

JGL Forensic Services

Executive Summary to -

Final Forensic Report:

Forensic Investigation into PRASA contracts

27 October 2016



Executive Summary

1. Background

JGL Forensic Services was appointed by the National Treasury to conduct an investigation into twenty (20) PRASA contracts from 2012 to the value of R10 million and above in order to verify the validity of payments made by PRASA.

We now provide a summary of the most salient findings that resulted from our review:

2. PRASA Policies

The legislative framework against which the investigation was conducted required the inclusion of the relevant PRASA policies and delegations. Of specific note in this regard is the following:

Findings

- The 2009 Supply Chain Management Policy is the only SCM policy that has been approved by the Board and is therefore the only legally binding SCM policy to be used by PRASA.
- Later versions of the Supply Chain Management Policy have been drafted but have not been approved by the Board, although officials appear to be applying some of these policies.
- PRASA has no Record Management Policy.

Recommendations

- PRASA should issue a memorandum to instruct officials to use the 2009 SCM Policy.
- PRASA should draft an Information and Record Management Policy and have it approved by the Board as soon as possible.

3. Contracts reviewed - Method of Appointment

The following table provides a summary of the method of appointment and the resulting findings on the award of the 20 contracts reviewed:

Award of Contract			
Method	Award	Contracted Party	Target Value ¹
Open Tender	Irregular	Risk Release (Pty) Ltd	R15,245,357.04
		Diesel Electric Services (Pty) Ltd	R15,084,142.46
		Schindler Lifts (SA) (Pty) Ltd	R23,388,159.06
		Trenchless Technologies	R37,896,446.51
		Silver Charm Investment 45	R14,691,932.47
		Supercare Services Group	R44,997,393.96
		Liquid Dynamics CC	R19,500,000.00
	Liquid Dynamics CC	R12,565,876.95	
	Regular	Kamo Construction	R44,927,297.00
		Shanela Cleaning Solutions	R12,282,877.08
		GVK-Siya Zama Building Contractors	R51,924,700.00
No finding	M and F Business Furniture	R22,231,689.06	
Tender (type?)	No finding	Boshard Construction (Pty) Ltd	R23,005,034.00
Closed Tender	No finding	Boshard Construction (Pty) Ltd	R23,005,034.00
No Procurement Process	Irregular	Advance Detachment Security Force	R17,088,218.00
		Cambridge Foods (Pty) Ltd	R17,100,000.00
		Cambridge Foods (Pty) Ltd	R17,100,000.00
	Regular	Growthpoint/Paramount	R104,000,000.00
Not Reviewed		TRE - Koedoespoort	R31,000,000.00
		Growthpoint	R121,000,000.00

It should be noted that:

- In the case of the first Liquid Dynamics contract listed above, the process started out as an open tender, but Liquid Dynamics was disqualified during bid evaluation. When it was found that none of the bidders qualified for the award, a “business decision” was taken to award to Liquid Dynamics.
- The second Liquid Dynamics contract was in fact only an extension of scope applied via an addendum to the first contract.

¹ These target values are reflected as per the list of 20 PRASA contracts to be review that was received from the OCPO, National Treasury

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- One of the two contracts to Boshard Construction (Pty) Ltd resulted from a closed tender process, while for the other no procurement documentation was available to confirm how the award came about.
 - No documentation in respect of the TRE-Koedoeport contract could be obtained and as a result the procurement method and contract award could not be reviewed.
 - The second of the two contracts listed in respect to Growthpoint, was found not to be a contract, but rather made reference to the budget provision of the first.

We will firstly deal with the awards that we submit were irregular then we will further discuss the general findings on the bid processes followed. In discussing the findings on irregular tender awards the reader is made aware that we identified statements of concern in the PRASA bid documents that allows discretion to be applied by PRASA in its bid evaluation and adjudication process. This discretion may allow issues of non-compliance to be permitted which will impact the outcome of the tender award. This issue of discretion is discussed under general findings.

4. Irregular Award of Contracts resulting from Open Tender Processes

4.1 Risk Release

Findings

Risk Release (Pty) Ltd was appointed under bid number HO/CRES/104/2014 described as *The Provision of Cleaning and Hygiene Services at Pretoria Station*.

We submit that the Risk Release (Pty) Ltd tender award was irregular and Risk Release should have been disqualified as a bidder prior to the tender evaluation stage. This results from various findings of non-compliance, including:

- Non-compliance to legislative requirements considered to be the primary basis of disqualification:
 - A valid Tax Clearance Certificate for Risk Release (Pty) Ltd was not provided.
 - No B-BBEE Certificate was provided for Risk Release (Pty) Ltd. A letter confirming the BEE status of Risk Release (Pty) Ltd was submitted, instead of a valid BEE Certificate containing an expiry date. Despite the absence of a valid B-BBEE Certificate, Risk Release claimed level 4 B-BBEE contributor points and scoring during bid evaluation

was conducted accordingly. This represents not only legislative non-compliance but also irregular bid evaluation processes followed.

- Non-compliance to other “compulsory” tender requirements within the bid document:
 - No certified CM29 or COR32, or B-BBEE plan in the name of Risk Release (Pty) Ltd was provided.
 - Two of the applicable tender forms (Form A – Notice to Tenderers and Form H – Security Screening), for Risk Release (Pty) Ltd, could not be obtained for review.

A letter undersigned by the Group Accountant / Group Financial Manager of Risk Release (Pty) Ltd, provided some insight into why no documentation in the name of Risk Release (Pty) was obtained:

“We have the pleasure to inform you that our newly established company Risk Release (Pty) Ltd has acquired the business Democratic Industrial Services (Pty) Ltd. We are currently in the process of registering Risk Release with all legislated statutory agencies and requirements. In the interim we will be utilizing the following registrations from Democratic Industrial Services (Pty) Ltd until Risk Release (Pty) Ltd registrations has been complete.....”

The above issues and the statement from Risk Release, when read together, raise concern whether Risk Release was a properly constituted entity with a track record at the time of bidding and whether the entity being awarded the tender is indeed the entity it purported to be. Another concern with regard to Risk Release is that if it is not registered with “*legislated statutory agencies and requirements*” it would also not be in compliance with SARS tax clearance requirements and therefore not in possession of a valid tax clearance certificate.

We submit that we have serious concerns on the differences in the points awarded between the first and second scoring evaluations as it appears that Risk Release (Pty) Ltd scored very low during the first evaluation and a second evaluation was undertaken, after some time lapsed, at which point the evaluation score had been increased or may have been inflated or the bidder allowed to correct certain aspects of its bid.

