



**FINAL REPORT: PASSENGER RAIL AGENCY OF SOUTH AFRICA/SA FENCE
AND GATE INVESTMENT HOLDINGS ("SAFNG1")/TOP
SIX HOLDINGS ("TOP 6")/BEKA-SCHRÉDER ("BEKA")**

1. INTRODUCTION

- 1.1. This report reflects on an investigation being conducted on behalf of the Board of the Passenger Rail Agency of South Africa (PRASA) into allegations emanating from findings of the Auditor General of South Africa (AGSA), the Public Protector (PP) and subsequent discoveries during these investigations.
- 1.2. The investigation focuses on the various projects and service providers of PRASA with respect to any instances of fraud, corruption, irregular, fruitless and wasteful expenditure incurred by PRASA employees (past or present) and/or implementing agents, contractors and/or subcontractors and/or associated persons and entities and any irregular and/or unlawful activity relating to the management, implementation and administration of such projects and services rendered.
- 1.3. The investigation is being conducted with the benefit of legal privilege, arising between the Board of PRASA and Werksmans.
- 1.4. This report (in whole or in part) may not, without our prior written consent –
 - 1.4.1. be transmitted or disclosed to or be used or be relied upon by any other person or entity whatsoever for any purposes whatsoever; or
 - 1.4.2. be quoted or referenced to or made public or filed with any third party for any purposes whatsoever, except, in either case to the extent that PRASA is required to disclose this report by reason of any law,



regulation or order of court or in seeking to establish its cause of action/defence in any legal or regulatory proceedings or investigations.

1.5. This is a progress report on key aspects under investigation.

2. **METHODOLOGY**

2.1. The process followed in compiling this report consisted of the collection of raw information from various open source databases and the Internet.¹

2.2. Where so required, underlying documents and data relied upon can be made available on request.

2.3. This process includes scrutiny of over one billion separate pieces of internally collected data in the form of documents, investigation-results and audit-results.

2.4. The raw information is then collated into a single format which depicts basic information relating to each entity under scrutiny.

2.5. The collated information is then analysed with a view to determine any obvious indicators of potential risk.

2.6. This report reflects the analysed conclusions of potential and actual risk between levels 1 to 5 thus far (out of 5 possible levels).

2.7. Level 1 risk factors reflect clinical indicators of any adverse financial records as registered on the databases. These would include:

2.7.1. Judgments obtained with respect to outstanding debt obligations;

¹ TransUnion (credit bureau); XDS (credit bureau); SearchWorks (corporate registry); Windeed LexisNexus (corporate and deeds registry); Deeds (deeds registry); Internet open source material; Social media platforms (where applicable) – veracity of data is dependent on service provider



- 2.7.2. Material default payments to third parties.

- 2.8. Level 2 risk factors reflect the result of an analysis of the integrated and collated data. This process entails the objective consideration of less obvious factors which may suggest risk. These would include:
 - 2.8.1. Potential risk reflected in registered fixed assets and credit facilities;
 - 2.8.2. Any potential lifestyle or financial risk factors.

- 2.9. Level 3 risk factors reflect on any additional risk factors concluded through the subjective analysis of the integrated data. These would include:
 - 2.9.1. Potential conflicts of interest and apparent no arms-length relationships;
 - 2.9.2. Any risk factor concerning conflicting registered information;
 - 2.9.3. Possible or existing allegations of criminality;
 - 2.9.4. Any other additional visible potential risk factors.

- 2.10. Level 4 risk factors are the results of more in-depth audits and investigations which require the integration of risk factors levels 1 to 3 to be combined with material internal documentation, interviews of relevant persons, assessing existing allegations that may emanate from whistle-blowers/complainants/victims or state law enforcement or Chapter 9 institution-related investigations and results of internal/external audits and investigations². Level 4 risk factors consider level 1 to 3 assessments of associated persons, family members and business interests held by primary directors.

² This report does not include this level of risk assessment



- 2.11. Level 5 risk assessments lead to the formulation of specific allegations of misconduct, criminality or unlawful actions. Hypotheses are developed at this level of risk assessment with a view to give direction, guidance and a determinable scope for specific investigations. Such investigations will set out to determine the veracity of such allegations and collect the relevant evidence in support thereof in the lawfully required manner. The results of such investigations may be any or a combination of:
- 2.11.1. Civil procedural legal action taken to address and remedy issues;
 - 2.11.2. Criminal investigations with a view to seek prosecution;
 - 2.11.3. Internal disciplinary actions.
- 2.12. In addition to the levels of risk assessments and investigations, legal analysis, opinions and findings (where relevant) insofar certain identified transactions are also set out herein.

3. **BACKGROUND**

- 3.1. The Public Protector in her “Derailed” Report released on 24 August 2015 found that the tender won by Siyangena Technologies (Pty) Ltd to supply and install high speed passenger gates at the Nasrec and Doornfontein stations was improperly extended to cover additional stations³. The so-called Integrated Security Access Management System (“ISAMS”) Phase 1 was awarded to Siyangena during 2009 in respect of the Nasrec and Doornfontein stations however this was extended to 7 other stations across South Africa under the guise that it is urgent for the world soccer cup. The increase was over R 800 million without any proper procurement process followed and in stark contrast to the SCM policy of

³ See the Public Protector Report paragraph 1 on page 22 and 23, paragraph 6 from page 159 and paragraph 8 from page 360 and further.



PRASA. The completion of the stations happened post the world soccer cup.

