsey and Regiments had jointly invoiced Transnet R140 million which was R40 million more than the initial approved contract value.

5.14.64. The payment of R40 million was irregular as the amount was outside the approved budget.

5.14.65. As at 30 November 2014, McKinsey had invoiced Transnet R84 278 517 and Regiments had invoiced R55 834 832.85.

5.14.66. Based on our review, it is evident the McKinsey and Regiments continued to invoice Transnet despite exceeding the approved budget of R100 million.

5.14.67. Paragraph 12.6 of the MSA states that *"should the Service Provider require that Transnet pay the subcontractor directly, the Service Provider must request this from Transnet in writing. If Transnet agrees to pay the Subcontractor directly the Service Provider still remains responsible for all obligations related to the contract including management of, and the performance of the* *subcontractor. The Service Provider shall verify the correctness of the Subcontractors invoices and confirm that all deliverables have been delivered."(***Annexure D174***)*

5.14.68. Regiments, the Subcontractor to McKinsey issued invoices directly to Transnet from May 2014 and were paid directly by Transnet before a letter was issued by McKinsey to Transnet authorising them to pay Regiments directly.

5.14.69. Parbhoo gave Transnet authority to pay Regiments directly on a letter dated 9 February 2016 with effect from 1 April 2014.

5.14.70. Parbhoo issued the authority letter to Transnet 1 year and 8 months after Regiments started invoicing Transnet (**Annexure D175**).

5.14.71. The payments made directly to Regiments without an authority letter were in contravention of paragraph 12.6 of the MSA concluded between Transnet and McKinsey.

5.14.72. Singh may have received gratification for the appointment of McKinsey through a confinement process in respect of the Manganese project.

5.14.73. The commencement of the project before the issuing of the RFP was irregular.

5.14.74. The sharing of responsibilities by McKinsey defeats the confinement reason given that Mckinsey possess sole source expertise.

NMPP Close out memorandum

5.14.75. We determined that on 15 June 2015, Parbhoo sent an email to Singh and Msagala stating that McKinsey had prepared a closeout memorandum for work conducted on the NMPP from 20 April to 30 June 2015 (**Annexure D176**).

5.14.76. We further determined that Msagala responded to Parbhoo's email with some discomfort and stated the following:

"Dear Prakash,

I guess you find it been not necessary to engage me despite me being clear on what I had expected from McKinsey which is contrary to your report. Your report is not true reflection of the matters on the ground about the project.

In the interest of progress. Let's focus on what I had asked this morning in order to meet our MC. In future please engage me on any of your opinion before reaching any conclusion to prevent misrepresentation of the facts about the project.

Regards

Herbert"

5.14.77. It is evident from Msagala's email that he was not satisfied with McKinsey's closeout memorandum and conclusions reached by McKinsey.

5.14.78. During our consultation with Msagala, he indicated that the reports produced by McKinsey in respect of the project were not a true reflection of what was happening on the ground. He further stated that he could therefore no longer continue signing off McKinsey's invoices for payment as he was not happy with their deliverables.

Payments made to McKinsey and Regiments

5.14.79. As indicated above, the contract value for the NMPP was R190 million. We were provided with a SAP summary report for all payments made to McKinsey and Regiments. We determined that McKinsey and Regiments were paid an amount of R266 187 615.02 (**Annexure D177**).

5.14.80. We determined that the R266 million paid to McKinsey and Regiments exceeded the approved extension contract value of R190 million. We further determined that McKinsey was paid R163 701 410.72 and Regiments was paid R102 486 204.30 in respect of NMPP (**Annexure D178**).

5.14.81. McKinsey and Regiments were paid R76 187 615.02 more than the approved increase of R190 million.

5.14.82. According to the PFMA, unauthorised expenditure means:

5.14.82.1. Overspending of a vote or main division within a vote; or

5.14.82.2. Expenditure not in accordance with the purpose of a vote or, in case of a main division, not in accordance with the purpose of the main division.

5.14.83. Based on our review of the MSA and approved extension contract value of R190 million, the additional payment of R76 million to McKinsey and Regiments resulted in unauthorised expenditure.

5.14.84. According to the DoA Framework effective 1 June 2013, the GCE could authorise monetary thresholds up to R250 million. As indicated above, McKinsey and Regiments were paid a total of R266 million (Incl. VAT), (R233 million Excl. VAT). The amount therefore still fell within the GCE's DoA. After noticing the increased project cost, Singh should have approached Molefe for approval in respect of the increased project cost. There is no evidence to suggest that Molefe was approached when the project cost increased from R190 million to R266 million.

Out of pocket expenses to Regiments and McKinsey

5.14.85. According to the contract, the cost of the contract including expenses and excluding VAT at R190 million.

5.14.86. Based on the invoices reviewed, we determined that McKinsey and Regiments invoiced Transnet R20 166 616.34 for out of pocket expenses.

5.14.87. We however determined that McKinsey and Regiments invoices did not provide supporting documents of the specific outcomes archived per invoice.

5.14.88. We determined that the LOI did not indicate the percentage allocated to McKinsey in respect of out of pocket expenses. However the LOI indicated that it would reimburse McKinsey for all costs incurred for the initial engagement with Transnet officials.

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

5.14.89. McKinsey prepared pointers for Singh in a form of document titled *"NMPP- memo for Brian.doc"* to enable him to convince Molefe to approve McKinsey's appointment on the NMPP project.

5.14.90. McKinsey and Singh compromised the integrity of the procurement process by sharing pointers of a procurement to be initiated.

5.14.91. McKinsey and Regiments continued to invoice Transnet despite exceeding the approved budget of R100 million.

5.14.92. Singh and other role players may have received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

5.14.93. Singh and other role players may have contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act.

5.14.94. McKinsey and Regiments were paid R12 476 640.75 and R7 689 975.59 for out of pocket expense without submitting documentary evidence.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend the following:

5.14.95. Transnet should consider recovering the out of pocket expenses paid to McKinsey R12 476 640.75 and Regiments R7 689 975.59.

5.14.96. DPCI should investigate if any role player received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

5.14.97. DPCI should investigate if Singh, McKinsey and any other role player did not contravene section 34(1) of the Prevention and Combating of Corrupt Activities Act.

5.14.98. Transnet to consider restricting McKinsey abusing and compromising the integrity of the procurement process.

5.15. CAPITAL OPTIMISATION AND IMPLEMENTATION SUPPORT - SWAT 2

Background

5.15.1. It is our understanding from a review of documentation that on 18 October 2013, Molefe approved the confinement of the McKinsey led Consortium to support Transnet in capital optimisation and implementation and embedding support initiative. This initiative would mitigate the capital affordability constraints by mobilising a team.

5.15.2. As indicated above, SWAT 1 was set up in 2013 to build a capability that would bring transparency to Transnet's capital portfolio. During this phase (SWAT 1), McKinsey claimed that they collectively implemented an ability to optimise capital both on portfolio level, as well as at a project level. As discussed above, Transnet appointed McKinsey through a confinement for the implementation of SWAT 1. It is our understanding based on documentation reviewed that SWAT 1 exceeded R49 billion of identified and signed off capital reductions.

5.15.3. McKinsey was paid in excess of R39 million (incl. VAT) for the purported capital reduction of R49 billion. The description on the Purchase Order was ("Prof Fees Accrued risk Portion"). The payment of R39 million was outside the budget allocated to McKinsey in respect of SWAT 1. The payment of R39 million to McKinsey is discussed below.

Communication between McKinsey and Transnet

5.15.4. During the review of Singh's emails, we found an e-mail tread between McKinsey and Transnet officials relating to the scope of work for SWAT 2. We determined that on 17 September 2013 at 11:36 am, Mahomedy wrote an e-mail to Fabio pedrazzi@mcKinsey.com, and Prakash_Parbhoo@mckinsey.com. The subject matter of the email was "Action list". The content of the e-mail in relation to SWAT 2 *inter alia* read as follows (**Annexure D179**) :

5.15.5. *"Hi Gents*

Hope you guys are well rested, post some hectic travels on your side.

Detailed scope of SWAT 2 – as it rests in Anoj's view:

5.15.6. We determined that on 7 October 2013 at 02:31 PM, Mahomedy forwarded the e-mail of 17 September 2013 referred to above to Singh. We further determined that on the same day *i.e.* 7 October 2013, Singh forwarded the action list to Sagar and stated the following (**Annexure D180**)

5.15.7. *"Bro*

My guys are complaining of non-delivery what going on long outstanding stuff

Also wahts (sic) up with the contract two weeks since you spoke to Mohammed.

A"

5.15.8. We determined that Sagar responded to Singh's e-mail on 7 October 2013 at 7:59 PM. Sagar indicated on his e-mail that his team had been meeting with MM (Mohammed Mahomedy) on a regular basis and discussing the items on the action list. We noted that Sagar responded to Mahomedy's e-mail of 17 September 2013 in relation to the detailed scope of SWAT 2 as follows (**Annexure D181**):

5.15.9. *"Discussion with MM completed. Pages prepared to reflect the conclusion arrived at with MM. MM to take the discussion forward with YM (Yusuf Mohamed) and AS (Anoj Singh). We have offered multiple times, including at the meeting on 2 October to AS, to do whatever needs to be done to close this. Need feedback on next steps.*

Finalise the one pager for GCE: This was prepared as part of the above work: total budget per project and split between McK and BEE partner; revised cost to complete/overrun per project including split for McKinsey and BEE partner".

5.15.10. Based on our review of Sagar's email to Singh, it is evident that McKinsey played a role in their appointment of the SWAT 2 project which is discussed in detail below.

5.15.11. It is evident that McKinsey prepared a memorandum for Singh to present to Molefe to approve McKinsey's appointment on the SWAT 2 project.

5.15.12. As discussed below, McKinsey billed Transnet for work done of SWAT 2 in September 2013 prior to the approval to confine the contract to them.

Request for to GCE to approve a confinement of Regiments and McKinsey

5.15.13. We determined that Singh addressed a memorandum to Molefe dated 7 October 2013 with subject matter *"Capital Optimisation and Implementation Support"*. The purpose of the memorandum was to request Molefe to approve a confinement and award in respect of the Capital Excellence programme to a consortium of Regiments and McKinsey to:

5.15.13.1. Further optimise the capital investment portfolio by a minimum of R100 billion for a maximum fee of R173 million (excluding expenses and VAT) in excess of the R49 billion optimisation expected from scrubbing and optimisation by the Project Factory; and

5.15.13.2. Implementation and embedding of the platinum standard developed by Capital Integration for a fixed fee of R72 million.

5.15.14. According to the memorandum, the original contract (SWAT 1) was confined to the consortium. The contract fee of R174.6 million (including expenses, excluding VAT) was dependent on the achievement of all the deliverables and the capital savings targets on the following basis:

5.15.14.1. Programme set-up: R78.9 million guaranteed fee (including expenses, excluding VAT) to build the base capabilities within Transnet and to lay foundations for the scrubbing and optimization work; and

5.15.14.2. At risk: R95.7 million (including expenses, excluding VAT), contingent on the realization of R49 billion capital savings from scrubbing and optimization.

5.15.14.3. The contingent fee would apply on the following scale linked to optimisation targets:

Further Optimisation target **R**	**Contingency Fee payable** **R**
1 000 000 000	1 726 531
10 000 000 000	17 265 306
20 000 000 000	34 530 612
30 000 000 000	51 795 918

Further Optimisation target **R**	**Contingency Fee payable** **R**
40 000 000 000	69 061 224
50 000 000 000	86 326 531
60 000 000 000	103 591 837
70 000 000 000	120 857 143
80 000 000 000	138 122 449
90 000 000 000	155 387 755
100 000 000 000	172 653 061

5.15.15. It was recommended that the GCE approve a confinement and award in respect of the Capital Excellence programme to a consortium of Regiments and McKinsey.

5.15.16. We noted that the memorandum was signed by Mahomedy on 11 October 2013 as the preparer. We further noted that Pita, Volmink and Singh signed the recommendation to Molefe on 14 October 2013. We determined that Molefe approved the recommendation to confine to Regiments and McKinsey on 18 October 2013 (**Annexure D182**).

5.15.17. As discussed above, we determined that McKinsey/ Sagar gave input into the memorandum presented to Molefe by Singh. The said input included the total budget per project and split between McKinsey and its BEE partner (Regiments).

5.15.18. We noted Transnet appointed McKinsey through a confinement on at least six other projects including the following:

5.15.18.1. GSM/15/03/1255;

5.15.18.2. GSM/12/10/0578;

5.15.18.3. GSM/14/04/1037;

5.15.18.4. GSM/14/04/1038; and

5.15.18.5. GSM/14/04/1039.

Letter of intent to McKinsey dated 4 February 2014

5.15.19. *According to paragraph 21.6.1of the PPM*

"a) A Letter of Intent is issued when a Bidder has been selected as a Preferred Bidder. The LOI informs the Preferred Bidder of Transnet's intention to negotiate and conclude a contract with it. The LOI also makes it clear that if a contract cannot be agreed upon, Transnet reserves the right not to award the business to the Bidder. No contractual or other legal rights are vested in a Bidder purely by virtue of having been issued a LOI.

b) The validity of such LOI should be for a limited period only and every effort must be made to finalise the signing of the contract within the shortest possible period. The extension of the validity period of a LOI should be avoided and only considered in exceptional circumstances.

c) Only if the Goods/Services are critical for operations, will it be permissible to draw off a LOI, whilst the negotiation process is underway. In such cases the LOI serves as a proxy for the binding legal agreement and under its authority Transnet may place orders on the supplier for its interim requirements, during which period the final agreement will be negotiated and finalised between the parties. Should negotiations between the parties break down for any reason, the supplier may immediately invoice Transnet for all reasonable costs for Goods/Services delivered (based on proof of delivery). Such amounts shall become due and payable by Transnet.

d) It is important to note that the longer the LOI is allowed to continue, the less likely it will be that Transnet will be able to leverage its negotiating power to change a contract condition to benefit Transnet.

e) When issuing an LOI, one of the approved standard templates available on the Intranet must be used".

5.15.20. We determined that on 4 February 2014, Singh issued a letter of intent to McKinsey relating to the approval by Molefe to appoint McKinsey and its consortium partners for identifying additional capital savings as well as the implementation of the Platinum Standards. The appointment would be subject to the successful conclusion of a Master Service Agreement.

5.15.21. Singh requested that McKinsey mobilise their team and have initial discussions with Transnet team while awaiting the request for proposal. Singh made an undertaking that in the event that the appointment is not concluded, Transnet would reimburse McKinsey for all costs incurred.

5.15.22. Singh highlighted in the letter that as services providers to Transnet providing consulting services, McKinsey's fees and expenses would be subject to the instruction note issued by National Treasury relating to cost containment measures.

5.15.23. As indicated below, we noted that McKinsey and Regiments invoiced Transnet R30 717 548.58 prior to the issuing of the RFP to McKinsey. The amount accounted for at least 11.8% of the approved budget for the contract.

5.15.24. The letter of intent to McKinsey and Regiments merely gave instructions to the two entities to have initial engagements with Transnet. There was therefore no mandate from Transnet for the two entities to commence with the project. Any work done by McKinsey outside engagements was therefore not approved (**Annexure D183**).

Request for approval for confinement - Capital Optimisation and Implementation Support

5.15.25. Based on documentation reviewed, we determined that Luqmaan Noor Moosa (Senior Buyer) issued a memorandum dated 20 June 2014 to Pita. The purpose of the memorandum was to:

5.15.25.1. obtain approval to go to market on a confined basis for the provision of capital optimisation and implementation support services; and

5.15.25.2. obtain approval for the RFP.

5.15.26. The consortium would commit 30% of the total contract value for the fixed fee (R72 million) and contingent fee (R173 million) towards supplier development (**Annexure D184**).

Financial Implication

5.15.27. According to the memorandum,

5.15.27.1. The expected value of the contract was R245 million. Remuneration for the fixed fee and contingency fee would be split on a 30/70 basis between the Principle (30%) and the Consortium Partner (70%) respectively.

5.15.27.2. The fees and expenses would be in accordance with National Treasury Instruction Note 01 of 2013/2014 on actual costs incurred aligned to the instruction note.

5.15.27.3. The amount of R72 million had been budgeted for in the 2014/2015 budget but additional at risk fees of R173 million had not been included in the budget, however given the contingent nature of the payment, if additional fees are paid, a significant saving would have been attained on the capital investment plan of 100 times the additional fees to be paid.

5.15.28. It was recommended that the Group Chief Supply Chain Officer (GCSCO) approves:

5.15.28.1. To go to market on a confined basis for the provision of capital optimisation and implementation; and

5.15.28.2. The RFP.

5.15.29. We noted that the memorandum was compiled by Moosa on 20 June 2014 and recommended by Thomas on 30 June 2014. We further noted that Thomas approved the recommendation on behalf of Pita on 9 July 2014. Thomas signed as both the recommender and approver of the memorandum (**Annexure D185**).

RFP – Confinement to McKinsey led Consortium – SWAT 2

5.15.30. Para 14.4.4 (c) of the PPM approved on October 2013 provides that:

"Bids may be advertised in local, national and / or international media as well as the Transnet internet website depending on the market and value of the bid. Note that for construction procurement, the advertisement must, in addition be placed on the CIDB web site using the CIDB's i-Tender@cidb service at least 10 working days before the closing date for tenders and at least 5 working days before any compulsory site meeting".

5.15.31. We determined from documentation reviewed that on 10 July 2014, Transnet issued an RFP to McKinsey for the provision of Capital Optimisation and Implementation Support Services for a period of 24 months. The closing date for the submission of the proposal was 22 July 2014 (Annexure **D186**).

Request for extension for submission of proposals

5.15.32. Based on documentation reviewed, we determined that McKinsey submitted a request for extension of submission deadline for RFP GSM/14/04/1052. The request was addressed to Luqmaan Noor Moosa and copied Singh, Pita and Mahomedy. McKinsey indicated in the request that they intended to respond to the request with Regiments Capital as a proposed implementation partner. However due to two concerning newspaper articles mentioning Regiments which were brought to McKinsey's attention, the latter requested time to perform a review and based on the outcome determine the way forward with Regiments.

5.15.33. According to the request, any potential agreement between McKinsey and Regiments on RFP GSM/14/04/1052 would be subject to formal approval from McKinsey's Global Firm Legal and Risk Functions.

5.15.34. McKinsey requested the deadline for the submission of the RFP to be extended by 2 weeks to allow time for the internal risk management process to be completed.

McKinsey indicated in their request that they would decide to either seek a different implementation partner or proceed with Regiments Capital depending on the outcome of the risk assessment.

5.15.35. We determined that subsequent to McKinsey's request for extension of submission deadline dated 28 July 2014, the closing date for the submission of the proposal was extended to 9 September 2014. We were however not provided with the approval to McKinsey's request.

5.15.36. As indicated below, Regiments was appointed as the BEE Partner to McKinsey in respect of RFP GSM/14/04/1052. Although we were not provided with the outcome of McKinsey's risk assessment, we determined that McKinsey proceeded with Regiments as was originally intended.

5.15.37. During our consultation with McKinsey's representatives, they indicated that they only became aware of potential risks with Regiments in 2016 and a decision was then taken to cut ties with the entity during February 2016. It should be noted that McKinsey terminated their partnership with Regiments at the time that Wood had indicated his intention to resign as a shareholder and director of Regiments and move to Trillian.

Scope of work

5.15.38. According to the RFP, Transnet required professional services for the support of identifying additional capital savings as well as the implementation of the platinum standard which would include the following:

5.15.38.1. A consulting team to ensure the embedding of the sustainable solution of the Platinum Standard which would reduce the reliance on consultants in the medium to long-term and as required in terms of the National Treasury instruction note relating to consultancy reduction plans. The deliverables would include:

5.15.38.1.1. Filling of key positions per approved resourcing strategy;

5.15.38.1.2. Embedding of portfolio recut and capital allocation principles at Operating Divisions;

5.15.38.1.3. Rolling out capital rooms at Operating Divisions

5.15.38.1.4. Rolling out approved financial model showing Transnet's single view of capital;

5.15.38.1.5. Portfolio optimisation initiatives in congruence with strategic capital decisions;

5.15.38.1.6. GCiA implementation and embedding support;

5.15.38.1.7. Change management of methodologies and principles of the Capital Platinum Standard;

5.15.38.1.8. Implementation of external stakeholder engagement plan;

5.15.38.1.9. Rollout of Top Talent programme within GCiA; and

5.15.38.2. All embedding would be evidenced by new capabilities created in the operating divisions to fully apply the Capital Platinum Standard in their area, and a formal sign off from each operating division's CAPIC.

5.15.39. Value optimisation of the Capital Investment Portfolio by a further R100 billion defined as complying with all of the following:

5.15.39.1. Savings identified in optimisation covering both technical and financial solutions with bankable FEL 3 final business case approved by Capital Investment Committee and signed off by owner's team;

5.15.39.2. Reduction in value in the Capital Portfolio to deliver 350 Mt and bringing all mega programmes to the end of FEL3 stage; and

5.15.39.3. Project optimisation would address strategic projects as listed per Annexure F of the Shareholder's Compact Agreement.

5.15.40. It is our understanding from documentation reviewed that the filling of key positions would be done as part of the NMPP acceleration and Manganese initiatives discussed above.

5.15.41. We noted that most of the projects awarded to McKinsey almost ran concurrently. We further noted that McKinsey and Regiments included the same resources on the proposals submitted to Transnet. It would have been impractical for McKinsey and Regiments to complete the projects using the same team within the set deadlines.

Remuneration percentage

5.15.42. According to the RFP, the Consortium would be required to share the total contract value, as agreed upon by Transnet and the Consortium:

Minimum remuneration percentage would be allocated as follows:

Fee	Principle	Consortium Partner
Total contract value	30%	70%

5.15.43. According to the RFP, the fixed fee and expenses would be remunerated to the service provider(s) in accordance with the National Treasury Note 01 of 2013/2014.

Proposal from McKinsey

5.15.44. We determined that McKinsey submitted a proposal to Transnet for the provision of Capital Optimisation and Implementation Support. According to the proposal the closing date for the submission of the tender was 9 September 2014 (**Annexure D187**).

5.15.45. The proposal indicated that the Capital SWAT 2 programme had three major components. The main components of SWAT 2 over the 24 month period included:

5.15.45.1. Embedding the capital allocation and PLP principle such as:

5.15.45.1.1. Capital allocation and portfolio optimization wave 2;

5.15.45.1.2. Implementing PLP standards through gate review support

5.15.45.2. Building a Platinum Standard organisation for the project development, evaluation and cascading the standard through the organisation in a sustainable manner:

5.15.45.2.1. Capital resourcing;

5.15.45.2.2. Leadership and organisation support;

5.15.45.2.3. Top talent programme;

5.15.45.2.4. OD Capital Rooms

5.15.45.2.5. Implementing OD and Group CAPIC governance (structural dialogue)

5.15.45.3. Delivering the next wave of optimised project through Project Factory.

5.15.46. According to the proposal, the full time team allocated to work on the project was reflected as follows:

Workstream	Team	Duration
Capital allocation	Leadership	Ongoing
	McK: EM +3	15 weeks

Workstream	Team	Duration
	CPs2:PM +5	20 weeks
Project Factory	Leadership	Ongoing
Wave 1 (Coal, Durban)	McK: EM+3	12 weeks
Wave 2	McK: EM+3	11 weeks
Continuous Project Factory Support	CPs2:2 PM +6	24 months
Platinum Standard and GCiA initiatives	Leadership	Ongoing
As when required	McK: EM + 1	12 weeks
Continuous support	CPs2:PM +4	24 months

5.15.47. The team would consist of local and international consultants who according to the proposal were all familiar with the Transnet context:

5.15.47.1. David Fine: Director Johannesburg office;

5.15.47.2. Norbert Dorr: Director Johannesburg office;

5.15.47.3. Vikas Sagar: Director Johannesburg office;

5.15.47.4. Prakash Parbhoo: Principal – Johannesburg office;

5.15.47.5. Fabio Pedrazzi: Associate Principal – Johannesburg office;

5.15.47.6. Nomfanelo Magwentshu: Principal – Johannesburg; and

5.15.47.7. Pravesan Govinder: Engagement Manager.

5.15.48. Support Team – Global experts in the infrastructure, capital productivity and organisation practices:

5.15.48.1. Jim Banaszak: Senior Expert in the Capital Productivity Practice;

5.15.48.2. Nicklas Garemo: Infrastructure; and

5.15.48.3. Stuart Shilson.

5.15.49. According to the proposal, SWAT 1 exceeded R49 billion of identified and signed off capital reductions. The proposal further indicated that since then, additional value was identified and signed off by Transnet as a result of the capability built during SWAT 1, including GCiA's and CAPIC's ability to have robust, structured discussions regarding investments decisions. According to the proposal, the reduction had further contributed to Transnet's affordability requirements.

5.15.50. We determined that McKinsey submitted invoice number 5705 dated 31 March 2014 in the amount of R39 389 060.55 (incl. VAT). The invoice was for professional fees: accrued at risk Portion from 0-49 billion Capital savings. We noted that the invoice included out of pocket expenses and support services in the amount of R4 506 757.50. The invoice was signed off by Mahomedy on 23 May 2014 and paid on the same day *i.e.* 23 May 2014. It should be noted that the payment of R39 million was outside the approved budget of R200 million for SWAT 1 (**Annexure D188**)

5.15.51. McKinsey proposed the baseline period for SWAT 2 to start at the point of SWAT 1 completion *i.e.* February 2014 after sign-off of the R49 billion capital reduction. Any optimisation by the GCiA/McKinsey team since then would be accounted for in the R100 billion optimisation target as per the RFP.