We did not receive copies of the actual bid submissions by the unsuccessful bidders, and we were therefore unable to verify whether all the bidders did in fact comply with the tender specifications, and if the bid process was conducted fairly.

It was noted that “discretion” (see paragraph 6.1 below) was referenced within the bid document for this tender.

Our review of the contract with Risk Release (Pty) Ltd revealed the following:

- The actual contract was signed on 12 February 2015 by PRASA CEO which is almost 11 months after contract commencement date of 1 Apr 2014 as specified in the contract. The tender was issued on 22 May 2013 as per clause 1.1 of the contract. The letter of acceptance was signed on 27 Mar 2014 and the commencement date in the contract stated as 1 April 2014.
- The contract for a value of R15,245,357.04 for maintenance of premises at the Pretoria Station – namely cleaning and hygiene services - was authorized by the CEO PRASA CRES. Whilst the contract value falls within the delegation of authority of R20m for maintenance and material for the CEO of a Division or a Subsidiary, we submit that the contract should never have been authorized as the tenderer should have been disqualified had the adjudication process been properly followed. The CEO PRASA CRES therefore acted improperly in authorizing an invalid contract.

Our review of the payment documents revealed the following issues of note:

- The scope of the services had been increased beyond the scope of the bid and that agreed to as reflected in the contract, bearing in mind the contract should not have been awarded in the first place. Whilst the contract provided for “Cleaning and Hygiene Services at Pretoria Station” we noted from the payment analysis that there were various invoiced amounts relating to items other than the Pretoria Station as follows:

Varied Text Descriptions	Total Values	Occurrences
PTA STATION CLEANING (Note 1)	-R11,493,850	27
Back dated increase PTA station April-	-R38,113	1
BOSMAN STATION CLEANING	-R210,832	5
CAPITAL PARK CLEANING	-R53,689	5

CAPITAL PARK OFFICE CLEANING	-R18,587	1
COACH CLEANING	-R21,067	1
LOFTUS,RISSIK STATION CLEANING	-R65,248	2
LUXURY COACH CLEANING	-R63,202	3
LUXURY COACH CLEANING PTA STATION	-R21,067	1
S & I HYGIENE EQUIPMENTS AT VARIOUS STATIONS	-R124,903	1
STATIONS CLEANING	-R657,794	12
WOLMERTON STATION CLEANING	-R139,474	2
WOLMERTON TRAIN OPS STATION CLEANING	-R103,194	1
TOTAL	-R13,011,018	62

Note 1: The expected contract cleaning services

- The above suggests that the scope has increased beyond the agreed scope of the contract. We have not noted any documentation that authorizes the increase in scope of the contract.
- We noted from the current rate of expenditure, as at May 2016, and factoring in the future expenditure in the amount of R15.245m as per the contract, the contract value will be exceeded. The expenditure to May 2016 for the contract:

Description	Amount	Notes
Total	-R13,011,018.31	62 payments
Invoices reviewed	-R3,472,801	
% Coverage	26.69%	The coverage will be increased once we receive additional payment documents
Contract Value	-R15,245,357	
Actual as % of contract	85.34%	

- With the above out of scope in mind we have calculated the expected contract expenditure until the completion of the contract (30 April 2017) and we expect that the expenditure will exceed the contract value by at least R2.4m should only the Pretoria Station cleaning be taken into account:

Description	Amount
Last payment	31 May 2016
End of Contract	30 April 2017
Total months till end of contract	11.00

Expected payment per month	-423,482
Total expected for remainder of contract	-4,658,304
Total payment to May 2016	-13,011,018
Expected total till end of contract	-17,669,322
Contract value	-15,245,357
Expected excess above contract value	-2,423,965

Recommendation

Based on the finding that the procurement process followed in the award of the contract to Risk Release (Pty) Ltd for the Provision of Cleaning & Hygiene Services at Pretoria Station, and is therefore found to be irregular, it is recommended that the contract be cancelled with immediate effect.

We also submit that the personnel involved in the irregular bid evaluation and adjudication processes which therefore deemed the tender award irregular, should be considered for disciplinary action.

4.2 Diesel Electric Services

Findings

Diesel Electric Service (Pty) Ltd was appointed under bid number HO/CRES/312/06/2013 for *Supply, Installation, Testing and Commission of Standby Power Generator at Umjantshi House*.

The process followed in order to appoint Diesel Electric Services is found to be irregular and as a result the award of the tender to Diesel Electric Services is deemed to be irregular, based on the following:

- Diesel Electric Services submitted an expired B-BBEE Certificate together with a letter from their verification agency confirming that the process of renewal of the B-BBEE Certificate was underway. Although the invalid B-BBEE Certificate should have been considered as the bidder declining to claim preference points, the Bid Evaluation Committee conducted scoring of the bid based on the expired B-BBEE certificate.

Scoring of the B-BBEE certificate caused the process followed to be irregular. As a result the award of tender to Diesel Electric Services is deemed irregular.

The following non-compliance to other “compulsory” tender requirements within the bid document was also found:

- The “Acknowledgement” section on Form D – Site Inspection Certificate / Pre-Tender Briefing, was not completed or signed.
- The “Conditions of Tender” was not initialed on each page, as per the requirements stipulated under point 12 of Form A – Notice to Tenderers.
- The proof of bank account letter was outdated (older than 3 months).
- The bank code letter was outdated (dated almost 3 years earlier)

It was noted that “discretion” (see paragraph 6.1 below) was referenced within the bid document for this tender.

No signed contract was obtained against which we could assess payments for this contract.

We analysed the Diesel Electric payments on the account and found:

- A memorandum, from Campus FM dated 29 September 2014, in the payment documentation that stated that two different contracts were posted to the same account:
 - Contract # 4600005559 reflects a contract value stated at R13,576,239.13 Umjantshi House, and Contract # 4600005558 has a contract value stated at R5,271,979.02 Standby Power Upgrade Shosholoza Meyl Junction.
- In the account we found entries of actual expenditure totaling R29,870,531 broken down as follows:

	Description	Amounts	Notes
	Total per account	-R29,870,531	<i>Broken down as follows:</i>
Project	Umjantshi	-R15,183,842	
Project	Shosholoza Meyl	-R4,473,955	<i>Incorrectly posted to this account</i>
	Unknown	-R6,310,029	<i>Payment with no reference or description</i>

	Description	Amounts	Notes
	Other	-R3,902,705	Various diesel generator sets supplied at locations other than Umjantshi House, scope potentially extended beyond the tender
Umjantshi	Invoices reviewed	-R6,991,716	For Umjantshi only
	% Coverage	46.05%	As a % of the Umjantshi value of R15,183,842
	Contract Value	-R13,576,239	The contract value for the Umjantshi project
	Actual as % of contract	111.84%	The actual expenditure of R15,183,842, not including the R3.9m potential scope extension, is in excess of the contract value

- We noted that the actual expenditure on Umjantshi of R15,183,842 exceeded the contract value of R13,576,239 by 11.84%. Should we include the expenditure at the various other locations of R3,902,705, which we suspect to be expenditure beyond the scope of the tender intention, we find that the total expenditure is R19,086,547 which is 41% over the contract value of R13,576,239.