- 3.2. PRASA announced the tender for Phase 2 of the ISAMS project during 2013. One of the bidders was SA FENCE AND GATE. The ISAMS phase 2 project tender was very specific in the required equipment to be provided and which requirements appear to be structured as to only benefit Siyangena in the end. In addition, and although the SA FENCE AND GATE bid was significantly lower than the SIYANGENA bid, SIYANGENA was the preferred bidder at the end.
- 3.3. The Public Protector Report was preceded by a criminal complaint that was lodged by Philemon Makgatlela (Parker) Mamabola during July 2015 on behalf of PRASA and is being investigated by the DPCI under case reference Hillbrow CAS 405/07/2015. The criminal case inter alia alleges that the erstwhile GCEO, Lucky Montana ("Montana") amongst other allegations, awarded a R 2,9 billion tender to the company, Siyangena in a fraudulent and corrupt manner. This complaint is narrated in very general terms and appears to be about the Phase 2 ISAMS PROJECT tender.
- 3.4. Prior to the ISAMS PHASE 2 PROJECT tender, SA FENCE AND GATE INVESTMENT HOLDINGS (SAFNG1) had already secured a tender from PRASA to provide and install security fencing at 8 depots nationally to the value of approximately R 209 million. This contract is referred to as the Fencing Contract for easy reference. The contract between the parties was signed on 25 March 2013 by Montana.
- 3.5. After signing the security Fencing contract, the same contract was expanded and or changed to include perimeter solar lighting at the various depots referred to above totalling a further R 61 035 144.00 (including VAT). The latter agreement is referred to as the Lighting Contract.



- 3.6. During November 2013, Palello Lebaka ("Palello"), the erstwhile Depot Modernization Program Executive Manager from PRASA authorized SAFNG1 to purchase and install the perimeter solar lights at the various depots.
- 3.7. On or about 20 August 2014 a Notice to Proceed ("NTP") forwarded to SAFNG1 indicated that the initial fencing contract amounting to R 209 million was increased with just over R 47 million which totalled the contract value close to R 257 million. According to the NTP the request for the increase from SAFNG1 due to variations on the project in respect of the contract of R 209m, was approved.
- 3.8. During January 2015 Martha Ngoye, the then acting GCEO signed off on a Condonation of Irregular Expenditure in respect of the Perimeter Lighting on the recommendation of Mr. Josephat Phungula ("Phungula"), the then Chief Procurement Officer ("CPO") at PRASA at the time.
- 3.9. Mr Montana, the erstwhile GCEO after termination of his services from PRASA during July 2015 lodged a criminal case against PRASA under case reference Hillbrow CAS 1034/7/2015 implicating PRASA employees and SAFNG in criminal behaviour.
- 3.10. A further criminal complaint was lodged against Montana during September 2015 in respect of the Phase 2 ISAMS PROJECT tender where it is alleged that the tender was rigged to the advantage of Siyangena. The case reference is Brooklyn CAS 278/9/2015. These investigations are ongoing and form part of the investigation under case reference Hillbrow CAS 405/7/2015.
- 3.11. The focus of this report is mainly in relation to the PRASA, SAFNG, Top 6 and Beka relationship and will therefore only refer to the ISAMS Phase 1 or ISAMS Phase 2 projects where it may be relevant to the issues under review.



4. **CORPORATE REGISTRY INFORMATION**

4.1. There are two entities under the SA FENCE AND GATE label, namely:

4.1.1. SA Fence and Gate Investment Holdings (Pty) Ltd 2004/031774/07 (SAFNG1); and

4.1.2. SA Fence and Gate (Pty) Ltd 2011/115011/07 (SAFNG2).

4.2. **SA Fence and Gate Investment Holdings (Pty) Ltd (SAFNG1)**

4.2.1. Per the CIPC records, the company registration number 2004/031774/07 belongs to a company called Suikerbosekwile 001 (Pty) Ltd. The CIPC documents seem not to reflect the name changes effected in the company over the years but rather still reflect the shelf name of the company as the current applicable name.

4.2.2. The CIPC document was not properly updated by CIPC to reflect the most recent name change to SA Fence and Gate Investment Holdings. The CIPC company history indicates that the company traded as Two Ships Trading 189 (Pty) Ltd since 2005 and as SA Fence and Gate Investment Holdings (Pty) Ltd since 2013. This company was registered on 01 November 2004 and according to the CIPC information available the company was "voluntary liquidated" on 09 February 2016.

4.2.3. Dewald Olivier ("Olivier"), who is reflected as a director on SAFNG2, during an interview confirmed that SAFNG1 was voluntarily liquidated during February 2016. According to him the business of SAFNG1 was formally transferred lock, stock and barrel to SAFNG2.

4.2.4. The VAT number recorded for SAFNG1 on the PRASA system is 4590219145 however this number appears not to exist in the SARS registry. This is most probably due to the liquidation of the company.



4.2.5. Per information obtained from the tender documentation, SAFNG1's PSIRA registration number is 1474603. However, per PSIRA's website, their registration status is shown as "withdrawn". This is most probably due to the liquidation of the company.

4.3. **SA Fence and Gate (Pty) Ltd (SAFNG2)**

4.3.1. SAFNG2 is a private company with registration number 2011/115011/07 and is recorded by CIPC as 'In Business'. The private company was incorporated on 13 September 2011. The VAT number recorded is 4470261860.

4.3.2. As per SARS confirmation, SAFNG2 has two VAT registration numbers: SA Fence and Gate (Pty) Ltd Pretoria (Vat No 4470261860) and SA Fence and Gate - KZN (Vat No 4690268364). This indicates risk of tax non-compliance.

4.3.3. The registered address for the company is recorded as 322/2 15TH Road, Ranjiespark, Midrand, Gauteng and registered postal address as PO Box 22085, Exton Road, Bloemfontein, 9313. This is the address where SAFNG's head office is situated.

4.3.4. SAFNG has offices nationally including an international footprint in the Middle East namely, Wamar International, 4 Al Ri'asah Street, 4th Circle, Near Prime Ministry, Jabal Amman, Zahar, Jordan. The SAFNG head office is situated at this address.