5.15.52. McKinsey further proposed *inter alia* the following:

5.15.52.1. Contingency fee of 0.173% of capital saved over a period of seven years;

5.15.52.2. The target capital savings would be R100 billion with contingent fee continuing at the same rate of 0.173% of savings in the event that capital beyond R100 billion is saved;

5.15.52.3. Project capital cash flow deferred beyond the 7 year period and those that are cancelled or removed from the project portfolio would be recognised as capital saved.

5.15.53. McKinsey indicated in the proposal that the aggregate spend by McKinsey and Company on Supplier Development would exceed the required 30% of the fees it would obtain as a result of the engagement, inclusive of fees shared with the empowered consulting partner.

5.15.54. We determined that the percentage split between Regiments and McKinsey was initially agreed at 70:30 respectively and later revised to 60:40. We were not provided with criteria used to arrive at the split proposed by McKinsey in terms of RFP GSM/14/04/1052.

Professional Arrangements

5.15.55. McKinsey proposed an amount of R245 million as follows:

5.15.55.1. R173 million was fee at risk, e.g. linked to delivery of capital optimization of R100 billion against the MDC period through Project Factory (scrubbing and optimization) and Capital Allocation work;

5.15.55.2. R72 million at a standard rate linked to support and implementation of Platinum Standard and GCiA initiatives; and

5.15.55.3. McKinsey and company would receive 30% of the professional fees.

Supplier Development Plan Executive Summary –

5.15.56. We determined that as part of their proposal to Transnet, McKinsey submitted an executive summary in respect of Supplier Development Plan. The Executive Summary was affixed with a Transnet Acquisition Council Tender stamp dated 9 September 2014.

5.15.57. According to the supplier development plan, the value of the contract which would be subcontracted to the BEE consulting partner would be R171 500 000.00 or a similar proportion of the contract value on the event of shifts in project duration or total contingent fees.

5.15.58. We noted that McKinsey did not indicate who their BEE consulting partner would be, however the approval for confinement signed by Molefe on 18 October 2013 reflected that Regiments would be McKinsey's BEE partner..

5.15.59. We noted that McKinsey quoted the exact amount budgeted for by Transnet in respect of SWAT 2. It therefore follows that McKinsey had insight into the approved budget for SWAT 2 prior to the submission of the proposal.

5.15.60. During our consultation with Parbhoo, he indicated that McKinsey may have indicated to Transnet how much the project would cost prior to the approval of the budget. The approved estimated budget was therefore informed by McKinsey's input.

Split of work

5.15.61. We determined from a review of documentation that the work was split as follows:

Transnet Proposal		
Project Phases		

Transnet RFP		Consortium Response		Transnet Response	
McKinsey	**Regiments**	**McKinsey**	**Regiments**	**McKinsey**	**Regiments**
30%	70%	Maximum 30%	Maximum 70%	Maximum 40%	Maximum 60%
		Not accepted	**Not accepted**		

HVT (Confinement) Gateway Review Process

5.15.62. It is our understanding from documentation reviewed that TIA issued a report dated 16 July 2014 based on the gateway review process conducted on the confinement of the Capital Optimisation and Implementation Support.

5.15.63. The overall scope for the HVT was to provide guidance, review and observe all procurement processes followed through the following stages of the tender process:

5.15.63.1. Demand stag: Demand review and development of specification/TDR, Business case development/SPP;

5.15.63.2. Acquisition stage;

5.15.63.3. Evaluation stage;

5.15.63.4. Negotiation/Contract award stage;

5.15.63.5. Contract management stage (limited); and

5.15.63.6. Provide assurance at key/specific gateways.

5.15.64. According to the HVT report, the results of the real time assurance at each stage of the HVT Gateway review process indicated full/sufficient compliance to the HVT methodology and/or PPM to mitigate and or manage those risks to which the process under review is exposed.

5.15.65. We noted that the HVT report was issued prior to the finalisation of the procurement process as the closing date for the submission of the proposal from McKinsey was extended to 9 September 2014 (**Annexure D189**).

Extension of value and scope – GSM/14/04/1052

5.15.66. We determined from documentation reviewed that during November 2014, Singh issued a memorandum to Molefe requesting approval of the following amendments to the

Capital Optimisation and Implementation Support initiative to mitigate the capital affordability constraints for the:

5.15.66.1. Reduction of value of the original request for proposal with an original value from R245 million including expenses to a maximum of R225 million including expenses by amending the scope as follows:

5.15.66.1.1. Increase implementation and embedding support from R72 million to an estimated amount between R150 million and R200 million, whilst ensuring that the maximum contract value is not exceeded; and

5.15.66.1.2. Decrease capital optimisation support from R173 million to an estimated amount between R25 million and R75 million, whilst ensuring that the maximum contract value is not exceeded.

5.15.66.2. According to the memorandum the amendment of scope as follows:

5.15.66.2.1. Increase the scope for implementation and embedding support; and

5.15.66.2.2. Reduce the scope for capital optimisation support.

5.15.66.3. Amendment of the split or work and fees of the consortium, by McKinsey and its Consortium partner as follows:

5.15.66.3.1. Increase the share of work and fees of the main consortium partner from a minimum of 30% to a maximum of 40%; and

5.15.66.3.2. Reduce the share of work and fees of the supporting consortium partner from a minimum of 70% to a maximum of 60%.

5.15.67. We determined from the memorandum that the above amendments were subject to negotiations through the approved procurement process.

5.15.68. According to the memorandum, the price would be adjusted to match the scope which best reflects Transnet's needs. The proposed amended scope was reflected as follows:

Transnet Budget		**The Consortium Priced Offer**		**Response**
First 24 months	R225 M Dividend	First 24 months	R245 M	Not accepted. The value would be amended to a maximum of R225 m

Transnet Budget		The Consortium Priced Offer		Response
				including expenses for a contract of 24 months
Disbursements	10%	Disbursements (McKinsey)	15%	All expenses to be capped at lower of actual expenses of limited to 10%
		Disbursements (Regiments)	10%	All expenses to be capped at lower of actual expenses or limited to 10%
Total	R225 m (24 months0	Total	R245 (24 months)	Not accepted A maximum fee of R225 including expenses for a period of 24 months to execute the scope as proposed

5.15.69. We noted that the memorandum was compiled by Mahomedy and recommended by Pita and Singh on 20 November 2014 respectively. We further noted that the memorandum was approved by Molefe on 30 November 2014 (**Annexure D190**).

Scope Split: Engagement model between GCiA, McKinsey and Implementation partners

5.15.70. We determined from a document titled Appendix A: Scope and Pricing that the cost for the project was split as follows (**Annexure D191**):

Scope Item	Duration	Cost
Portfolio optimisation – project factory business case development, for example	8-12 weeks per business case	R86 million
Implementation, embedding and	18 months	R61.9 million

sustainability		
Capital Allocation/Portfolio at OD embedding	12 weeks	R41 million
Change control (scope, cost, schedule) including contingency management risk	Upon award	R5.2 million
TE Transfer pricing	N/A	R3.3 million
Top talent programme	18 months	R27.3 million
Total		**R224.7 million**

The notes to Appendix A reflected the following:

5.15.71. Detailed scope and deliverables were to be reviewed regularly (monthly or quarterly as required) and would be adjusted by mutual agreement to best meet Transnet's needs;

5.15.72. Resources and costs may be reallocated between programme items depending on urgency, level of depth required, changing needs within Transnet;

5.15.73. Fee split would normally be 30:70, McKinsey : Partners, but may be adjusted to meet Transnet's needs and resourcing requirement and may increase to 40:60; and

5.15.74. Total costs included expenses.

Agreement between Transnet and McKinsey

5.15.75. We determined that Transnet and McKinsey entered into an agreement for the provision of services related to RFP GSM/14/04/1052 for the provision of Capital Optimisation and Implementation Support for a period of 24 months.

5.15.76. According to the agreement, the commencement date was reflected as 9 April 2014 with an expiry date of 8 April 2016 (**Annexure D192**).

5.15.77. As indicated above, Thomas recommended to confine the Capital Optimisation and Implementation Support in his capacity as Executive Manager iSCM and also approved the recommendation on behalf of Pita.

5.15.78. We noted that Singh and Sagar signed the memorandum on 6 March 2015 and 10 March 2015 respectively. We further noted that Pita and Thomas witnessed the agreement on behalf of Transnet. Benedict Phiri and Nomfanelo Magwentshu witnessed the agreement on behalf of McKinsey.

5.15.79. We determined that McKinsey commenced with the project before their agreement with Transnet was concluded.

Payments made to McKinsey and Regiments

5.15.80. We were provided with various invoices submitted by Regiments and McKinsey in respect of RFP GSM/14/04/1052.

5.15.81. As indicated above, the split of work was revised in November 2014 resulting in McKinsey being allocated 40% and Regiments 60%.

Date	Entity	Disbursements	Total fees Incl. Vat and dis
Sep 13 to Mar 16	McKinsey	R2 495 397.67	R82 020 243.08
Nov 13 to Feb 16	Regiments	R8 085 313.92	R122 853 225.29
Mar 16 to May 16	Trillian	R214 500.00	R38 704 126.91
Total			**R243 577 595.28**

5.15.82. It should be noted that initially R173 million of the R225 million contract price was a contingency fee based on a capital savings that was forecast to be achieved by Transnet over a seven year period.

5.15.83. The contingency fees were supposed to be payable to McKinsey and Regiments upon Transnet achieving a target capital savings of R100 billion.

5.15.84. As indicated above, on 30 November 2014, Molefe approved amendments to the scope that resulted in a decrease in estimated fees for capital optimisation from R173 million to between R25 million and R75 million.

5.15.85. The amendment in scope further resulted in an increase in estimated fees for implementation embedding support from R72 million to between R150 million and R200 million.

5.15.86. Although the total estimated budget was reduced from R245 million to R225 million, the amendment to the scope meant that McKinsey would be in a position to invoice

Transnet within a shorter period and not based on the capital savings that were forecast to be achieved over a seven year period.

5.15.87. Based on information provided to us by Transnet, we determined that McKinsey was paid 31.9% *i.e.* R82 million of the approved contract price of R225 million (R256.5 million incl. VAT). We further determined that Regiments was paid 47.5% *i.e.* R122 million of the contract price of R225 million. Trillian was paid 15% of the contract of R256.5 million incl. VAT (**Annexure D193**).

5.15.88. We were not provided with evidence of how much capital savings were archived by March 2016 to support the total payment of R243 577 595.28 made to McKinsey, Trillian and Regiments.

5.15.89. The targeted capital savings of R100 billion that were anticipated to be archived over a seven year period could not have been archived by 2016 as RFP GSM/14/04/1052 was for a two year period.

Invoices issued before submission of proposal

5.15.90. We noted that McKinsey and Regiments issued various invoices for work allegedly completed in respect of SWAT 2 prior to the submission of the RFP. The said invoices amounted to R19 845 811.81 and R 10 871 736.77 including VAT and disbursements. The invoices were for McKinsey and Regiments respectively.

5.15.91. We further noted that R23 696 798.04 was in respect of work purportedly done by McKinsey and Regiments before the request for proposal was issued on 10 July 2014.

5.15.92. The approval and payment of invoices in the amount of R23 696 798.04 was irregular as the procurement process for the appointment of a service provider for Capital Optimisation and Implementation Support (SWAT 2) was not finalised. The contract between Transnet and McKinsey was only concluded and signed during March 2015.

5.15.93. We determined that McKinsey commenced with SWAT 2 and charged Transnet for work done prior to the approval to confine the project to McKinsey date 18 October 2013 (**Annexure D194**).

Out of pocket expenses

5.15.94. We determined that McKinsey and Regiments claimed a percentage of the fees as out of pocket expenses. Based on the actual invoices provided to us by Transnet, we determined that McKinsey and Regiments claimed out of pocket expenses in the amount of R2 495 397.67 and R 8 085 313.92 respectively.

5.15.95. We further determined that Trillian claimed R214 500.00 out of pocket expenses in respect of invoice number TCP-GCIA-01 for professional fees for the period 1 February 2016 to 1 April 2016. We determined that the out of pocket expenses were 10% of the invoice amount of R2 145 000.00.

5.15.96. The percentage charged in respect of out of pocket expenses on each of the invoices varied between 7.5 % and 15%.

5.15.97. There was no description on the invoices for the actual out of pocket expenses claimed by McKinsey and Regiments. We noted that McKinsey and Regiments were inconsistent in terms of the percentages claimed for out of pocket expenses.

5.15.98. Regiments and McKinsey failed to provide supporting documents in respect of the out of pocket expenses claimed in respect of RFP GSM/14/04/1052.

Restructuring of Regiments Capital

5.15.99. We determined from documentation reviewed that Wood issued a letter dated 7 March 2016 to Pita informing him of the restructuring process within Regiments. According to the letter, the advisory business of Regiments Capital had moved with Wood to Trillian Capital Partners with effect from 1 March 2016.

5.15.100. The transfer of the advisory business was according to the letter effected by means of section 197 of the Labour Relations Act. The section gave effect to the transfer of all affected staff, the advisory business and its contracts as going concern.

5.15.101. From the staffing perspective, 54 staff had moved from Regiments with Wood to Trillian Capital Partners effective 1 March 2016. According to the letter, the capacity to service Transnet for a number of work assignments as well as future possible assignments had effectively moved from Regiments to Trillian.

5.15.102. The letter further indicated that McKinsey was informed of the restructure of the Regiments Capital business in December 2015, January 2016 and February 2016. According to the letter McKinsey was advised that the staff and skills required to complete the remaining sub-contracted work under SWAT 2 contract had moved to Trillian.

5.15.103. Furthermore, McKinsey was advised that given the transfer as per section 197, Trillian would execute the remaining work required under the SWAT 2 contract in place of Regiments (**Annexure D195**).

Cession of Regiments contracts to Trillian

5.15.104. Based on documentation reviewed, we determined that Wood addressed a letter dated 13 April 2016 to Thomas stating that in terms of the separation agreement between himself, Wood, and Regiments, the contracts previously awarded to Regiments had been ceded to him, Wood. Wood requested that the said contracts in turn be ceded to Trillian with effect from 1 March 2016 (**Annexure D196**).

Letter from Niven Pillay dated 12 September 2016

5.15.105. We determined from documentation reviewed that Niven Pillay ("Pillay") wrote a letter dated 12 September 2016 to Pita raising concern in respect of various invoices approved by Pita based on an alleged cession of Advisory Business from Regiments to Trillian. Pillay referred to previous letters dated 15 March 2016 and 19 August 2016 issued to Pita which Regiments had not received responses to.

5.15.106. The said letters indicated that Wood remained a director of Regiments, owing fiduciary duties to it. The letters further recorded that the portion of the Advisory Business together with the specific set of contracts remained with Regiments. According to the letters issued in March and August 2016, the contracts had not been ceded to Wood, Trillian or to any other party. The letters stated that Regiments retained all rights under the contract, including the right to invoice clients in respect of the contracts for work and services executed thereunder.

5.15.107. According to the letter dated 12 September 2016, Pillay *inter alia* expressed his discontentment in the manner in which Wood/ Trillian invoiced Transnet for work that was conducted by Regiments as a sub-contractor to McKinsey.

5.15.108. According to paragraph 7 of the letter, Pillay indicated that the work done in terms of invoice number TCP-GCIA01 dated 20 May 2016 was executed pursuant to the agreement between Transnet and McKinsey for the provision of services related to RFP GSM/14/04/1052. The letter indicated that the contract RFP GSM/14/04/1052 had not been ceded to Trillian or any other party and remained with Regiments as the sub-contractor of McKinsey.

5.15.109. Invoice number TCP-GCIA01 dated 20 May 2016 expressed to be for the period 1 February 2016 to 1 April 2016. The letter indicated that Wood and other Trillian employees were still full time employees of Regiments. According to the letter, the work done in respect of Transnet Capital Affordability model was performed by a Regiments team consisting of 4 people of which Charl Brill, a full time Regiments employee during March 2016, was a main contractor.

5.15.110. We determined that at the time that Pillay wrote the letter dated 12 September 2016, Pita had already approved Trillian invoice number TCP-GCIA01 and invoice number TCPSWATII-01 in the amount of R2 689 830 and R36 014 296.91 respectively.

5.15.111. We noted that Pita and Thomas approved the said invoices for payment on 29 June 2016. It should be noted that at the time that Pita and Thomas approved the said invoices, Pillay had issued a letter dated 15 March 2016 notifying Pita of the restructuring process within Regiments that was underway.

5.15.112. Pillay undertook to notify Pita once the transaction agreement had been executed and the restructuring implemented to the extent that it would impact Transnet.

5.15.113. Pita approved Trillian invoices in the amount of R38 704 126.91 without confirmation from Regiments that the restructuring was finalised.

5.15.114. We determined from a review of Pita's emails that Trillian paid Transnet an amount of R38 704 126.91. The said amount was paid on 21 December 2016 (**Annexure D197**).

Conclusions relating to RFP GSM/14/04/1052

Based on the findings discussed above, we conclude as follows:

5.15.115. It appears that Singh and McKinsey officials colluded and allocated work with fixed budget to Mckinsey and Regiments compromising the principles of section 217(1) of the constitution.

5.15.116. McKinsey officials discussed the scope of work and also submitted proposal for the same work contravening instruction note 3 of 2003.

5.15.117. The letter of intent dated 4 February 2014 was issued by Singh before bid process commenced.

5.15.118. The process followed in the appointment of McKinsey and Regiments as a BBBEE partner was not in line with the provisions of Section 217 of the Constitution.

5.15.119. McKinsey invoiced Transnet for work purportedly done in September 2013, prior to the approval to confine the contract to Regiments and McKinsey.

5.15.120. Approval to advertise the RFP was sought at least 4.5 months after Singh issued the Letter of Intent to McKinsey.

5.15.121. Thomas acted negligently in that he recommended and approved the issuing of RFP GSM/14/04/1052 thereby undermining the principle of segregation of duties.

5.15.122. The amendment in the scope of work after submission of proposal from McKinsey resulted in a decrease in estimated fees for capital optimisation from R173 million to an estimated amount between R25 million and R75 million and an increase in estimated fees for implementation and embedding support from R72 million to between R150 million and R200 million.

5.15.123. The amendment of the scope was meant to circumvent the conditions of a risk based contract and facilitated McKinsey to invoice Transnet quicker and not based on the capital savings that were forecast to be achieved over a seven year period.

5.15.124. Transnet failed to obtain approval from National Treasury to deviate from Instruction Note 01 of 2013/2014. The risk based portion approved by Transnet and paid to McKinsey, Regiments and Trillian therefore constituted an irregular expenditure.

5.15.125. The amount of R23 696 798.04 constitute irregular expenditure as the procurement process in respect of RFP GSM/14/04/1052 had not been completed.

5.15.126. Pita approved payment to Trillian in the amount of R38 704 126.91 without confirmation from Regiments that the restructuring had been finalised.

5.15.127. The payments were made despite various communication from Pillay to Pita that the outcome of the pending restructuring process would be communicated to Transnet;

5.15.128. Trillian issued two credit notes totalling R38 704 126.91 in respect of invoices initially issued to Transnet for work purportedly done on SWAT2.

5.15.129. Trillian paid Transnet R38 704 126.91 on 21 December 2016 following Pillay's letter dated 12 September 2016.

5.15.130. McKinsey, Trillian and Regiments were paid a total of R243 577 595.28 by August 2016;

5.15.131. There is no evidence of how much capital savings were derived or achieved by Transnet to support the payment of R243 577 595.28.

5.15.132. McKinsey, Trillian and Regiments failed to submit supporting documents for out of pocket expenses in the amount of at least R10.7 million; such an amount should be regarded as fruitless and wasteful expenditure.

5.15.133. Transnet approved payment of R10.7 million to McKinsey, Trillian and Regiments without proof that indeed the three entities had incurred the said expenses; and

5.15.134. The approval of payment of R10.7 million was irregular as it was not in line with National Treasury Practice Note 01 of 2013/2014.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend Transnet to consider the following:

5.15.135. Quantify and recover inflated amounts due to collusion between Transnet officials and Mckinsey officials

5.15.136. Recover the fruitless and wasteful expenditure of R10.5 million for out of pocket expenses from Regiments and McKinsey.

5.15.137. Transnet should ensure that expenses submitted by consultants are accompanied by supporting documents before payment.

5.15.138. DPCI to investigate if any role player did not receive any gratification for facilitating this contract. e.g. email correspondences before the RFP is issued, discussing the scope of work and budget before the RFP is issued, rendering of services before RFP is issued

5.15.139. DPCI to investigate possible fraud/misrepresentation regarding the out of pocket expense paid to Mckinsey and Regiments;

5.15.140. DPCI to investigate possible fraud/misrepresentation for allowing suppliers to commence with work before an RFP is issued.

5.16. R11 MILLION INVOICE APPROVED BY JIYANE

5.16.1. We determined that on 17 February 2016, Clive Angel ("Angel") sent an email from email address clive@tcp.co.za to Jiyane titled *"Trillian Financial Advisory proposal"* and copied Wood and Mothepu. The email from Angel stated that (**Annexure D198**):

"Dear Thami,

As per our discussion find attached the Trillian Financial Advisory Structuring Proposal for TE.

Please advise if you require anything further in this regard.

Kind Regards

Clive Angel"

5.16.2. Attached to the email was Trillian Financial Advisory proposal dated 15 February 2016. We determined that the proposal was to undertake Financial Structuring advisory services in order to assist TE with the fundraising required to facilitate its African and global sales of rolling stock (**Annexure D199**).

5.16.3. We determined that on 22 February 2016 *i.e.* 5 days after Angel sent the proposal to Jiyane, Angel sent an email to Jiyane using a different email address styled clive@integratedcapital.co.za. Attached to the e-mail was an invoice in the amount of R11 400 000.00. In his email to Jiyane, Angel stated that (**Annexure D200**)"

Dear Mr Jiyane,

As discussed please find attached the Trillian Financial Advisory invoice for work performed.

Please confirm receipt thereof and that all is in order."

5.16.4. We have not investigated the relationship between Trillian and Integrated Capital. Mothepu however alleged that Integrated Capital were paid a monthly retainer of R700 000.00 by Trillian. There is no evidence that Integrated Capital conducted work at Transnet.

5.16.5. During our consultation with Mothepu, she indicated that no work had been performed by Trillian which led to issuing of the R11 million invoice. According to Mothepu, there was no contractual obligation between Trillian Financial Advisory and TE at the time of issuing the proposal and the invoice. Mothepu further stated that Trillian had no employees at the time of issuing the proposal and invoice.

5.16.6. According to Mothepu, she went with Wood to attend a meeting with Jiyane at TE. She indicated that their meeting was short and subsequently upon return, Wood requested Tebogo Leballo to issue an invoice of R10 million to TE.

5.16.7. Mothepu indicated that the proposal sent to Jiyane was also sent to Stanley Shane ("Shane") for review and at the time, he was the Chairman of the BADC.

5.16.8. During the course of our investigations, we identified two invoices dated 19 February 2016 in the amount of R11 400 000.00 (incl. VAT) each issued by Trillian and addressed to Jiyane. The description on both invoices was reflected as "*Professional fees: Financial Structuring Advisory Services" (***Annexure D201***).*

5.16.9. We determined that despite both invoices being addressed to Jiyane for the same services, the invoices were from two different entities. The table below reflects the differences and similarities in respect of the said invoices:

Entity Name	Trillian Financial advisory	Trillian Capital Partners
Addressed to	Thamsanqa Jiyane	Thamsanqa Jiyane

Invoice date	19 February 2016	19 February 2016
Invoice no	TE2016-FA01	TE2016-CP01
Amount (Incl. VAT)	R11 400 000.00	R11 400 000.00
Description	Professional Fees: Financial structuring advisory services	Professional Fees: Financial structuring advisory services
Bank Account number	4088541565	4088041167
Account name	Trillian Financial Advisory (Pty) Ltd	Trillian Capital Partners (Pty) Ltd
Signed off by	Jiyane	Pita and Thomas

5.16.10. We consulted with Thomas and he informed us that a second invoice was issued as a result of Trillian Financial Advisory not being on Transnet's supplier database.

Payments to Trillian

5.16.11. As indicated above, the revised invoice was signed off by Pita and Thomas on 29 June 2016. We determined that the invoice was paid by Transnet on 1 July 2016.

5.16.12. We noted that invoice number TE2016-CP01 was paid from the approved GFB budget of R375 million. We further noted that the said invoice did not relate to the professional fees for the GFB contract.