Recommendations

Notwithstanding the fact that the contract may and should probably have been completed or terminated as at the time of compiling our report, we submit that the personnel involved, if still employed at PRASA, should be considered for disciplinary action. These are:

- The personnel involved in the bid evaluation and adjudication process for awarding a tender to a bidder by following an evaluation process that is irregular, which therefore deemed the award irregular.
- The personnel that approved the spending, at other locations outside of Umjantshi House, beyond the intended scope of the tender that reads “Supply, Installation, Testing and Commission of Standby Power Generator at Umjantshi House.” We do however advise caution in proceeding on the potentially unauthorized scope extension as we believe key documents for instance a signed contract could exist as well as any other relevant documentation that may have a bearing on the matter.

4.3 Schindler Lifts (SA) (Pty) Ltd

Findings

Schindler Lifts (SA) (Pty) Ltd was appointed under bid number HO/CRES/279/03/2013 described as *Umjantshi House Lift Modernisation*.

The process followed in order to appoint Schindler Lifts (SA) (Pty) Ltd was found to be irregular and as a result the award of the tender to Schindler Lifts (SA) (Pty) Ltd is deemed to be irregular, based on the following:

- The B-BBEE Certificate submitted by Schindler Lifts SA (Pty) Ltd was invalid at the time of submission and accompanied by a letter from a rating agency stating that Schindler Lifts SA (Pty) Ltd was in the process of renewal of their B-BBEE Certificate. Schindler Lifts (SA) (Pty) Ltd also did not completed the section of the bid documentation that made provision for equity ownership but instead referred the reader to the “attached documentation” which is assumed to be the expired B-BBEE Certificate and accompanying letter regarding renewal process. As such it is interpreted that the bidder did not stake claim to the points awarded on B-BBEE.
- Review of the scoring conducted, revealed that Schindler Lifts (SA) (Pty) Ltd was the only bidder that achieved the required minimum threshold points on technical evaluation criteria. Subsequently no scoring on B-BBEE and price was reflected in the recommendation report submitted for appointment of the bidder. It was however noted that the Level 4 B-BBEE contributor rating and equity ownership information reflected on the expired B-BBEE certificate did form part of the recommendation compiled to appoint Schindler Lifts (SA) (Pty) Ltd as successful bidder. No mention was made in the report regarding the fact that the BEE Certificate submitted had expired. From this information it is noted that the Level 4 B-BBEE procurement recognition of Schindler Lifts (SA) (Pty) Ltd was in fact taken into account during bid evaluation and adjudication processes, which is deemed irregular in the absence of any valid B-BBEE certificate. As such the award of the tender to Schindler Lifts (SA) (Pty) Ltd is irregular.

Non-compliance by Schindler Lifts with respect to the following returnable bid documents and supporting documents also occurred:

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- The document on file confirming the company shareholding and directorship, was not an original letter from the company auditors as required by the bid document.
 - The COR39 submitted was not certified as required.
 - No B-BBEE Plan could be found as required by the bid documents.

It was noted that “discretion” (see paragraph 6.1 below) was referenced within the bid document for this tender.

The contract for this minor capital work was authorised by PRASA CRES Chief Executive - Philiswa Tara Ngubane for a contract value of R23,648,479. The contract value of R23,648,479 is in excess of the R20m allowed for the CEO of a Subsidiary / Division for minor capital works as per the Delegation of Authority – Tender Approval. Whilst we have not noted any material issues on the contract per se the PRASA CRES Chief Executive should not have entered into this particular contract without any Board authorization to do so. We have not had sight of any documentation that supports authorization beyond the scope of delegation of authority.

A total of 51 payment entries amounting to a total of R23,444,373.51 were made by PRASA CRES 6000 as accounting unit to Schindler Lifts (SA) (Pty) Ltd. These payments were made during the period from 01 October 2013 to 01 April 2016 and based on the narration recorded for these transactions relate to the provision of lift upgrade – for 10 lifts - at Umjantshi House in Braamfontein and monthly maintenance services at other locations like Nasrec and Germiston. We submit that the contract does not cover the maintenance of the lifts at these other locations and that the postings are either done in error or the scope of this contract has been extended. We have not had sight of any documentation that suggests the maintenance of other locations should form part of the contract.

Recommendation

As at the time of writing we note that the works for the Schindler Lifts contract has reached its conclusion with contract expiry date of 09 September 2015 and the last payment noted up to 01 April 2016. Accordingly we submit that any disciplinary action would be retrospectively applied:

- firstly to the bid evaluation and adjudication members, should they still be in the employ of PRASA, that approved the tender award despite the non-compliance issues;

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- and secondly to the PRASA CRES CEO that authorized a contract in contravention of the permitted delegation of authority.

4.4 Trenchless Technologies

Findings

Trenchless Technologies CC was appointed under bid number 2.6.GA.14.001-09 for *Planning, Design Construction and Rehabilitation of Main Sewerline and Stormwater Reticulation at Johannesburg Station*.

We submit that the Trenchless Technologies CC tender award was irregular and the bidder should have been disqualified due to not meeting the minimum requirements with reference to the CIDB 6SO grading required.

We noted with reference to the scoring by the bid evaluation committee members:

- Both Khulani Quality Construction and Axton Matrix Construction / PH Bagale Inc. were disqualified due to not meeting the minimum requirements with reference to the CIDB 6SO grading required. We were unable to verify this, since we could not obtain copies of the actual bid submissions by these two bidders.
- A review of the bid submission by Trenchless Technologies CC contained a letter from the Construction Industry Development Board (CIDB), indicating that Trenchless Technologies CC applied to be considered for the grading designation 6SO. The letter also indicated that “the final grading determination will be subject to a registration turnaround time of 21 working days once the application is deemed compliant with the registration requirements.”
- We submit from a strict reading of the bid compliance requirements that Trenchless Technologies CC did not meet the 6SO grading requirements at the time of asking and was in the same situation as Khulani Quality Construction and Axton Matrix Construction / PH Bagale Inc. Trenchless Technologies CC should also have been disqualified.