4.3.5. The major clients recorded by SAFNG on their website are:

4.3.5.1. Eskom;

4.3.5.2. Anglo Base;

4.3.5.3. Anglo Base Metals;



- 4.3.5.4. GSL;
- 4.3.5.5. TJ Architects;
- 4.3.5.6. Department of Correctional Services SA;
- 4.3.5.7. ACSA;
- 4.3.5.8. P&L Consulting Engineers;
- 4.3.5.9. Holm Jordaan Architects;
- 4.3.5.10. Sishen South;
- 4.3.5.11. Anglo American;
- 4.3.5.12. Phezulu Fencing;
- 4.3.5.13. Vodacom;
- 4.3.5.14. PRASA;
- 4.3.5.15. Department of Public Works;
- 4.3.5.16. Transnet, etc.

5. **RISK ASSESSMENT / EVALUATION / INVESTIGATIONS**

5.1. **Level 5 Risks**

- 5.1.1. SA Fence and Gate Investment Holdings (SAFNG1) secured a contract to supply security fencing to PRASA depots nationally following on a tender process to the value of approximately R 209 million⁴.

⁴ The contract number is HO/SCM/225/11/2011. The contract was signed by PRASA on 25 March 2013.



- 5.1.2. According to the scope of work SAFNG1 had to provide an integrated security system to various PRASA depots which included the following key aspects:
 - 5.1.2.1. Specialized Fencing;
 - 5.1.2.2. Motion Detection System (that monitors movement and access to the fence);
 - 5.1.2.3. Closed Circuit Television (CCTV);
 - 5.1.2.4. Alarm System;
 - 5.1.2.5. Security Monitoring System (from a Central Operations Centre).

- 5.2. This is the company that was voluntarily liquidated during February 2016.

- 5.3. The above security fencing contract between the parties was signed by the GCEO, Montana on 25 March 2013 and was promptly followed by a Recommendation Report from the CPO, at the time namely, Chris Mbatha requesting the GCEO (Montana) to approve the payment of the 10% mobilization fee to SA Fence and Gate which amounted to R 20 987 455,98 in order to accelerate the implementation of the project.

- 5.4. A Remittance Advice dated 26 March 2013 from PRASA in favour of SAFNG Investment however with company registration number 2011/115011/07 which is SAFNG2's registration number and with Vendor Number 108452, refers to payment to the service provider SAFNG. The Remittance Advice refers to invoice number INV0011002 and reflects the amount paid as R 20 987 455,98 (which constitutes the 10% mobilization fee). The mobilization fee was paid by PRASA into the



account of SAFNG2 and not into the account of SAFNG1 which was the entity which signed the contract with PRASA.

- 5.5. This was an internal failure of systems of PRASA creating a clear and identifiable risk for PRASA when paying a third-party entity not party to the contract. This payment was irregular.
- 5.6. On 3 June 2013 Palello directed an email to a number of persons from SA FENCE AND GATE and various internal PRASA staff regarding the above fencing and security project's first meeting on 5 June 2013 "where the details requirements going forward will be spelt out in detail". In addition, he requested George Els ("Els"), Chief Operations Officer from SA FENCE AND GATE to inform "Allister" to attend (should most probably be Alisdair – more detail below).
- 5.7. In reply, on 4 June 2013, William Murray ("Murray"), the Business Development Director from NAMEC Electronic Manufacturing confirmed that Alisdair Macdonald ("Alisdair") will be attending the meeting the following day as well as attending the site visits on 6 and 7 June 2013. Alisdair appeared to be working with Murray as he was copied into the mail at alisdair@namec-emco.za.
- 5.8. Murray at the same time copied Thobani Msimang ("Msimang") from Tmang Consulting into the mail at thobanim@tmang.co.za. Msimang replied as follows:

"Dear William

*The discussion should be kept **more technical** at this stage to develop the spec and to quantify the business. **Commercial discussions will be managed and concluded by myself.** This will be guided by your technical recommendations. (Own emphasis)*

*Regards,
Thobani"*



(More detail below in respect of emphasized portions above)

- 5.9. Els was adamant during our interview with SAFNG that he was only physically introduced to Alisdair by Palello for the first time when they attended a meeting at PRASA in a 13th floor boardroom at Umjanji House, Braamfontein during the initial stages of the process. As far as SA FENCE AND GATE is concerned they allege that Alisdair was made part of the process by Palello who indicated that Alisdair will assist with the scoping and design of the solar lights for the lighting project.
- 5.10. The project "kick-off" meeting held on 5 June 2013 at Umjantshi House (PRASA) confirm the attendance of Alisdair representing NAMEC. The minutes indicate that the kick off meeting was indeed held on the 13th floor at PRASA.
- 5.11. During our interview with Alisdair he was adamant that he met all the parties involved at the first meeting at PRASA. He indicated that if he remembers correctly a certain Thobani Msimang ("Msimang") from Tmang Consultants CC (2003/019837/23) arranged his involvement in the lighting project. Msimang is the only member of Tmang. Alisdair however initially attended the matter under the NAMEC TECHNOLOGIES umbrella which explains the email address used.
- 5.12. However according to Alisdair the NAMEC involvement was short lived when the CEO Vijay Panday allegedly misappropriated large funds of money from the business. These allegations were covered in the media at length. Both Alisdair and Murray left the NAMEC stable at the time and are still involved with a business called Lormark CC (1997/047367/23) where Alisdair is the only member.
- 5.13. Alisdair confirmed that he was involved in the scoping and design of the solar perimeter lights on the project.