5.16.13. As indicated above, Mothepu indicated that invoice TE2016-CP01 was paid without any services being rendered.

5.16.14. In his written response to our questions relating to the payment of the invoice above, Pita indicated the following *"I am not sure when a proposal was sent to Mr Jiyane but it is correct that Transnet Engineering were invoiced in error as I recall asking questions about this when I received the signed invoice in June 2016 which Mr Jiyane signed evidencing that the work was performed yet it was dated early in the project. I agree that the work could not have been done by the date of the invoice but I do recall asking Mr Thomas, Group Chief Supply Chain Officer, to find out what had happened and that a letter was sent from Mr Wood to Mr Thomas explaining what had occurred regarding the date error. I recall getting feedback that Mr Jiyane only signed the invoice much later once satisfied that the work was completed. I recall being told that the* *initial work did not meet Mr Jiyane's satisfaction and that he asked for improvements which were subsequently finalized. I did not manage the work performed for TE as the business process owners would manage the work done and sign off only if it was completed to their satisfaction. I recall receiving an update presentation at a point in time which was used as part of the thinking around possible funding solutions to promote African Sales, amongst other things. I also recall asking for the file of work done in preparation for a visit from National Treasury to inspect work done by Trillian which Trillian provided to Mr Edward Thomas".*

5.16.15. Pita's assertions above cannot be correct as Jiyane signed the first invoice issued by Trillian Financial Advisory. Jiyane's signature was not reflected on the second invoice issued by Trillian Capital Partners confirming that work was performed. It therefore follows that Pita paid the invoice on the basis of the first invoice issued by Trillian Financial advisory and signed by Jiyane. This is also contrary to Thomas' statement that the second invoice was issued because Trillian Financial Advisory was not a service provider to Transnet and not because Jiyane had not satisfied himself that work had not been done.

5.16.16. Pita further stated that *"The Contract was transversal in other words held at Group but for use by all the Operating Divisions to call off, if there was scope performed for ODs and other process owners they were responsible for the performance management thereof and sign off that work was performed and completed to their satisfaction. The invoices would be sent to Group, signed off by process owners, I asked Mr Thomas to check that the correct process owners had indeed signed off and to sign as proof thereof, I would then sign to effect payment. We received a signed off invoice from Mr Jiyane, I wouldn't sign to make payment if I didn't have that confirmation from the process owner".*

5.16.17. There is no indication that Transet considered and approved a proposal from Trillian. There is further no indication that an LOI was issued to Trillian in respect of the project referred to above.

Questions to Jiyane in respect of the R11 million invoice

5.16.18. On 30 August 2018, we sent questions to Jiyane seeking clarity in respect of the proposal and invoice issued by Trillian (**Annexure D202**).

5.16.19. As at date of this report, Jiyane had not responded to the questions posed to him relating to the invoice above.

Procurement process in the appointment of Trillian

5.16.20. We determined that there was no procurement process followed in the appointment of Trillian to assist TE with the fundraising required to facilitate its African and global sales of rolling stock.

5.16.21. Thomas indicated that the work conducted by Trillian was part of the GFB contract. Thomas however did not specify which scope covered the work purportedly done by Trillian.

5.16.22. It is not clear why Trillian would prepare a separate proposal relating to fundraising required to facilitate Transnet's African and global sales of rolling stock if the GFB contracts already included the scope of work.

5.16.23. As indicated above, the GFB contract was concluded between Regiments and Transnet with McKinsey being the subcontractor. The GFB made no reference to Trillian being the subcontractor or B-BBEE partner in the consortium.

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

5.16.24. There is no evidence of work performed by Trillian in respect of the Financial Structuring Advisory Services to support the invoice of R11.4 million.

5.16.25. Trillian, Jiyane and any other role player may have committed fraud facilitating the R11 million invoice.

5.16.26. Jiyane, Trillian and any other role player may have received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

5.16.27. Jiyane, Trillian and any other role player may have contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend the following:

5.16.28. Transnet should consider recovering the R11.4 million (Incl. VAT) unlawfully paid to Trillian.

5.16.29. Transnet should consider instituting disciplinary action against Jiyane and any other official who facilitated the payment of R11.4 million.

5.16.30. DPCI should investigate if Jiyane and any other role player received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

5.16.31. DPCI should investigate if Jiyane and any other role player did not contravene section 34(1) of the Prevention and Combating of Corrupt Activities Act.

5.16.32. DPCI should investigate if Jiyane, Trillian and any other role player did not commit fraud/theft in facilitating the payment of R11.4 million.

5.17. LIQUID FUELS AND GAS DEMAND - GSM/14/10/1167

Background

5.17.1. It is our understanding from documentation reviewed that Transnet Planning and Sustainability was the custodian of all freight demand forecasting for Transnet and its operating divisions. It is further our understanding that Freight Demand Model (FDM) was a tool for most commodities but lacked sufficient detail and supportive intelligence when it came to liquid fuel needs and requirements, within Transnet, into the future.

5.17.2. A liquid Fuels and Gas Demand Model was developed to provide more in depth and detail about flows on pipelines as well as forecasts for the next 30 years. The model needed to be updated with the latest data and information, to provide Transnet with revised scenarios. In addition, further refinements to the approach and scenarios were required. It is our understanding that proper integration of the liquid fuels and gas demand model with the other planning tools within the Transnet Planning and Sustainability group was required.

5.17.3. In order to address the above, Transnet issued an advertisement to appoint a service provider for a period of two (2) or three (3) years to update the Liquid Fuel and Gas Demand Model.

Approval to initiate a procurement process - Liquid Fuels and Gas

5.17.4. We determined from documentation reviewed that Makoma Mabitsela (Senior Manager Transnet Group Planning and Sustainability) drafted a memorandum dated 3 December 2014 to Krishna Reddy (Transnet Group Planning and Sustainability) (**Annexure D203**).

5.17.5. The purpose of the memorandum was to request approval to initiate a procurement process for the update of the Liquid Fuels and Gas 30 Year Demand Forecast required by Transnet Group Planning and Sustainability.

5.17.6. According to the memorandum, the proposed contract would not exceed R3 000 000.00.

5.17.7. The required budget would be available in Group Planning and Sustainability Cost Centre 1008003 a follows:

Financial Year	Budget
2014/15	R500 000.00
2015/16	R1 300 000.00
2016/17 (Option)	R1 200 000.00

5.17.8. The memorandum recommended that a procurement process be initiated for the appointment of a service provider for the update of the liquid gas demand.

5.17.9. We determined that the recommendations were approved by Reddy on 5 December 2014 (**Annexure D204**).

Advertisement of tender GSM/14/10/1067

5.17.10. We determined that on 13 January 2015, Transnet issued RFP GSM/14/10/1067 for service providers to submit proposals to enhance, rerun and update the liquid fuels and gas model for a period of two (2) or three (3) years. The closing date for the submission of the proposals was 3 February 2015. The purchase price for the RFP document was R100.

5.17.11. According to the tender evaluation and recommendation report, the RFP would be advertised on various newspapers including Sunday Times, City Press, Sowetan, New Age and Transnet website (**Annexure D204**).

Collection of RFP

5.17.12. We determined from documentation reviewed that the RFP document was available for collection from 13 January 2015 until 20 January 2015. According to the Tender Evaluation and Recommendation report, 23 bidders collected tenders (**Annexure D205**).

Tender Briefing

5.17.13. Based on documentation reviewed, we determined that a briefing session was held on 23 January 2015 at Transnet Corporate Centre, 8th Floor, Room 0809, Procurement Offices. We noted from the attendance register that McKinsey was represented by L Millroy (**Annexure D206**).

Technical Evaluation

5.17.14. We determined from the review of the tender evaluation and recommendation report that five bidders submitted their proposals as listed below (**Annexure D205**):

5.17.14.1. Encorex (Pty) Ltd;

5.17.14.2. Maubane Transport Holdings cc;

5.17.14.3. Business Enterprise at University of Pretoria (Pty) Ltd;

5.17.14.4. McKinsey and Company (Pty) Ltd; and

5.17.14.5. Electronic Trading Projects cc.

Evaluation methodology

5.17.15. Based on the tender evaluation and recommendation report, Transnet would utilise the following methodology and criteria in selecting a preferred Service Provider.

Stage 1	Stage 2	Stage 3	Stage 4	Stage 5
Administrative Responsiveness	Substantive Responsiveness	70% minimum threshold	Weighted Scoring/100 (90/10)	Post tender negotiations, requesting respondents to provide best and final offer
Returnable Documents and Schedules	Pre-Qualification 10% of contract value	Technical/Functionality	Weighted Score	Post tender negotiation, final weighted score and final award

Stage one – Administrative Responsiveness

5.17.16. We determined that the following bidders were disqualified from the tender as they failed to submit mandatory documents:

5.17.16.1. Encorex (Pty) Ltd;

5.17.16.2. Maubane Transet Holdings cc; and

5.17.16.3. Business Enterprise at University of Pretoria (Pty) Ltd.

5.17.17. McKinsey and ETP progressed to the following stage of the evaluation process.

5.17.18. According to the Technical evaluation report dated 12 February 2015, ETP and McKinsey achieved the minimum threshold of 70% as follows:

Supplier Name	Average Score	Weighted Average	Results
ETP	3.67	95.00%	Qualified
McKinsey	3.75	96.25%	Qualified

5.17.19. The technical evaluation panel was reflected as Francois Meyer, Makoma Mabitsela and Luthando Jojwana. Amod was reflected as the moderator and Mohlomi was reflected as a representative from procurement.

Costing

5.17.20. We determined that McKinsey submitted a pricing and delivery schedule with their RFP. We noted that for the two year option, McKinsey quoted a total of R1 800 000.00 at a rate of R2 331 for each of the resources reflected there on. McKinsey quoted five resources for phase 1 and phase 2 respectively.

5.17.21. We further noted that for the three year option, McKinsey quoted a total of R2 000 000.00 at a rate of R2 331 for each of the resources. McKinsey quoted five resources each, for phases 1, 2 and 3 respectively.

5.17.22. We determined that McKinsey and ETP proposed R2 200 000 and R7 446 925 respectively. McKinsey and ETP scored 90 points and -124.65 points for price respectively.

5.17.23. According to the technical evaluation report, the prices excluded disbursements. An allowance of 10% would be allowed for disbursements.

5.17.24. All prices were quoted in South African currency and Forex had no impact on the amount quoted (**Annexure D207**).

Recommendation to award RFP GSM/14/10/1167

5.17.25. According to the tender evaluation and recommendation report, it was recommended that Transnet award the tender to McKinsey for a total value of R2 420 000, including an allowance of 10% (R220 000) for disbursements.

5.17.26. The report was recommended by Suellen Du Plessis on 19 February 2015 and approved by Walsh on 2 March 2015.

Letter of Intent

5.17.27. We determined from documentation reviewed that on 12 March 2015, McKinsey was issued with a letter of intent for the appointment of a service provider to compile group planning's update of the liquid fuel and gas (30) Thirty year demand for a period of three years.

5.17.28. The purpose of the letter of intent was to document the intentions of the Parties in respect of the required services and would remain in effect until the agreement is signed by both parties, or until 90 days had lapsed from date of issue of the letter of intent, whichever event occurred first.

5.17.29. We determined that Suellen Du Plessis (Acting Procurement Manager: Transnet Corporate Center) and Sagar signed the letter of intent on 12 March 2015 and 24 March 2015 respectively.

5.17.30. The contract was valid for three years commencing 12 March 2015 and expiring on 11 March 2018 (**Annexure D208**).

Contract Fees

5.17.31. The contract fees and related costs were quoted in South African currency and were exclusive of VAT. Total fees including disbursement allowance was R2 200 000.00. The total fees were linked to service deliverables discussed below. According to Annexure A of the letter of intension, disbursements would be based on actual disbursements but would not exceed 10% of the total cost for services proposed.

5.17.32. Payment of actual disbursements would be subject to Transnet's internal policies and the National Treasury instruction note 01 of 2013/2014.

Objectives

5.17.33. The detailed objectives of the scope of work were as follows:

5.17.33.1. Enhance the liquid fuels and gas model;

5.17.33.2. Project direction, planning, management and meetings;

5.17.33.3. Annual update of base data with annual RSA national district data and (Botswana, Lesotho, Swaziland, Namibia) data updates ensuring data integrity and preparing forecast (including liquid fuel and gas);

5.17.33.4. An assessment and view of external factors that would influence Liquid Fuels and Gas demand and using these to adjust the annual demand forecast;

5.17.33.5. Source, review and update liquid fuels and gas industry assumptions, update, the models for OD outputs calculations and run the different models;

5.17.33.6. Review and validation of data output and transferring the final output files to Group Planning and Sustainability;

5.17.33.7. Provision for minor model updates and refinements to include external source data relating too, for example, gas from external sources; and

5.17.33.8. Provide documentation on key assumptions.

Deliverables

5.17.34. The key deliverables for the project would contain the following:

5.17.34.1. A liquid Fuel and Gas Demand Forecasting Model;

5.17.34.2. Overview of the liquid fuel and gas industries with an International and Southern African view;

5.17.34.3. Analysis and review of Industry specific trends, risk and future outlook;

5.17.34.4. Production of a 30 year demand forecast for both liquid fuel and gas, in the case of gas an estimated of gas demand would be required initially that can be refined in subsequent years;

5.17.34.5. Full report and summaries that will be used in the publication of the 2016 to 2018 Demand Books; and

5.17.34.6. Further participation in ad-hoc work relating to aligning the demand of liquid fuels and gas with the freight demand model output and consolidation of final demand data to be used in the demand book publications for three years.

Schedule

5.17.35. According to the letter of intent, it was required that the project would be completed by the end of July of each year. That would be the deadline for the next updated set of liquid fuel and gas demand data. Four milestones needed to be met:

5.17.35.1. Initial inception report containing the overview of the liquid fuel and gas industries, updated at the start of each of the forecasting cycles;

5.17.35.2. A first interim report covering the analysis and review of industry specific trends, risk and future outlook;

5.17.35.3. A second interim report containing the 30 year demand forecast with the necessary data sets; and

5.17.35.4. Final annual full report at the end of each of the forecasting cycles.

Supplier Development

5.17.36. Supplier Development formed part of the pre-qualifying criteria. It is our understanding that McKinsey committed that 10% of the contract value would be utilised against Supplier Development initiatives.

5.17.37. It is further our understanding that McKinsey undertook to provide Transnet with a Supplier Development Implementation Plan setting out the nature, extent and monetary value of the Service Provider's commitments which the service provider shall undertake.

5.17.38. Based on documentation reviewed, there is no evidence that McKinsey had a BBBEE Partner in respect of RFP GSM 14/10/1067 in line with the requirements of the tender. As indicated above, McKinsey committed that 10% of the contract value would be utilised against Supplier Development initiatives.

Authority to pay Subcontractors

5.17.39. We determined that Parbhoo addressed a letter dated 9 February 2016 to Transnet authorising Transnet to pay Regiments subcontracting fees on receipt of a valid and undisputed tax invoice effective from 1 April 2014. The sub-contracting fees were in terms of a number of contracts between McKinsey (Service Provider), Transnet and Regiments (Subcontractor).

5.17.40. Based on documentation reviewed, we determined that Regiments did not issue invoices to Transnet as a sub-contractor to McKinsey or Supplier Development Partner in respect of RFP GSM/14/10/1067 (**Annexure D209**).

Contract Performance Review and Verification

5.17.41. Based on documentation reviewed, we determined that Thomas addressed a letter to Sagar and Wood requesting that the following information be provided:

5.17.41.1. SD and B-BBEE reporting in terms of the commitments made;

5.17.41.2. Proof of delivery of SD and B-BBEE commitments;

5.17.41.3. Evidence of skills transfer;

5.17.41.4. Detailed evidence of benefits realised by subcontractors who were developed through these contracts e.g. growth in client base, revenue, service offerings for the sub-contractor; and

5.17.41.5. Latest demographics of both the Subcontractor and the Service Provider relating to Ownership, management and Employees;

5.17.41.6. Details of the shareholding of the Subcontractor and the Service Provider; and

5.17.41.7. Benefits realised by Transnet, detailed individually to the detailed scope as per the contracts.

5.17.42. McKinsey and Regiments were given a deadline of 26 February 2016 to submit the required information.

5.17.43. According to the letter, Transnet intended to review the contract scope performance and the SD and B-BBEE benefits of all contracts concluded with the consortium between McKinsey and Regiments ("the Consortium"). Transnet further intended to confirm compliance with the SD and B-BBEE contractual requirements (**Annexure D210**).

5.17.44. We were not provided with confirmation that McKinsey adhered to the request above. We were further not provided with evidence that Transnet conducted a review of the contract scope performance and the SD and BBBEE benefits of contracts concluded with the Consortium between McKinsey ad Regiments.

Payments to McKinsey in respect of tender GSM/14/10/1167

5.17.45. We determined that McKinsey issued invoice number 6370 dated 28 October 2015 to Transnet. The invoice was in respect of the following (**Annexure D211**):

Description	Amount
Liquid fuels and gas demand forecasting model 95% completion	R570 000.00
Overview of the liquid fuel and gas industries with an international and South Africa view – 90%	R360 000.00
Production of a 30 year demand forecast for both liquid fuels and gas. In the case of gas an estimate of gas demand will be required initially that can be refined in subsequent years – 70% completion	R420 000.00
Full report and summaries that will be used in the publication of the 2016 and 2018 Demand books – 80% completion	R320 000.00
Subtotal	**R1 670 000.00**
Vat @ 14%	**R233 800.00**
Total	**R1 903 800.00**

5.17.46. We noted that McKinsey did not claim for disbursements in respect of RFP GSM/14/10/1067. We were not provided with information confirming that 10% of the contract price allocated for utilisation on SD initiatives was in deed utilised as per McKinsey's commitment.

5.17.47. We were further not provided with reports on the deliverables claimed for by McKinsey. There is no evidence that Transnet implemented or derived any benefit from the work performed and claimed for by McKinsey in respect of RFP GSM/14/10/1067.

5.17.48. Although McKinsey was allocated 10% of the contract fee as disbursements, we noted that McKinsey did not claim any disbursements in respect of RFP GSM/14/10/1167.

5.17.49. As indicated above, Transnet approved R2 420 000.00 (Excl. VAT) for the project over a three year period. We noted that as at October 2015, *i.e.* at least 6 months into the project, McKinsey had already billed 76% of the contract price.

Conclusions – GSM 14/10/1067

Based on the findings discussed above we conclude as follows:

- We were not provided with reports from McKinsey in terms of the deliverables for RFP GSM 14/10/1067.
- We were therefore not able to make a determination whether Transnet implemented or derived any benefit from McKinsey's reports.
- McKinsey billed at least 76% of the contract price *i.e.* R1.6 million (Excl. VAT) within a period of six months into the project.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend that Transnet should establish if it received value for work relating to RFP GSM/14/10/1167.

5.17.50. **Payments made to McKinsey, Regiments and Trillian (2005 -2017)**

5.17.50.1. From available documents, Transnet paid McKinsey a total of R1 993 977 479.58 including VAT since 1 March 2005 to the financial year ended 31 March 2016 made up as follows:

Year end	Amount
31 March 2006	R113 719 141,62

Year end	Amount
31 March 2007	R369 050 268,45
31 March 2008	R270 603 499,58
31 March 2009	R302 941 229,85
31 March 2010	R47 389 075,28
31 March 2011	R14 455 200,00
31 March 2012	R29 098 978,80
31 March 2013	R56 618 558,78
31 March 2014	R203 931 874,55
31 March 2015	R318 755 975,99
31 March 2016	R267 413 676,68
Total payments	**R1 993 977 479,58**

5.17.51. **Payments made to Regiments**

5.17.51.1. Regiments have been paid by Transnet the total amount of R1,085,786,589.32 including VAT since 1 March 2013 to the financial year ended 31 March 2017 made up as follows:

Financial year end	Amount
31 March 2014	R105,156,802.00
31 March 2015	R503,224,614.20
31 March 2016	R475,226,031.20
31 March 2017	R2,179,141.92
Total payments	**R1,085,786,589.32**

Payments made to Trillian Partners

5.17.51.2. The table below shows payments made to Trillian Partners within four months of their appointment:

Invoice date	Amount in ZAR
15 April 2016	41,040,000.00
07 April 2016	7,980,000.00
07 April 2016	36,014,296.91
23 May 2016	7,980,000.00
23 May 2016	7,980,000.00
20 May 2016	2,689,830.00
19 May 2016	11,400,000.00
Total Payment	**115,084,126.91**

5.17.51.3. We determined that Transnet paid Trillian Asset Management R93 480 000 in respect of the Club Loan. The said payment was made on 18 November 2015

5.17.51.4. We determined that Transnet paid a total of approximately R3.26 billion to McKinsey, Trillian and Regiments. The said payments were made from the time McKinsey was appointed at Transnet in 2005 to 2017.

5.17.51.5. The amount of R3.26 billion included payments made to McKinsey, Regiments and Trillian in respect of the following projects:

Service Provider	Project Name	Period	Amount
Regiments	Maputo Corridor	1 Nov 2013 – 31 Aug 2014	R37 959 289.95
McKinsey	Results Management Office	15 Jan 2013 – 13 Mar 2016	R41 684 844.64

Service Provider	Project Name	Period	Amount
Regiments	Results Management Office	15 Jan 2013 – 13 Mar 2016	R26 015 000.26
Regiments	Defined Benefit Fund	23 Jan 2014 – 30 Jan 2016	R38 156 790.00)
McKinsey	TFR's new operating model	1 Apr 2012 – 30 Aug 2013	R4 911 228.07
McKinsey	Transnet Freight Rail bridging	1 Jun 2009 – 30 Nov 2010	R12 750 000.00
McKinsey	Corridors and hubs	1 Jan 2009 – 30 Jun 2011	R100 582 493.86

5.17.51.6. We were not provided with documentation relating to the contracts above and therefore they do not form part of the discussion in this report.

5.18. LACK OF ADMINISTRATIVE AND POLITICAL SUPPORT FRUSTRATES THE FIGHT AGAINST CORRUPTION

5.18.1. We determined that in 2016 National Treasury conducted preliminary investigations at Transnet relating to McKinsey, Regiments and Trillian's appointments. We enquired from Solly Tshitangano ("Tshitangano"), Chief Director: SCM Governance, Monitoring and Compliance why the review/ investigation was not concluded. Tshitangano indicated that National Treasury's investigation was hampered by refusal by Gama and the Director General of the Department of Public Enterprises, Richard Seleke ("Seleke") to provide documentation to National Treasury.

5.18.2. Tshitangano further indicated that the same modus operandi was used when Office of the Chief Procurement Officer wanted to review contracts in SABC, Eskom, SASSA and other institutions.

5.18.3. Tshitangano further stated that to address the non-submission of documents, the Procurement Bill should give the Chief Procurement Officer authority to enter and search any premises occupied by the procuring entity and demand the production of any document relating to the activities of the procuring entity at any time without prior notice.

5.18.4. During the course of our investigations we requested Transnet Management to provide us will all the relevant documentation relating to the appointment, payments and reports or all work performed by McKinsey, Regiments and Trillian.

5.18.5. On 30 August 2018, Thomas provided us with a flash drive containing documents relating to McKinsey, Regiments and Trillian.

5.18.6. We also requested National Treasury to submit correspondence and other relevant documents between itself and amongst other organ of state Transnet and Eskom.

5.18.7. We determined that there were correspondences between National Treasury and Transnet relating to the request of documentation.

5.18.8. We further determined that there were correspondences between Transnet and DPE as well as between DPE and National Treasury and National Treasury and SCOPA relating to the said documentation.

Request from National Treasury for documents relating to McKinsey and Regiments

5.18.9. On 25 January 2016, Tshitangano wrote a letter to Gama requesting documents pertaining to McKinsey and Regiments Capital. The letter requested Gama to submit documents by not later than 29 January 2016 (**Annexure D213**).

5.18.10. We determined that Gama responded on a letter dated 27 January 2016 indicating that all relevant documentation cannot be sent on email due to size but are available for inspection at Transnet Head Office (**Annexure D214**)

5.18.11. On 10 February 2016, National Treasury officials visited Transnet Offices to conduct preliminary review on the process followed in the appointment of McKinsey and Regiment Capital.

5.18.12. We determined that Gama sent a letter to National Treasury on 10 February 2016. In the said letter Gama wrote, *"Please note that we cannot send you the documents, nor do we have the authority to allow the documents to be collected without the express permission of the Transnet Board of Directors. In these circumstances we advise you to send your request to the Department of Public Enterprises (DPE), <u>in line with normal protocols, highlighting the basis upon which you request this information and under what mandate you are acting on</u>*. Further, and to our dismay, it has come to our attention that National Treasury Staff have made suspicious calls to members of our staff telephonically asking questions about these contracts referred to above. *This unwarranted practice causes unnecessary consternation and mistrust between our respective employees and I would not care if this practice is terminated forthwith. This happens at an incredibly difficult time, where the economic climate is regressing,* *where Transnet must focus on maintaining an acceptable credit rating and work with the National Treasury to ensure we do not become an additional burden to the fiscus. In these times of declining commodity prices we need to stand together as Government to weather the storm".*

We noted that the signature on the letter dated 10 February 2016 was not Gama's signature. During our consultation with Gama he confirmed that the signature appearing on the said letter was not his (**Annexure D215**).

5.18.13. On 3 March 2016 Kenneth Brown ("Brown"), the then Chief Procurement Officer, wrote a letter to Gama requesting documents pertaining to McKinsey and Regiments Capital. Brown indicated that the preliminary reviews conducted by officials from his office warrants that a detailed investigation be conducted regarding the appointment of McKinsey and Regiment Capital. Brown further requested Gama to ensure that documents are submitted by not later than 7 March 2016 (**Annexure D216**).

5.18.14. We determined that Gama responded on a letter dated 10 March 2016 indicating that he will be able to provide the documents by 14 March 2016 to the Department of Public Enterprises. It is our understanding that Brown did not receive this letter because a wrong email address was used (**Annexure D217**).

