Rig, Conceal, Destroy and Falsify: How State Capture Happened at PRASA.

R2.5 Billion Irregular Expenditure

#UniteBehind Report for the Standing Committee on Public Accounts and the Portfolio Committee on Finance on leaked forensic investigations by Treasury of about 200 contracts worth approximately R15 billion at the Passenger Rail Agency of South Africa (PRASA)

Compiled by the #UniteBehind Metrorail Monitoring Project: December 2017

#UniteBehind is a coalition of people’s movements and their support organisations. We are supported by trade unions, faith-based organisations, community groups, women’s organisations and individuals.

#UniteBehind works for a just and equal South Africa where all people share in the country’s wealth and participate in the decisions that affect their lives, and where the environment is sustainably protected for future generations.
1. Introduction

Corruption and state capture compromises the provision of social goods and basic public services, directly devastating the lives of people, especially the working-class and poor. This includes unnecessary increases in the costs of electricity, water, and transportation. In the case of the Passenger Rail Agency of South Africa (PRASA), state capture and corruption directly disrupt and harm the lives and livelihoods of people every day.

This year close to 500 passengers have died and over 2000 have been injured according to the Railway Safety Regulator\(^1\). Beyond this terrible cost of lives, such accidents and crime costs railway operators almost a billion rand (R961 million)\(^2\). Almost all passengers routinely suffer physical and psychological harm. It is estimated that 43% of former passengers (~248 500) have stopped using Metrorail in the Western Cape over the past four years\(^3\). On average over 73% of trains are late and around 7% of all trains are cancelled. However, up to 57% of trains have been cancelled during certain weeks on the Central Line, with an overall 400% increase in train cancellations in the Western Cape between 2015 and 2017\(^4\).

The most extreme example of this took place in the week of Monday 11th December 2017, when Metrorail issued a statement that all services on the Cape Town Central Line would be suspended until further notice. They blamed this on extreme vandalism. The full service was still not fully restored three days later. This line services commuters from Langa, Bonteheuwel and Gugulethu through to Mitchell’s Plain and Khayelitsha.\(^5\)

The crisis means that passengers are consistently missing work and losing their pay and leave. Such passengers often lose their jobs as well. Consequently, commuters are desperate to get onto trains and this is regularly responsible for the deaths and injuries mentioned above. It leads people to run across the tracks, hang out of doors and windows, travel between carriages, or ride on the roofs of overcrowded and shortened trains. If passengers do make it to work on time, they will probably get home late, leaving them with less time for their families, let alone for themselves. Such a lifestyle is prone to anxiety, stress and depression. Individual households can suffer catastrophic consequences and the local economy suffers greatly, while corrupt actors at PRASA, the companies that captured them, and our public representatives revel in luxury, with no fear of prosecution or consequences.

#PRASALeaks – Treasury Forensic Investigation

In 2012, the South African Transport and Allied Workers Union (SATAWU) laid 37 complaints with the Public Protector. These implicated Lucky Montana the then PRASA General Chief Executive Officer (GCEO) and other functionaries at PRASA. The complaints alleged maladministration and related improper conduct involving procurement irregularities, conflicts of interest, nepotism and human resources mismanagement, including victimization of whistleblowers. When SATAWU tried to withdraw its complaint, the National Transport Movement pursued the complaint.

On 24 August 2015, Advocate Thulisile Madonsela released “Derailed: A report on an investigation into allegations of maladministration, financial mismanagement, tender irregularities and appointment irregularities against the Passenger Rail Agency of South Africa (PRASA)”. The Public Protector found evidence of systemic maladministration at nearly all levels of PRASA’s financial management, tendering and appointment processes.

One of the most important remedial actions prescribed by Advocate Madonsela required the Chairman of the PRASA Board to “commission the National Treasury in conducting a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative deficiencies allowing ongoing maladministration and related improprieties in its procurement system.”

One of the reasons this finding was made was because she could not get access to documents relating to procurement:

“I must record that the investigation team and I had immense difficulty piecing together the truth as information had to be clawed out of PRASA management. When information was eventually provided, it came in dribs and drabs and was incomplete. Despite the fact that the means used to obtain information and documents from PRASA included a subpoena issued in terms of section 7(4) of the Public Protector Act, many of the documents and information requested are still outstanding.”

“I must also indicate that the authenticity of the documents submitted by PRASA management as evidence, principally relating to procurement, is doubtful. Many of the memoranda for approval of tenders and related documents submitted by PRASA management as evidence, principally relating to procurement is doubtful.”

In February 2016, the National Treasury, in compliance with the Public Protector’s directions, commissioned forensic investigations into 216 contracts awarded by PRASA between 2012 and 2015. Of these, only 13 were found to have been above-board.