- 5.14. Alisdair indicated that although he only met Lucky Khumalo (“Khumalo”) from Top 6 Holdings towards the end of his (Alisdair’s) involvement in the project, Msimang informed him early on of Top 6’s involvement in the project. If he remembers correctly Msimang early on in the process told him that Top 6’s involvement was delayed due to the delay in the registration of the company.
- 5.15. Top 6 Holdings with registration number 2013/126011/07 was only registered on 25 July 2013 which seems to corroborate Alisdair’s comments regarding their involvement and that the company still had to be registered. Msimang is a director of this company Top 6 as well.
- 5.16. The procurement of a company which was still to be registered and which does not have a trading history defies the logic. Apart from the risk exposure to PRASA at the outset, the suspicions of possible criminal activities become very real.
- 5.17. Although the “Kick Off” minutes on 5 June 2013 are silent about the lighting it is obvious that this was part of the mix especially having regard to the fact that Alisdair’s involvement was primarily to scope and design the lighting required at the various depots. PRASA site visit minutes for example confirm his attendance at the depots nationally. It would appear as if the fact that Top 6 would be super imposed between SAFNG and the lighting supplier was already planned at the outset of the fencing project or at least since May 2013 when the ex PRASA employee Palello got involved in the project.
- 5.18. On 7 June 2013 Els emails the initial proposed site visiting travelling plans to various interested parties at PRASA and included Alisdair. The mail this time is forwarded to alisdair@lormark.co.za. According to the records available, he was appointed as member to Lormark CC on 5 January 2000.
- 5.19. The above scope of work did not provide for the installation of lights at the different depots identified which under the circumstances may have



hindered achieving the optimum objective set out in the beginning of the project namely that the CCTV camera system function optimally however the process followed was highly irregular and suspect. The perimeter solar lights should have formed part of the original tender for the security fencing.

- 5.20. It would seem as if the perimeter lights were an issue from early on in the process as is evident already on 11 June 2013 when Palello via email enquires from Els whether he *"has received an estimate for the lightning"*?
- 5.21. The allegation that Alisdair was involved with the scoping of the lights and arranging even the quote estimates was confirmed when Els replied on the same day at 7:59 pm that *"I have not received any estimate yet. I will contact Alisdair first thing in the morning"* (own emphasis).
- 5.22. Vernon Dinkelman (Project Manager from SA FENCE AND GATE) ("Dinkelman") on 10 July 2013 sent an email to Alisdair with the following contents:

"Hi Alisdair

Following on from our discussion. I don't have the luxury of asking when you will have the lighting pricing for us, I have to let you know that we need the lighting pricing by close of business today. The BOQ revised deadline is Thursday (already moved out by a week). Please!

*I am also not sure how I need to get pricing from your suppliers or they need to get to me? We could probably source our own lighting? **Nobody from your supplier has contacted me yet?***

Please get back to me at your earliest convenience.

Kind Regards"



This email was copied to Els, Kersagan Reddy (PRASA), Palello and Xoliso Kupiso (PRASA).

- 5.23. Els, during our interview, alleged that he got a call from a person who stated that he was from a company called Top 6 and that he was calling in respect of the PRASA lighting project. Els believes that it was Khumalo from Top 6 that called him although he cannot be a 100% sure. Els subsequently contacted Palello who confirmed that SA FENCE AND GATE must use Top 6 to provide the lighting as they (Top 6) were preferred suppliers of PRASA. In other words, PRASA (Palello) nominated Top 6 as the preferred supplier of the lights.
- 5.24. Unbeknown to SAFNG, Top 6 however was not registered at PRASA as a supplier to PRASA. This appears to be a blatant misrepresentation by Palello to ensure the import of Top 6 as supplier and confirmed Msimang's statement that Top 6 will be involved in the project (provision of the lights).
- 5.25. A letter from TMang Consulting/Consultants dated 1 July 2013 and addressed to SA FENCE AND GATE with the subject matter "Proposal for the installation of a lighting solution for the PRASA 8 Depot Security program" indicates that their technical teams have been working with SA FENCE AND GATE as well as PRASA to establish the requirements of each site. This was the job of Alisdair from Lormark. The author of the letter is Msimang, MD of Tmang Consultants.
- 5.26. The actual lighting proposal with pricing attached however is dated 13 July 2013. The proposal in all probability was therefore submitted only on the 13th although the cover letter is dated 1 July 2013. Msimang's pre-involvement with PRASA and most probably with Palello prior to the lighting project appears to be continually confirmed.



- 5.27. The fact that Dinkelman queries the availability of the quote on 10 July 2013 confirms the date of the letter and quote was most likely on or about the 13th.
- 5.28. The above lighting proposal contains two options. Option 1 details Beka (Pty) Ltd ("Beka") as the technology partner in SA whereas option 2 refers to Bloxwich a Malaysian multinational company which is chosen to supply the lights whereas Namec Electronics and Manufacturing is chosen as the technology partner in SA. Part of the proposal refers to Lormark Power Housing and Lormark Solar Panels.
- 5.29. According to Alisdair, he believes that the moment TMang received the designs for the lights, his relationship was terminated. He indicated that if he remembers correctly he was paid by Top 6 and he was also short paid for the job he did.
- 5.30. A Pricing Submission from SAFNG1 to PRASA dated 15 July 2013 for the attention of Palello quotes the pricing from the Beka option plus ten percent.
- 5.31. The 10% added to the quote seem to confirm the comment by Msimang namely that "*commercial discussions will be concluded and managed by myself*" which comment is contained in his email dated 4 June 2013 to Murray and the "*more technical detail*" most probably referred to Alisdair's involvement in the lighting project. At the time of this email the company Top 6 was not yet registered.
- 5.32. Palello subsequently submitted a Project Change Request Form dated 23 July 2013 to Xoliso Kupiso ("Xoliso") wherein he motivated the necessity for the perimeter lighting as part of the National Fencing and Security Project contract allocated to SA FENCE AND GATE at an extra cost of R 53 439 600.00 (excluding Vat which with Vat Total R 61 035 144.00). This amount corresponds with the Pricing Submission from SA FENCE AND GATE addressed to Palello on 15 July 2013.