5.18.15. We determined that on 7 April 2016 Brown sent a follow up letter to Gama. Brown wrote: *Just to remind you that Transnet has an obligation to submit information to National Treasury as and when required. Section 54(1) of the Public Finance Management Act states that the accounting authority for a public entity must submit to the relevant treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require. Please ensure that the requested documents are submitted by not later than 13 April 2016. Your office will be notified should further information be required (***Annexure D218***).*

5.18.16. We determined that on 8 March 2016, Seleke the former DG of DPE wrote a letter to the then National Treasury DG, Lungisa Fuzile ("Fuzile"), referring to Brown's letter of 3 March 2016. In the said letter Seleke wrote: *"Mr Kenneth Brown's letter dated 03 March 2016 that is addressed to the Acting Chief Executive Officer of Transnet and which I have been copied bears reference. In his letter (attached), Mr Brown makes reference to preceding communication with the Department of Public Enterprises that neither I nor any officials in the Department are aware of with Mr Brown and/or National Treasury on the matter referenced above. As the shareholder representative on behalf of Government, the Minister of Public Enterprises and the Department expect the State Owned Companies within the Department's portfolio to maintain clean governance and adherence to proper procurement processes.*

*Consistent with the above, upon receipt of Mr Brown's letter, the Department requested Transnet's Board to assess the matter and to provide a comprehensive feedback in order to fully appraise the Minister. Therefore, the Department requests that the expectation that Transnet address National Treasury's information requirements by 07 March 2016 be held in abeyance until the Department has received and analysed the relevant facts pertaining to the matter"(***Annexure D219***).*

5.18.17. It is not clear what Seleke was going to analyse as the letters from National Treasury did not specify the nature of allegations to be investigated. It appears it was a delaying tactic not to release the documents.

5.18.18. We determined that on 14 March 2016 Thomas prepared a memorandum detailing the documents that he indicated were in six boxes to be reviewed by Gama before being submitted to DPE. The memorandum was signed by someone on behalf of Thomas, as well as by Garry Pita (recommending) and Gama (approving).

5.18.19. On 15 March 2016, Gama wrote a letter to Seleke informing him that boxes containing files requested by National Treasury would be delivered to DPE (**Annexure D220**).

5.18.20. We determined that on 11 April 2016, Fuzile the then DG of National Treasury wrote a letter to Seleke, DG of Department of Public Enterprises. Fuzile wrote: "*You will appreciate that fighting corruption and ensuring value for money is a collective effort, given that public entities under your supervision and the role they play in the economic growth is of paramount importance. The President in a number State of the National addresses and as late as Friday, 1 April 2016 has emphasised the importance of the Office of the Chief Procurement Officer in modernising supply chain and addressing corruption in government. I implore your department to support the efforts of the Chief Procurement Officer and the President. You indicated that you are not aware of any communication from the Chief Procurement Officer regarding the review of tenders in the state owned entities. Please find attached all communication from the Office of the Chief Procurement Officer relating to the review of contracts above R10 million. Your department has been informed on the ongoing review work in Transnet. Just to remind you that there is no legal basis for National Treasury to request any information from public entities through your department. Section 54(1) of the Public Finance Management Act states that the accounting authority for a public entity must submit to the relevant treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require. Kindly ensure that Transnet submit the required documents by not later than 11 April 2016"(***Annexure D221***).*

Approval by Gama to submit documents relating to McKisney and Regiments to DPE

5.18.21. On 24 April 2016, Gama approved the memo for submitting the documents for the appointment of McKinsey and Regiments to DPE. Our physical inspection of the boxes revealed that the documents were received by DPE on 19 April 2016.

5.18.22. We determined that on 9 May 2016, Seleke sent a letter to Fuzile. In the said letter, Seleke wrote: "*My urgent request to fully appreciate the issues relating to the above has regrettably been ignored. Instead the state-owned companies within DPE portfolio are still inundated with instructions to provide information to the Office of the Chief Procurement Officer. It is also important to highlight that the information being requested pre dates current regime as well as the tenure of recently appointed Executives and is also being made through the SOC external auditors. Therefore, until such time the issue is resolved, I have instructed the SOCs to avoid any engagement and sharing of information on this and related matters. I reiterate my request for an urgent DG to DG meeting to deal with the matter (***Annexure D222***).*

5.18.23. It is not clear why Seleke raised the pre-dates current regime as well as the tenure of recently appointed Executives because DPE had already received documents on 19 April 2016. The proposed DG to DG meeting did not resolve the problem as Seleke did not submit the documents.

Letter dated 8 December 2016 from Gama to National Treasury CPO

5.18.24. We determined that on 8 December 2016 Gama sent a letter to the Chief Procurement Officer, Gama wrote: *"it was reported in Parliament during a Parliamentary response that three state owned entities – SAA, SABC and Transnet – as well as the Department of Public Enterprises have not supplied National Treasury with documents for its tender review process. With specific reference to Transnet, it was noted that the scope of review was on a contract awarded to McKinsey, Regiment Capital and Trillian. The statements that were made regarding Transnet are not true. We kindly request that the statement made by National Treasury that Transnet has not complied with the National Treasury requests for documentation be corrected in Parliament and the press as this causes unnecessary reputational damage to Transnet and the government as a whole"(* **Annexure D223***).*

5.18.25. Gama's statement above is not true as he was aware that the documents were submitted to DPE and not to National Treasury.

5.18.26. We determined that on 18 August 2017 Gama sent a letter to the Director General of National Treasury, Dondo Mogajane. Gama wrote*: "As indicated previously in our prior correspondences and the letter dated 8 December 2016 (attached) Transnet indicated that the files* *are available for collection at the offices of the Department of Public Enterprises. These documents have been available for collection by National Treasury since April 2016. We again re-iterate that the additional documents National Treasury requested are available for collection at the Department of Public Enterprises. Please contact Ms. Matsietsi Mokholo to make the necessary arrangements to collect the documents that National Treasury requested. We kindly request that National Treasury collect these documents from the Department of Public Enterprises and conclude its review and provide the reports to Transnet" (***Annexure 224***).*

5.18.27. There is no evidence that Gama requested Transnet Board to invite Seleke to understand why he was not submitting the requested documents because the obligation to submit the documents rests with the Accounting Authority.

5.18.28. During our consultation with Tshitangano, he indicated that the non-submission of documentation required for investigation was not unique to Transnet. According to Tshitangano, he experienced resistance in obtaining documents from SASSA and SABC.

5.18.29. We discuss below the challenged experienced by Tshitangano at SASSA and SABC.

5.18.30. It should be noted that we did not conduct investigations into SASSA and SABC relating to the issues raised by Tshitangano as it did not form part of our investigation.

Failure by SABC to provide National Treasury with documents

5.18.31. We determined that Tshitangano sent a letter dated 3 November 2015 to the Group Chief Executive Officer, Mr. Frans Matlala (Matlala). This letter requested Matlala to submit supporting documents by not later than 6 November 2015 (**Annexure D225**).

5.18.32. Based on documentation reviewed we determined that Matlala responded to Tshitangano's letter on 4 November 2015. Matlala requested a meeting on 6 November 2015 and an extension to submit the documents on 20 November 2015 (**Annexure D225**).

5.18.33. We determined that Tshitangano granted extension to SABC on a letter dated 4 November 2015 and scheduled a meeting for 6 November 2015

5.18.34. We determined that a meeting was held between Tshitangano and Matlala on 6 November 2018

5.18.35. We determined that Matlala was suspended before submitting the documents to National Treasury.

5.18.36. We determined that Tshitangano sent a letter dated 23 November 2015 to the Acting Group Chief Executive, Mr Mathews requesting him to submit the requested documents by not later than 25 November 2015 (**Annexure D226**).

5.18.37. We determined that Mathews responded on a letter dated 25 November 2015 indicating that protocol requires that he direct the request to the Director General of the Department of Communications (**Annexure D226**).

5.18.38. We determined that Tshitangano sent a letter dated 2 December 2015 to the Acting Director General of the Department of communication, Mr Norman Munzhelele. This letter requested Munzhelele to facilitate and resolve protocol issues with SABC to ensure that the required documents are submitted to National Treasury by not later than 9 December 2015 (**Annexure D227**).

5.18.39. We determined that Tshitangano sent a letter dated 3 December 2015 to Mathews requesting him to submit the initial and additional requested documents by not later than 9 December 2015 (**Annexure D228**).

5.18.40. We determined that Mathews responded on a letter dated 9 December 2015 indicating that since he is not the Accounting Authority of the SABC, the correspondence should be addressed to the Chair of the Board of SABC (**Annexure D229**).

5.18.41. We determined that a letter dated 10 December 2015 was sent to Mathews requesting him to liaise with the Chairman of the Board and submit the documents by not later than 14 December 2015 .

5.18.42. We determined that a letter dated 15 December 2015 was sent to the Chairman of the Board, Prof Maguvhe requesting him to direct the Acting Group Executive Officer to submit the documents by not later than 22 December 2015.

5.18.43. We determined that Minister of Communications. Ms Muthambi sent a letter dated 23 December 2015 to Minister of Finance, Mr Gordhan. Muthambi wrote, **On 15 December 2015, the Chairperson of the Board of the South African Broadcasting Corporation (SABC), Professor Obert Maguvhe, brought to my attention a letter addressed to him by national Treasury official, Mr Solly Tshitangano, regarding the above-mentioned matter. The letter also make reference to correspondence between the Group Chief Executive Officer of the SABC and the National Treasury on this matter. The Department of Communications respects that the National Treasury is empowered by the Public Finance Management Act to request documents from the Accounting Authority of a public entity. However, the Department finds it unfortunate that the National Treasury has decided to conduct an investigation into the SABC without the courtesy of informing me as the Minister who is the shareholder in the SABC on behalf of the South African Government. I humbly request the National Treasury to provide me with the information regarding the rationale and terms of reference of this investigation. This will enable me to decide on the best course of action to be taken going forward regarding this matter*" (**Annexure D230**).

5.18.44. We determined that Brown sent a letter dated 12 April 2016 to Prof M O Maguvhe, Chairperson of the SABC Board. Brown wrote: "*My letter dated 03 November 2015, 04 November 2015, 2015, 23 November 2015, 03 December 2015, 10 December 2015, and 15 December 2015 have reference. My office has not received the supporting documents as requested which makes it impossible to verify if the South African Broadcasting Corporation (SABC) complied with the SCM norms and standards when appointing various suppliers. Just to remind you that the SABC has an obligation to submit information to National Treasury as and when required. Section 54(1) of the Public Finance Management Act states that the accounting authority for a public entity must submit to the relevant treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require. It is important to note that the accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently fails to comply with a requirement of Section 50, 51, 52, 53, 54, or 55 of the Public Finance Management Act. Should you fail to avail the documents within seven days of receipt of this letter, it will be understood that the SABC Board is wilfully failing to comply with Section 54(1) of the Public Finance Management Act"(***Annexure D231***)

5.18.45. We determined that the Minister of Finance responded to Minister of Communication on a letter dated 27 June 2016. Gordan wrote, *"I refer to your letter dated 23 December 2015 raising concerns regarding the reason why the National Treasury has decided to conduct investigations into the South African Broadcasting Corporation (SABC) without informing you as the shareholder". Please note that the National Treasury requested documents to conduct a preliminary investigation in order to establish whether Supply Chain Management (SCM) norms and standards were complied with during the procurement process. The outcome of the preliminary investigation would confirm whether a forensic investigation is warranted or not. Should the preliminary report recommend a forensic investigation, then the shareholder would be informed accordingly. Please could I request that you direct the SABC to submit the requested documents for review within 2 weeks of the date of this letter" (***Annexure D232***).

5.18.46. According to Tshitangano, SABC did not submit the requested documents despite the intervention by the Minister of Finance.

Failure by SASSA to provide National Treasury with documents

5.18.47. We determined that Office of the Chief Procurement Officer sent a letter dated 15 June 2016 to the Acting Chief Executive Officer of SASSA. This letter requested SASSA to submit documents regarding RFQ 403/15/SBD by not later than 24 June 2016 (**Annexure D233**).

5.18.48. We determined that Acting Chief Executive Officer of SASSA submitted information on a letter dated 24 June 2016.

5.18.49. We determined that the Minister of Social Development sent a letter dated 15 July 2016 to the Minister of Finance. The heading of the letter is titled: *"INTERFERENCE OF THE NATIONAL TREASURY ON MATTERS OF THE SOUTH AFRICAN SOCIAL SECURITY AGENCY (SASSA)"*. Bathabile Dlamini wrote: *"This interference is driven mainly by greed and private business interest of some of the officials in the National Treasury who want to determine service providers the Agency must appoint.*

5.18.50. *A case in point is a matter which relates to a tender regarding the appointment of a service provider to implement the recommendation of the Ministerial Committee on the Future Payment System and the work streams. What I gathered here is that there are officials in the National Treasury who are driven by greed and personal interest. Recently, SASSA has received a letter from Treasury alleging that proper processes were not followed in the appointment of service providers for the SASSA work streams. The treasury officials are well aware that SASSA must take over the payment of social grants next year and they are deliberately stalling this process. This creates a very difficult situation where officials of the Treasury takes unilateral decisions and another entity has to account for decisions which they were not consulted on. We have not even completed the appointment of the service providers for the work streams but the Treasury officials already want to interfere with the process"*. The letter concludes as follows: *"I therefore request your intervention on this matter which if left unattended will hinder implementation of the key deliverables for the Department of Social Development and SASSA"*.

5.18.51. According to Tshitangano, the review conducted by National Treasury revealed that the suppliers were irregularly appointed (**Annexure D234**).

Request by Minister Brown to Minister Gordhan to exempt Eskom and Transet from NT instruction notes

5.18.52. We determined that on 30 June 2016, Minister of the Department of Public Enterprises, Lyn Brown sent a letter to Minister of Finance, Pravin Gordhan. Lyn Brown wrote: *"I write to you in my capacity as Shareholder Minister, on behalf of both Transnet and Eskom, to request that you urgently consider exempting these entities from the operation of various instruction notes that were recently issued by National Treasury in terms of section 92 of the Public Finance Management Act,1999, you as Minister of Finance may exempt any institution from any provision of the Act or instruction notes. <u>I can confirm my commitment and that of the state-owned companies (SCOCs) and the Department of Public Enterprises within the ministerial portfolio of public enterprises to good governance in the supply chain environment.</u>*

*They have developed robust policies and procedures and their governance structures are fully functional to ensure that supply chain transactions comply with the regulatory framework. In terms of section 76(4), National Treasury may issue regulations or instructions to establish a framework for an appropriate procurement and provisioning system. I share the view of the organisations above that the instruction notes that have been issued are not appropriate and not supportive of their procurement, transformation and socio-economic objectives. In the spirit of cooperative governance, I urge you to allow the two Eskom and Transnet to engage further with you and I to ensure that a framework for an appropriate procurement and provisioning system is achieved without it becoming adversarial. In the mean time I have requested the two SOCs to hold in abeyance legal remedies that may be available to them"(***Annexure D235***).*

5.18.53. It is not clear what informed Minister Lyn Brown that governance structures at Eskom and Transnet are fully functional to ensure that supply chain transactions comply with the regulatory framework. The outcome of our investigations reveals that governance structures at Eskom and Transnet were dysfunctional and that there was poor governance in the supply chain environments which enabled these entities to be captured.

Communication between Themba Godi and Minister Gigaba

5.18.54. We determined that on 17 May 2017 Themba Godi, Chairperson of SCOPA sent a letter to Minister of Finance, Mr Gigaba, Godi wrote: *"The Standing Committee on Public Accounts (SCOPA) and National Treasury have legislative mandate to oversee the effective use of public resources. As such, SCOPA and National Treasury agreed to engage regularly for the purpose of promoting and enforcing transparency and accountability over spending from the fiscus. We would like to formally request the Chief Procurement Officer to update the committee on various reports (Eskom, PRASA, SABC and Transnet). I must stress that it is critical and urgent that as Parliament we receive the final reports and be briefed on them".*

5.18.55. On 11 July 2017 Minister of Finance, Mr Gigaba sent a letter to Themba Godi , Gigaba wrote: *"National Treasury issued a draft report to Eskom on 05 April 2017. Eskom responded on a letter dated 21 April 2017 requesting clarity on certain matters. On the 17 May 2017 Eskom requested a meeting to finalise terms of reference for the appointment of forensic audit firm. Eskom submitted comments on National Treasury report to Standing Committee on Public Accounts (SCOPA) on 30 May 2017. It is anticipated that the report will be finalised by 30 July 2017. Forensic audit reports were submitted to PRASA Board for their comments on 25 April 2017. PRASA Board was requested to submit comments/ inputs to National Treasury on or before 18 May 2017. PRASA requested an extension to submit comments by not later than 31*

*October 2017, however, the extension was granted until 30 August 2018. SABC has not yet submitted the requested documents. The first letter requesting documents was sent on 03 November 2015. SCOPA also engaged the SABC on the submission of outstanding documents. Transnet and the Department of Public Enterprise have not submitted requested documents. The first letter requesting documents was sent on 25 January 2016. SCOPA also engaged the Minister of Public Enterprises on 14 March 2017 on the submission of outstanding documents. I am engaging my colleagues to get outstanding information to finalise the reports"(***Annexure D236***).*

Media statement issued by National Treasury

5.18.56. We determined that on 4 August 2017 National Treasury issued a media statement, the statement read, "*The Minister of Finance Malusi Gigaba has directed National Treasury to undertake a forensic investigation into the Tegeta report which was handed over to the Standing Committee on Public Accounts (SCOPA). DG signed off the forensic investigation on the 26th of July 2017. Treasury has reviewed the enforceability of the report and the report sent to SCOPA still stands. Finance Minister Malusi Gigaba said that governance and accountability at State Owned Enterprises remained a priority"(***Annexure D237***).*

5.18.57. During our consultations with Tshitangano, he indicated that after National Treasury's media statement of 4 August 2017, National Treasury issued an RFP to appoint a forensic company to investigate allegations contained in National Treasury's preliminary investigation. According to Tshitangano due to the delay in the appointment of a forensic investigation company, he sent a letter dated 6 February 2018 to the Chairperson of the Audit Committee of National Treasury, Ms Octavia Matloa (**Annexure D238**).

5.18.58. In his letter, Tshitangano wrote: *"This letter serves to request the Chairperson of the Audit Committee to urgently investigate whether individuals in National Treasury abused their authority to frustrate the appointment of a firm to conduct a credible forensic audit investigation in Eskom and other institutions mentioned in the National Treasury report issued on 11 July 2017".*

5.18.59. Tshitangano indicated that on 20 February 2018, Matloa responded to his letter of 6 February and wrote: *"The Audit Committee held its closed session teleconference on 13 February 2018 and resolved to accept the engagement and for internal audit unit to conduct the investigation".*

5.18.60. According to Tshitangano, the internal audit investigation was not yet concluded at the date of our report.

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

5.18.61. It took treasury six months to appoint a forensic audit firm from the date of the release media statement of the 4 August 2017.

5.18.62. It took 32 months for Transnet to release the documents relating to McKinsey, Regiments and Trillian as the documents were only provided to forensic auditors on 20 August 2018.

5.18.63. Documents relating to McKinsey, Regiments and Trillian that were delivered to the DPE were still in boxes on the date of inspection *i.e.*20 August 2018.

5.18.64. Minister Gigaba's undertaking to engage other ministers to submit documents did not produce any positive results as he was redeployed to the Department of Home Affairs before National Treasury received documents.

5.18.65. Delays in submitting documents results in losing critical evidence (tangible or intangible).

5.18.66. Delays in conducting investigations give the officials opportunity to resign before facing disciplinary processes.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend that National Treasury considers the following:

5.18.67. The procurement Bill should give authority to the Chief Procurement Officer to enter and search any premises occupied by the procuring entity and demand the production of any document relating to the activities of the procuring entity at any time without prior notice.

5.18.68. The Procurement Bill should make it a crime or dismissible financial misconduct if an accounting Officer/ Authority fails to submit documents required by National Treasury/ Office of the Chief Procurement Officer. An accounting officer/authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer/authority fails to submit the requested documents.

5.18.69. The turnaround time to appoint forensic auditors should be reduced to a reasonable time.

6. DEPARTMENT OF PUBLIC ENTERPRISE

6.1. Background

6.1.1. During the course of our investigations we accessed information at DPE, which information related to our investigations at Transnet and Eskom. Part of the said information related to the following:

6.1.1.1. Seleke's appointment to serve on the Transnet board;

6.1.1.2. Seleke's CV having been sent to Duduzane Zuma from the infoportal1@zoho.com email address;

6.1.1.3. Failure by Seleke to release McKinsey, Trillian and Regiments documents which National Treasury required for investigation purposes;

6.1.1.4. Seleke's appointment of Tshegofatso Motaung at DPE, who our searches revealed was linked to Mosebenzi Zwane (Former Minister of Mineral resources), the latter being listed as a reference on Seleke's job application at DPE; and

6.1.1.5. Seleke's appointment of Kgomongwe at DPE, after Kgomongwe had nominated Seleke to serve as a board member at Transnet.

6.2. Seleke's appointment as Board Member of the Transnet Board of Directors

6.2.1. We determined that Seleke was appointed as a Board Member/Director of Transnet from 11 December 2014 and resigned on 27 November 2015. Below we discuss his nomination and appointment process. As discussed below, Seleke was appointed as DG of the Department of Public Enterprises on 27 November 2015, the same date that he resigned as Transnet Board member.

The nomination

6.2.2. We obtained and reviewed documentation in relation to the nomination of the Transnet and Eskom Board Members. From the said documentation we determined that on 16 October 2014, Kgomongwe completed a nomination form to nominate Richard Seleke to be part of the Transnet Board (**Annexure D239**).

6.2.3. We determined that Kgomongwe signed the nomination form on 16 October 2014. We further determined that Seleke signed the said nomination form on the same date as Kgomongwe, *i.e.* 16 October 2014.

6.2.4. Kgomongwe confirmed that she nominated Seleke for a position as Transnet Board member. Kgomongwe further confirmed the handwriting on Seleke's nomination form as hers. Kgomongwe indicated that she did not know anything about the Transnet Board nominations until Seleke approached and requested her to nominate him for the position. Kgomongwe further stated that it was only after Seleke requested her to nominate him that she completed the forms, gave them to Seleke to sign and later emailed them to the DPE e-mail address for Board nominations. Kgomongwe further confirmed that Seleke provided her with his CV, which she emailed to DPE together with the completed nomination forms. Part of the written questions we asked Seleke was if he provided Kgomongwe with his CV. Seleke failed to answer the said question.

6.2.5. Seleke failed to respond to question that the format and font in the CV attached to Kgomongwe email is similar to the one attached in the inforportal1@zoho.com.

6.2.6. Seleke responded as follow: "*The manner and process of appointment of a board member at Transnet is available at Transnet (sic) and DPE. I will also appreciate that you get to obtain such information from Transnet or the relevant department at the DPE. At the same time the Transnet can also get you records of when I started and when I ceased to be a board member*".

6.2.7. We determined that Kgomongwe worked with Seleke in his office at DESTEA. We further determined that on 24 November 2015, prior to the Public Service and Administration and DPE Ministers signing Seleke's confirmation and appointment letters on 26 November 2015 and 27 November 2015 respectively, Seleke sent a letter to DPE requesting that Kgomongwe be transferred to DPE to enable him to settle at the Department quickly. Kgomongwe was later transferred from Seleke's office at DPE to International Relations (within DPE) only three months after commencement of her employment at DPE (**Annexure D240**).

6.3. The appointment of Seleke to the Transnet Board

6.3.1. We determined that Mokholo prepared a Cabinet Memorandum dated 2 December 2014. The subject of the memorandum is reflected as the appointment of Non-Executive Directors to Transnet SOC Ltd Board. Mokholo was Acting DG of the Department of public enterprises at the time.

6.3.2. We determined that the Cabinet Memorandum dated 2 December 2014 was signed by Minister Brown, then DPE Minister, authorising the processing thereof. The Cabinet Memorandum recommended cabinet to appoint the following board members to the Transnet board:

6.3.2.1. Linda Carol Mabaso

6.3.2.2. Stanley David Shane;

6.3.2.3. Mogokare Richard Seleke;

6.3.2.4. Gideon Mahlalela;

6.3.2.5. Potso Elizabeth Mathekga;

6.3.2.6. Zainul Nagdee;

6.3.2.7. Vusi Matthew Nkonyane;

6.3.2.8. Peter George William; and

6.3.2.9. Brett Stagman.

6.3.3. Minister Brown signed Seleke's appointment letter on 10 December 2014. The appointment was with effect from 11 December 2014 for a period of three years subject to an annual review.

6.3.4. We determined that during his tenure as Transnet board member, Seleke was paid R645 838.50 (excluding travel and accommodation) in board fees.

6.3.5. According to the National Treasury Circular on remuneration adjustment level : service benefit packages for office – bearers of certain statutory and other institutions dated 24 June 2014, employees of National, Provincial and Local Government or institutions, Agencies and Entities of Government serving as office-bearers on Public Entities/Institutions are not entitled to additional remunerations.

6.3.6. Seleke was not entitled to the board fees of R645 838.50 from Transnet.

6.3.7. As indicated above Kgomongwe and Seleke worked together at the DESTEA at the time Kgomongwe nominated Seleke to be considered for Transnet Board appointment. Seleke was Head of Department for DESTEA and Kgomongwe a supervisor. There was nothing preventing Kgomongwe to nominate Seleke to be a Transnet Board Member. Furthermore, there was nothing preventing Seleke to either nominate himself or requesting

Kgomongwe to nominate him to be considered for directorship of the Transnet or any other SOC board.