Non-compliance by Trenchless Technologies with respect to the following returnable bid documents and supporting documents also occurred:

- Some of the tender forms were not obtained for review - Form B – Declaration of Good Standing Regarding Tax, Form C – Tender Form, and Form E – Statement of Works Successfully Carried out by Tenderer.
- No “Proof of Professional Indemnity Insurance” was available which places PRASA at risk.
- A copy of the B-BBEE Plan was not obtained for review.

We did not receive contract documentation for Trenchless Technologies. We are unable, therefore, to provide the salient details of the contract and review the details of the contract.

- In the absence of contract detail we were unable to properly evaluate whether payments were fully in line with contract stipulations.
- The payment totals can be summarized as follows:

Description	Amount	Notes
Total	-R48,413,694	<i>21 account entries</i>
Invoices reviewed	-R33,711,023	<i>15 payment packs reviewed</i>
% Coverage	69.63%	
Contract Value	-R37,896,447	
Actual as % of contract	127.75%	<i>Exceeds contract value. See below for adjustment of possible duplicates</i>
Possible Duplicates	-R10,517,273	<i>Possible duplicates identified; see below for more details</i>
Total less duplicates	-R37,896,420	
Contract Value	-R37,896,447	
Adj Actual % of contract	100.00%	

If we adjust for possible duplications, the actual expenditure over the contract value is 100% with no overspend as at 14 December 2015 per the accounting entries.

From a review of the payment packs received we have not noted anything of concern save to say, in the absence of a signed contract document, we cannot evaluate the expenditure with reference to a signed contract.

Recommendation

Notwithstanding the fact that the work on the project was concluded without overspending (when adjusting for possible duplicates) we recommend that disciplinary action should be considered for the employees involved in the bid evaluation and adjudication process for their role in the irregular award of the tender.

4.5 Silver Charm Investment 45

The contractor is a joint venture involving two entities, also known as Silver Charm Investments 45 (Pty) Ltd and Devet Management Solutions CC JV.

Silver Charm Investments 45 (Pty) Ltd & Devet Management Solutions CC JV was appointed under bid number HO/CRES/384/11/2013 for *Renovations of the Heritage Building at Pretoria Station*.

Award of a tender to this bidder was irregular based on the following legislative non-compliance:

- We noted that a valid tax clearance certificate was submitted by Silvercharm Investments 45 (Pty) Ltd but the tax clearance certificate submitted by Devet Management Solutions, as one of the two joint venture partners, had expired at time of submission. We submit that if a JV is applying for the tender and the JV consists of two separate and clearly identifiable entities and not one single entity JV, then both individual entities comprising the JV must comply to bid requirements in full. This non-compliance to compulsory document requirements, and statutory compliance at that, should have led to the disqualification of the Silvercharm Investments and Devet Management JV.

Other elements that caused concern included the following:

- It would appear that, for reasons unknown, the Bid Evaluation Committee in the bid evaluation report reduced the required CIDB grading from 7GB to 6GB or higher while in the

tender advertisement the CIDB grading appears to be 7GB or higher. In the Bid Evaluation report it appears that both final candidates had a CIDB rating of 7GB or higher. By setting a higher required CIDB grading at the tender advert stage, 7GB, whilst ostensibly requiring a 6GB or higher rating, PRASA would effectively eliminate 6GB rated companies that may be able to provide the required services at a reasonable quality and price point. In effect this kind of practice, one could argue, would eliminate suppliers that may be “unwanted” in favour of those that are “wanted.” This is considered a contravention of Section 217 of the Constitution as echoed in the PFMA and PRASA’s own Supply Chain Management Policy in that the practice applied is considered to be unfair in that the published advertisements excluded bidders from participating in the tender process that would qualify based on the reduced CIDB grading applied during evaluation

- We noted that the date reflected on the tender opening register is 14 January 2014. The closing date of this bid on both the CIDB and newspaper advertisements was indicated to be 19 December 2013. The long period from the closing of the bid to opening bids and recording on the tender opening register is disconcerting as it creates the potential for manipulation of the submitted bids (i.e. submissions being added or removed etc.) as no record of submitted bids existed before 14 January 2014.

The contract for this minor capital work was authorised by PRASA CRES Chief Executive - Philiswa Tara Ngubane for a contract value of R14,691,932.00. The contract value of R14,691,932.00 is within the R20,000,000.00 allowed for the CEO of a Subsidiary / Division for minor capital works as per the Delegation of Authority – Tender Approval.

The payment packs we reviewed had valuation payment certificates signed off by LTD Consulting QS & Construction Project Managers – principal agent for PRASA on the project. We did not note any material issues on the payment batches reviewed.

The account appeared to contain a mixture of contract transactions – payments for Pretoria Station and Unified Station. We note that the contract was entered into for the Pretoria Station Heritage building but for reasons unknown payments in respect of Unified Station (Johannesburg) also occurred. The existence of a second contract or extension of the original contract to also include Unified Station could not be excluded as no documentary confirmation was identified within documentation provided for perusal.

The total amount expended to October 2015 for the Pretoria Heritage building renovation was in line with the contract value:

Description	Amount	Notes
Total	-R12,575,584	<i>PTA station building</i>
Invoices reviewed	-R11,355,342	<i>17 payment batches</i>
% Coverage	90.30%	
Contract Value	-R14,691,932	
Actual as % of contract	85.60%	

The amounts attributable to Unified Station is:

Description	Amount	Notes
Total	-R986,223	<i>Unified station alone</i>
Invoices reviewed	-R986,223	<i>7 payment batches</i>
% Coverage	100.00%	
Contract Value – per cert	-990,670	
Actual as % of contract	99.55%	

Recommendation

Notwithstanding the fact that the contract has been completed as at the time of compiling our report we submit that the personnel involved, if still employed at PRASA, should be considered for disciplinary action based on documentation made available to us. These are:

- The officials involved in the bid evaluation and adjudication process for awarding a tender to a bidder that was non-compliant to bid requirements
- The officials that executed the extended scope (construction at the Unified Station) without authorization and outside of the contracted for scope (being the Heritage Building at the Pretoria Station)

4.6 Supercare Services Group

Supercare Services Group (Pty) Ltd was appointed under bid number HO/CRES/452/05/2014 for *The Provision of Cleaning and Hygiene Services at Johannesburg Park Station.*

Supercare Services Group (Pty) Ltd was found to be in compliance with the legislative tender requirement. Non-compliance by Supercare Services Group with respect to the following returnable bid documents and supporting documents required by the bid document did however occur:

- Form C – tender form, could not be obtained for review.
- A copy of the company letterhead could not be obtained for review.
- An original letter from the company auditors confirming the company shareholding and directorship could not be obtained for review.