- 5.33. The Project Change Request Form was signed during August 2013 by the following parties:
- 5.33.1. Project Manager: Xolisa (signed 12/08/2013);
 - 5.33.2. SM: SCM: Mr Godfrey Sonny (signed 12/08/2013);
 - 5.33.3. Project Sponsor: Palello (signed 13/08/2013);
 - 5.33.4. CEO PRASA Tech: Mr Saki Zamxaka (signed 14/08/2013).
- 5.34. The Request Form was however not signed off and approved by the Acting Group Chief Financial Officer (GCFO) at the time Mr Fenton Gastin. The process followed was in any case highly irregular.
- 5.35. During this time, on 16 August 2013, Dinkelman, the Project Manager wrote an email to Xoliso asking him who the preferred lighting supplier was that PRASA instructed them to use. SAFNG maintained that they were instructed by PRASA to use a company called Top 6 to supply the lights quoted on by Beka. Dinkelman knew PRASA nominated the supplier but at that stage he was not sure of the details. Els replied that he had received the information already and apologises for not communicating same with Dinkelman sooner.
- 5.36. During the interview with Olivier (the current Chief Operating Officer of SA FENCE AND GATE) and Els (from SA FENCE AND GATE), they further indicated that shortly after they were visited by Mr Lucky Khumalo and Mr Siphon Shezi from Top 6 they signed the Supplier Contract between Top 6 and SAFNG1 on 10 September 2013. Mr Khumalo signed the contract on behalf of Top 6 which confirmed that the Beka option of lighting will be pursued.
- 5.37. Top 6 entered into a Standard Conditions of Sale Agreement with Beka. Although the pro forma document appears to be created during 2011 it



would appear as if the parties to the agreement signed during November 2013.

- 5.38. It would appear as if PRASA undertook a site visit to Beka on 15 November 2013. The short memo in this regard indicated that the lights for PRASA were not yet available.
- 5.39. During about mid-April 2014, the lights were all apparently available for collection subject to the full payment being made by Top 6. There were approximately 2000 lights of which only about 6 were delivered according to a PRASA employee Piet Swart who was appointed Project Manager of the SAFNG project soon after Palello's services were terminated by PRASA. It was requested that they split the order into 6 invoices, however it was made clear that this was one order. The lights would only be released once full payment had been made. Between February 2014 – May 2014 seven payments were made by Top 6 to Beka.
- 5.40. Beka repeatedly informed Top 6 that the lights are available but it became increasingly apparent that there was a disagreement between Beka and Top 6. During this dispute and to try and resolve the problem Werksmans (who are representing Beka) met with BBM Attorneys (SAFNG's lawyer Reddy was one of the attorneys), 2 Top 6 representatives (Thobani Tobias Msimang & M Ntobella) and their legal team. Msimang's involvement has come full circle being involved from the beginning right up to the end.
- 5.41. A settlement agreement was entered into and reduced to writing in this meeting. As the representatives of Top 6 had to leave they allegedly nominated their attorneys to sign on their behalf. Top 6 subsequently apparently alleged that their attorneys did not have the mandate to sign the settlement on their behalf. The lights are currently still believed to be stored in a warehouse at Beka. PRASA has paid millions towards this



project without result. The process followed was highly irregular which resulted in irregular payments.

- 5.42. During April 2014 Palello responded in an email to his colleagues at PRASA regarding the lighting project – he clearly indicates that when he received the fencing project during May 2013, he immediately realized that the "*PRASA requirement Specification*" was not enough and he requested the contractor (SAFNG1) to supply "*pricing for the perimeter lighting*". It would appear from this as if he initiated the extension of the fencing contract to include the lighting. The fact is that Palello does not follow due process.
- 5.43. SAFNG believe that their April 2014 NOTICE OF CONCERNS REPORT in respect of the ISAMS Phase 2 project with supporting documents which outlined the irregularities of the tender and tender process and which was submitted to PRASA management ultimately resulted in the letter from PRASA terminating the security fencing contract during May 2014. It should be noted that the termination was followed by NTP's on 20 August 2014 and 1 October 2014 and a "final" termination letter on 9 June 2015 from PRASA to SAFNG due to non-fulfilment by SAFNG of the revised time schedules and related problems.
- 5.44. According to SAFNG they, in respect of the security fencing contract, formally submitted to PRASA 108 Requests for Information over a two-year period of which 94% were unresolved due to PRASA's inaction. In addition, they formally submitted 28 Contractual notifications dating from 29 May 2013 to PRASA of which only one has been responded to by PRASA. According to SAFNG this explains the reason for the cost increase and delays on the fencing contract and not as noted by PRASA.
- 5.45. The erstwhile PRASA employee, Palello was disciplined for the irregular extension/change of the fencing contract to include the perimeter lighting and was subsequently dismissed from PRASA.



- 5.46. Montana, the erstwhile GCEO after termination of his services from PRASA during July 2015 lodged, what appears to be, a counter criminal complaint against *inter alia*:
- 5.46.1. Mr Popo Molefe (“Molefe”) [PRASA Chairman of the Board];
 - 5.46.2. Martha Ngoye (“Ngoye”) [PRASA Legal];
 - 5.46.3. Palello;
 - 5.46.4. Phungula [erstwhile PRASA Group Chief Procurement Officer]; and
 - 5.46.5. SAFNG1.
- 5.47. The complainant in the criminal matter, Montana *inter alia* alleges that SAFNG1 colluded with the erstwhile employee, Palello to lodge a large claim of R 47 million against PRASA and which claim was apparently paid by PRASA. This amount appears to refer to the amount of the increase on the R 209 million security fencing contract. This amount was authorised by the Board.
- 5.48. In addition, Montana questions the services and product provided to PRASA by alleging that they (SAFNG1) provided sub-standard services and product to PRASA.
- 5.49. Montana further alleges that the contract was irregularly increased by a further amount of approximately R 58 million to include the perimeter lighting which Martha Ngoye (PRASA Legal) in her position as Acting GCEO at the time allegedly unlawfully signed off and approved during January 2015.
- 5.50. It is further alleged by Montana that Molefe was in a corrupt relationship with SA FENCE AND GATE who donated funds towards Molefe’s foundation by donating money to the foundation’s golf day.



5.51. During our interview with SA FENCE AND GATE during March 2017 we were advised that they are preparing for the arbitration hearing against PRASA in respect of the monies owing to them flowing from the original fencing and security contract. The amount outstanding runs into millions according to SAFNG.