Seleke's CV sent to Duduzane Zuma

6.3.8. The Guptaleaks reflect that on 29 June 2015 at 10:55 AM Seleke's CV was forwarded to Duduzane Zuma from an email address infoportal1@zoho.com. The details relating to the infoportal1@zoho.com email address are discussed in the relevant paragraphs in this report. We asked Seleke if he provided his CV to infoportal1@zoho.com but he failed to answer the said question.

Advertisement of the DG post at DPE

6.3.9. In 2015 the Department of Public Enterprises placed a re-advertisement with reference number DPE/2015/041, which was a re-advertisement for the position of Director General at the Department. Enquiries in relation to the advertisement and the filling of the post were to be sent to Henriette Strauss. The closing date for applications was reflected as 25 September 2015.

6.3.10. Henriette Strauss ("Strauss") indicated that she does not know why the initial advertisement and process to fill the DG position was cancelled. She stated that she received instruction from the DPE Ministry indicating that the initial advertisement should be cancelled.

6.3.11. Strauss stated that Matsietsi Mokholo ("Mokholo") who was DPE's Acting DG, was one of the applicants in the initial process to fill the DG position.

6.3.12. Mokholo confirmed Strauss' version that she was one of the applicants for the position of DPE Director General. Mokholo stated that she withdrew her application after the initial process was cancelled. She indicated that she decided to withdraw her application after it became evident to her that the position was earmarked for someone else.

Seleke's application for the DG position

6.3.13. During the course of our investigations DPE provided us with Seleke's personnel file.

6.3.14. Attached to Seleke's personnel file was his application for employment, signed by him on 22 September 2015. The application reflected a DPE date stamp of 29 September 2015.

6.3.15. The application by Seleke occurred three months after his CV was forwarded to Duduzane Zuma from the infoportal1@zoho.com email address.

6.3.16. We noted that one of the references used by Seleke in his application form as well as his CV, is Mosebenzi Zwane. In the application form and CV, Seleke referred to Zwane as Member of Executive Council (former supervisor), and Former MEC Economic Development, Tourism and Environmental Affairs respectively.

6.3.17. We determined that after Seleke was appointed as DG of the Department of Public Enterprises, he appointed Tshegofatso Motaung, to the position of Chief Director, Human Resources, DPE. Motaung confirmed that she and Zwane have a child together.

6.3.18. The Guptaleaks reflect that Zwane was one of the panel members scheduled to interview Seleke for the DG position. The Guptaleaks further reflected that Zwane was removed from the panel after his relationship with Seleke, *i.e.* as Seleke's principal at Economic Development in the Free State as well as the fact that Seleke listed Zwane as a reference on his CV, was brought to the attention of then DPE Minister Brown.

Cabinet confirms Seleke's appointment

6.3.19. We determined that, according to a Cabinet Memorandum prepared by DPE dated 12 October 2015, Seleke was one of two shortlisted candidates.

6.3.20. We determined that Cabinet approved the appointment of Mr Mogokare Richard Seleke (sic) as the Director-General (DG) in the Department of Public Enterprises subject to the verification of qualifications and the relevant clearance.

6.3.21. We further determined that former DPE Minister Brown signed Seleke's appointment letter for the DPE Director General position on 27 November 2015.

CONCLUSIONS

Based on the findings discussed above, we conclude as follows:

6.3.22. Seleke resigned as Transnet Board member on 30 November 2015 after Cabinet appointed him as the Director general of DPE on 4 November 2015;

6.3.23. National Treasury should regularly communicate circulars relating to remuneration of board members to candidate from Government Departments and other SoEs.

6.3.24. The payment of R645 838.50 to Seleke was irregular as it was not in line with the requirements of the National Treasury circular dated 24 June 2014.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend that Transnet considers the following:

6.3.25. Recovery of R645 838.50 from Seleke as the payment was not in line with the requirements of the National Treasury circular dated 24 June 2014.

6.4. Imaging of the DPE server

6.4.1. As indicated above we accessed the DPE mail server for information relating to our investigations. During the process of imaging the DPE mail server we identified possible breaches in that most emails belonging to Seleke, were deleted from the server.

6.4.2. We however managed to perform the following activities that will assist us in our investigations:

6.4.2.1.1. Obtain forensic copies of all printer audit trails at DPE offices in Pretoria and Cape Town;

6.4.2.1.2. Obtain a forensic copy of the IT infrastructure of DPE for the period 2009 to October 2018 which include the following:

6.4.2.1.2.1.1. Five million e-mails stored in the Cryo Server for the period 2013 to October 2018;

6.4.2.1.2.1.2. Back-up tapes for the e-mail exchange which consisted of 18 EDBs for the period 2009 to 2013.

6.4.2.1.3. During the initial analysis of the data we identified various communications between individuals at DPE, Eskom and Transnet.

6.4.2.1.4. We are in the process of mapping the said relationships as well as the roles played by the said individuals and will provide a separate report specific to DPE at the conclusion of the said analysis.

7. ESKOM

7.1. Appointment of McKinsey for the development of TOP Engineers Programme

Background

7.1.1. Based on documentation reviewed, we determined that McKinsey submitted a preliminary proposal to Eskom dated 20 April 2015. According to the preliminary proposal, McKinsey proposed on how they could support Eskom in developing the TOP Engineers Programme into a stand-alone, world class, Internal Consulting Unit (**Annexure D245)**.

7.1.2. The proposal outlined how McKinsey would structure and support the programme as follows:

7.1.2.1. Project Context and objectives;

7.1.2.2. Overall programme design;

7.1.2.3. Module 1: Build an Internal Consulting Unit;

7.1.2.4. Module 2: Immediate cash generation via procurement;

7.1.2.5. Module 3: Immediate cash unlocking via balance sheet optimisation; and

7.1.2.6. Module 4: Unlock funding sources via additional financing opportunities.

Overall Programme Design

7.1.3. According to the proposal, the objective of the programme would be to build a highly functional, Internal Consulting Unit based on the Top Engineers. The programme was estimated to take two to three years to complete, during which McKinsey and its partners would work on projects to unlock cash and generate equity at Eskom.

7.1.4. The projects would function as training ground for Eskom's new internal consultants.

7.1.5. The proposal reflected that work would consist of four modules to be launched simultaneously:

7.1.5.1. Build an internal consulting unit (on going, over two to three years);

7.1.5.2. Immediate cash generation via procurement (18 to 24 months) across the entire spend base and ensure initiatives are implemented;

7.1.5.3. Immediate cash unlocking via balance sheet optimisation (12 to 18 months depending on how may initiatives are launched in parallel);

7.1.5.4. Unlock funding sources via additional financing opportunities (five to six months).

7.1.6. During our consultation with Mosilo Mothepu (former CEO of Trillian Financial Advisory), she indicated that Regiments and McKinsey were negotiating the MSA with Singh when she joined Regiments in June 2015.

7.1.7. According to Mothepu, McKinsey and Regiments were supposed to assist Eskom with cost savings on procurement, generation, primary energy and the establishment of Eskom's Top Engineering Programme. McKinsey would lead the streams and subcontract Regiments Capital as a BEE Partner.

7.1.8. It should be noted that at the time of the negotiations *i.e.* June 2015, Singh was still employed at Transnet as the Group Chief Financial Officer and therefore had no authority to negotiate contracts on behalf of Eskom.

7.1.9. Mothepu indicated that Regiments and McKinsey met regularly with Singh at various hotels to discuss the programmes. Mothepu further indicated that Regiments and McKinsey started to meet at Eskom offices subsequent to Singh's official appointment as the Acting CFO at Eskom.

7.1.10. According to Mothepu, McKinsey replaced Regiments Capital with Trillian Capital Partners as their BEE partner when Wood informed McKinsey and Singh that he was splitting from Regiments.

7.1.11. The change of McKinsey's BEE partner was supported by both Eskom and McKinsey.

7.1.12. Mothepu indicated that Eskom did not follow an open tender process in the appointment of McKinsey as the latter proposed a risk based contract on cost savings set to be achieved by Eskom.

7.1.13. Mothepu further stated that Eskom sought legal opinion and Koko informed the Regiments and McKinsey team that Eskom had further requested the National Treasury to approve their confinement appointment.

Round Robin Resolutions

7.1.14. We determined that on 30 March 2015, EXCO Procurement Committee held a special meeting wherein it was resolved that the minutes of the previous meeting to discuss the mandate to negotiate with McKinsey to develop the Top Engineers Programme into an Internal Consulting Unit be considered through a round robin. We were however not provided with the minutes of the previous meeting referred to above (**Annexure D246**).

7.1.15. We determine that EXCO Procurement Sub-Committee resolved through a round robin to approve the mandate to negotiate with McKinsey to develop the To Engineers Programme into an Internal Consulting Unit subject to the following:

7.1.15.1. McKinsey be contracted in a manner that is self-funding at a contract value of R0.00 as the initiative was expected to be self-funding and the project duration be limited to a maximum of 3 years.

7.1.15.2. The BPP value package on optimisation of Eskom's external spend, located within Group Commercial be used as a base project to generate savings that would fund project set-up costs;

7.1.15.3. The development of packages relating to the unlocking of cash by optimising the balance sheet, the unlocking of funding sources through additional financing opportunities and claim management at Medupi, Kusile and Ingula, be approved;

7.1.15.4. These projects would be included in the projects at Eskom's sole discretion on a case by case basis depending on value to Eskom;

7.1.15.5. Other projects be added as they were identified and as the programme matures on the same basis as per point 3; and

7.1.15.6. That a Negotiation Team that would also serve as a Steering Committee for the development of Eskom Internal Consulting Unit be authorised under the Chairmanship of the Acting Group Executive: Technology and Commercial to develop, negotiate and implement the strategy.

7.1.16. We determined that on 20 May 2015, A Noah (Chairman of the EXCO Procurement Subcommittee) approved a resolution taken by the EXCO Procurement Subcommittee. We further determined that A Noah noted that the sole source justification form should be updated.

7.1.17. We noted that other committee members did not sign the resolution including the following:

7.1.17.1. E Mabelane

7.1.17.2. J Dladla;

7.1.17.3. E Pule;

7.1.17.4. N Veleti; and

7.1.17.5. C Choeu.

Memorandum to DG National Treasury

7.1.18. We were provided with a draft memorandum dated September 2015 from Eskom to DG National Treasury. The purpose of the draft memorandum was to apply for deviation from National Treasury instruction note on cost containment guidelines.

7.1.19. The draft memorandum recommended that the DG National Treasury acknowledge and approve:

7.1.19.1. The use of a risk-based contracting model exclusive for Consulting Services on cost cutting initiatives in Eskom for the remainder of the MYPD3 period to facilitate accelerated savings. All other consultants initiatives would be fees based;

7.1.19.2. Eskom to be allowed to make upfront payment for project setup costs and expenses, which would be recovered through a defined risk based methodology. The payment mechanism would only apply to the risk based contracting model.

7.1.20. We noted that the draft memorandum was not signed. We were not provided with evidence that the memorandum was submitted to National or that National Treasury approved the recommendation/request by Eskom.

7.1.21. Eskom should not have proceeded with the appointment of McKinsey without approval from National Treasury. (**Annexure D246**)

National Treasury Instruction 01 of 2013/2014

7.1.22. Paragraph 4.1 provides that Consultants may only be remunerated at the rates:

(a) Determined in the "guidelines for fees", issued by the South African Institute of Chartered Accountants;

(b) Set out in the "Guide on hourly Fees Rates for Consultants", by the Department of Public Services and Administration; or

(c) Prescribed by the body regulating the profession of the consultant.

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

7.1.24. We noted that Eskom only engaged with National Treasury relating to the applicable prescripts in respect of Consultant fees after the contract with McKinsey had already been concluded (**Annexure D247**).

Memorandum dated May 2015

7.1.25. We determined from documentation reviewed that Mabelane prepared a memorandum to Molefe requesting that McKinsey be appointed as a Strategic Partner for the development of the new Eskom Internal Consulting Unit.

7.1.26. According to the memorandum, the strategic partner would be contracted in a manner that is self-funding and directly linked to the impact. This meant that the professional fees in the project would be paid out of cash in-flows generated by the work done by McKinsey, e.g. procurement savings.

7.1.27. It was anticipated that the positive financial impact of the work of the strategic partner would exceed their professional fees significantly. Therefore, the net financial impact of the proposed development of the internal consulting unit would be positive.

7.1.28. The memorandum recommended that the strategy for the development of Eskom's Internal Consulting Unit be approved and that the Acting Group Executive: Technology and Commercial be authorised to put measures in place within Eskom's governance and commercial processes to secure services of McKinsey as a sole partner for the purpose of implementing the recommendation.

7.1.29. We determined that Molefe approved the recommendation on 15 May 2013 (**Annexure D248**).

Special meeting – 18 May 2015

7.1.30. We were provided with an unsigned copy of a memorandum dated 18 May 2015 prepared for submission to the Chairperson of the EXCO and BTC.

7.1.31. The memorandum sought approval for the appointment of McKinsey on a sole source basis to develop a Top Engineer's programme into an Internal Consulting Unit.

7.1.32. The contract duration would be for three years. The contract value would be R0.00 as the initiative was expected to be self-funding.

7.1.33. According to the memorandum, a sole source process would be adopted for the following reasons:

7.1.34. McKinsey developed the original Top Engineers Programme and had intellectual property in the design of the programme that Eskom could not recreate in respect of:

7.1.34.1. Content of class room training programmes;

7.1.34.2. Reverse secondment approach to include Eskom employees as trainees on McKinsey's engagements within Eskom and other clients;

7.1.34.3. Specific mentorship methodology to fast track development;

7.1.34.4. Specific evaluation schemes to assess consulting readiness or engineers in training; and

7.1.34.5. McKinsey was the only leading global consulting firms capable of delivering the world class knowledge is South Africa.

Sole Source Justification

7.1.35. We determined from documentation reviewed that on 18 May 2015, Prish Govender requested approval for the appointment of McKinsey as a sole source. We further determined that the request was supported by M Mpye and approved by Mabelane on 18 May 2015 respectively.

7.1.36. Paragraph 3.5.1 (i) of Eskom's procurement and Supply Chain Management Procedures provides that, where, as a result of proven in-depth market analysis, only one supplier in the market has been identified as being capable or available to supply the assets, goods or services in the existing circumstances, it may then become necessary to deviate from competitive tendering and follow the sole source process.

7.1.37. The grounds used to motivate for McKinsey's appointment could not be justified as there is no indication that an in-depth market analysis was done to support that only McKisney could provide the services required by Eskom (**Annexure D249**).

Probity review for the Development of the Top Engineers Programme

7.1.38. We determined that Muffin Consulting was appointed by Eskom to conduct a probity review on McKinsey in respect of the Top Engineers Programme.

7.1.39. The purpose of the probity review was to identify and report any conflict of interest that may have existed between McKinsey's directors and members of the authorising Eskom's committees, employees and their respective spouse.

7.1.40. According to the report, the findings were based on information that was retrieved by Muffin Consulting between the period 22 May 2015 and 27 May 2015.

7.1.41. The report concluded that there was no perceived conflict of interest between the Eskom authorising committee members and McKinsey.

Request from Mabelane to GM Finance

7.1.42. We determined that on 29 May 2015, Mabelane submitted a request to GM Finance for the development of a permanent internal consulting capability based on the design, facilitation and training of the Top Engineers.

7.1.43. The submission motivated for the appointment of McKinsey as Strategic Partner for the development of the new Eskom Internal Consulting Unit.

7.1.44. We determined that the submission was signed by Mabelane on 29 May 2015 (**Annexure D251**).

Approval conditions for Top Engineering Development Program

7.1.45. We determined that on 29 June 2015, Nonkululeko Veleti sent a letter to Mabelane requesting that the following be taken into account in finalising the process:

7.1.45.1. Retention strategy must be developed immediately to ensure Eskom does not invest for a period of 3 years in Top Engineers and then lose the resources with the skills to external market;

7.1.45.2. Budget has been set for the nest 3 years and it was critical that Business Productivity Programme savings are achieved. Activities for the development of the Top engineers should be done within the allocated budget.

7.1.45.3. Expenditure should not increase above the budget as a result of the project as the training is expected to deliver on Business Productivity target commitment for Group Commercial Division.

7.1.45.4. In determining benefits the payment, methodologies must be agreed upfront to ensure bottom-line benefits actually flows to income statements and balance sheet for each of the 3 years.

7.1.45.5. National Treasury instruction must be complied with in relation to Consultant Rates and if alternative methodology such as incentive – based is used, need to verify that is allowable within the rules of National Treasury.

7.1.45.6. Commercial processes must be adhered to (**Annexure D251**).

Strategic and Management Consulting Approval

7.1.46. We determined that Corporate Finance Department conducted an assessment of the request by Group Technology to appoint McKinsey as a sole source for the development of a permanent internal consulting department.

7.1.47. We further determined that Ismail Mulla prepared a report dated 29 May 2015 to Mabelane based on the assessment conducted by Corporate Finance Department.

7.1.48. We determined that Corporate Finance Department did not support the request by Group Technology to appoint McKinsey for the development of a permanent internal department due to *inter alia* the following reasons:

7.1.49. A Business Consulting Unit already exists in Eskom within the Finance Group;

7.1.49.1. The mandate of the Top Engineers Programme was for McKinsey to train and transfer project management and engineering consulting skills during the Outage Management Contract as part of the SD & L requirement, to the Top Engineers, Only Engineers were eligible to apply for the programme, According to Corporate Finance, reflected that McKinsey deviated from the mandate and apparently trained the selected candidates in general strategic and business consulting theory and methodology;

7.1.49.2. Sole source request for the scope of work cannot be justified, since McKinsey is not the sole provider of consulting services in the market.

7.1.49.3. Corporate Finance recommended that the business first develop a business case for the establishment of an internal consulting section within Eskom for Exco consideration and decide on the best Strategy and partner to deliver same if approved.

7.1.49.4. Corporate Finance further recommended that if the Business case is approved by Exco, then an open tender process be followed to appoint one or more consultants on a fixed fee basis to support the establishment. All real-time projects identified by Eskom to be used as the platform for the skills training over the period could be delivered at no additional cost or success to Eskom.

7.1.49.5. Consultant cannot be appointed for the development, as well as implementation of strategies since this poses a conflict of interest and a risk that inappropriate strategies may be implemented;

7.1.49.6. There was no science behind the estimated saving of R0.5 million that could allegedly be made on the annual consulting spend in Eskom;

7.1.49.7. National Treasury directive did not allow SOE's to contract external consultants of a "success fee" basis;

7.1.49.8. Past engagements had demonstrated that McKinsey's fee structures were substantially higher than those allowed by the National Treasury Directive.

7.1.50. We determined that on 6 June 2015, Mabelane responded to Corporate Finance's report and indicated the following:

7.1.50.1. The requirements for compliance with the National Treasury Instruction 01 of 2013/2014 had been complied with in all respect.

7.1.50.2. Internal Consulting Department had been fully consulted and all aspects of the submission for development of Top Engineers had been discussed with the General Manager: Internal Consulting Department and the Acting Chief Financial Officer.

7.1.50.3. The Eskom delegation of authority had been followed in that, the submission had been deliberated by the EXCOPS via a round robin and approval was previously granted.

Submission to EXCOPS and BTC

7.1.50.4. Based on documentation reviewed, we determined that a memorandum was submitted to EXCOPS and BTC on 8 October 2015 and 22 October 2015 respectively. The purpose of the memorandum was to provide feedback on the negotiation outcome with McKinsey to develop the Top Engineer Programme into an Internal Consulting Unit.

7.1.50.5. According to the memorandum, on 6 July 2015, the BTC via round robin approved the mandate to negotiate with McKinsey without prior tendering. We determined from the memorandum that Eskom held negotiations with McKinsey from 28 July 2015 to 29 September 2015.

7.1.50.6. As indicated above, Mothapo indicated that Singh engaged with McKinsey relating to the above appointment prior to his appointment as the Acting CFO at Eskom.

7.1.50.7. One of the conditions negotiated between McKinsey and Eskom was the down payment that would be payable to McKinsey in lieu of project set-up costs and consulting fees at a total value of R475 000 000. The down payment would be broken down as follows:

Value Package	**Value**
Module "Top engineers"	R0.00
Module "Procurement"	R50 000 000.00
Module "PED"	R75 000 000.00
Module "Generation (PLL only)"	R50 000 000.00
Module "Generation (project factory)"	R50 000 000.00
Module "Generation (UCLF Reduction)"	R200 000 000.00
Module "Claims Management" not yet concluded	R50 000 000.00

Value Package	Value
Total	**R475 000 000.00**

7.1.50.8. The down payment would be made when they fall due after commencement of each value package, therefore requiring a positive value contract initially.

7.1.50.9. As indicated above, there is no evidence that permission was sought and or received from National Treasury to implement the down payment of R475 000 000 as negotiated with McKinsey.

Negotiation results

7.1.50.10. As indicated above, Eskom held negotiations with McKinsey from 28 July 2015 to 29 September 2015. The following are some of the results of the negotiations:

7.1.50.10.1. The objective of the contract would be to develop the Top Engineers Programme into an internal consulting unit than can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash.

7.1.50.10.2. The contract would be based on the R0.00 and self-funding principle, and would be for a period of three years. Payments would be made to McKinsey on work packages approved by a Steering Committee. The envisaged end state or implementation level of the work packages for benefit/impact calculation would be at the implementation level and would be to a maximum of 10.80% and 10.55% of the savings for once-off and recurring benefits or impact that is calculated respectively.

7.1.50.10.3. McKinsey would issue Eskom with a bank guarantee in lieu of the down payments. The bank guarantee value would include the down payments made plus interest that would be incurred to the down payments at the potential termination point 12 months after the contracted started.

7.1.50.10.4. McKinsey would be willing to comply with the National Treasury guidelines for expense payments and thus claims against Eskom for expenses. McKinsey however would retain the right to apply its own travel guidelines. The expenses would not be available for scrutiny. The cap on expenses was at 10% of McKinsey's share of benefits realised.

7.1.50.10.5. The memorandum further required approval for possible application for a deviation from the National Treasury Cost Savings Instruction Note 1 prescripts. In the event that the contract value exceeded the R1 200 000 000 there would be a need to report it to the Minister for Public Enterprises.

7.1.50.11. The memorandum was approved by Charles Kalima, Prish Govender and Matshela Koko on 2 October 2015, and 6 October 2015 respectively.

Extract of approved minutes of the Board Tender Committee – 21 October 2015

7.1.51. We were provided with an extract of approved minutes of the BTC meeting held on 21 October 2015. According to the minutes, it was resolved that the following be approved for recommendation to the BTC:

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

7.1.51.2. To ratify minor differences between negotiated outcomes and approved mandate parameters as contained in Sub-clause 133 and 136

7.1.51.3. To note the following negotiated conditions:

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

7.1.51.3.2. That the contract would be based on the R0.00 and self-funding.

7.1.52. We noted that the extract of the minutes were signed by Daniels certifying the minutes as the true extract (**Annexure D252**).

Communication from McKinsey to Eskom - dated 30 October 2015

7.1.53. We determined that on 30 October 2015, McKinsey wrote a letter to Eskom officials including Ntombizodwa Mokoatle, and Prish Govender.

7.1.54. The purpose of the letter was to provide an opinion as to whether McKinsey and its BBBEE consulting partners were complying with the consulting rates as specified by National Treasury in April 2014.

7.1.55. According to the letter,

7.1.55.1. The impact payment would include consulting fees and a risk premium that was required to cover for the 100% professional fees being at a risk for McKinsey and its BBBEE consulting partners;

7.1.55.2. Consulting fees included costs for tools and services provided to Eskom; and

7.1.55.3. The respective consulting fees were in compliance with both National Treasury and the Strategy Panel Tender as submitted to Eskom in June 2015.

7.1.56. The following hourly rates applied:

7.1.56.1. Average hourly rate for short-tern engagements (excluding expenses for travel/accommodation and excluding VAT):R1 985.21 (As per Eskom's categories: Director/Partner R2 885, Associate Director R2 855, Senior Manager R2 297, Manager R2 323, Senior Consultant R1 3300, Consultant R1 300, Analyst R935);

7.1.56.2. Average hourly rate for long-term engagements (excluding expenses for travel/accommodation and excluding VAT): R1 643.42 (As per Eskom's categories: Director/Partner R2 380, Associate Director R2 356, Senior Manager R1 895, Manager R1 917, Senior Consultant R1 166, Consultant R1 166, Analyst R623)

7.1.56.3. Expenses for accommodation and travel would be charged on an as and when incurred basis in full compliance to the National Treasury regulations. As per the negotiations expenses for travel and accommodation would be treated outside the at risk nature of the programme and would be paid on the as and when incurred basis (**Annexure D253**).

Service Level Agreement

7.1.56.4. We determined that McKinsey entered into a Services Level Agreement with Eskom for the development of a Top Engineer's programme into an Internal Consulting Unit.

