

Our Reference: Mr Johan Kruger Your Reference: 43/1/2/5/1
Direct Line: +27 83 444 0908 Date: 12 January 2017
Email Address: johan.kruger@bowmanslaw.com

BY E-MAIL

Attention: Mr. Vukani Ndaba
Department:
NATIONAL TREASURY
Republic of South Africa
Private Bag X115
Pretoria
0001

Dear Mr. Ndaba,

PRIVILEGED AND CONFIDENTIAL

INVESTIGATION INTO 20 SELECTED CONTRACTS (AS PER ANNEXURE C TO THE AGREEMENT BETWEEN NATIONAL TREASURY AND BOWMAN GILFILLAN DATED 10 FEBRUARY 2016) ABOVE R10 MILLION AWARDED BY PRASA FROM 2012 TO DATE – COMBINED REPORT

1. Bowmans was mandated by National Treasury to investigate 20 PRASA contracts with a value exceeding R20m from 2012 to date.
2. This is our combined report pertaining to the preliminary investigation of the 10 remaining PRASA contracts.
3. Please do not hesitate to contact me should you require any further information.

Yours faithfully,

Bowman Gilfillan

per: Johan Kruger

This document is intended only for the use of the addressees named herein and may contain legally privileged and confidential information. If you are not the intended recipient of this document, you are hereby notified that any dissemination, distribution or copying of this document is strictly prohibited. If you have received this document in error, please immediately notify us by telephone and return the original / copy to us via the postal service. We will reimburse you any cost that you incur in notifying us and returning the document to us. Our telephone number is +27 (11) 669 9000.

EXECUTIVE SUMMARY OF FINDINGS AND OPINION

Mandate

1. The Public Protector in her report on the Passenger Railway Agency of South Africa ("PRASA") investigation, directed the Office of the Chief Procurement Officer ("OCPO") to conduct forensic investigations in respect of all PRASA contracts above R10 million from 2012 to date.
2. Bowmans was mandated by National Treasury to investigate 20 PRASA contracts above R10 million, awarded by PRASA from 2012 to date.
3. National Treasury selected the 20 PRASA contracts to be investigated by Bowmans.

Summary of findings and opinion

10 remaining PRASA contracts

4. Bowmans compiled and submitted 10 separate reports to PRASA for 10 of the 20 PRASA contracts investigated.
5. This is a combined report, which relates to the preliminary investigation of the 10 remaining contracts as listed below:

#	Purchasing Document	Account number	Vendor/supplying plant	Description	Contract value (Rand)
1	4600005943	100872	Naledi Rail Engineering (Pty) Ltd	Wheels: Repair and refurbish	11 573 759
2	4600006012	110870	Dikiza Railway and Civil Engineering CC	The provision of maintenance of infrastructure	50 000 000
3	4600006029	110908	David Sekgobela and Associate (Pty) Ltd	Maintenance of infrastructure in Gauteng	50 000 000
4	4600006031	110909	Langa Lebalele Trading CC	Maintenance of infrastructure in Gauteng	50 000 000
5	4600006172	105256	Maredi Telecom and Broadcasting (Pty) Ltd t/a Maredi Telecoms	Ad hoc repair work, call out and technical support	25 000 000
6	4600006238	103845	Active Power Projects (Pty) Ltd	Design, manufacture, supply and installation	12 815 367
7	4600006240	103845	Active Power Projects (Pty) Ltd	Supply, installation and commissioning	11 897 955
8	4600006317	103845	Active Power Projects (Pty) Ltd	Supply, installation, commissioning: indoor/outdoor	12 397 955

#	Purchasing Document	Account number	Vendor/supplying plant	Description	Contract value (Rand)
9	4600006389	111276	Mabule Rail and Infrastructure (Pty) Ltd	Ad hoc repair work, call out and technical support	50 000 000
10	4600006390	111332	Y-Rail (Pty) Ltd	Ad hoc repair work, call out and technical support	51 566 800
				TOTAL	325 251 836

Preliminary investigation of the 10 remaining contracts

6. As a result of initial delays in receiving information from PRASA and thereafter budget and time constraints, Bowmans was unable to investigate the 10 remaining PRASA contracts in detail.

Work completed on the 10 remaining PRASA contracts

7. Bowmans was only able to finalise the investigation relating to the appointment of the 10 remaining PRASA suppliers contracts.
8. We discovered during the PRASA investigation that, except for Naledi Rail Engineering (Pty) Ltd, the remaining 9 PRASA supplier contracts were appointed through the Supplier Development Program ("SDP").
9. Other reports submitted to National Treasury describes in detail our findings and opinion with regard to the SDP.
10. We are of the opinion that The SDP is in contravention of the PRASA SCM Policies dated February 2009 and September 2013, respectively and that all appointments of suppliers by PRASA in terms of the SDP are irregular.
11. Below is a short summary of the SDP.

Supplier Development Program

12. During 2012, the Group Chief Executive Officer ("GCEO") approved the SDP. This program was intended to provide BBBEE companies with an opportunity to develop, by working together with well-established companies where after they would be capable of executing mandates independently.
13. Nine suppliers were added to the SDP during the first request.
14. Three additional requests were submitted to the GCEO for approval where additional suppliers were added to the SDP:

- a. Request #2 - 17 suppliers added on 11 December 2012
 - b. Request #3 – 27 suppliers added on 11 December 2013
 - c. Request #4 – 26 suppliers added on 9 January 2015
15. A total of 63 suppliers formed part of the SDP (there were some duplications between the various requests, therefore the total suppliers are less than the number of suppliers added during each request).

Irregularities discovered

16. We are of the opinion that:
- a. The SDP is in contravention of the PRASA SCM Policies dated February 2009 and September 2013, respectively.
 - b. We could not identify any policy or procedure in terms of which the suppliers were selected.
 - c. The suppliers were not accredited prior to being added to the SDP contracts register, i.e.:
 - i. No audit of the supplier's systems and procedures were performed in order to ensure that the supplier had capacity to deliver. No assessment of the staff, facilities, equipment and infrastructure of the supplier was performed.
 - ii. No assessment was performed on the supplier to determine its practical ability to carry out the required maintenance and repairs on the assets.
 - d. The suppliers did not have the necessary CIDB grading as prescribed, to perform construction works.

Outstanding issues

17. The following work is outstanding for the 10 remaining contracts:
- a. Review of the company searches
 - b. Review of the director searches
 - c. Review of the PRASA vendor registration information
 - d. Review of the agreements between PRASA and the 10 suppliers

- e. Interviews that should be conducted with the:
 - i. Relevant PRASA project managers
 - ii. Relevant PRASA staff at the PRASA depots/stations
 - iii. Directors/members of the suppliers
 - f. Payments made by PRASA to the suppliers
 - g. Physical verification of the work completed by the suppliers
18. In our opinion, all appointments of suppliers made in terms of the SDP should be regarded as Irregular Expenditure as envisaged in the PFMA. The appointments of the various contractors in terms of this program appears to be completely arbitrary and it is clear that no fair and transparent competitive bidding processes were followed as is required in terms of PRASA SCM policies, the PFMA and other legislation.