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6 Public Protector South Africa, Derailed (2015), Sec: 33, (b), 5 , p. 49
7 Public Protector South Africa, Derailed (2015), (xviii) , p. 20
8 Public Protector South Africa, Derailed (2015), (xix), p. 21
During most of the period covered by the Treasury Investigations, PRASA was led by the then Board Chairperson, Mr. Sfiso Buthelezi (now Deputy Minister of Finance) and Mr. Lucky Montana, GCEO. A mostly new Board under the leadership of Mr. Popo Molefe was appointed in August 2014 when it became clear that PRASA’s main subsidiary, Metrorail, which transports more than 1 million people daily, was in crisis. The new Board worked with Treasury under former Minister of Finance Pravin Gordhan, former Director-General of Treasury Mr. Lesetja Kganyago and the former Chief Procurement Officer of Treasury Mr. Kenneth Brown to implement the findings of the Public Protector. PRASA’s reconstituted Board under Molefe also implemented other findings of the Public Protector while the Treasury Investigations into the 216 contracts over R10 million continued. Wherever they found corruption, they tried to act swiftly.

The subsequent dismissal of successive Ministers of Finance (Nhlanhla Nene and Pravin Gordhan) and of Mcebisi Jonas (Deputy Finance Minister), as well as the departures of key Treasury staff, is the direct result of efforts to protect the interests of those involved in state capture and systemic corruption. A great deal of evidence and analysis has proven the command, capture and control of government departments and state-owned entities by private interests, including the Gupta and Zuma clans as well as their networks. State capture has become synonymous with the Guptas. This is true but not the whole story.

On the 14th of November 2017, the Parliamentary Portfolio Committee on Transport suddenly called a hearing to discuss corruption at PRASA to follow-up on the former Public Protector’s Derailed Report.10 #UniteBehind activists and commuters attended the hearing where it became clear that the Transport Minister Joe Maswanganyi, egged on by the Committee Chairperson Dikeledi Magadzi, wanted to focus on investigators hired by former Board chairperson Popo Molefe, rather than on Sfiso Buthelezi, the billions lost to corruption and the criminal enterprise that had captured PRASA. Unlike the credible inquiry into State Capture at Eskom by the Portfolio Committee on Public Enterprises, the Transport Committee appeared to start a white-washing process that would target those wanting to expose the corruption and weaken or conceal the findings of the Treasury Investigations.

In response to this threat to bury the investigation, whistleblowers provided #UniteBehind with the documentation, in the belief that our work against state capture in PRASA/Metrorail demonstrated that the coalition could be trusted with the findings of the Treasury Investigations. The #PRASALEaks expose a staggering level of corruption and non-compliance with the constitutional and legal obligations of the rail transport agency.

#PRASALEaks indicates that Jacob Zuma may have other criminal enterprises involved in state capture. Makhensa Mabunda, Roy Moodley and Mario Ferreira, among others, may be implicated in capturing PRASA. They parallel the Gupta’s modus operandi acting with the protection of Zuma, Buthelezi and Montana. The Treasury Investigations threatened to expose the capture of PRASA/Metrorail. Those implicated fought back by forcing out Popo Molefe, the then PRASA Board Chairperson, and those helping him to fix the problems at PRASA, shutting down all forensic investigations including that of Treasury. The complete findings of the Treasury Investigations have not yet seen the light of day, until now.

10Minister of Transport on PRASA state capture allegations; SAMSA & ATNS audit challenges. (Parliamentary Monitoring Group, 2017). Available: [https://pmg.org.za/committee-meeting/25489/]
#UniteBehind received about 1500 pages in reports based on forensic investigations by about 13 forensic and legal entities. We believe that this information must be made public because the impact of state capture at PRASA has led to the virtual collapse of the passenger rail network, including the obliteration of professional capacity and the drastic breakdown in infrastructure and rolling-stock at Metrorail. The impact on passengers is devastating.

These documents are of vital public interest. We have therefore released the documents to the community news site, GroundUp, to assist with investigation and dissemination. We chose GroundUp as they have consistently held Metrorail accountable for its failures to people who suffer (not use) trains every day.

This Interim Report highlights evidence which points to a level of criminal collusion and widespread breakdown in professional ethical conduct on the part of the then Board, PRASA senior management, officials and suppliers. Under Popo Molefe’s short-lived leadership, PRASA laid about 40 charges with the Directorate of Priority Crimes Investigation (DPCI or Hawks) and the National Prosecution Authority more than two years ago.

At present, the criminal justice agencies such as the Hawks and the National Prosecuting Authority are engaged in obstructing investigations and prosecutions. For this reason, #UniteBehind appeals to academics, journalists, researchers and activists to expose the criminal enterprise that captured PRASA and demand and take action in the public interest.

While the majority of cases investigated by the Treasury have yet to result in legal action, the PRASA Board under Popo Molefe took the two biggest cases to court in order to declare the contracts worth about R7 billion unlawful. The courts have pronounced on these major cases involving Siyangena Technologies and Swifambo Rail Agency. In the case of Siyangena, the court declined to hear the matter because it was out of time. PRASA has appealed the case. In the case of Swifambo, the tender process was found to be rigged to provide a European company, Vosloh Espana, the contract to provide PRASA with locomotives. Swifambo has appealed this outcome.