6. **NOTABLE CORPORATE INTERESTS OF DIRECTORS**

6.1. **GEOFFREY EDWARD GREYLING (ID NO: 6510145163087)**

6.1.1. SAFNG forms part of a group of companies under the SASSTEC group of companies. The company Integritron Solutions and Technologies (Pty) Ltd for example has featured in the media on numerous occasions when they allegedly came under the spotlight when NEWS24 inter alia first reported that National Treasury raised queries about the tender procurement process followed by the Department of Correctional Services when awarding the multi-million Inmate Management System contract to them.

6.2. **MOYA CANDLISH NAPE (ID NO: 7705085287081)**

6.2.1. Moya Candlish Nape has an interest in SAFNG and had an interest in Hages Infosystems which are current suppliers to PRASA. He resigned from Hages Infosystems on 1 April 2013.

6.2.2. Hages Infosystems is recorded to be a current supplier to PRASA who invoiced PRASA R11,529,416.00 thus far. The following supplier codes have reference:

6.2.2.1. 108125;

6.2.2.2. 112375;

6.2.2.3. 112376;



6.2.2.4. 112377;

6.2.2.5. 113145.

6.2.3. Krishnan Rajesh Thampy, a director is a former employee of PRASA with employee no 20100023 – employed from 01 April 2010 to 16 October 2010 as a Senior Manager at PRASA Corporate. This person seems to be a foreigner.

6.2.4. Mobile number 0836013683 being used by Krishnan Rajesh Thampy is also used by Tebogo Bopape (Id No 8705165942083) who is an active Director of Moloteka Rail (company registration no 2012/215607/07) who is trading as Zithama Investments. Dennis Bowles who is not only the Senior Manager Projects at Zithama Investments dealing with railway infrastructure engineering, but was also involved at Actom Transportation as a Contract Manager, managing the Contract Division in delivering Signalling Upgrades for PRASA, various Mines and Transnet.

6.2.5. Kumar Abhishek, Signalling Engineer at Zithama Investments, was involved in the PRASA Railcom Project as a Project Manager for Siemens and then again on the ISAMS Project for Siyangena Technologies.

6.3. **PAULUS MOLETSANE (ID NO: 7509085514084)**

6.3.1. Paulus Moletsane has an interest in various corporate entities which have no interest at PRASA apart from SAFNG.

6.4. **DEALINGS WITH PRASA**

6.4.1. SAFNG is a service provider to PRASA with supplier numbers 108452, 109330 and 111663.



- 6.4.2. It would seem from research from sources available that SAFNG, during the period between 26 March 2013 to 08 June 2013, invoiced PRASA about a 187 times for a sum of approximately R 350 242 665.54. PRASA made 30 payments to SAFG in the amount of R 288 820 544.56 (short payment of -R 61 422 120.98) from what was invoiced and generated between 05 April 2013 to 18 July 2016. Except for the mobilisation fee which was paid into the SAFNG2 account, it would appear as if the rest of the funds paid were paid into the SAFNG1 account.
- 6.4.3. It would further appear as if SAFNG1 was created and registered as a service provider on PRASA's supplier database on 05 April 2013. It would therefore appear from the information available as if SAFNG1 invoiced PRASA before they were created on the system and started to receive remuneration on the same day.
- 6.4.4. Various inconsistencies with regards to invoicing / payments were identified such as possible duplicate invoicing, bulk invoicing on the same day, bulk invoicing on Sundays. These potential inconsistencies are just some red flags which may or may not point to possible problems and require further investigation.
- 6.4.5. The following diagram shows differences / inconsistencies between Invoice and Purchase Order Amounts and VAT between Quotes and Invoice Amounts:

| Doc Type | Total |
|---|---------------|
| Total on Quotes | 29 453 434,44 |
| Total on PO's | 29 453 434,44 |
| Total on Invoices | 30 167 051,07 |
| Difference between PO's & Invoices | 713 616,63 |
| Vat on Invoices | 3 704 725,57 |
| Vat on Quotes | 3 617 088,44 |
| Difference between VAT on Quotes and Invoices | - 87 637,13 |



7. **SCM PROCESS**

- 7.1. In principle, it would appear as if the lighting project was a good and essential idea to enhance the security fencing project which raises the question as to why Palello did not follow the proper channels.
- 7.2. The process followed by PRASA and in particular by Palello was however irregular and resulted in later attempts to condone the irregular expenditure incurred by PRASA and to finish the enhancement of the security fencing at the depots.
- 7.3. The erstwhile employee Palello was taken to task and dismissed following upon a disciplinary hearing.
- 7.4. The Condonation Document dated January 2015 indicated that the implemented project scope did not include the procurement and installation of lights which would enhance the visibility and quality of images transmitted to the control room. The lights were apparently necessary for the effective functioning of the deployed security system. The document seeks to condone the already paid out amount of R 33 833 032.00 and to pay the further R 24 320 264,72 required to fulfil the lighting job. The CTPC meeting resolved that the submission be supported and elevated to the GCEO for approval. The acting GCEO (Martha Ngoye) signed the condonation on 20 January 2015.
- 7.5. On 1 December 2015, the matter of Condonation of the perimeter lights was re-visited by PRASA. A further motivation is submitted to the then Acting GCEO to approve. According to this document the PRASA Supply Chain Management Policy and the PFMA were contravened.
- 7.6. The document explains that the original fencing project amounting to R 209 874 559.80 was approved by the PRASA Board. Subsequently the Board approved a variation of R47 083 730.37 resulting in a new



contract value of R 256 958 290.17. The lights variation amounting to R 58 153 296.72 was submitted to the Acting GCEO and approved during January 2015.

7.7. However Internal Audit recommended that the variation must be submitted to the Board for approval due to the fact that the combined value of the contract falls within the delegation of the Board. The approval of the condonation will increase the contract to R 315 111 586.89. This motivation dated 1 December 2015 therefore requested Board approval to condone the variation.

7.8. At the time the Acting Chief Procurement Officer, Mr. Mbulelo Gingcana indicated that he did not support the above request indicating that the matter was under investigation by Treasury.