It was noted that “discretion” (see paragraph 6.1 below) was referenced within the bid document for this tender.

Furthermore, the contract document we reviewed is signed by the service provider (17 February 2015) and by Philiswa Tara Ngubane – PRASA CRES Chief Executive Officer for PRASA (3 March 2015) but no witnesses signed. We note however that the contract site handover or start date is 1 September 2014 which means the contract was signed some 7 months after site handover. We note that the first major payment of R1,210,449.77 – per the payment data schedule - was dated 29 September 2014 which is after the start date of 1 September 2014 of the contract and before signature date.

The contract value is for R43,476,405 and as authorized by the PRASA CRES CEO is beyond the limits of R20,000,000 permitted by the Delegation of Authority for the CEO of a Division or a CEO for Maintenance and material. We have not had sight of any Board approval giving the PRASA CRES CEO authority to enter into this contract beyond the limits of the Delegation of Authority. The contract as signed is therefore not valid from PRASA's perspective as the CEO as signatory had no standing in law in the absence of the required Board approval.

The contractor signed an Addendum 1 on 12 December 2014 – not signed by PRASA with different total contract values of R45,064,614.89 (or R1,251,794.86 per month) as Adjustment Contract Value. From available documentation we cannot ascertain the validity or reasons for this.

Recommendation

Based on the finding that the contract is also considered to be null and void as no delegated authority was granted to the PRASA CRES CEO to sign on behalf of PRASA, it is recommended that the contract be cancelled with immediate effect. The contract is also considered to be null and void as no delegated authority was granted to the PRASA CRES CEO to sign on behalf of PRASA.

4.7 Liquid Dynamics

The entity referred to as Liquid Dynamics was in fact a joint venture – Cynthia's Elite/Liquid Dynamics CC (2008/257118/23) - formed by the following three entities: Liquid Dynamics CC, Cynthia's Elite Events Planning CC, and Fountain of Life (no documentation with any unique identification / registration number found). Liquid Dynamics CC became the agent of the joint venture and subsequently the joint venture was referred to simply as Liquid Dynamics.

From the information initially provided to us it appeared as if Liquid Dynamics was awarded two separate contracts or tenders. To distinguish between the two transactions, we refer to these as follows:

- The transaction with tender number APX/HO/SCM/003/07/2012 and closing date 17 August 2012 is referred to as the "*First Tender*" – commencement date of 1 December 2012 and
- The transaction with tender number APX/SM/026/10/2013 and closing date 01 November 2013 is referred to as the "*Second Tender*" – intended commencement date 1 November 2013.

Our review indicated that of the 2 tenders issued by PRASA only the "*First Tender*" was awarded and the "*Second Tender*" was processed and evaluated but was never awarded and contracted. A decision was reached that the tender would be re-advertised. As an interim measure it was recommended that the services of "Cynthia's Elite Events Management / Liquid Dynamics JV" (referred to simply as Liquid Dynamics) be extended on a month to month basis until the tender process was concluded – this was accepted by the JV. Less than a month later Autopax terminated the month to month agreement with the Liquid Dynamics with immediate effect, sighting changes in operational requirements as reason.

The First tender

Liquid Dynamics was appointed under bid number APX/HO/SCM/003/07/2012 described as the Appointment of an Onboard Catering, Inventory Management and Logistics Services Provider.

Based on our review of documents at our disposal we submit that the award of the tender to Liquid Dynamics was irregular:

- The Bid Evaluation Committee Members did not score Liquid Dynamics on the first round due to an issue where not all members of the JV signed required documentation. Even though the JV was marked as disqualified, the bidder was permitted to proceed to the next steps in the evaluation and adjudication process.
- Despite Liquid Dynamics being flagged as non-compliant with bid requirements and the Adjudication report recommending Open Foods for tender award, the Bid Adjudication Committee still recommended Liquid Dynamics as the successful bidder as one of the other two bidders was noted to have “*submitted a fraudulent BEE certificate*” and the third received an adverse security screening report.
- We noted that the following business decision was contained within the Recommendation Report:

“After careful consideration for alternatives, Supply Chain Management and the End User department (Sales and Marketing) approached Liquid Dynamics. Liquid Dynamics managed to submit all information that is required. An on-site assessment of their capacity was carried out by Supply Chain Management and Sales and Marketing departments. It was then concluded that Liquid Dynamics has the capacity and the experience to carry out the work and deliver maximum benefit for Autopax.”

We were unable to obtain the actual bid submissions of any of the bidders on this tender. Since Liquid Dynamics was disqualified during pre-evaluation, the joint venture was not scored and no pricing information was reflected on Technical Evaluation score sheet or subsequent Bid Evaluation Committee recommendation report that recommended the appointment of Open Food (Pty) Ltd.

The only reference to price for Liquid Dynamics was found within the later recommendation report compiled by the Autopax Tender Adjudication Committee containing the motivation of the “business decision” to appoint the Liquid Dynamics. Comparison of this pricing information to the bid offers by the other two bidders originally subjected to evaluation revealed the following:

Bidder	Bid Value
Open Food (Pty) Ltd	R20,475,060.67
Food on the House	R22,536,965.56
Bidder	Awarded Value
Liquid Dynamics	R23,760,000.00

As such it would appear that Liquid Dynamics offered the highest bid price. We were, in the absence of their actual bid submission, however, unable to confirm whether the value of R23,760,000.00 was the actual bid offer by this joint venture or whether this value was somehow later negotiated following the “business decision” taken on the appointment of Liquid Dynamics.

We noted that, despite the fact that the tender should never have been awarded to Liquid Dynamics, an extension of scope was also later authorized and implemented by the Autopax CEO.

Only the First Tender, APX/HO/SCM/003/07/2012, resulted in the award of a contract for the delivery of onboard catering services to Liquid Dynamics as joint venture despite initial disqualification. Only a partial agreement has been received in respect of this contract.

The scope extension to also provide canteen services at three Autopax depots occurred via an addendum to the principal agreement. In the absence of complete contract documentation we cannot provide any further comments.

From the payment data provided we noted that 2 accounts contained payment data. From a review of the payment data we were unable to establish, in the absence of sufficient supporting documents, which of the accounts relate to the principal contract agreement and which to the addendum to the principal agreement.