7.1.56.5. The agreement was valid for a period of three years from the effective date. According to the Service Level Agreement, Eskom would make the following mobilisation/initiation payments to McKinsey:

7.1.56.5.1. Procurement work package – R50 000 000 in six equal monthly instalments with effect from the effective date; and

7.1.56.5.2. Claim Management - R100 000 000 in six equal monthly instalments with effect from the effective date.

7.1.56.6. Generation – R340 000 000 in six equal monthly instalments with effect from effective date as follows:

7.1.56.6.1. R50 000 000 in respect of any services relating to partial load losses;

7.1.56.6.2. R240 000 000 in respect of any services relating to the unplanned capability loss factor;

7.1.56.6.3. R50 000 000 in respect of any services relating the project factor as identified in the Generation Work Package schedule

7.1.56.7. Primary Energy – R75 000 000 in six equal monthly instalments with effect from the effective date.

7.1.56.8. The service level agreement was signed by Mabelane and Weiss on 7 January 2016 and 11 January 2016 respectively (**Annexure D254**).

Minutes of the Top Consulting Programme Steering Committee meeting of 9 February 2016

7.1.56.9. We determined that on 9 February 2016, the Top Consulting Programme Steering Committee held a meeting to *inter alia* provide guidance and support to the Top Engineers Programme.

7.1.56.10. The purpose of the meeting was to further provide guidance to and approval of all work package initiatives.

7.1.56.11. The committee would be in operation for the duration and term of the service level agreement (**Annexure D255**).

Letter dated 19 February 2016

7.1.57. Based on documentation reviewed, we determined that Singh wrote a letter dated 19 February 2016 to Weiss of McKinsey in relation to the Top Consultants Programme –Risk Based Contract Proposal and Negotiations.

7.1.58. The letter sought a formal response to *inter alia* the following items:

7.1.59. According to the letter, the intended BBBEE partner to McKinsey was Regiments. The letter further stated that Regiments was in the process of a transition and the ultimate BBBEE partner would be Trillian.

7.1.60. Eskom sought a response from McKinsey relating to an article published in the Financial Mail (February 18 – February 24) relating to allegations associated with Mr Mohammed Badat, a former employee of Regiments Group.

7.1.61. Eskom further sought a response from McKinsey to issues raised by Singh during a meeting of 9 February 2016 relating to the objectives of the risk based contract. According to the letter, some of the issues raised by Singh included the development of the BBBEE partner (Regiments) as regards the vision, aspirations, skills and competency mix and overall plan for success over the contract duration.

7.1.62. We determined from documentation reviewed that McKinsey responded to Singh's letter dated 19 February 2016. We further determined that Eskom was not happy with McKinsey's response.

7.1.63. We were however not provided with McKinsey's response to the letter dated 19 February 2016 (**Annexure D256**).

Registration as a Vendor

7.1.64. We determined that Sagar issued a letter dated 9 February 2016 to Govender requesting Eskom to pay Trillian directly for any services performed by the latter in pursuance of McKinsey's obligation under the Agreement with Eskom (**Annexure D257**).

7.1.65. According to the letter, McKinsey had subcontracted a portion of the services to be performed under the agreement to Trillian Property Limited.

7.1.66. It should be noted that the SLA signed in January 2016 was between McKinsey and Eskom and not Eskom and Trillian. Trillian had no official mandate with Eskom to perform any work relating to the Top Consulting Programme or any other project.

7.1.67. We determined that Govender sent a letter dated 8 April 2016 to Khomola relating to a request from McKinsey that Trillian be paid directly. The purpose of the letter was to request Eskom Finance Department to add Trillian as a registered Eskom Vendor. According to the letter, McKinsey had sub contracted a portion of the services for contract number 4600059002 to Trillian (**Annexure D258**).

7.1.68. Attached to the letter were Trillian Management Consulting's company documents including CIODA tender letter dated 14 March 2016 and a Tax Clearance Certificate approved on 28 January 2016 with an expiry date of 27 January 2017 as well as their share certificate.

7.1.69. According to the share certificate, Trillian Capital Partners held 100% Ordinary shares in Trillian Management Consulting. Bianca Goodson was reflected as the Chief Executive Officer of Trillian Management Consulting.

7.1.70. Mothepu indicated that during April 2016, she received a call from Mabelane indicating that Eskom was processing Trillian's invoice and required McKinsey to sign off/approve the invoice before Eskom could process payment.

7.1.71. Mothepu further indicated that on 11 April 2016, Govender telephonically requested Trillian's BEE certificate and tax clearance certificate to register Trillian on their supplier database in order to process payment.

7.1.72. We determined that Trillian Management Consulting was registered as an Eskom vendor on 14 April 2016 with vendor number 0011083725.

7.1.73. According to Mothepu, on 14 April 2016, she received proof of payment from Mary-Anne Hendricks, however she could not recall the amount.

Letter dated 10 March 2016 – From McKinsey to Wood

7.1.74. We determined that during March 2016, McKinsey conducted a global risk review/due diligence on Trillian.

7.1.75. Based on documentation reviewed, we determined that George Desvaux and Jean Christophe Mieszala issued a letter to Wood requesting responses to a letter dated 25 February 2016 relating to *inter alia* the following questions:

7.1.75.1. Detailed account of the form and legal status of Trillian's relationship with Hubei Hongyuan and E Gateway Global Consultants; and

7.1.75.2. Confirmation that pending the detailed response to the letter and with immediate effect, no Trillian personnel, subcontractor personnel, or personnel of any affiliate undertaking will conduct or undertake any activities on any elements of the Top Consultants Programme which may lend themselves to a conflict of interest whether real or perceived.

7.1.76. We were not provided with Trillian's response to the questions above.

7.1.77. We however determined from documentation reviewed that E-Gateway is a company based in India that was subcontracted by Trillian to provide technical skills on the Eskom turnaround programme.

7.1.78. According to the Outsourcing Engineering Consultancy Service Agreement between Trillian and E Gateway Global, it was agreed that a fixed down payment portion of the remuneration would be 77% of the agreed monthly budget allocated to Trillian.

7.1.79. The remuneration would be invoiced in South African Rand and paid to the bank account of E Gateway Global.

7.1.80. We determined that Bianca Goodson and Javed Shafqat Khan signed the agreement on 26 January 2015 on behalf of Trillian and E Gateway Global respectively.

7.1.81. Goodson indicated that Clive Angel had arranged a meeting for her to meet the Directors of E-Gateway on 7 December 2015. E-Gateway was the nominated subcontractor to TMC for the Generation work stream at Eskom.

7.1.82. According to Goodson, the meeting was held at ICM offices and at that meeting, she met Javed Shafqat Khan ("Khan"), a Director of E-Gateway Global based in Dubai.

7.1.83. Goodson indicated that her interactions with Khan started with the Generation work stream at Eskom, but later increased and included the Duvha boiler replacement project.

7.1.84. During our consultation with Mothepu, she indicated that Goodson had informed her of McKinsey's global risk review decision in March/April 2016. Mothepu indicated that she raised concerns with Wood questioning how Trillian could continue working at Eskom without a contract (**Annexure D259**).

Meeting between Koko and Goodson arranged by Salim Issa

7.1.85. According to Mothepu, Wood indicated that he would speak to Singh to appoint Trillian independently through an RFP Eskom issued in March 2016 for Financial Services Provider Panel.

7.1.86. During our consultation with Goodson, she indicated that Salim Essa had arranged for her to meet Koko on 10 February 2016 to discuss issues that she was encountering with McKinsey.

7.1.87. Goodson indicated that her working relationship with the McKinsey partners had become strained as she felt that Trillian was not being included in the decision-making in relation to the Eskom programme.

7.1.88. She further stated that at the time, she did not understand the resistance on the part of McKinsey to include Trillian in decision-making.

7.1.89. Goodson further indicated that once the meeting was confirmed Clive Angel instructed her on behalf of Salim Essa to convey a message to Koko articulating Trillian's request that invoices are submitted to Eskom directly and paid directly to Trillian and not through McKinsey.

7.1.90. Goodson indicated that Koko requested Mabelane to join the meeting. According to Goodson, Koko indicated that he understood that Trillian wanted to invoice Eskom directly, however he could not support that as Trillian did not have a contract with Eskom.

7.1.91. It is our understanding that McKinsey terminated its ties with Trillian in March 2016 at least a month before the first payment was made to Trillian by Eskom.

Submission to the BTC dated 9 June 2016

7.1.92. We determined that on 6 June 2016, Govender and Mabelane approved a submission to the BTC relating to McKinsey's risk based contract.

7.1.93. According to the submission, Eskom had issued a letter to McKinsey following a programme kick off steering committee wherein key concerns relating to the programme were raised.

7.1.94. The submission reflected that McKinsey failed to fully address Eskom concerns. The submission further raised concerns that a previous contract with McKinsey concluded as a risk based contract had been a source of an audit finding.

7.1.95. According to the submission, management felt it prudent to terminate the contract finalisation process for the McKinsey risk based contract. It was management's view that McKinsey would have to be compensated for the work carried out. Such costs would be negotiated and finalised with McKinsey.

7.1.96. According to the submission, a resolution was required from BTC to grant:

7.1.96.1. Approval to cancel McKinsey risked based process;

7.1.96.2. Allow all costs to be negotiated and finalised, to be approved by the relevant tender committee; and

7.1.96.3. Approval for activities to be re-directed to existing contracts where appropriate with the incorporation of similar SDL objectives and the option of contracting on a risk based approach (**Annexure D260**).

Submission to the BTC meeting of 8 August 2016

7.1.97. We determined from documentation reviewed that Eskom BTC held a special meeting on 8 August 2016. During the said meeting, a submission on the feedback on McKinsey Top Consultants Programme MSA settlement process was presented for consideration by the BTC (**Annexure D261**).

7.1.98. According to the submission, the BTC on 22 June 2016 approved the decision to wind down the existing Top Consulting Programme Master Service Agreement with McKinsey, based on an inability to reach agreement of the final terms and conditions of the contract.

7.1.99. We determined that the submission was signed by Govender, Mabelane and Singh certifying that the information presented thereon was correct. The submission was signed by the three Eskom officials on 5 August 2016 respectively.

7.1.100. According to the submission, the following resolution was required from the BTC:

7.1.101. BTC to note the following:

7.1.101.1. The initiatives under the Top Consultants Programme MSA had achieved more than R18.6 billion of annualised impact for Eskom; and

7.1.101.2. Applying the termination and settlement clause within the MSA would mean that Eskom would pay up to R2.84 billion (inclusive of payment to the BBBEE partner) for the value achieved.

7.1.102. The BTC to *inter alia* approve the following:

7.1.102.1. An already negotiated lower settlement value of R1.8 billion (inclusive of payment to the BBBEE partner)

7.1.102.2. The R1.8 billion settlement negotiated would consist of an initial cash payment of R800 million to cover the utilisation of the consultant's resources; and

7.1.102.3. The consultants had made an offer to reinvest the risk premium from the settlement.

7.1.102.4. The Group Chief Executive, Group Chief Financial Officer and Group Executive Generation and Technology were authorised to negotiate more favourable terms and conditions to the settlement process.

7.1.103. We determined that during the meeting of 8 August 2016, the BTC noted and resolved to approve as per the submission presented and signed by Govender, Mabelane and Singh.

7.1.104. We noted that Eskom negotiated a settlement with McKinsey just six months after signing the SLA relating to the Top Consultant Programme.

7.1.105. We determined that on 4 November 2016, Singh approved a request from Govender and Mabelane to raise a provision for R500 million for the settlement of McKinsey Contract. The request was dated 21 October 2016 and was recommended by Govender and Mabelane on 24 October 2016 respectively.

Invoices from McKinsey

7.1.106. We were presented with invoices from McKinsey relating to the Top Engineering Programme (**Annexure D262**):

Date	**Invoice number**	**Description**	**Total incl. VAT**
11 August 2016	6595	Incentive Payment	680 524 879.00
17 February 2017	6730	Settlement amount	348 067 620.72
Total			**1 028 592 499.72**

7.1.107. We determined that the invoices from McKinsey were issued following the cancellation of the MSA in June 2016.

7.1.108. We further determined that McKinsey elected to repay R902 million plus interest of R99.5 million earned over a two year period. McKinsey indicated t said the fee repayment was a consequence of Eskom's non-compliance with the relevant procurement laws and was not an admission of liability by McKinsey.

7.1.109. It is our understanding that the decision to return the R1 billion was made in July 2018 following a settlement agreement between the McKinsey, Eskom and the Asset Forfeiture Unit (AFU).

Invoices issued by Trillian to Eskom

7.1.110. We were provided with the following invoices issued by Trillian Management Consulting. The invoices were issued between April 2016 and February 2017.

Invoice date	Invoice number	Invoice addressed to	Total incl. VAT
14 April 2016	ESK20016-MC01	Anoj Singh	30 666 000,00
10 August 2016	ESK20016-MC02	Maya Bhana	122 208 000,00
10 August 2016	ESK20016-MC03	Maya Bhana	113 262 534,00
14 December 2016	ESK20016-MC04	Maya Bhana	152 760 000,00
15 February 2017	ESK20016-MC05	Edwin Mabelane	176 332 379,29
Total			**595 228 913.29**

7.1.111. We determined that the invoices were in respect of Management Consulting fees for *inter alia* the following initiatives:

7.1.111.1. Professional fees: Pro –rate share of Eskom Corporate Plan deliverable

7.1.111.2. Project Surge;

7.1.111.3. Private Sector Participation;

7.1.111.4. Online Vending Services;

7.1.111.5. Hitachi;

7.1.111.6. Duvha;

7.1.111.7. Short term funding facility;

7.1.111.8. Long term funding facility;

7.1.111.9. Programme Management Office (PMO);

7.1.111.10. Procurement;

7.1.111.11. Primary Energy;

7.1.111.12. Claims; and

7.1.111.13. Generation.

7.1.112. During our consultation with Mothepu, she indicated that from October 2015 to June 2016, Singh had requested the Regiment team and later Trillian team post 1 March 2016 to assist in the following mandates:

7.1.112.1. Eskom Funding Plan;

7.1.112.2. Analysis of China Development Bank's $500 million loan facility;

7.1.112.3. Analysis of Goldman Sach's R30 billion loan facility;

7.1.112.4. Online Vending;

7.1.112.5. Sale of Eskom Finance Company; and

7.1.112.6. Duvha 3 Power Station Insurance claim.

7.1.113. Mothepu indicated that to the best of her knowledge, Trillian Financial Advisory had not billed Eskom for the above work nor had Eskom paid Trillian for work performed when she left in June 2016.

7.1.114. According to Mothepu, the exception was in February 2016, where Trillian Management Consulting issued an invoice to Eskom for work performed on the Corporate Plan. Mothepu indicated that she received a WhatsApp message from Clive Angel requesting her to send "Headings" of work done by Trillian Financial Advisory on the Eskom Corporate Plan.

7.1.115. According to Mothepu, she explained to him that Trillian Financial Advisory had only assisted Andre Pillay with the funding plan and no other work had been performed by Advisory on the Corporate Plan.

7.1.116. We determined that invoice number ESK20016-MC01 in the amount of R30 666 000.00 was in respect of Professional fees: Pro –rate share of Eskom Corporate Plan deliverable.

7.1.117. In her statement originally prepared for the Portfolio Committee on Public Enterprises, Goodson *inter alia* indicated that between 1 January and 29 February 2016 Trillian Management Consulting comprised of two employees including herself. Goodson disputed that any meaningful work could have been carried out by the time Trillian submitted the invoice relating to Eskom Corporate Plan.

7.1.118. Based on Singh's parliamentary response to question number PQ2701, he indicated that no amount was paid to Trillian Capital Partners for the Duvha power plant insurance claim. He further stated that Eskom did not appoint Trillian Capital Partners to negotiate the settlement for the Duvha Power Plant claim.

7.1.119. Singh stated that Eskom did not appoint Trillian Capital Partners to source a new supplier to replace the exploded boiler at the Duvha Plant. Singh further stated that there was no need to appoint any external party to assist with sourcing.

7.1.120. According to Mothepu, her team assisted Eskom with negotiations of the Duvha 3 insurance claim with Marsh (Lara Wild). .Mothepu indicated that her team met with Marsh, Singh, Koko and one Jacki Kalani on several occasions to discuss insurance settlement options. She further stated that her team advised Eskom on the most effective options.

7.1.121. We determined that invoice number ESK20016-MC02 in the amount of R122 208 000.00 and dated 10 August 2016 related to *inter alia* work performed by Trillian on Duvha 3 Power Station Insurance claim negotiations.

7.1.122. Invoice number ESK20016-MC05 was in respect of settlement agreement approved by BTC following the cancellation of the MSA with McKinsey.

7.1.123. Trillian did not have an official mandate with Eskom and McKinsey to perform work at the SOE. The payments of R595 228 913.29 made to Trillian were therefore irregular.

7.1.124. Goodson indicated that she disputes all invoices submitted to Transnet, Eskom and any other client from Trillian Management Consulting for the period between 1 January 2016 and 31 March 2016, on the following basis:

7.1.124.1. Trillian Management Consulting did not have employees to conduct the work; and

7.1.124.2. The employees that transitioned from Regiments did not execute any work that could be invoiced to a quantum more than R10m under her management, during this time; and there were no signed contracts between Trillian Management Consulting and any client.

Top Engineering Programme Review

7.1.125. We determined that Eskom's Assurance and Forensic department conducted a review of the procurement process followed in awarding the contract to McKinsey for the development of the Top Engineers Programme into an Internal Consulting Unit. The said review included cancellation of the contract and related payments. The review was based on a request by Singh. A report into the above review was issued on 12 December 2016.

7.1.126. According to the report, the review did not constitute an audit but an advisory review for the consumption of the CFO and other executives according to the sole discretion of the CFO.

The report concluded that:

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

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

7.1.129. Assurance and Forensic could not determine whether the contract was terminated in accordance with the termination clauses as contained in the contract or was in fact terminated at all;

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

7.1.131. The report indicated that a request to Board was to have the contract with McKinsey terminated and the work be put back into the panel of Strategic Management for all panel members to tender for.

7.1.132. It is clear from the above statement that Eskom failed to conduct an in-depth market analysis before confining the contract to McKinsey.

7.1.133. We noted that the report was signed by Molefi Nkhabu (**Annexure D263**).

Extract from the draft minutes of BTC meeting of 13 December 2016

7.1.134. We determined from a review of documentation that the BTC held a meeting on 13 December 2016 to discuss *inter alia* the MSA settlement process (**Annexure D264**).

7.1.135. It was resolved during the meeting that approval be granted:

7.1.135.1. For a mandate to negotiate and conclude the remaining portion of the settlement up to R849 million, based on the total value of R18 billion communicated to the BTC in August 2016;

7.1.135.2. For a payment of R134 million to finalise payments up to August 2016 to the BBBEE partner that was due as per the work split agreed with McKinsey; and

7.1.135.3. The Acting Group Executive, the Chief Financial Officer and the Chief Procurement Officer were authorised to negotiate and conclude the settlement process with McKinsey.

7.1.136. We determined that the submission presented during the BTC meeting of 13 December 2016 was approved by Mabelane.

7.1.137. According to the submission,

7.1.138. An initial payment of R803.5 million was paid to McKinsey inclusive of payment to the BBBEE partner in line with the approval granted by BTC in August 2016;

7.1.139. A letter of demand from McKinsey and the BBBEE partner was received claiming outstanding payment up to R1.8 billion; (we were not provided with the said letter of demand")

7.1.140. Management had put into place three review initiatives to assist with compliance and assurance including an audit by internal audit as well as the appointment of Oliver Wyman. Oliver Wyman was appointed to conduct a detailed assessment of the claimed value and payment due upon the cancellation of the MSA.

7.1.141. Oliver Wyman's report *inter alia* indicated the following:

7.1.141.1. "*Based on the invoice from the Consultant supplier and the split of revenues they set out, a further payment of R134 million is due to the BBBEE partner for the contribution to the consulting work packages;*

7.1.141.2. *The payment of the remaining R849 million could be further negotiated with the Consultant:*

7.1.141.2.1. *There appear to be a clear-cut reason to challenge R380 million of the payment;*

7.1.141.2.2. *The other R469 million seems justified for payment, but there are reasons to argue that a portion of it should be delayed rather than paid immediately":*

7.1.142. We noted that Oliver Wyman's report appeared to be more favourable to the BBBEE partner being paid a further R134 million *"for the contribution to the consulting work package".*

7.1.143. During our consultation with Goodson, she *inter alia* referred us to her whistle blower statement as she gave account of incidents that lead to her resignation as Chief Executive Officer of Trillian Management Consulting.

7.1.144. According to her Whistle Blower Statement, Goodson indicated *inter alia* the following relating to her interactions with officials from Oliver Wyman., *"I was introduced to Hartmann on the 11 January 2016 by Wood at Regiments Capital as a Director of OW Dubai. Wood explained that Essa had arranged for OW to be the preferred consultants to work at CoGTA and Transnet. Wood inferred that TMC would be the supplier development partner to OW on this work, should it realise. Hartmann attended dinner with Gary Pita later that evening. Hartmann attended the introduction meeting with Anoj Singh [Eskom CFO] the following morning. Later in my tenure, Hartmann and I corresponded mostly on the proposal to Eskom on Change Management and Shale Gas extraction".*

7.1.145. As reflected above, there may have been conflict of interest between Trillian and Oliver Wyman which resulted in the approval of a settlement payment of R134 million to Trillian based on *inter alia* a recommendation on a report issued by Oliver Wyman.

7.1.146. We determined that Trillian had already invoiced Eskom an amount of R266 136 534 at the time that the resolution was approved in December 2016. Trillian invoiced Eskom a further R329 092 379.29 including a settlement amount of R 176 332 379.29.

Termination of Top Consulting Group MSA

7.1.147. Based on documentation reviewed, we determined that Mabelane issued a termination letter dated 16 June 2016 to McKinsey.

7.1.148. The termination of McKinsey's Risk Based Contract was based on a decision taken by the Board on 9 June 2016.

7.1.149. According to the termination letter, Eskom would embark on a transparent procurement process to reallocate the activities under the risk based contract (**Annexure D265**).

Extract from minutes of BTC meeting of 8 February 2017

7.1.150. We determined that on 8 February 2017, the Eskom BTC held a meeting to discuss *inter alia* the MSA with McKinsey.

7.1.151. We determined from the extract of the minutes that based on the last submission presented to the BTC on the above matter, there was an outstanding payment of R800 million that was due to McKinsey as part of the contract. During the BTC meeting of 8 February 2017, Govender reported that Eskom had through an external process interrogated the contract and the payments made.

7.1.152. Govender further reported that in line with the recommendation from the external verifier and as a result of the negotiation process, Eskom had settled at a value of R460 million in terms of the outstanding payments. It was confirmed that all subcontractors to McKinsey would be paid from the R460 million to be paid by Eskom.

It was resolved that:

7.1.153. The feedback on the settlement reached with McKinsey and the payment of R460 million by Eskom as part thereof in full and final settlement of all claims in terms of the MSA be noted and supported by the BTC.

7.1.154. We determined that Mabelane issued a letter dated 9 February to Weiss requesting him to provide the necessary documents for purposes of effecting the settlement amount of R460 000 000 in line with the resolution of the BTC meeting of 8 February 2017.

7.1.155. We further determined that Mabelane issued a letter to Wood requesting him to provide documentation so that a settlement payment of R154 677 525 could be effected to Trillian. We noted that the letter to Wood was not dated.

7.1.156. We determined that subsequent to the letter from Mabelane referred to above, Trillian Management Consulting issued an invoice dated 15 February 2017 in the amount of R176 332 379.29 including VAT. The said invoice was in respect of the settlement.

7.1.157. We determined from the BTC minutes of meeting of 8 February 2017 as well as a letter dated 16 February 2017 issued by Mabelane to Weiss that the total settlement amount of R460 million would be payable to McKinsey and its BBBEE Partner, *i.e.* Trillian.

7.1.158. McKinsey issued invoice number 6730 in the amount of R348 067 620.72 (Incl. VAT) as a final settlement amount due. The invoice reflected an amount of R154 677 525.59 (Excl. VAT) due to the BBBEE partner *i.e.* Trillian (**Annexure D266**).

Memorandum dated 27 September 2017

7.1.159. We determined that Wawa Xaluva (Acting GM: Legal and Compliance) issued a memorandum dated 27 September 2017 to Jaybalan Pillay (Chief Procurement Officer). The purpose of the memorandum was to advise the Chief Procurement Officer that the risk based contracts which were implemented within Eskom required approval from National Treasury before they could be implemented (**Annexure D267**).

7.1.160. According to the memorandum, any payments and commitments made in terms of the risk based contracts at the time would be considered irregular expenditure.

7.1.161. The memorandum referred to National Treasury instruction note 01 of 2013/2014 effective 1 January 2014 succeeded by instruction note 01 of 2016/17 effective 1 November 2016 as well as instruction note 03 of 2017/18 effective May 2017.

7.1.162. National Treasury instruction note 01 of 2013/2014 was applicable at the time that Eskom entered into the MSA with McKinsey. National Treasury instruction note 01 of 2013/2014 did not permit the use of risk based remuneration model.

7.1.163. As indicated above, the MSA between Eskom and McKinsey was a risk based contract. We however determined that Eskom did not obtain approval from National Treasury prior to the conclusion of the said contract.

Memorandum – Factual Findings report into MSA between Eskom and McKinsey

7.1.164. We determined from documentation reviewed that during July 2017, Molefi Nkhabu issued a report on the nature and extent of Singh's involvement in the transactions relating to an MSA between Eskom and McKinsey.

7.1.165. According to the report, Assurance and Forensics' responsibility was to verify and validate the information against the chronology of events with accompanying management comments made on the schedule depicting chronology of events.