7.9. What is abundantly clear is that the policy and processes were not adhered to and followed.

8. **CONCLUSIONS AND RECOMMENDATIONS**

8.1. Xolisa Kupiso (ex PRASA Project Manager) – as per a whistle blower report in the media, and who was very much involved with the fencing and lighting project left PRASA and was allegedly employed by SAFNG. According to SAFNG he was never employed at SAFNG at any stage however he was apparently part of a business that rented premises across from their Midrand offices which business supplied sewage pumps.

8.2. SAFNG1 as a provider of security fencing is required to be registered at PSIRA. The contracts were secured through SAFNG1 which company appears to be no longer compliant as far as their PSIRA registration is concerned. This may be as a result of their liquidation. The liquidation of SAFNG1 and the factors surrounding the liquidation require a close look at especially in view of the fact that it is SAFNG1 that was the



contracting party to the original fencing contract. The original fencing contract requires prior written consent from the PRASA GCEO where there is any change in the composition of the contractor or where the contractor assigns the contract (see clause 2 of the fencing agreement in this regard). Were any of these formalities complied with when SAFNG1 transferred the contracts to SAFNG2?

- 8.3. According to the records available the initial mobilization fee (R 20 987 455,98) was not paid to SAFNG1 but to SAFNG2. The money was supposed to be paid to SAFNG1 as SAFNG2 was not a party to the fencing contract at the time. This was an irregular payment.
- 8.4. Although the lighting contract appears to be a necessary requirement the process followed was irregular and thus still constituted irregular expenditure.
- 8.5. The fact that Msimang appears to be pivotal to the lighting transaction with PRASA is a matter for concern as Msimang headed up Tmang Consultants who apparently brought in Alisdair to do the scoping in respect of the solar lighting. This seems to be done with the approval of Palello. Msimang informs Alisdair that Top 6 will deal with the matter going forward. Tmang submits a quote to SAFNG1 which reflects two options.
- 8.6. Top 6 calls SAFNG which involvement is confirmed by Palello. Top 6 "takes over" the deal. Msimang not only has an interest in Tmang Consultants but is also noted as a director of Top 6, which company ultimately was super imposed in the deal between SAFNG and Beka at a 10% increase to provide lighting to PRASA and which Palello agrees to. According to Els he telephonically spoke to Palello, who confirmed that they had to work through Top 6 to buy the lights.



- 8.7. During numerous discussions with Palello, although quite helpful in respect of other matters within PRASA, he was rather silent regarding the above matter maintaining that he was unfairly dismissed.
- 8.8. In retrospect, it would seem as if the transaction was “forced” through without following proper process specifically as the project now seems to have been predetermined to favour Top 6 to the prejudice of PRASA.
- 8.9. The process of super imposing Top 6 into the lighting transactions appears to be highly irregular if not criminal. On the face of it, Top 6 was merely super imposed between SAFNG AND BEKA with what appears to be the co-operation of Palello and Msimang to enrich Top 6 with a 10% payment over and above the value of the lights.
- 8.10. Although Palello was disciplined and his services subsequently terminated, it would appear as if there may well have been more to the transaction than a mere irregular process however this aspect should be investigated by the police.

9. **RECOMMENDATIONS WITH RESPECT TO CONTINUED CRIMINAL INVESTIGATIONS GOING FORWARD**

- 9.1. Having regard to the content of this report, read in conjunction with the other investigative reports holistically, it is recommended that the offences of racketeering in terms of the *Prevention of Organised Crime Act 121 of 1998 (POCA)* as amended be considered. The reasons underpinning this recommendation are set out herewith:
 - 9.1.1. It must be noted that the recommendations require a collective perusal and consideration of all relevant investigative reports and link analysis charts in this regard.



9.1.2. By way of background: The intentions of the legislature in introducing POCA (and relevant to this recommendation) were; to introduce measures including combating organised crime, money laundering and criminal gang activities; to prohibit certain activities relating to racketeering activities; to provide for the prohibition of money laundering and for an obligation to report certain information; to provide for the recovery of the proceeds of unlawful activity; to provide for the establishment of a Criminal Assets Recovery Account; to amend the International Co-operation in Criminal Matters Act, 1996; to repeal the Proceeds of Crime Act, 1996; to incorporate the provisions contained in the Proceeds of Crime Act, 1996; and to provide for matters connected therewith.

9.1.3. The sections of POCA relevant to this recommendation are Sections 2 (1), 4 and 6:

"2. *Offences - (1) Any person who:*

- (a) (i) *receives or retains any property derived, directly or indirectly, from a pattern of racketeering activity; and*
- (ii) *knows or ought reasonably to have known that such property is so derived; and*
- (iii) *uses or invests, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment or operation or activities of, any enterprise;*
- (b) (i) *receives or retains any property, directly or indirectly, on behalf of any enterprise; and*



- (ii) knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity,*
 - (c) (i) uses or invests any property, directly or indirectly, on behalf of any enterprise or in acquisition of any interest in, or the establishment or operation or activities of any enterprise; and*
 - (ii) knows or ought reasonably to have known that such a property derived or is derived from or through a pattern of racketeering activity;*
- (d) acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity;*
- (e) whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;*
- (f) manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity; or*
- (g) conspires or attempts to violate any of the provisions of paragraphs (a), (b), (c), (d), (e) or (f), within the Republic or elsewhere, shall be guilty of an offence.*



4. Money Laundering:

Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and –

1. *enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or*
2. *performs any other act in connection with such property, whether it is performed independently or in concert with any other person,*

which has or is likely to have the effect –

- (i) *of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or*
- (ii) *of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere-*
 - (aa) *to avoid prosecution; or*
 - (bb) *to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,*



shall be guilty of an offence”.

6. *Acquisition, possession or use of proceeds of unlawful activities. –*

Any person who –

(a) *acquires;*

(b) *uses; or*

(c) *has possession of,*

property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person, shall be guilty of an offence”.