We also did not receive any payments supporting documentation from PRASA for the payments made to Liquid Dynamics in order to evaluate the nature of the actual payments with reference to

the contract terms. We are therefore unable to comment intelligently on the payments in relation to the contract and addendum thereto.

The Second Tender

The Second Tender was issued and an adjudication process took place with an award to Liquid Dynamics. Even though the award of the Second Tender was cancelled and not awarded, we submit with reasons as noted below, that a recommendation that this Second Tender be awarded to Liquid Dynamics should never have been.

After the award of the Second Tender and subsequent cancellation a process was embarked upon to re-issue the tender. The re-issue of the tender however never transpired.

The issues we submit for non-award of the Second Tender to Liquid Dynamics is delineated below as the process unfolded to provide an appreciation of what we believe may be a flawed application of adherence to the basics of the prescribed procurement process on the part of PRASA evaluation and adjudication committees:

- The Bid Adjudication Report obtained for review, was unsigned.

The Bid Adjudication Report dated, 07 November 2013, indicated Chef Direct and K2013201621 JV to be non-compliant for the following reason:

"Failed to adhere to JV agreements requirements as per Autopax tender forms 'Form F'."

The BEC made a note of "Non-Compliant" in the comments section of the "Compliance Checklist", next to the BEE Certificate validity but no further explanation provided. We were unable to obtain a copy of the bid submission of Liquid Dynamics / Cynthia's Elite in order to verify the B-BBEE Certificate in question. If the BEC had issues with the BEE certificate not being compliant, Liquid Dynamics should have been rejected on the same basis as Chef Direct and K2013201621 (Pty) Ltd JV. The "Compliance Checklist" for Chef Direct and K2013201621 (Pty) Ltd JV stated that:

"In terms of the APX tender forms page 10 form F JV Agreements are to be adhered to as outlined. This Company has failed to meet some of the requirements, therefore BEC disqualified them. (Please see the minutes by the BEC)."

The Bid Adjudication Report, dated 07 November 2013 also states:

*"A total of four bidders passed the compliance test and only one bid in, Chef Direct and K2013201621 Joint Venture were disqualified by the BEC for further evaluation as they failed to submit JV's bank account, percentage of work split. (sic) **The Bid Evaluation Committee with the assistance of SCM official also discovered that, Cynthia's Elite/Liquid Dynamics JV cc, has declared a relationship with the CEO through YPO and one of the company directors. The BEC deliberated on it and agreed unanimously that, it does not have any undue influence on the process. Thus recommending it to be evaluated further, however the Autopax Tender Adjudication committee would have their input appreciated also.**"*

The above indicates inconsistency by the BEC and BAC members in evaluating bids. Despite non-compliance with reference to the Consortium / Joint Venture agreement completed by Liquid Dynamics JV during 2012, they still recommended award of the tender to this JV. Another bidder, Chef Direct and K2013201621 JV, was disqualified during 2013 for not meeting the Consortium / Joint Venture requirements.

We submit that the above recommendation of award, despite technical failures on the part of Liquid Dynamics in not providing proper B-BBEE credentials, for which another bidder was disqualified, may have been unduly influenced by the relationship of the bidder with the Autopax CEO.

The award of the second tender was, however, never fully executed.

As part of the scope extension on the first contract, canteen services were however still rendered by the Cynthia's Elite Events Management / Liquid Dynamics JV. On 16 April 2014 the Cynthia's Elite Events Management / Liquid Dynamics JV was informed of the termination of the monthly fees on canteen services as of 01 May 2014 although the operation of the canteen was not ceased but was to carry on until expiry set to take place on 30 June 2014 which was later extended to 31 December 2014. We submit that this extension of scope and the convoluted transaction

management by PRASA should be set aside as the First Tender and the Second Tender were irregular from the start.

Recommendation

We note that the contract for the First Tender award to Cynthia's Elite Events Management / Liquid Dynamics JV (tender APX/HO/SCM/003/07/2012) terminated prior to the writing of this report and this investigation.

We recommend that:

- the nature and payments of this irregular contract be reported as irregular expenditure in the next annual financial statements on the basis of a relationship of the bidder with the CEO as it is considered a material fact even though the contract has ended and it relates to prior years
- the members of the bid evaluation committee and the bid adjudication committee be disciplined, should they still be in the employ of PRASA, for gross violation of basic procurement processes and policies by failing to disqualify non-compliant bidders.
- the CEO's relationship with the parties concerned, Cynthia's Elite/Liquid Dynamics JV be investigated to determine if no other contracts of similar nature are in existence as it appears efforts were made to somehow extend scope for an irregular contract award.

5. Irregular Award of Contracts where no Procurement Processes took place

5.1 Advance Detachment Security Force

Findings

Advance Detachment Security Force was appointed to provide Security Services to PRASA Cres in Gauteng. From the documentation at our disposal the earliest appointment to Advance Detachment Security Force reviewed, resulted from extension on an already existing contract. It would appear that said existing contract may have been entered into in the 2011/12 financial year or possibly even earlier as no reference to the contract period of the initial contract could be found.

Subsequent continual extension of the contract with Advance Detachment Security Force occurred. Based on the available documentation the following extension periods have been identified:

Period	Duration
1 December 2011 to November 2012	12 Months
December 2012 to November 2013	12 Months
1 April 2014 to 31 March 2015	12 Months
From 1 April 2015	Month to Month

No documentation on any extensions for the period from December 2013 to April 2014 was obtained for review.

Documentation perused provided various reasons for the continual extension, including:

2012: Lack of PRASA Cres security budget to cover the costs;

2013: Could not embark on national security tender as appropriate budget preparation was needed;

2014: An open tender process for a national security tender will be embarked upon;

2015: Month to month extension pending finalisation of the national security tender.

The continual extension of security contracts to the same service providers constitutes a contravention of section 217(1) of the Constitution (echoed in Section 51 of the PFMA; Regulation 16.5.3 of Treasury Regulations issued in terms of the PFMA and set out in PRASA's own Supply Chain Management Policy) in that the process followed is not fair, equitable, transparent, and competitive.

No signed contracts were obtained for review from PRASA. A single contract for the period from 1 February 2012 to 30 November 2012 was received from the service provider but the annexure indicated to contain value / pricing information was omitted. No contract values were available against which we could assess payments for this contract.

Two account numbers were encountered for Advance Detachment Security Force with payments totalling R35,497,429 and R30,694,500 respectively.