On 3 July 2017, High Court Justice Francis said the following in *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd*:

“*This case raises issues of fundamental public importance. This case concerns corruption by a public body concerning a tender that will affect the public for decades to come. This case is not merely a case about the public purse being used to acquire assets that will be used by the state or public officials. The public will make use of these locomotives for a considerable period of time and be directly affected by the benefits of harm arising from the decision to acquire them from Swifambo. ...*

*Harm has been done in this case to the principle that corruption should not be allowed to triumph. Harm will be done to the laudable objectives of our hard fought freedom if I was not to set aside the award. Harm will be done to all the hardworking and honest people of our land who refrains from staining themselves*
with corruption. Harm will be done were I to allow an unlawful tender to remain intact. Harm will be done to the whistleblowers who were able to blow a whistle to members of the reconstituted board. Harm will be done if the benefactors of the tender were allowed to reap the benefits of their spoils. Harm will be done to the administration of justice if this award is not set aside from the onset. Corruption will triumph if this court does not set aside the tender.”

Swifambo appealed this judgment and the Supreme Court of Appeal is expected to hear this matter next year. The courts have often come to the rescue but it is the decent women and men in PRASA, Treasury, Transnet and the public service generally who resist state capture by being professional and hard-working. This report has been made possible by working people who fear for their livelihoods and often for their lives when they refuse to turn a blind-eye to corruption. They choose instead to defend an ethical public service that places the needs of Metrorail passengers first. We are indebted to these public servants.

2. PRASA Governing Framework

“One of the cornerstones of democracy is that government leaders should be held accountable for how they use their power, including how they manage public funds. Through organizations and elected representatives, the public has a duty and a right to monitor government performance and draw attention to broken promises and mismanaged public resources.”

2.1 Constitutional Obligations of PRASA

The Minister and Department of Transport, the PRASA Board, management and staff have a constitutional duty to put the needs of passengers first. The Constitution of South Africa is the cornerstone of the legal, regulatory framework within which PRASA must function. In terms of the injunctions of the Constitution, PRASA:

- Has a duty to promote and maintain high standards of professional ethics;
- Has a duty to make efficient and effective use of resources;
- Is required to be transparent, accountable and encourage public participation in policy making;
- Should be development oriented and provide fair, equitable, unbiased services that are responsive to community needs;
- Should procure goods and services in a manner which is fair, equitable, transparent, competitive and cost-effective, protecting or advancing people or categories of people who are disadvantaged by unfair discrimination.

14 Constitution of the Republic of South Africa, 1996
2.2 Legislative Obligations

Various laws, regulations and policies apply to the governance of PRASA. By law, PRASA must provide a passenger rail service that is safe, reliable, affordable, accessible and of an acceptable standard. The Minister of Transport must ensure that PRASA has sufficient funds, infrastructure and rolling stock to give effect to this obligation. Financial management, procurement and asset protection are the responsibility of the PRASA Board and Executive Management.

Over the last ten years, PRASA failed to fulfill almost every one of its constitutional and legal mandates as state capture and corruption appears to have become the norm. The #PRASALeaks provides damning evidence of the scale and institutionalisation of the corruption.

3. Summary of Findings

The National Treasury commissioned forensic investigations into all contracts PRASA had entered into after 2012 with a value in excess of R10 million, in compliance with the remedial action contained in Derailed (2015), the then Public Protector Advocate Thuli Madonsela’s report on the passenger rail service.

15 National Land Transport Act, 5 of 2009;
16 In addition, the following Acts and Policy apply: Legal Succession to the South African Transport Services Act 9 of 1989; Legal Succession to the South African Transport Services Amendment Act, No. 38 of 2008; Public Finance Management Act, 9 of 1999; Preferential Procurement Policy Framework Act 5 of 2000; Broad-based Black Economic Empowerment Act 53 of 2003; National Treasury guidelines and regulations; Construction Industry Development Board Act, 38 of 2000
17 PRASA Supply Chain Management Policy September 2014
National Treasury contracted 13 forensic and legal firms to carry out the investigations: Bowmans, Delloite, ENS, Fundudzi, Gobodo, JGL, KPMG, Nexus, PPM, Strategic Investigations and Seminars, PWC, Sekela Xabiso and TGR.

Although the reports do not constitute fully fledged forensic audits, they make damning findings and, where they had access to sufficient information, make firm recommendations based on the information, documentation and data made available to them by PRASA and the suppliers. The Treasury Investigations represent what auditors call “the smell test”, an inquiry into all available paperwork for procurement and contract management supplemented by interviews with relevant management officials, staff and suppliers. In virtually every case, the investigator did not have access to the full set of documentation and were therefore unable to verify whether critical steps had been carried out according to Policy or whether they had been carried out at all. In most cases investigators were unable to undertake site visits to verify whether work was actually done, often because the lapse of time would not make this meaningful.

Despite these cautions, the forensic reports point to gross corruption which goes well beyond the bounds of financial mismanagement and maladministration, too often identified by Parliamentary oversight bodies and the Auditor-General with respect to government departments and other State entities.

Our review of the vast majority of the reports of the investigators reveals dangerous trends and findings. The Treasury Investigations reveal the following:

- The extensive, institutionalised corruption at PRASA/Metrail directly implicates Deputy Finance Minister Sfiso Buthelezi, in his then capacity as chair of the PRASA Board and members of the Board in criminal collusion and negligence.