7.1.166. The report indicated that the results of the factual findings from procedures performed by Assurance and Forensic were as follows:

7.1.166.1. There is no evidence to indicate that the GCFO was involved in:

7.1.166.2. Seeking a mandate from the Board to negotiate with McKinsey;

7.1.166.3. Negotiation with and seeking approval from the Board Tender Committee to approve the outcome of the negotiation with McKinsey;

7.1.166.4. Signing the letter of intent from Eskom to McKinsey;

7.1.166.5. Signing the final MSA with McKinsey;

7.1.166.6. The actual negotiation ad signing of final settlement with McKinsey;

7.1.166.7. Approving any payments.

7.1.167. There is evidence of the GCFO's involvement to a more or lesser degree in the following instances:

7.1.167.1. The GCFO was the chair of the Top Consulting Steering Committee;

7.1.167.2. The GCFO wrote the letter to McKinsey requesting formal response on the role to be played by the BBBEE partner amongst others;

7.1.167.3. Requesting cancellation of the MSA from the BTC;

7.1.167.4. The endorsement of the request to the BTC to approve the settlement terms and the first payment; and

7.1.167.5. The GCFO's involvement was limited to requesting the appointment of the assurance provider to validate the payment (**Annexure D268**).

Conclusions - Appointment of McKinsey -TOP Engineers Programme

7.1.168. During July 2015, Singh was still an employee at Transnet and had no authority to negotiate contracts with McKinsey on behalf of Eskom. Singh was seconded to Eskom from 1 August 2015.

7.1.169. The appointment of McKinsey did not follow an open tender process.

7.1.170. Mabelane proceeded to appoint McKinsey and disregarded concerns raised by Eskom's Corporate Finance Department relating to the said appointment.

7.1.171. Mabelane and Govender contravened section 57 of the PFMA in that he failed to act in the best interest of Eskom when motivating for the appointment of McKinsey resulting in irregular and wasteful expenditure of R1.6 billion.

7.1.172. Govender contravened section 57 of the PFMA by instructing Khomola to facilitate Trillian's registration as an Eskom Vendor knowing fully well that Trillian did not have a contract with Eskom.

7.1.173. Eskom failed to seek permission from National Treasury in line with section 79 of the PFMA; in respect of the risk based contract concluded with McKinsey.

7.1.174. The appointment of McKinsey for the Top Engineer Programme was not in line with the provisions of Section 217 of the Constitution of Republic of South Africa;

7.1.175. Eskom cancelled the MSA with McKinsey and negotiated a settlement resulting in a payment of R1.6 billion to McKinsey and Trillian six months into the contract;

7.1.176. McKinsey cut ties with Trillian following a failed due diligence conducted by McKinsey in March 2016;

7.1.177. Eskom continued to engage with Trillian even though McKinsey had cut ties with the entity;

7.1.178. Trillian issued various invoices to Eskom even though Trillian had no formal mandate or contract with Eskom;

7.1.179. Payments made to Trillian Management Consulting were irregular as Trillian did not have a contract with Eskom;

7.1.180. The resolution to negotiate a further settlement with McKinsey and Trillian was inter alia based on a recommendation by Oliver Wyman;

7.1.181. Oliver Wyman appears to have favoured Trillian in their recommendations to Eskom;

7.1.182. There was a possible conflict of interest between Oliver Wyman and Trillian as Trillian had previously arranged business meetings for Oliver Wyman with inter alia COGTA and Transnet;

7.1.183. Singh misled the Parliament Portfolio in his submission that Eskom had not paid Trillian for the Duvha 3 Power Station Insurance claim negotiations;

7.1.184. We were not provided with confirmation of work done by Trillian on behalf of Eskom to the value of R122 208 000.00

7.1.185. The appointment of McKinsey into Eskom was initiated by Singh at the time that he was still a GCFO at Transnet;

7.1.186. McKinsey paid back more than R1 billion to Eskom including interest of R99.5 million earned on the R903 million paid in 2016 and 2017;

7.1.187. Nkhabu failed to perform his duties diligently and to the best of his abilities as he failed to identify that the processes followed in the appointment of McKinsey were flawed and exposed Eskom to risk. Nkhabu further exonerated Singh of any involvement or wrong doing in the appointment of McKinsey;

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend the following:

7.1.188. Recover the irregular payment made to Trillian during 2016 and 2017; and

7.1.189. DPCI to investigate if any role player did not receive any gratification for facilitating the contract between McKinsey/Trillian and Eskom.

8. ANOJ SINGH'S OVERSEAS TRIP FACILITATED BY MCKINSEY

8.1. During the course of our investigations we determined that on 1 February 2012 Pita prepared a memorandum titled *"INCREASE IN VALUE OF MCKINSEY AND PWC ENGAGEMENT"*. The purpose of the said memorandum is reflected as:

8.1.1. To request the Group Chief Executive's approval for an increase in value of the McKinsey appointment from R25 million to R49 million; and

8.1.2. To request the Group Chief Executive's approval for an increase in value of PWC appointment, from R5 million to R20 million.

8.1.3. The memorandum was recommended by Pita and Singh on 1 February 2012 and 15 February 2012 respectively.

8.1.4. We noted that Molefe did not approve it. Instead, Molefe wrote a note reflecting the following *"I don't understand how a six months consulting project can cost R49 million. I.E R8.5m per month! What needs to be done and what resources will be deployed? Work programme? Break down of cost? Please!(***Annexure D269***)*

8.2. It should be noted that the requested increase was done two months after the commencement of the project *i.e*. the project commenced in December 2011 and the increase was requested in February 2012.

8.3. We were not provided with procurement documentations relating to the project. We were therefore not able to investigate the process followed in the award of the project to McKinsey.

8.4. We obtained documentation that reflects that a day after Pita signed the recommendation to increase McKinsey's fee from R25 million to R49 million, *i.e.* on 2 February 2012 at 12:09, an e-mail titled 2012 CFO Forum –Invitation, was sent from McKinsey e-mail address CFO-Forum2012@McKinsey.com to Singh. The invitation extended to Singh was for him to attend the CFO conference in London (**Annexure D270**).

Invitation by McKinsey

8.5. Some of the documents provided to us by McKinsey relate to the CFO Forum of 2012. An e-mail was sent on 19 September 2011 from CFO-Forum to *inter alia* Vikas Sagar and Adam Bird. Paragraph three of the e-mail stated that *"we are writing you in your role as DCS for important Firm clients. We understand you to be the key contact for the following client(s), which are nominated as invitees. It is our policy to notify and seek DCS guidance before contacting any clients. Please advise if you wish for us NOT to contact any one of these individuals and extend an invitation to the event"*. **(Annexure D271)**

8.6. We noted that McKinsey blackened out the particulars of the clients the company sought to invite. From the e-mail above it follows that Vikas Sagar nominated Singh to be invited for the 2012 CFO Forum.

Memorandum from Singh to Gama requesting authorisation to travel

8.7. We determined that Singh sent a memorandum to Gama to seek approval to meet investors in London and the United Arab Emirates to gauge the Market's appetite for Transnet debt.

8.8. The memorandum was signed by Helen Welsh on 31 May 2012, acting on behalf of Singh as the compiler and Acting CFO. The memorandum was recommended by Disebo Moephuli ("Moephuli") as the Acting CFO, and approved by Gama as the Acting GCE. We noted that the Acting CFO title appeared for both the compiler and the individual who recommended the trip.

8.9. Singh explained the objective of the funding strategy as follows:

8.9.1. To explore an opportunity and to gauge the market's appetite for Transnet's debt;

8.9.2. Ensuring that Transnet has sufficient liquidity to meet all its requirements including challenging market conditions;

8.9.3. To raise funds cost effectively from multiple sources and markets ahead of demand; and

8.9.4. To explore innovative funding solution as well as minimizing constraints that increase capital expenditure (**Annexure D272**).

Trip Itinerary for 2012

8.10. The memorandum indicated that Singh was scheduled for the following destinations:

Destination/Area	Purpose	Date
London	Discussions with several people including McKinsey partners	14 June 2012
London	McKinsey CFO Conference	15 June 2012
Dubai and Abu Dhabi	Discussion with several investors including the McKinsey expert on funding infrastructure	17 June 2012 to 18 June 2012

Financial implications

8.11. According to the memorandum, there were sufficient funds available in the 2012/13 Group Finance Budget:

Description	Amount
Flights (return trip)	R70 000.00
Accommodation	R15 000.00
Allowance	R8 500.00
Total	**R93 500.00**

8.12. Based on available documentation, we determined that when the memorandum dated 31 May 2012 was drafted, Singh was in Miami attending meetings at the Bank of America Merill Lynch. We further determined that Moephuli signed the memorandum on behalf of Singh.

8.13. Gama approved the memorandum in respect of Singh's travel on 31 May 2012.

Final arrangement preceding the travel

8.14. One of the documents provided to us by McKinsey is an e-mail sent from CFO Forum Christiane Stuehler-Churr to Singh and Takane on 31 May 2012 at 11:55. Of particular importance to us are the second and eighth rows of a table in the said e-mail (**Annexure D273**).

8.15. The second column reflected the conference venue as the Langham London. Importantly, the second row further reflected the following *"Should you wish to stay at The Langham London please contact the hotel directly by phone on +44 20 7973 7503. Please state the reservation code CFO Forum to benefit of the negotiated rate of £355 per night per room, excluding VAT"*. The e-mail clearly states that it was the delegates' responsibility to contact the hotel and make their own booking arrangements. As discussed below, we determined that McKinsey made the booking arrangements for Singh's stay at the Langham Hotel.

8.16. Row eight of the table in McKinsey's e-mail of 31 May 2012 to Singh and Takane reflected *inter alia* that *"please make your own arrangements for transportation to and from the hotel*".

VISA Applications

8.17. We determined that McKinsey facilitated Singh's Dubai VISA on 8 June 2012. We further determined that the Faye and Gilan from McKinsey were responsible for Singh's visa application. On 12 June 2012, Sagar sent an e-mail to Singh congratulating him on securing his VISA application. In the said e-mail, Sagar stated that "*congratulations. you have now been designated as a project manager by the emiratis"*. According to the visa, Singh's profession was a Project Manager (**Annexure D274**).

8.18. We further determined that Singh's Dubai short term visit VISA was issued on 12 June 2012 and was valid until 10 August 2012. We further determined that the VISA indicated that the sponsor was McKinsey and Company Inc International.

8.19. We were provided with various email communication between Takane and Germaine Walker ("Walker"), the latter being an Intermediate Travel Consultant for Seekers. The communication related to Singh's trip to the 2012 McKinsey CFO Forum.

8.20. We determined that on 7 June 2012 Faye Gounder ("Gounder"), a McKinsey employee sent an email to Takane at 11:53 AM informing her that she had reserved a room for Singh in Frankfurt and indicated that it was the only booking she has made for Singh. Gounder stated that Takane would take care of the rest and furthermore requested to be updated with regard to Singh's VISA application status.

8.21. Takane sent an email on 7 June 2012 to Gounder with a request to help with the Schengen VISA application on behalf of Singh from their travel agent. On 7 June 2012, Gounder responded to the request of Takane and informed her that they only do Dubai VISA and subsequently Takane requested Gounder to help with the Dubai VISA on, 7 June 2012.

8.22. On 8 June 2012 Takane responded to Gounder's email with Singh's passport attached.

8.23. We determined that on 11 June 2012, McKinsey wrote a letter to the German Embassy in Pretoria requesting a VISA for Singh. We further determined that the said letter indicated that Singh was McKinsey's client and he would be visiting McKinsey Germany for business reasons from 13 June 2012 to 16 June 2012 (**Annexure D276**).

Destinations approved by Transnet

8.24. As discussed above we determined that Singh submitted a memorandum to Gama for approval to attend the CFO Forum in 2012. The destinations approved by Gama as reflected in the memorandum were London, Dubai and Abu Dhabi. As discussed below, we determined that during his trip to the CFO Forum, Singh's bookings were amended on McKinsey's recommendations to include destinations and hotel bookings that were not initially in the approved itinerary.

8.25. We further determined that the changes in Singh's bookings were done so as to align them with Sagar's travel. As will be seen below, the said changes in Singh's bookings resulted in additional and authorised expenses incurred by Transnet.

Travel to CFO Forum in 2012 (Annexures D277)

8.26. Travel to London for the 2012 CFO Forum

8.26.1. Takane indicated that she was the individual who assisted Singh in arranging for his travel for the CFO Forum in 2012. Takane further indicated that as far as she can remember, all the bookings relating to the flights were done through a company called Seekers, a travel agent used by Transnet at the time. We determined that the total costs for the round trip was R63 888.00.

Flight to London

8.26.2. From available documentation we determined that on 13 June 2012, Singh flew from OR Tambo International Airport to London Heathrow Airport on flight number SA 0234. The flight was booked by Seekers as per Transnet travel authorisation form dated 12 June 2012.

Accommodation in London

8.26.3. We determined from documentation reviewed that Singh was booked at the Thirstle Marble Arch Hotel in London from 13 June 2012 to 15 June 2012 as per Transnet's instructions to Seekers. According to Seekers booking confirmation, the daily room rate was R3 600 which translates to R7 200.00 for the two nights stay.

8.26.4. We determined that McKinsey facilitated accommodation for Singh at the Langham Hotel. McKinsey reserved accommodation for Singh at the Langham hotel in London for one night on 14 June 2012. We further determined that the cost of the accommodation was £378 which translated approximately R4 872.42 at the time. According to the referral voucher no 931379; American Express Travel Services was the travel agent that booked Singh's accommodation on behalf of McKinsey.

8.26.5. As indicated above, McKinsey indicated in their invitation e-mail dated 31 May 2012 to Singh that *"Should you wish to stay at The Langham London please contact the hotel directly by phone on +44 20 7973 7503. Please state the reservation code CFO Forum to benefit of the negotiated rate of £355 per night per room, excluding VAT"*.

8.26.6. McKinsey's reservation for Singh's accommodation at the Langham hotel in 2012 was clearly against the communication sent to Singh as reflected above. We were not provided with the cancellation of the booking done by Seekers in respect of the Langham Hotel accommodation.

Travel to Frankfurt

8.26.7. **Flight to Frankfurt**

8.26.7.1. From available documentation we determined that Singh was scheduled to fly from London City Airport to Frankfurt on 15 June 2012 on BMI flight number BD3469.

8.26.7.2. The flight was booked by Seekers as per Transnet travel authorisation form dated 12 June 2012.

8.26.7.3. As reflected below, McKinsey issued an instruction to Takane to cancel accommodation for Singh's stay at the Sheraton Frankfurt Congress.

8.26.7.4. We therefore could not establish if Singh utilised the booked flight and travelled to Frankfurt on 15 June 2012.

8.26.7.5. We further noted that the flight to Frankfurt was not included in the memorandum submitted to Gama for authorisation and therefore was not authorised.

8.26.8. **Accommodation in Frankfurt**

8.26.8.1. We determined from documentation reviewed that Singh was booked at the Sheraton Frankfurt Congress from 15 June 2012 to 16 June 2012 as per Transnet's instructions to Seekers.

8.26.8.2. According to Seekers booking confirmation, the daily room rate was €109 which translated to approximately R1 139.05 at the time. As indicated below, we determined that Transnet did not pay the amount of R1 139.05 as the said booking was cancelled.

8.26.8.3. McKinsey reserved accommodation for Singh at Sheraton Frankfurt Airport for 15 June 2012 and he was scheduled to check out on 16 June 2012. According to the referral voucher 926708, the cost of accommodation at Sheraton Hotel was €185 which translated to approximately R1 933.25 at the time. We noted that in her e-mail dated 7 June 2012, Gounder attached Sagar's itinerary including flights and accommodation for his CFO Forum trip. We determined that the said itinerary included Frankfurt as destination for Sagar's trip.

8.26.8.4. On 11 June 2012, Gounder sent an e-mail to Singh and Takane with subject *"Germany Hotel vouchers Sagar/Singh"* stating that *"dear both please find attached voucher for Frankfurt"*. Attached to the e-mail was a referral voucher mentioned above amounting to €185 for Singh's accommodation at the Sheraton Frankfurt Airport hotel.

8.26.9. **Cancellation of Frankfurt accommodation by Transnet**

8.26.9.1. We determined that after the first travel authorisation, Takane sent an e-mail dated 12 June 2012 to Walker and initiated a cancellation request for the accommodation at the Sheraton Hotel in Frankfurt Germany.

8.26.9.2. Takane requested Walker to cancel the booking for 15 June 2012 at the Sheraton Hotel in Frankfurt Germany. Takane further explained that *"the people travelling with Singh had booked a different hotel and paid for it"*. Takane indicated that by *"the people travelling with Singh"* she referred to Sagar and Faye, the latter being responsible for bookings on behalf McKinsey.

8.26.9.3. Takane indicated to Walker that she had just confirmed that *"they have also booked the transfers to all destinations; which means we do not need transfers, please"*. Takane further indicated that she would forward an amended form to Walker.

8.26.9.4. In an email response dated 12 June 2012, Walker confirmed that the cancellation was processed.

8.26.9.5. We determined that on 15 June 2012, Takane issued and signed updated travel authorisation form. The said travel authorisation had cancelled Singh's accommodation in Frankfurt. According to the updated travel authorisation form, Singh would travel from Dubai to South Africa on 19 June 2012.

8.26.9.6. We obtained e-mail communication between Faye Gounder ("Gounder") with e-mail address faye_gounder@mckinsey.com, and Theo Takane ("Takane") relating to *inter alia* Singh's June 2012 travel to the CFO Forum in London.

8.26.9.7. On 12 June 2012 at 12:34 Gounder sent an e-mail to Takane stating *"apologies we just got cut off- as discussed i will not cancel the accommodation for Anoj in Frankfurt"*. Gounder's email clearly reflects that she was not going to cancel the accommodation for Singh in Frankfurt. As will be seen below, the said accommodation was booked by McKinsey.

8.26.9.8. In response to Gounder's e-mail that she was not going to cancel Singh's accommodation, Takane responded as follows *"Hi Faye, please request the invoice from your agency – so we can process the payment. Transnet does not allow consultants to pay for its employees. It is against policy to do so"*. From Takane's e-mail, it is clear that Transnet had not made the reservation for Singh's accommodation in Frankfurt and as such Takane was concerned that such a reservation by McKinsey may have been a violation of Transnet policies.

8.26.9.9. As discussed in this report, tender GSM/12/05/0447 relating to the advisory services for the acquisition of the 1064 locomotives was issued on 30 May 2012 and closed on 7 June 2012. McKinsey led consortium submitted a proposal in respect of the tender. Letsema was part of the McKinsey led Consortium. We determined that on 22 August 2012, Sing prepared a memorandum to Molefe recommending the removal of Letsema from the McKinsey led consortium due to a perceived conflict without indicating who will replace it. LOI reflected that Letsema would be replaced by Regiments.

8.26.9.10. It is clear that Singh discussed the removal of Letsema with McKinsey before the LOI was issued. It is unclear whether the discussion happened in London during Singh's trip to the CFO Forum or telephonically after returning from the London trip.

8.26.10. **Response from McKinsey relating to the bookings for Frankfurt**

8.26.10.1. McKinsey provided us with their responses relating to the Frankfurt accommodation. According to McKinsey's response, they only paid a nominal fee of R581.40 each in respect of "Accommodation Booking Fee" for Langham hotel and Sheraton Frankfurt Airport hotel respectively.

8.26.10.2. Based on McKinsey's response and supporting documents provided, it is evident that McKinsey paid a fee towards the reservation of Singh's accommodation.

8.26.10.3. We determined that the initial itinerary approved by Gama on 31 May 2012 did not include accommodation for Frankfurt. As indicated above, McKinsey reserved accommodation for Singh at the Sheraton Frankfurt Airport hotel.

8.26.10.4. It is not clear why McKinsey reserved accommodation in Frankfurt when it was not part of the approved itinerary. From documentation provided to us by Transnet, there are no records to indicate that Transnet paid for Singh's accommodation in Frankfurt.

8.26.10.5. We requested both Takane and Yusuf Mahomed ("Mahomed") to assist in retrieving documentation relating to the payments for Singh's travel for the CFO Forum in London in 2012.

8.26.10.6. Both Takane and Mahomed indicated that they could not find any documentation indicating that Transnet paid for Singh's hotel accommodation in Frankfurt.

8.26.10.7. A possibility exists that Sagar, McKinsey, Regiments or any other role player may have paid for accommodation and related expenditure (**Annexure D278**).

Travel to Dubai for a meeting McKinsey

8.26.11. **Flight to Dubai**

8.26.11.1. We determined that Singh was scheduled to fly from Frankfurt to Dubai on 16 June 2012 on Lufthansa flight number LH0630. The flight was booked by Seekers as per Transnet travel authorisation form dated 12 June 2012.

8.26.11.2. We determined that on 16 June 2012 Singh travelled from London City Airport to Dubai. It is not clear whether Singh went to Frankfurt and how he got back from Frankfurt to London as the said information is not available. We however determined that Singh flew from London to Dubai on 16 June 2012.

8.26.11.3. Takane requested Seekers to change Singh's flights which were initially supposed to be from Frankfurt to Dubai. The change resulted in Singh flying from London on 16 June 2012 with a rerouting cost of R25 830.00. The amount of R25 830 was over and above the approved budget.

8.26.12. **Accommodation in Dubai**

8.26.12.1. Documentation reviewed reflects that Singh was booked at the Shangri la Hotel from 16 June 2012 to 19 June 2012 as per Transnet's instructions to Seekers. According to Seekers booking confirmation, the daily room rate was R2 200 which translated to R6 600 (**Annexure D279**).

Travel from Dubai to Johannesburg

8.26.13. **Flight to Dubai**

8.26.13.1. Singh was scheduled to fly from Dubai to Johannesburg on 19 June 2012 on SAA flight number SA7159. The flight was booked by Seekers as per Transnet travel authorisation form dated 12 June 2012. The total cost of the flights inclusive of the flight from Dubai to Johannesburg was R63 888.

8.26.13.2. We determined that Singh's flight departure date was changed from 19 June 2012 to 18 June 2012. The updated travel authorisation form did not provide reasons for the said change.

8.26.13.3. On 20 June 2012, Takane issued an updated travel authorisation form changing Singh's travel from Dubai to South Africa from 19 June 2012 to 18 June 2012.

8.26.13.4. The change in the flight schedule resulted in Transnet paying an amount of R27 256.00 as reflected in invoice number 1637326 dated 20 June 2012 (**Annexure D280**).

Alignment of Singh's travel to Sagar's – 2012 CFO Forum

8.26.14. During the course of our investigations, we determined that McKinsey ensured that Singh's travel was always aligned to Sagar's travel. McKinsey insisted that Sagar and Singh travel together and preferably stayed at the same hotels. This is evident on various emails sent by Gounder to Takane requesting Takane to book Singh's travel and accommodation in line with Sagar's itinerary.

8.26.15. Below are various examples of e-mail communication where Gounder requested Takane to book Singh's travel in line with Sagar's itinerary.

8.26.16. On 8 June 2012 Gounder sent an e-mail to Takane containing Sagar's itinerary to enable Seekers to make similar bookings. We determined that Takane forwarded the said e-mail with Sagar's itinerary to Seekers to book for Singh's flights and accommodation in line with Sagar's schedule.

8.26.17. On 11 June 2012 Worldwide Travel Brokers issued booking confirmation to Walker indicating that an amount of R13 800.00 was payable by Transnet for Singh's accommodation in London (Thirstle Marble Arch hotel) and Dubai (Shangri-La Hotel). We determined that on 14 June 2012, Gounder sent an e-mail to Takane with subject matter "*Pls cancel Anoj booking for London*" stating that "*Hello Theo Please cancel the hotel booking you made for Anoj for London as you did not book him in at Langham , Vikas just called me now and said i should book Anoj in at Langham same as Vikas , so its easier for travel and logistic purposes. So for Frankfurt, I have made the reservation for Anoj and he will settle when he leaves".*

8.26.18. As indicated above, Singh was scheduled to fly from London City Airport to Frankfurt on 15 June 2012. We determined that on 15 June 2012, Singh's flight that was scheduled from London to Frankfurt was rerouted to Dubai.

8.26.19. The change in Singh's travel was as a result of an e-mail from Gounder sent to Takane on 15 June 2012 indicating that Sagar was booked on flight number: EK 008 LHR-DXB from London Heathrow Airport to Dubai Airport. We further determined that Takane requested Walker to book Singh on the same flight in an email dated 15 June 2012.

8.26.20. In their response to our questions relating to the invitation to the CFO Forum, McKinsey indicated that they extended the said invitation to a number of their clients. It is unclear whether McKinsey aligned the flights and accommodation of their other clients to those of other Principals at McKinsey (**Annexures D281**).