A memorandum in support of a payment from PRASA Cress to Advanced Detachment Security noted a ten month extension from 1 February to 30 November 2012 and related this to monthly invoices paid to the value of R684,000.00 (80 guards relating with 44 guards for the Soweto East Line and 36 guards for the Soweto West Line) each month in addition to invoiced amounts R427,000.00 (for 50 guards relating to Johannesburg Park Station)

Our review of the payment details on this account noted in relation to the “extension” that there was, in the absence of other contrary evidence, an over payment totalling R2,052,000.00. These are payments that were made beyond the extension end date of 30 November 2012 with payments noted for December 2012, January and February 2013. We did not find other documents attached to payment documents that extended the contract from December 2012 to February 2013.

Recommendations

We strongly recommend that action be taken to ensure that PRASA senior management correct management decisions and address the continual extension of the security contracts. PRASA should undertake a formal review of the security process and safeguarding of rail assets and actually undertake a new tender process in this regard.

The continual extension of these security contracts raises suspicion whether the appointment of security contracts was compliant to the relevant processes, policies and regulations and National Treasury may investigate this issue as a separate undertaking as it appears the annual expenditure may be in excess of R300 million.

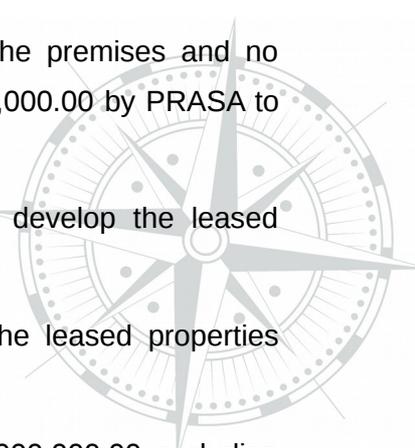
5.2 Cambridge Food

An agreement of lease was entered into between PRASA and Cambridge Food without any form of procurement process based on Public Procurement rules having been conducted.

Payments were made for capital development, for which no development agreement was entered into and for which no form of procurement process was conducted.

It is found from documents made available to us that:

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- No documents were presented by PRASA that indicate the lease agreement and the development of state properties were sent out to tender.
 - The negotiations for the development and leasing of the premises commenced long before the full lease agreement was signed.
 - The lease agreement constitutes a different transaction from the development of the premises yet both parties – PRASA and Cambridge Food - never sought to enter into a separate development agreement for a material amount of R60,000,000.00, excluding VAT, for 4 premises.
 - The payment of R51,300,000.00 by PRASA to Cambridge, for 3 premises Leralla, Vereeniging and Tembisa, was made for the development of the premises and does not relate to the leases.
 - No procurement process took place in entering into the lease agreement, which renders the process irregular and the contract null and void.
 - No procurement process took place regarding the development of the premises and no contract for the development was identified. The payment of R51,300,000.00 by PRASA to Cambridge Food is thus an irregular expenditure.
 - PRASA colluded with Cambridge to establish their arrangement to develop the leased premises by:
 - attempting to conceal the exclusivity / pre-emptive rights for the leased properties without going out to tender,
 - omitting a material amount for development fees of some R60,000,000.00 excluding VAT from the main lease agreement whilst including it in a 2 page lease offer agreement signed on 4 July 2013 before the signing of the full lease agreement on 28 February 2014.
 - Four individuals from Cambridge corresponded with PRASA regarding the development arrangement and therefore knew or ought to have known of the collusion with PRASA.
 - No development agreement could be identified.



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- The cancellation of the lease agreement and the repayment of the transferred sum with interest appear orchestrated and suspicious in that it may be reactive in order to avoid scrutiny by this investigation.

We noted that the payments made totalled R68,400,000 and relates to capital "Development" on the Tembisa, Leralla, Vereeniging and Saulsville premises.

The Group CEO TL Montana signed for a lease agreement on 28 February 2014 for the lease of the 3 premises Tembisa, Leralla and Vereeniging with monthly rental of R192,000.00 per month each or R6.912m per annum for all 3 premises.

We submit that the full lease agreement is a de facto lease agreement and not a capital development agreement as it does not include clauses relating to the development of properties for R68.4million. The GCEO may have had the intention of signing for capital development but as illustrated above this was concealed and not stated in the lease agreement.

We noted payment for capital projects for R68.4m in the GL account for which we did not find any capital development award of tender or contract. The capital payments were therefore irregular.

The lease agreement was for leasing of 3 premises and not for capital development of these premises and there is no capital development agreement to verify the terms and conditions that gave rise to the R51,300,000. We note that the GL account refers to 4 premises namely Tembisa, Leralla, Vereeniging and Saulsville

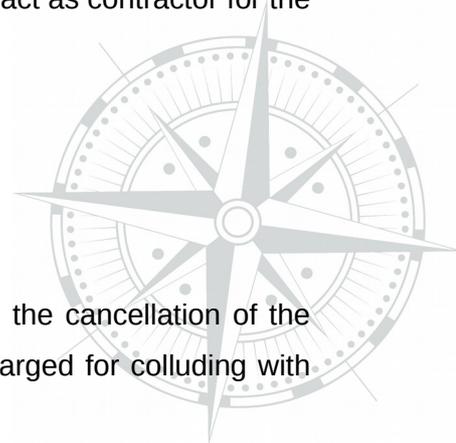
An amount of R55,247,578.33, on a "Credit Note" was repaid to PRASA by Cambridge on 18 August 2016 in relation to 3 premises - Tembisa, Leralla, Vereeniging.

We submit that the amount for Saulsville does not appear to have been repaid and we suspect that this property is already operational but have not been able to confirm it with documentary evidence.

Recommendation

- The Accounting Authority and Mr TL Montana (as CEO of PRASA Group and in his personal capacity) should be charged for contravening section 51 of the PFMA for not following a procurement process before entering into the lease agreement.
- All officials involved should be charged with contravening section 57 of the PFMA for not following a procurement process before entering into the lease agreement.