- There is evidence that President Jacob Zuma’s network of friends and associates including Makhensa Mabunda, Roy Moodley, Mario Ferreira, Arthur Fraser, Manala Manzini, Auswell Mashaba and others unduly benefited through their companies from contracts which were irregularly obtained or for which little or no documentation exists that can prove legality.

- The Ministers of Transport at the relevant times: Ben Martins, Dipuo Peters and now Joe Maswanganyi appear to have deliberately turned a blind eye to corruption and mismanagement. In the case of Peters and Maswanganyi, there appears to be collusion to obstruct justice.

- The investigation points to Lucky Montana (GCEO), Josephat Phungula, Chris Mbatha, Daniel Mthimkulu, Rebecca Setino, Maishe Bopape and Ernest Gow as key members of the network in PRASA that appear to have facilitated the capture of the institution for the benefit of the President’s Keepers.

- The companies that are directly implicated include the “S Group” which includes Siyaya Energy, Siyaya DB Consulting Engineers and Siyaya Rail Infrastructure Solutions and Technology; Royal Security; Resurgent Risk Management; Tshireletso Enza Construction.
• R15 billion was the total value of the contracts investigated by Treasury and R6 billion of this amount constitutes questionable expenditure. Specifically, R2.5 billion can explicitly be attributed to “irregular” and unlawful expenditure or due to irregular appointments, while a further R3.5 billion is unverifiable, due to lack of documentation.

• All the investigators found that there was an absence of record keeping and/or documentation. Information, documents and data were either missing altogether, misplaced, possibly destroyed or not made available to the auditors. In many instances, where documents were found, they revealed that the process did not comply with PRASA’s Supply Chain Management policy. Irregular documentation, in turn, renders expenditure to be irregular. The problem of irregular or non-existent record keeping spanned the entire supply chain process. Given how widespread the lack of documentation and/or record keeping is, it is reasonable to make an assumption that this is not simply a case of poor or incompetent record keeping but rather a deliberate act to facilitate corruption, where processes were either not followed at all or failed to follow the prescribed processes. Without an audit trail, it is not possible to verify whether critical steps in the procurement process were in fact followed. Without an audit trail there is the ability to syphon public funds and resources with impunity.

• One of the consistent gaps across all investigation reports is the lack of any information on needs analysis for individual tenders. This created serious risk of non-delivery and shoddy work. The lack of a proper needs analysis laid the foundation for tender evaluations which were not based on providing the best possible outcome for PRASA, but rather on ensuring a preferred provider was successful. Deviation from laid down professional standards were recorded in a number of the investigations, where there were specific lowering of the legislated standards applicable to projects, depending on the value of the work.

• Tender or contract rigging was commonplace. Procurement processes routinely defied the requirements of both PRASA’s own Supply Chain Management policies as well as the Public Finance Management Act and other legislation. Astonishingly, PRASA only established a Bid Specification Committee in 2015. The failure to undertake proper demand management undermined virtually every tender under investigation, ensuring that bids could not be properly assessed, scoring would not result in the best supplier being selected, pricing could not be easily judged, contracts were inadequate and payments could be made which were unrelated to actual delivery against an objective specification. This failure was too widespread to be considered a reflection of inadequate technical expertise. It was more likely to be a deliberate attempt to manipulate the tender process, to allow preferred corrupt suppliers to be appointed.

• Where competitive tendering processes were followed on the surface, the scoring of tenders was manipulated to allow suppliers without the required technical or financial capability to win bids. A significant number of contracts were awarded through non-competitive processes, in direct breach of policy and legislation.
The investigation reports do not say much about contract management, but where there was the capacity to investigate, there was evidence of serious non-delivery on contracts, despite the supplier being paid in full for the services. There was also evidence of price inflation and overcharging.

There is a shocking absence of accountability throughout PRASA, from the Board, through to senior management, as well as the Finance, Supply Chain and Internal Audit Departments. Some staff members were disciplined and others dismissed but the leaders of the criminal enterprise remain unscathed.

The Auditor-General failed to detect the systemic corruption and state capture for several years.

The Parliamentary Portfolio Committee on Transport continues to fail in its oversight of PRASA duties by ignoring clear evidence of state capture and systemic corruption.

Most seriously, despite mountains of evidence of systemic corruption and state capture at PRASA, the Directorate for Priority Crimes Investigation (the Hawks) and the National Prosecuting Authority have failed to act for more than two years.


Case Study 1: ENZA Construction

ENZA Construction has been awarded over R310 million for three PRASA contracts over the period that was reviewed; in each case there were a variety of irregularities involved. With regards to the first of these contracts, PRASA published an invitation to tender for the restoration and upgrade of facilities at Saulsville Station, in Tshwane. This was published on 23 November 2013. Due to the fact that this construction was estimated to cost R70 million, a Bid Evaluation Committee (BEC) and a Corporate Tender and Procurement Committee (CTPC) would be a legal requirement. These committees would be responsible for adjudicating the awarding of the contract. At the outset of this tender process the forensic reviewers noted that the BEC was not properly constituted and there was no evidence that a CTPC was ever constituted. The auditors note that it was Chief Procurement Officer, Josephat Phungula, who irregularly recommended ENZA Construction to the then GCEO Lucky Montana and ENZA was subsequently appointed on the 19th of June 2014. No proper procurement procedures were followed and as of May 2016 a total of R26,749,481.04 had been paid to the company.