Payments made by Transnet in respect of accommodation and travel

8.26.21. Transnet provided us with the following documentation as proof of payment for Singh's travel for the CFO Forum in 2012:

Order No.	Invoice No.	Date of Invoice	Description	Amount
1162423	1613492	12/06/2012	Accommodation	R13 800,00
	1613496	12/06/2012	Flight bookings	R63 888,00
	1162423	12/06/2012	Flight bookings (rerouting)	R25 680,00
	1632983	15/06/2012	Forex	R9 688,20
1181129	1637326	20/06/2012	Flight bookings (changing of flights)	R27 256,00
Total Amount Paid				**R140 312, 20**

CONCLUSIONS

Based on our findings as contained in our report above, we conclude as follows:

8.26.22. Sagar nominated Singh to be invited for the 2012 CFO Forum;

8.26.23. Gama approved Singh's travel to the 2012 CFO Forum in London at an estimated cost of R93 500.00;

8.26.24. The approved itinerary did not include Singh's travel to Frankfurt , Germany;

8.26.25. McKinsey, through American Express Travel Services reserved accommodation for Singh at the Langham hotel at a cost £378, approximately R4 8 72;

8.26.26. McKinsey paid a nominal fee of R581.40 for the reservations at the Langham hotel;

8.26.27. McKinsey, through American Express Travel Services reserved accommodation for Singh at Sheraton Frankfurt Congress at a cost €185, approximately R1 933.25;

8.26.28. Transnet did not pay any amount for Singh's reservation made by McKinsey at the Sheraton Frankfurt Congress;

8.26.29. There is no evidence of who paid R6 805.25 for Singh's accommodation at both the Langham and Sheraton Frankfurt Congress hotels;

8.26.30. Segar's travel itinerary was aligned with Singh which resulted in Transnet booking unauthorised travel to Frankfurt;

8.26.31. Transnet incurred additional flight cost of R25 570.00 for rerouting Singh's flight initially scheduled from London to Frankfurt and later changed to Dubai in order to align his travel arrangements to Sagar's;

8.26.32. Transnet incurred additional flight cost of R27 256.00 for rescheduling Singh's flight to an earlier date of 18 June 2012 instead of the original date of 19 June 2012;

8.26.33. Transnet paid a total of R140 312.20 for Singh's accommodation and travel to the 2012 CFO's Forum and other destinations;

CFO Forum 2013

8.26.34. **Invitation by McKinsey**

8.26.35. Based on our review of Singh's Mimecast emails, we determined that McKinsey with an email address styled CFO-Forum2013@mckinsey.com sent an email on 15 March 2013 inviting Singh to the CFO Forum to be held on 6 to 7 June 2013 in London (**Annexure D282**).

Memorandum from Singh to Molefe requesting authorisation to travel

8.26.36. We determined from documentation reviewed that Singh submitted a memorandum to Molefe requesting approval to attend the McKinsey CFO Forum in London. According to the memorandum, Singh would undertake international travel to London and the Middle East between 4 June and 13 June 2013 to enable him to:

8.26.36.1. *"Attend the 2013 McKinsey CFO Forum in London of the 6 and 7 June 2013;*

8.26.36.2. *Visit peer companies who have implemented the capital portfolio management and scrubbing approaches Transnet is implementing;*

8.26.36.3. *Meet with the McKinsey experts and the Ex-CFO of Deutsche Bahn; and*

8.26.36.4. *Meet bankers and a number of experts to gauge capital market, global market economic scenarios for 2013/14 as well as a view of Transnet's major trading partners."*

8.26.37. According to the memorandum, Transnet had recently launched the SWAT programme which included executing a number of short and long term initiatives to drive impact and mitigate delivery risks. The memorandum reflected that as part of the trip, the Group Chief Financial Officer was scheduled to meet peer companies who had implemented the capital portfolio management and scrubbing approaches envisaged in the SWAT programme (**Annexure D283**).

8.26.38. It should be noted that McKinsey was appointed by Transnet as the main contractor for advisory services on the SWAT project. We determined that McKinsey was appointed through a confinement in November 2012 for a budget of R200 million.

Financial implications

8.26.39. The memorandum reflected the estimated costs of the as follows:

Description	Amount
Flights (return trip)	R75 000.00
Accommodation	R25 000.00
Forex	R10 00.00
Total	**R110 000.00**

8.26.40. According to the memorandum, there was sufficient budget under the 2013/2014 Group Finance Budget.

International booking quotations

8.26.41. We reviewed an international booking quotation with quote number 461838 relating to Singh's travel to the 2013 CFO Forum. We determined that the quotation was generated by Seekers on 4 June 2013. We further determined that Seekers made booking reservations for Singh's trip to London as follows:

Date of departure	Place of departure	Arrival	Number of days
05 June 2013	Johannesburg Airports	London Heathrow Airport	3

08 June 2013	London Heathrow Airport	Dubai	2
10 June 2013	Dubai	Frankfurt	1
11 June 2013	Frankfurt	Moscow Sheremetyevo	2
13 June 2013	Moscow Sheremetyevo	Frankfurt	1
13 June 2013	Frankfurt Airport	Johannesburg Airport	

VISA Application

8.26.42. We determined that on 27 May 2013, Gounder sent an e-mail to Takane to inter alia enquire on the progress of Singh's VISA applications. Gounder further indicated in her email that she had forwarded the following for Takane's attention:

8.26.42.1. Singh's Dubai visa;

8.26.42.2. Schengen visa requirements along with the two McKinsey invitation letters (one abroad and one from Johannesburg);

8.26.42.3. UK visa requirements together with the two McKinsey invitation letters (one abroad and one from Johannesburg); and

8.26.42.4. Russia all the visa requirements from McKinsey.

Travel to London for the 2013 CFO Forum

8.26.43. Takane indicated that she assisted Singh in arranging for his travel for the CFO Forum in 2013. Takane further stated that all the bookings relating to the flights were done through a company called Seekers, a travel agent used by Transnet at the time.

8.26.44. During the analysis of documentation provided to us by Transnet, we determined that Transnet initially booked flights and accommodation for Singh's travel to the 2013 CFO Forum.

8.26.45. We however determined that Takane was requested by Gounder to cancel bookings for accommodation as McKinsey had already booked on behalf of Singh.

8.26.46.The various bookings by McKinsey on behalf of Singh are discussed in detail below (**Annexures D284**).

8.26.47. **Flight to London**

8.26.47.1. We determined that on 5 June 2013, Singh flew from OR Tambo International Airport to London Heathrow Airport on SAA flight number SA 0236. The flight was booked by Seekers as per Transnet travel authorisation form dated 30 May 2013.The total cost of the flights inclusive of the flight from OR Tambo International Airport to London Heathrow Airport was R228 777.00.

8.26.48. **Accommodation in London**

8.26.48.1. We determined that McKinsey through Wings Travel Management, booked accommodation for Singh at the Langham Hotel in London from 5 June 2013 to 8 June 2013 at a cost of £336 per night .

8.26.48.2. Based on documentation reviewed, we determined that on 4 June 2013 at 04:40 PM, Sagar sent Takane reservation confirmation number 7078779 for Singh's accommodation at the Langham Hotel. We noted from the said email that the hotel accommodation booking was done by Wings Travel in April 2013..

8.26.48.3. We further determined that the booking reference used was 8765541. According to McKinsey, *"there were instances in which a travel agency that works with McKinsey made hotel reservations for Mr. Singh resulting in nominal fees paid by McKinsey".* We determined that Transnet did not pay for accommodation in respect of Singh's stay at the Langham Hotel. This was confirmed by Takane and Mohamed during our consultation with them.

8.26.48.4. McKinsey admitted that they paid a nominal fee of R220 for Singh's reservations made at Langham hotel.

8.26.48.5. The total amount paid for Singh's stay at the Langham hotel was approximately R15 585.60 for three nights.

Travel to Dubai

8.26.49. **Flight from London to Dubai**

8.26.49.1. We determined that on 8 June 2013, Singh flew from London Heathrow Airport to Dubai on Emirates flight number EK 0002. The flight was booked by Seekers as per Transnet travel authorisation form dated 30 May 2013.The total cost of the flights inclusive of the flight from London Heathrow Airport to Dubai was R228 777.00.

8.26.50. **Accommodation in Dubai**

8.26.50.1. On 24 May 2013, McKinsey booked accommodation for Singh at the Ritz Carlton hotel in Dubai at a cost of AED 850 per night for three nights. Based on documentation reviewed, we determined that Transnet did not pay for accommodation in respect of Singh's stay in Dubai.

8.26.50.2. McKinsey admitted that they paid a nominal fee of R220 for Singh's reservations made at the Ritz Carlton hotel.

8.26.50.3. The total amount paid for Singh's stay at the Ritz Carlton hotel was approximately R6 983.80.

Travel to Frankfurt

8.26.51. **Flight from Dubai to Frankfurt**

8.26.51.1. We determined that on 10 June 2013, Singh flew from Dubai to Frankfurt on Emirates flight number EK0047. The flight was booked by Seekers as per Transnet travel authorisation form dated 30 May 2013. The total cost of the flights inclusive of the flight from Dubai to Frankfurt was R228 777.00.

8.26.51.2. We determined from accommodation booked in Dubai that Singh was supposed to check out from the Ritz Carlton hotel on 11 June 2013. A possibility exists that Singh checked out a day earlier as he flew to Frankfurt on 10 June 2013.

8.26.52. **Accommodation in Frankfurt**

8.26.52.1. We determined that McKinsey booked accommodation for one night at Sheraton Frankfurt on behalf of Singh. Based on documentation reviewed, we determined that Transnet did not pay for accommodation in respect of Singh's stay in Frankfurt.

Travel to Moscow

8.26.53. **Flight from Frankfurt to Moscow**

8.26.53.1. We determined that on 11 June 2013, Singh flew from Frankfurt to Moscow Sheremetyevo on Aeroflot flight number SU2305. The flight was booked by Seekers as per Transnet travel authorisation form dated 30 May 2013.The total cost of the flights inclusive of the flight from Dubai to Frankfurt was R228 777.00.

8.26.54. **Accommodation in Moscow**

8.26.54.1. We determined that McKinsey through Wings Travel Management, booked accommodation for Singh at the Ritz Carlton in Moscow from 11 June 2013 to 13 June 2013 at a cost of Russian Ruble (RUB) 11 000 per night, approximately R6 824.49 for two nights. We further determined that the booking reference used was 8781869.

8.26.54.2. We further determined that on 8 May 2013, McKinsey through Wings Travel Management, booked accommodation for Singh at Radisson Blu - Belorusskaya Hotel from 13 June 2013 to 24 June 2013 at a cost of RUB 6 000 per night, approximately R18 417.40 for 10 days. We further determined that the booking reference used was 8738117. The said booking did not relate to Singh's travel approved for the 2013 CFO's Forum and Middle East travel.

8.26.54.3. In their response to our questions and the second draft report, McKinsey indicated that they booked and paid for Singh's travel to Moscow for the duration 13 June 2013 to 24 Jun 2013 which booking they cancelled and were later refunded R19 410.00.

8.26.54.4. McKinsey however did not indicate who paid for accommodation they booked for Singh at the Radisson Blu Russia at an estimated cost of R18 417.40.

8.26.54.5. Furthermore, we determined that Singh was provided with a tourist voucher of RUB 1 340 during his stay in Russia, Moscow.

8.26.54.6. Based on documentation reviewed, we determined that Transnet did not pay for accommodation in respect of Singh's stay in Moscow.

8.26.54.7. We could not find any memorandum from Transnet relating to Singh's travel to Russia scheduled for 13 June 2013 to 24 June 2013 which was booked and later cancelled by McKinsey.

Travel to Frankfurt

8.26.55. **Flight from Moscow to Frankfurt**

8.26.55.1. We determined that on 13 June 2013, Singh flew from Moscow Sheremetyevo to Frankfurt on Aeroflot flight number SU2302. The flight was booked by

Seekers as per Transnet travel authorisation form dated 30 May 2013.The total cost of the flights inclusive of the flight from Moscow to Frankfurt was R228 777.00 which was paid by Transnet.

8.26.56. **Travel to Johannesburg**

8.26.56.1. We determined that on 13 June 2013, Singh flew from Frankfurt to Johannesburg on SAA flight SA 0261. The flight was booked by Seekers as per Transnet travel authorisation form dated 30 May 2013.The total cost of the flights inclusive of the flight from Frankfurt to Johannesburg was R228 777.00 which was paid by Transnet.

8.26.56.2. In response to our questions relating to the above bookings, McKinsey confirmed that they booked accommodation on behalf of Singh and paid a nominal fee of R220 for each reservation. McKinsey further indicated that the reservations were made such that the room charge would be paid by the traveller as seen in the notations on the records such as "settle direct". The total nominal fee paid by McKinsey in respect of reservations for Singh's accommodation was R1 100.

8.26.56.3. As indicated above, Transnet had already obtained quotations for Singh's accommodation at the following Hotels:

8.26.56.3.1. London (3 nights)

8.26.56.3.1.1. Hyatt Regency (R21 515 per room);

8.26.56.3.1.2. Le Meridien Picadilly (R19 980 per room); and

8.26.56.3.1.3. Courthouse Doubletree (R13 800 per room).

8.26.56.3.2. Dubai (2 nights)

8.26.56.3.2.1. Ritz Carlton (R9 260 per room)

8.26.56.3.3. Stuttgard (1 night)

8.26.56.3.3.1. Le Meridien Willy Brandt (R2 600)

8.26.56.3.4. Moscow (2 nights)

8.26.56.3.4.1. Radisson Belorruskya (R6 640)

8.26.56.4. Takane was instructed by Gounder in an e-mail dated 27 May 2013 to cancel the bookings referred to above as McKinsey had already booked accommodation on behalf of Singh.

8.26.56.5. It is not clear why McKinsey would want Transnet to cancel Singh's accommodation and in turn incur costs for reserving the accommodation. It is further not clear why McKinsey expected Singh to settle the accommodation direct whereas Transnet's travel agent would have booked and settled the accommodation on Singh's behalf.

8.26.56.6. We requested Takane and Mohamed to provide us with supporting documentation indicating that Singh might have directly settled his own accommodation. Takane and Mohamed informed us that they could not find any records to support that Singh may have paid for his own accommodation.

8.26.56.7. In the absence of supporting documents confirming that both Transnet and Singh paid for the accommodation, we conclude that neither Transnet nor Singh paid for the Singh's accommodation for the 2013 CFO Forum and scheduled destinations. Based on available documentation, McKinsey paid the nominal fees for Singh's accommodation and may have ultimately paid for the accommodation as this was not paid by Transnet.

8.26.56.8. McKinsey took it upon themselves to book for Singh's accommodation and paid a nominal fee for the said bookings. McKinsey did not have to book and pay nominal fees on behalf of Singh as Transnet had its own well-resourced Travel Agent which could book accommodation for the scheduled trips. As discussed below, Transnet had completed travel authorisation forms confirming Singh's accommodation at the hotels referred to above and later cancelled as McKinsey had already confirmed the same bookings for Singh.

8.26.56.9. We determined that Transnet prepared Singh's schedule in line with Sagar's itinerary.

8.26.56.10. McKinsey confirmed that they scheduled the following meetings for Singh during the 2013 CFO's conference:

Destination	Scheduled meetings
London (3 days)	Singh met with finance executives from at least four major financial institution (no overlap from the prior year) and relevant McKinsey personnel

Destination	Scheduled meetings
Dubai (2 days)	Singh met with finance executives from at least one major financial institution and relevant McKinsey personnel
Germany (1 day)	Singh met with current and former railway executives from at least one major transport company and relevant McKinsey personnel
Russia (2 days)	Singh met with executives in the oil and gas and railway industries and relevant McKinsey personnel

McKinsey reserves flights for Singh to Russia

8.26.57. Based on various documentation reviewed, we determined that McKinsey booked a flight for Singh to Russia. We noted that the said bookings were outside the 2013 CFO Forum held in London from 4 June 2013 to 13 June 2013. We discuss below the said booking.

Flight to Russia outside of CFO Forum

8.26.58. As discussed above, we determined that on 8 May 2013, McKinsey booked flights for Singh to Russia. According to e-Ticket number 220-3906006854, Singh was scheduled to depart from Johannesburg on 12 June 2013 and return on 24 June 2013. Furthermore, we determined that Singh was scheduled to arrive in Frankfurt on 12 June 2013 and fly from Frankfurt to Moscow on 13 June 2013. According to the memorandum submitted by Singh to Molefe to attend the McKinsey CFO Forum in London, Singh was meant to travel from 4 June 2013 to 13 June 2013.

8.26.59. We further determined that Wings Travel Management (McKinsey Travel Agent) booked the flights on behalf of Singh.

8.26.60. We determined that that e-tickets and accommodation vouchers were communicated to Singh by vikas_sagar@mckinsey.com and faye_gounder@mckinsey.com.

8.26.61. McKinsey provided us with a response relating to the bookings referred to above stating that *"As indicated in Paragraph 12.b, as part of assisting Mr. Singh in procuring VISAs, McKinsey booked a refundable economy ticket for both Mr. Singh and for a McKinsey partner* *with an Itinerary that included Russia as a final destination. Records confirm that the ticket in question was later cancelled and refunded to McKinsey less a booking and cancellation fee*". Despite the above bookings being cancelled, McKinsey should not have booked the flight for Singh in the first place. According to Takane, McKinsey acted against Transnet's policies that prohibit service providers from paying travel expenses for Transnet's employees. Transnet had its own travel agency that could have booked the flights for Singh.

Alignment of Singh's travel to Sagar's – 2013 CFO Forum

8.26.62. As indicated above we noted in 2012 whereby McKinsey wanted to align Singh's travel to Sagar's travel schedule in respect of the CFO Forum held in London. We noted the same trend in 2013 whereby McKinsey wanted Transnet to align Singh's itinerary to Sagar's travel schedule.

8.26.63. As indicated above, we were provided with various travel authorisation forms prepared by Transnet in respect of Singh's travel to the McKinsey 2013 CFO Forum. We reviewed the said authorisations forms and determined the following:

First Travel Authorisation

8.26.64. We determined that on 30 May 2013, Takane prepared a travel authorisation form in respect of Singh's travel to the 2013 CFO Forum. According to the travel authorisation form, Singh's travel schedule was as follows:

Business class

Date	**Departure**	**Arrival**
05 June 2013	Johannesburg	London
08 June 2013	London	Dubai
10 June 2013	Dubai	Frankfurt
11 June 2013	Germany Stuttgart	Russia Moscow
13 June 2013	Russia Moscow	Johannesburg

Accommodation details

Hotel	**Date of departure**	**Date of arrival**	**Rates**
Langham Hotel	05 June 2013	08 June 2013	GBP 336

Ritz Carlton Hotel	08 June 2013	10 June 2013	AED 850
Le Meridien Hotel	10 June 2013	11 June 2013	EUR 165
Radisson Blu Belorusskaya			RUB 6000

8.26.65. We determined that on 27 May 2013, Gounder sent an email to Takane and copied Sagar with summary trip details for Sagar and Singh. The subject matter of the e-mail was reflected as "Anoj and Vikas' Trip" (**Annexure D286**).

8.26.66. Gounder indicated that the flight details in the email are for Sagar and therefore requested confirmation as to whether Singh had the similar bookings as that of Sagar. Below are the flight details as per the email:

Flight No.	Date	Departure	Arrival
SA 236	05 June 2013	Johannesburg Airport	London Heathrow Airport
EK 002	08 June 2013	London Heathrow Airport	Dubai Airport
EK 047	10 June 2013	Dubai Airport	Frankfurt Airport
SU 2305	11 June 2013	Frankfurt Airport	Moscow Sheremetyevo Airport

8.26.67. Two options that were suggested to Takane with regard to Singh's travel as follows:

Flight No.	Date	Departure	Arrival
LH 1447	13 June 2013	Moscow Domodedovo Airport	Frankfurt Airport
SA 261	13 June 2013	Frankfurt Airport	Johannesburg Airport

8.26.68. We determined that Takane sent information obtained from Gounder to Walker for booking purposes. Walker responded to Takane's request on 3 June 2014 stating the following with regard to bookings for Singh:

8.26.68.1. Langham Hotel

8.26.68.1.1. The hotel was not available at the time of booking and therefore provided several alternatives with a price range of R13 800 to R21 515.00 for the three nights.

8.26.68.2. Ritz-Carlton Intl Finance

8.26.68.2.1. Accommodation was available at the price of R9 200 per room for the two nights.

8.26.68.3. Le Meridien Stuttgart

8.26.68.3.1. A superior room was available for an amount of R2 600 for the night.

8.26.68.4. Radisson Blu Belorusskaya Moscow

8.26.68.4.1. Accommodation was available at an amount of R6 660 for the two nights.

8.26.69. We determined that on 4 June 2013, Walker sent an email to Takane requesting confirmation for hotel bookings in respect of Singh's travel to the 2013 CFO Forum (**Annexure D287**).

8.26.70. We further determined that Walker sent quotations from various hotels to Takane. Takane responded to Walker on an email dated 4 June 2013 and requested her to cancel the hotel bookings as McKinsey had already booked for accommodation for Singh. We determined that Walker requested Takane to forward a revised order without accommodation and transfers.

Second Travel Authorisation

8.26.71. We determined that on 5 June 2013, Takane prepared a revised travel authorisation form excluding accommodation initially included in the travel authorisation form dated 30 May 2013. We noted that the flight schedule dated 5 June 2013 included an additional flight from Frankfurt to Johannesburg scheduled to depart on 13 June 2013.

Third Travel Authorisation

8.26.72. We determined that on 11 June 2013, Takane prepared a third travel authorisation form amending the departure airport from Stuttgart to Frankfurt. According to the travel authorisation form, the flight number changed from SU2305 to LH147.

8.26.73. We noted that Takane amended the travel authorisation form dated 5 June 2013 and 11 June 2013 in line with Sagar's bookings and itinerary provided by Gounder in the e-mail dated 27 May 2013.

8.26.74. Based on documentation reviewed, Transnet only paid for Flights amounting to R228 777.00. Included in the amount of R228 777.00 there was additional fee of R59 343.00 which was as a result of Singh rerouting his flight.

8.26.75. As indicated above, Transnet did not pay for Singh's accommodation in respect of the 2013 CFO Forum.

8.26.76. During our consultation with McKinsey on 3 October 2018, David Newman: McKinsey's Attorneys ("Newman") indicated that there was no record that McKinsey paid the hotel accommodation for Singh or that they paid a refund to Sagar in respect of Singh's hotel expenses during the 2012 and 2013 CFO Forums. Newman further indicated that McKinsey enquired from Sagar's representative whether he had personally paid for Singh's hotel accommodation.

8.26.77. According to Newman, Sagar's representative indicated that there were no records that Sagas paid for the said hotel accommodation on behalf of Sing. We requested Newman to provide us with confirmation of Sagar's responses through his representative, however he indicated that McKinsey communicated with the latter's representative telephonically.

8.26.78. We requested McKinsey to provide us with information/documentation relating to payments made for Sagar's travel in respect of the 2012 and 2013 CFO Forum. As at date of this report, McKinsey had not provided us with the said documentations.

8.26.79. In their written response to questions relating to Singh's hotel bookings at the Langham Hotel, McKinsey indicated the following "*Mr. Singh's room at the Langham was booked "settle direct," and McKinsey does not have access to the documents of other parties that would conclusively show the payment was effectuated. But we would urge you to continue to raise the matter with Transnet and Mr. Singh, as we expect that records in the possession of one or both would settle the matter*".

CONCLUSIONS

Based on our findings as contained in our report above, we conclude as follows:

8.26.80. McKinsey invited Singh for the 2013 CFO Forum;

8.26.81. Molefe approved Singh's travel to the 2013 CFO Forum in London at an estimated cost of R110 000.00.

8.26.82. From 5 June 2013 to 8 June 2013 Singh was booked at Langham Hotel in London at a cost of R15 585.60.

8.26.83. McKinsey paid a nominal fee of R220 for the reservations at the Langham hotel.

8.26.84. It is not clear who paid the balance of the reservation amount of R15 365.60 for the Langham hotel.

8.26.85. Transnet did not pay any amount for Singh's reservation made by McKinsey at the Langham hotel.

8.26.86. It is not clear who paid the balance of the reservation amount of R6 763.80 at the Ritz Carlton in Dubai.

8.26.87. Transnet did not pay any amount for Singh's reservation made by McKinsey at the Ritz Carlton in Dubai;

8.26.88. McKinsey, through Wings Travel reserved accommodation for Singh at Ritz Carlton Moscow at a cost of RUB 11 000, approximately R6 824.49;

8.26.89. McKinsey, through Wings Travel reserved accommodation for Singh at Radisson Blu – Bleorusskaya in Moscow at a cost of RUB 6000, approximately R18 417.40 for ten days;

8.26.90. Out of the total amount of R29 393.89, McKinsey admitted to have paid a nominal fee of R1 100;

8.26.91. It is not clear who paid the balance of R28 293.89 as Transnet did not pay the said amount;

8.26.92. Transnet paid a total of R228 777.00 for Singh's flights to the 2013 CFO's Forum and other destinations outside the CFO's Forum;

8.26.93. Transnet paid R118 777.99 in excess of the estimated budget in order to align Singh's travel to Sagar's travel which amounts to fruitless and wasteful expenditure.

8.26.94. There was no plausible reason for McKinsey to book accommodation for Singh as Transnet was in the process of doing so;

8.26.95. Singh and any other role player may have received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

8.26.96. Singh, Sagar, McKinsey, Regiments and any other role player may have contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend the following:

8.26.97. DPCI should investigate if Singh, Sagar, McKinsey, Regiments and any other role player did not receive gratification in terms of the Prevention and Combating of Corrupt Activities Act.

8.26.98. DPCI should investigate if Singh, Sagar, McKinsey, Regiments and any other role player did not contravene section 34(1) of the Prevention and Combating of Corrupt Activities Act.

Should you have any queries relating to this report please do not hesitate to contact Ernest Nekhavhambe at 011 403 2526.

Yours faithfully

Ernest Nekhavhambe

Managing Director: Fundudzi Forensic Services (Pty) Ltd