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- The Accounting Authority and Mr TL Montana (as CEO of PRASA Group and in his personal capacity) should be charged for contravening section 51 of the PFMA for not following a procurement process in concluding a development transaction.
 - All officials involved should be charged with contravening section 57 of the PFMA for not following a procurement process in concluding a development transaction.
 - The following officials who knew or ought to have known of the collusion, should be charged for colluding with Cambridge to establish Cambridge as contractor to execute the developments of the premises:
 - Ms Modiselle
 - Mr Shingane
 - Ms Beukes
 - A criminal charge should be brought against the following employees of Cambridge who knew or ought to have known of the collusion with PRASA in order to act as contractor for the development of the premises:
 - Mr Petit
 - Mr Garton
 - Mr Marais
 - Ms Modiselle who knew or ought to have known of the collusion in the cancellation of the lease agreement and the return of distributed monies, should be charged for colluding with Cambridge.
 - From the limited correspondence, only Ms Modiselle could be identified as being involved in the cancellation of the agreement and repayment of the development funds and either did or should have been aware of the illegal nature of these transactions.
 - The following individuals from Cambridge who knew or should have known of the collusion in the cancellation of the lease agreement and the return of distributed monies should be criminally charged for committing collusion:
 - Mr Petit
 - Mr Steyn



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- The charge of collusion should be investigated further in order to confirm the identities of the individuals involved as well as strengthen the charges against the identified individuals. A full lifestyle audit (including obtaining bank statements by approaching the courts for an order in terms of section 205 of the Criminal Procedure Act 51 of 1977) should be conducted on identified and to be identified individuals.
 - Collusion is a serious offence and it is strongly advised that PRASA take action against the officials involved and report the individuals involved to the SAPD through the appropriate channels.

6. General findings on the bid process

6.1 Discretion

We identified various statements of concern in the PRASA bid documents that allows discretion to be applied by PRASA in its bid evaluation and adjudication processes. These include:

- With reference to compliance requirements stipulated within bid documents:
 - The section for Legal Compliance, read as follows: *"Bidders must ensure that they comply with all the requirements of the RFQ and **if Bidders fail to comply with such requirements it shall be at the sole discretion of PRASA either to allow the Bidder to comply or disqualify the Bidder.**"*
 - The above clause may leave room for inconsistent treatment of bidders in that one bidder will be allowed to comply and others not.
 - The compliance requirements listed read as follows: *"Bidders shall comply with the following requirements **failure to comply may lead to disqualification.**"* The words "shall comply" and "may lead to disqualification" are a contradiction. This clause contained within the bid document once again provides room for inconsistent treatment of bidders. Non-compliance should always lead to disqualification.
- The above brings into question whether the practices applied by PRASA will result in fair and equitable treatment of bidders in line with Section 217 (1) of the Constitution.

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- With reference to the compulsory returnable documents, some bid documents note:

“Furthermore Prasa Cres may in its discretion deem tenderers that do not provide the following non-responsive and therefore disqualify them:

- *A valid Tax Clearance Certificate*
- *Bank Code Letter and*
- *Proof of Bank Account”*

According to the PPPFA Regulations 2001: *“No contract may be awarded to a person who has failed to submit an original Tax Clearance Certificate form the South African Revenue Services (“SARS”) certifying the taxes of that person to be in order or that suitable arrangements have been made with SARS.”*

We note that the bid document allows PRASA Cres discretion to disqualify non-responsive bidders based on not submitting of an original Tax Clearance Certificate which we believe is in contravention of the aforementioned PPPFA Regulations 2001.

Where such statement(s) allowing for discretion have been encountered within the bid document of a specific tender, these statement(s) have been specifically noted and discussed within the relevant chapter of our report dealing with the tender award in question.

6.2 Bid Submissions of Unsuccessful Bidders

We were unable to obtain the bid submission of the unsuccessful bidders. As a result we were unable to verify whether the bidders did in fact comply with the tender specifications, and whether they submitted all necessary supporting documents. As a result, we were also unable to assess or comment on the scoring by each tender evaluation committee member on each bid submission evaluated.

6.3 BEC – Confidentiality Agreements and Declaration of Interest

It would appear that PRASA officials involved in evaluation process do not have the necessary appreciation for the important role played by the confidentiality agreement and the declaration of interest that each member of the BEC needs to complete. These documents are seldom correctly completed, which often results in declarations that are not in full or confidentiality agreements that do not serve its intended purpose.

6.4 PRASA Cress - BAC documentation

From PRASA Cress, with reference to the following, no Bid Adjudication Committee documentation, that illustrates compliance with the PRASA SCM policy and process, could be obtained for review:

- Appointment letters of bid adjudication committee members
- Bid Adjudication Committee attendance register
- Declaration of Interests
- Confidentiality Agreements
- Minutes of meetings held

7. Other Concerns - Growthpoint Properties / Paramount Property Fund

A contract was signed in terms of which Paramount Properties as seller, sold its letting enterprise to PRASA as purchaser. The following entities formed part of the sales agreement:

PRASA:	The owner of the land, including improvements (buildings) Lessor of the land with improvements Purchaser of the Letting Enterprise
Paramount:	Lessee in terms of a notarially executed principal lease Seller of the Letting Enterprise
Growthpoint:	Recipient of the contract payment
RMB:	Bond holder

Based on the nature of the transaction, the normal rules of procurement do not apply to this transaction and contract. Although no apparent irregularities were found with regards to this transaction, the following aspects of concern were noted:

- Some documentation referenced the seller as Growthpoint Properties. This was found to be inaccurate and may lead to confusion and legal disputes.
- In certain documents the object of the contract is not described correctly in that it is referenced as “the shopping centre” or “the lease” while a letting enterprise is in fact purchased. Erroneous description of the nature of the contract may lead to confusion and legal disputes.

PRASA should ascertain the identity of the contracting party it intends to contract with and should use the correct name in all documents, especially Board minutes and resolutions.

Before the Board makes any decisions regarding the negotiation, entering and signing of contracts, it should ensure that it holds all and the correct information regarding such contracts. Wrong information, especially pertaining to legally related matters, may render a contract invalid and null and void.

8. Background Checks

A comparison was conducted between the CIPC registered interests held by individuals from the following two groups:

- Group 1: Identified PRASA officials involved in the procurement of the contracts reviewed, for whom full names and identity numbers were made available.
- Group 2: Members / directors of entities contracted by PRASA

Based on entity registration numbers and entity names of the CIPC registered interests held by the two groups, no correspondence between the interests held by the two groups was found.

As a result no potential conflict of interests between the directors/members of the entities listed above and the PRASA officials for whom identity numbers were listed, was found.

9. In Conclusion

It should be noted that although the above accounts for the most salient findings in the investigation and this report, it is not an exhaustive summary. Various procedural findings also resulted which although found to not cause contract award to be irregular are still considered concerning or worth noting. Such findings also on occasion resulted during the review of contract awards that were not considered to be irregular.

This Executive Summary is not a substitute for the detailed report and does not supersede or replace the detailed report. The reader is advised to consult the detailed report to gain a full appreciation of the facts, findings and recommendations as it pertains to our investigation.