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In the second contract that was awarded to this company, ENZA was appointed as the main contractor to redevelop Mabopane Station. The total contract value was R146,6 million. There is no evidence to suggest that any official procedures were followed in the awarding of the contract – tender documents, appointments of the BEC and CTPC, and minutes of meetings are all absent. As of September 2016 the company has received R121,8 million from PRASA on this contract alone.

In the third and final contract, PRASA published a tender for the upgrading of warehouse facilities at Durban Station at a limit of R100 million. In this case, documentation shows that the BEC did meet and reviewed 9 tender submissions that were received. However, there is no evidence that a CTPC was constituted, which is required for tenders of this size. In fact, instead of a recommendation coming from the CTPC, it was a recommendation letter from Josephat Phungula to the GCEO, Mr. Montana, that endorsed ENZA Construction for the contract at an amount of R97,841,346.33. As the CPO, Mr. Phungula had no authority to sign or issue a recommendation report. ENZA was paid R95,739,070.39 for the work.

Case Study 2: Siyaya Energy\textsuperscript{19} and Valucorp\textsuperscript{20}

Siyaya Energy, under the Siyaya Group or ‘S Group’, had initially been appointed by PRASA for the provision of fuel tanks, bulk fuel services and e-tags. At the same time they had been appointed by PRASA for the investigation and prevention of fuel fraud. At the start of this contract, this was shockingly not deemed to be problematic or a conflict of interest. Irregularities around this appointment and contract management will be discussed below.

On 03 December 2010, a company by the name of Valucorp CC [which also goes by ‘S Dayanand Forensic Consulting’ (SDFC)] was registered as an entity. The Active Principal, Sudesh Dayanand was appointed on the same date. Siyaya Energy subcontracted their duties of investigation and prevention of fuel fraud to this company, SDFC. From interviews conducted around these contracts, it is suggested that SDFC was subcontracted by Siyaya Energy within weeks to months of them being registered as an entity.

From the available evidence, the Siyaya Group received a total of seven contracts during the period analysed. The sole director of the Siyaya Group is Mr. Makhensa Mabunda\textsuperscript{21}. Siyaya Energy received one contract for R855,738,021.00\textsuperscript{22}. Siyaya DB Consulting Engineers (Pty) Ltd received five contracts for a total of R214,909,023.19\textsuperscript{23} and Siyaya Rail Infrastructure received one for R69,985,033.00\textsuperscript{24}. For all seven


\textsuperscript{22}ENS, Section 1.3.4.1.

\textsuperscript{23}ENS, Section 2.

contracts, the total value contracted is more than R1.2 billion. Every single one of these contracts have features that are irregular. For example, findings relating to the single contract to Siyaya Energy, described above for bulk fuel services and prevention of fuel fraud, for a value of more than R855 million are as follows:

- PRASA did not conduct any due diligence or needs analysis before it advertised the tender that was given.
- Siyaya Energy had not actually attended the compulsory briefing session regarding the tender but was still ultimately awarded the contract.
- The Notice of Appointment regarding a three-year extension of this contract, issued by Mr. Josephat Phungula, occurred on 06 June 2014, while PRASA’s board only approved the extension some eight weeks later, on 31 July 2014.
- It appears that PRASA’s board approved the extension of this contract even though no procurement process was followed.
- Upon requesting that PRASA provide documentation on payments made to Siyaya Energy, only an extract of these could be accounted for, and therefore the total value paid to them for this contract could not be established whatsoever. The value paid to them could be higher or lower than R855 million.

SDFC’s subcontracted investigation into fuel fraud yielded more than 9000 irregular fuel transactions at 45 petrol stations within eight months\(^{25}\). These amounted to a total value of over R20 million, which is equivalent to approximately 15% of the total fuel costs of PRASA. Siyaya Energy was responsible for providing an e-fuel system that monitored and accounted for this fraud but irregularities relating to their e-fuel system were identified. A conflict of interest was therefore noted.

Due to this conflict of interest, PRASA moved to appoint SDFC directly. Their appointment was based on confinement, a non-competitive process that is usually only indicated in very specific and recognised circumstances, arguing the fact that Siyaya Energy had chosen to hire them before, for this purpose. The reasons given for confinement are however not valid. There are various forensic investigation companies which could have fulfilled this contract, and any relationship since established between SDFC and Siyaya Energy would not have dissipated purely because of the change in appointment structure. Contracts between SDFC and PRASA, over their total duration, were estimated to be worth over R43 million.

Important findings, in addition to the abovementioned irregularities around the tender procurement processes, regarding the appointment of SDFC and their services provided include: (1) a contract agreement, signed by Mr. Montana on 23 April 2013, does not provide how rates per hour or level of staff used for their services are determined, (1b) does not provide details of the Project Managers on behalf of

PRASA or SDFC and (1c) does not state to whom SDFC should report, (2) payments were not supported by any timesheets and/or supporting documentation as would usually be required for this type of service, and (3) that during forensic investigations (concluded in 2016), no evidence of any forensic reports being issued by SDFC could be found or accounted for, despite the company being paid more than R36 million.