9.2. In reading the three sections of POCA above, the following definitions as contained in Section 1 thereof are also relevant:

9.2.1. **“Enterprise”** includes any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity;

9.2.2. **“Pattern of racketeering activity”** means the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act (POCA) and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1;



- 9.2.3. **"Proceeds of unlawful activities"** means any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived;
- 9.2.4. **"Unlawful activity"** means any conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere.
- 9.3. In light of the above, it is clear that POCA intends to deal with organised racketeering of entities irrespective of the various parts played by persons associated with such enterprise in achieving the object of their collective conspiracy to commit a particular crime or a series of crimes.
- 9.4. The starting point in considering the recommendation to institute charges of racketeering as defined and provided for in POCA would be the fact that the requirements described in Section 2 (1) of POCA (as set out above) would have to be met in evidence.
- 9.4.1. These require the ability to demonstrate that the various suspect individuals and entities were all active in different capacities, in one manner or another, and involved in an illegal enterprise.
- 9.4.2. The respective reports have to be read in conjunction in order to comprehend the scale and range of criminal activities that are alleged to have been committed. In addition, the relevant link analysis charts need to be taken into account simultaneously.
- 9.4.3. Read collectively as recommended, the reports and link analysis make a *prima facie* case which identifies the persons and entities, underlying



criminal offences and show all to have had the intended purpose to facilitate the multiple instances of fraud, corruption, money laundering and other unlawful activities or a combination thereof and as described in schedule 1 of POCA, for the benefit of the criminal enterprise.

9.5. The reports which display the progress made on the multiple cases depict the various stages of investigation and collection of evidence (even when having regard for the limitations ensued as a result of the lack of the Directorate of Priority Crimes Investigations and/or the National Prosecuting Authority in exercising their persuasive powers, such as subpoenaing and analysing bank account statements of the relevant periods and other third parties, obtaining witness statements and warning statements from suspects and/or conducting search and seizure warrants) collectively comprise *prima facie* evidence which the state can rely upon to institute several charges of racketeering against the identified entities and individuals. Common categories of activities which are demonstrated throughout all the reports and which must be read in conjunction with each other in order to consider such charges include:

9.5.1. Instances where invoices for payment were submitted for the same delivery of services and/or goods on more than one occasion – alleged fraud and corruption;

9.5.2. Instances where suppliers of services and/or goods were registered as suppliers on multiple occasions and within multiple parts of PRASA – alleged fraud and corruption;

9.5.3. Instances where payments were given effect to for services not rendered – alleged fraud and corruption;

9.5.4. Instances where contracts were entered into *contra* the legal requirements of PRASA – alleged fraud and corruption;



- 9.5.5. Instances where suppliers to PRASA were registered as suppliers under one name or legal status interchangeably e.g as CC or Pty(Ltd) – alleged fraud and corruption;
 - 9.5.6. Instances where payments from PRASA to suppliers were diverted from one entity or person to another in a concealed fashion – alleged money laundering;
 - 9.5.7. Instances where suppliers to PRASA presented themselves to be based at particular addresses as functioning entities, when in fact they could not be traced to those addresses – alleged fraud;
 - 9.5.8. Instances where individuals and entities received the benefits of proceeds of organised crime;
 - 9.5.9. Instances where the financial proceeds of unlawful activities were utilised by persons to acquire moveable and immovable property;
 - 9.5.10. Instances where the proceeds of organised crime or unlawful activities were diverted from one entity or person to another;
 - 9.5.11. Instances where persons with conflicts of interests or potential conflicts of interest participated in activities and/or decisions and/or giving effect to payments, which resulted in unlawful direct or indirect benefits to third parties associated to them – alleged fraud, corruption and money laundering.
- 9.6. Insofar the recommendations as set out above, PRASA has written to both the Head: Directorate of Priority Crimes Investigations and the National Director of Public Prosecutions of the National Prosecuting Authority, requesting for the declaration of the investigations as priority crimes and to consider the issuance of a certificate for an investigation of racketeering.



- 9.7. Unfortunately, any further attempts to see this process through to its logical conclusion have not borne any fruit from the side of PRASA and its legal representatives.
- 9.8. Having said this, there is no reason why the National Director of Public Prosecutions of the National Prosecuting Authority may not still consider these requests at any given point in time going forward.
- 9.9. It is strongly recommended that the requests referred to be pursued until the National Director of Public Prosecutions of the National Prosecuting Authority takes a stance either way. Such a decision would dramatically impact on the continued paths for the investigations, as it would result in each instance having to be treated as separate and unconnected offences, and presented by way of criminal complaints and prosecutions accordingly. Should such a scenario occur, various legal ramifications may ensue which would hamper successful prosecutions significantly, simply because of the overlapping nature of the reported activities, alleged crimes, and common suspects and methodologies as set out in the respective investigative reports.

10. **CONCLUSION**

- 10.1. Should PRASA wish to investigate this matter further, the investigation in this regard will comprise, *inter alia*:
 - 10.1.1. Unpacking the agreements entered into with these various entities to determine whether the work contracted and paid for was in fact completed by each such entity and to the satisfaction of PRASA;
 - 10.1.2. The PRASA employees involved in the compilation, motivation, recommendation and approval of the Memos and their relationships, if any, with the entities must be investigated;



- 10.1.3. Should the investigation reveal any impropriety on the part of any employee, the appropriate disciplinary action would be recommended as well as any other proceedings which may be appropriate in the circumstances;
 - 10.1.4. Should the investigation reveal that no value was in fact received by PRASA, the appropriate legal steps would need to be considered relating to the possible setting aside of contracts with the concomitant actions to recover monies and lodging of criminal complaints.
11. It must be noted that the levels of complexity and sheer volumes of evidence that is required to be considered, reviewed and concluded to bring these matters to conclusion, will prove a challenge to even the state's law enforcement agencies today. Notwithstanding this challenge, it is incumbent upon PRASA to properly and fully investigate these matters so that from an operational perspective, all identified irregularities are addressed and appropriate legal procedures are followed to both protect and enforce PRASA's rights.