Noting that there were large gaps in documentation around these contracts, interviews with pertinent staff were conducted. While these may be less objective than formal documentation, the findings of these interviews are summarised below and provide important insights. It was noted that SDFC were paid according to a flat rate and the payment schedule was adhered to irrespective of proof that services were provided, or the quality of those services. SDFC was noted, in various interviews, to be reporting directly to Mr. Montana. An office manager noted that he had never been able to see the content of these reports as they were provided directly to Mr. Montana in sealed envelopes. The office manager went on to describe that upon receiving invoices from SDFC, Mr. Montana had always confirmed that he was satisfied with the work performed, where after the invoices were approved for payment. At a time when the contract between SDFC and PRASA was initially coming to an end (in 2013), individuals reported being criticized by Mr. Montana for raising the topic of this contract ending, during Executive Committee meetings. Mr. Montana seemed to be very supportive of this contract continuing and extensions to this contract ultimately led to it running until 2015.

Damning findings, highlighted above, were made by SDFC during their time of being contracted to Siyaya Energy - regarding fuel fraud of at least R20 million. These findings were recognised by PRASA (as confirmed in CTPC meeting minutes from 10 April 2013) but evidence of disciplinary action or criminal charges arising from this investigation are severely lacking. On the contrary, contracts with Siyaya Energy and other companies in the Siyaya Group were renewed after findings made by SDFC. The majority of interviews conducted by forensic investigators gave the impression that nothing had ever transpired out of the work done or the reports written by SDFC. Noting that Mr. Montana was the individual reading and handling these reports, it would seem that he should be able to give further comment regarding subsequent investigations and their findings and recommendations. However, Mr. Montana declined the invitation to any interviews on this topic.

**Case Study 3: Fantique Trade 664 CC**

PRASA entered into two contracts with Fantique Trade 664 CC (Fantique) in early 2012. This company has no website and it is unclear which individuals are involved, but they appear to be based in Benoni. Both contracts were to do drainage upgrade works. Forensic investigators who were asked to look into this contract did not receive any documents relating to Fantique’s appointments, the method used to appoint Fantique or when the appointment was made. After struggling to obtain these documents and details, the investigators concluded that, “the documents relating to the appointment of Fantique on both contracts do not exist and/or PRASA does not want to provide these documents and/or that these documents may have

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been destroyed.’” In light of these glaring gaps in documentation, the total contract value of R29 million was deemed to be possibly irregular expenditure.

Missing documentation in this case study goes further than the above. The forensic investigators experienced and noted the following in their hunt for documentation: (1) unknown PRASA officials had signed necessary checklists on certain invoices prior to payment, (2) for three payments, totaling R8.2 million, there was no proof that PRASA had completed this necessary checklist or had invoices signed off whatsoever, (3) for five payments, totaling R1.7 million, no supporting documentation could be provided at all, and (4) Fantique could only provide a statement, with amounts, for one payment of R2.8 million. With reference to points (1) and (2), it is important to note that without valid signatures and completed checklists, PRASA ultimately had no proof that the relevant services or goods had actually been provided before they made these payments.

In the view of the investigators, the PRASA Board has contravened the law (Section 50(1)(a) of the PFMA) in that it failed to exercise reasonable care to ensure the proper safekeeping of procurement related documents. Furthermore, in terms of the relevant laws, (Section 83(2) of the PFMA), all of the PRASA board members are individually and severally liable for financial misconduct.

**Case Study 4: Marble Arch Cleaning Services**

In 2012, PRASA identified various stations in Gauteng North, Gauteng West and Gauteng East that needed to be cleaned. After issuing a request for proposals, Marble Arch Cleaning Services submitted a tender for the cleaning of stations in Gauteng West on 25 May 2012. Forensic investigators reported that there was no evidence of a tender submitted by this company for Gauteng North or East. Marble Arch Cleaning Services have no website or information available online and therefore we were unable to establish the individuals involved in this company. PRASA issued a Notice to Proceed to Marble Arch on 1 November 2012 at a cost of R802,000.08 per month for the cleaning of stations in Gauteng West, and on the same date a Notice to Proceed at R113,867.91 per month, for Gauteng North. The reason for a Notice to Proceed for Gauteng North, when it doesn’t appear that a tender application was submitted, is unclear. The contract period was stipulated at 12 months.

On 25 February, 2013, Marble Arch signed a contract agreement stating they would deliver cleaning services at a cost of R126,881.09 per month for Gauteng West. This value is very different to that in the Notice to Proceed. PRASA never actually signed this contract agreement. The cumulative value of this contract over a period of 12 months would be R1,522,573.08.

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Forensic investigators were able to estimate a cumulative value paid to March Arch by PRASA for the period under investigation. This total came to R58,997,221.93. This is more than 35 times the contract value expected by March Arch Cleaning Services. R54,868,144 of this amount was in payments that had no supporting documentation whatsoever and moreover, certain invoices were signed off by unknown PRASA officials. Overall, it is still not clear how many contracts PRASA awarded to Marble Arch due to missing documentation.

The forensic investigators believed that PRASA’s Board at the time should be held accountable for financial misconduct in that it may have contravened Section 50(1)(a) of the PFMA in failing to exercise reasonable protection of procurement and financial documents. In terms of section 83(2) of the PFMA, all members of PRASA’s board should be held liable. The investigators also recommend that PRASA (in collaboration with the national treasury) consider disciplinary action against PRASA board members at the time for contravening Section 50(1)(a) of the PFMA.

**Case Study 5: SA FENCE & GATE (SAFG)**

SA Fence and Gate (SAFG) falls under the SA Security Solutions and Technologies (SASSTEC) group. Former employees and whistleblowers have already made explosive allegations of corruption against this group in the media. PRASA’s original contract to SAFG was awarded at R209,874,559.79. At the conclusion of forensic investigation into this contract, payments to the value of R295,292,897.77 had been made, despite less than fifty percent of the work being completed. The forensic investigators have deemed that all of these payments should be reported to the National Treasury as irregular expenditure. The evidence behind the conclusions of irregular expenditure comes from the fact that the tender was not properly advertised (as should have been done by the acting Chief Procurement Officer, Chris Mbatha and the Senior Manager for Procurement, Matshidiso Mosholi). SA Fence and Gate’s B-BBEE certificate could not be verified, and significant other documentation was missing. The correct processes regarding the constitution of the bid evaluation committee (BEC) were not followed.

With regards to specifics of contracts with this company, SAFG had been contracted to do a fencing project at the Wolmerton Depot. Due to various problems with the contract, PRASA had to accelerate its completion at a cost of R8,909,342 which could have easily been avoided, as explained below. SAFG had also provided a bid quote to PRASA for 236 lights valued at R2,471,061. In addition to this, an employee committed PRASA to procure additional lights at a cost of R58 million. Correct, legislated procedures were not followed in the procurement of these additional lights. At the completion of forensic investigations in 2016, only 24 lights of a total contract for 2000 lights had been provided - this despite 92% (R53,618,790) of the contract already being paid. Based on a comparison of payments made and goods provided, PRASA has ultimately paid about R2.2 million per light.

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29 SA Fence and Gate website. Available: [https://www.fng.co.za/index.php/about](https://www.fng.co.za/index.php/about)
31 Nexus, SA FENCE AND GATE - EXECUTIVE SUMMARY. Section 6.
32 Nexus recommends disciplinary action against Mbatha and Mosholi for contravening Sec 75 of the PFMA
33 Nexus, SA FENCE AND GATE - EXECUTIVE SUMMARY. Section 7.
A person identified as Lebaka allegedly instructed SAFG to procure additional lights through Top 6 Holdings (Pty) Ltd, resulting in additional costs amounting to R 27 986 245. According to Nexus, “this cost could have been avoided had PRASA procured it directly from the supplier Beka-Schreder (with whom it had done business before) and thus are seen to be fruitless and wasteful”. The procurement through Top 6 Holdings raises a reasonable suspicion, which is reportable in terms of the Prevention and Combatting of Corrupt Activities Act (PRECCA).

PRASA failed to provide the forensic investigator, Nexus with copies of evaluations concluded by the Corporate Tender & Procurement Committee (CTPC) to the GCEO as well as the recommendations from the GCEO to the Finance, Capital Investment and Tender Committee (FCIP). In the absence of the documents, Nexus concludes that “PRASA failed to do it, which renders the process irregular”.

PRASA entered into a formal contract with SAFG (signed on 20 February 2013 and 25 March 2013 respectively). The CTP recommended a deviation of R40,341,400.89 be awarded to SAFG on 15 March 2013, subject to approval of the GCEO of PRASA. A Notice to Proceed was issued by the Senior Manager Procurement (Mosholi) to SAFG and confirmed the award of R47,083,730.37. As the FCIP awarded the initial contract, it also had to approve the deviation. PRASA failed to provide any documentation explaining the difference between the R40,341,400 recommended by the CTPC and the R47 million confirmed by Moholi. PRASA failed to provide any proof that the FCIP approved the variation. Nexus concludes that in the absence of documentation that “the award was not fair, equitable, transparent, competitive and cost effective and thus regarded as irregular”.

Serious questions must be asked as to who stood to gain from this gross abuse of public resources. The networks of corruption appear to be pervasive, with SAFG also having been awarded tenders at Eskom and the Department of Correctional Services. As reported by amaBhungane, a whistleblower has made a series of explosive allegations against the Department of Correctional Services (DCS) and the SA Security Solutions and Technologies (SASSTEC) group, which is the holding company of SA Fence and Gate. The whistleblower alleged extensive collusion between DCS officials and SASSTEC leading up to the awarding of a R378 million tender for the Integrated Inmate Management System (IIMS) — a software solution to keep track of South Africa's 160 000 strong prison population. The whistleblower detailed the allegations in a letter to the standing committee on public accounts (Scopa), which is probing irregularities in the contract, awarded in November 2015.

SASSTEC, is also already embroiled in a dispute with the National Treasury over the tender, which was awarded to one of its subsidiaries. Treasury attempted to intervene even before the award, warning the National Commissioner for Correctional Services (Zach Modise) that the fact that only one bidder met the technical threshold risked rendering the process unfair, unreasonable and uncompetitive.

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34 Nexus, SA FENCE AND GATE - EXECUTIVE SUMMARY. Section 6.
in 2016 that National Treasury, had instructed Modise to apply steps to cancel the contract with any fruitless and wasteful expenditure incurred through cancelling the contract should be recovered from Modise personally\textsuperscript{38}.

**Case Study 6. Resurgent Risk Management (RRM)\textsuperscript{39}**

Resurgent Risk Management (RRM) are a security company that were co-founded by former State Security Agency Director General Arthur Fraser and former National Intelligence Agency boss Mr., Manala Manzini. Mr. Fraser already “stands accused of flouting tender processes and submitting false tax certificates” (Daily Maverick, 2017)\textsuperscript{40}. A contract to the value of R 52,871,837 was awarded to RRM on the basis of confinement. This confinement was at the instruction of the GCEO, Mr. Montana but the Corporate Tender and Procurement Committee (CTPC) did not recommend or approve the confinement application, as alleged in the recommendation report that was signed by the GCEO. The confinement application was also substantially unjustifiable in that there was no urgency, emergency, expertise that was unique, or grounds for secrecy. A budget was not even secured for the project before or after the GCEO signed the confinement request. With respect to the appointment of RRM through confinement, forensic investigators concluded that “it cannot be excluded that the disregard for proper process...was as a result of, or in lieu of, gratification as defined in PRECCA”.

Forensic investigators also found that “there are numerous and irreconcilable contradictions between the CTPC’s resolution in December 2014 and the approved conditions in the approved memorandum”. In light of this, they recommend that criminal action be taken against Dr Phungula and Mr. Mantsane on a charge of fraud, seeing as they misrepresented what the CTPC had approved. In addition, the investigating company Nexus recommended to Treasury and PRASA that criminal action should be taken against Mr. Lucky Montana, the then GCEO for failing to comply with his fiduciary and general duties in his capacity as a member of the Accounting Authority. The Board is advised to report the RRM contract to the SAPS in terms of section 34 of PRECCA, to ensure compliance with its reporting duty. Furthermore, PRASA officials who would have known or at least suspected that the approval of the confinement was irregular, failed to take effective and appropriate steps to prevent irregular expenditure.

Further details pertaining to this contract include the fact that the payment plan was a result of an irregular approval; included a mobilisation fee that was not justified; and that investigators were unable to make any finding with respect to the goods or services received due to the lack of evidence and documentation within PRASA. The available evidence begs the question why PRASA then under the leadership of Deputy Minister Sfiso Buthelezi and Mr. Lucky Montana had no interest in monitoring this contract.


Case Study 7: S N Projects Management CC

This contract, for vegetation control services, was awarded by closed tender to S N Projects Management, for an amount of R 22,600,000. The market-related rate for cutting vegetation is 15 cents per square meter and that for spraying herbicides is 22 cents per square meter. According to the S N Project Management invoice, PRASA were charged R6.60 per square meter, which is significantly inflated. S N Projects Management operates out of a residential property in Klerksdorp but was awarded this vegetation control contract in KwaZulu Natal. The company has no website or internet presence. Although classified as being owned by a black woman, the sole director and shareholder is listed as a Mr. Fesi.

During the evaluation process of tenders for this contract, the Tender Evaluation Committee (TEC) members all scored S N Projects Management identically, creating the suspicion that there was some collusion between TEC members with regards to the awarding of this contract. Furthermore, only three of the four TEC members signed Declaration of Interest confidentiality forms. Additional findings relating to this contract include the fact that the total value paid does not correspond with that stipulated in the contract. In terms of the contract, S N Project Management would receive 50% of the contract value once work was completed, with the balance after PRASA inspected the work. However, PRASA paid 8.5% (R1,925,893) after approximately six weeks.

Case Study 8: Supplier Development Programme and the Panel of Emerging Professional (sic) in Construction Industry

PRASA initiated a Supplier Development Programme (SDP) and the Panel of Emerging Professional (sic) in the Construction Industry (PEPCI) in 2012 in order to broaden the base of suppliers to PRASA and to ensure that the existing established construction and consulting/professional companies had more competition to bring down prices. They were intended to enable emerging black entrepreneurs and professionals to establish themselves as independent suppliers over a three-year period by partnering them with established companies.

In the case of the SDP, the business case was drafted by Mr. Bopape, the former senior manager of PRASA’s Supply Chain Management Department on 2 May 2012 and signed off by the GCEO, Lucky Montana, on 14 May 2012. The GCEO approved the PEPCI on the 15th May, 2015, following a tender process.

PRASA SCM Policy provided for the CPO to procure, through an open tender process, a Competitive Database of professionals with set remuneration rates which would be valid for three years. The competitive database would have a minimum of five approved professional service providers per area of professional expertise. The professionals would be appointed on a rotational basis, to ensure equitable

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distribution of work. Each award of such work based on technical proposals, every time such services were required.

The use of both the databases was restricted by legislation and policy to work valued under R350,000 and even then, a limited competitive process was required, requesting quotations and proposals for how the work would be undertaken. All the contracts under investigation exceeded R350,000 and the database therefore should not have been used, or should only have been used in exceptional cases.

Against PRASA policy, the GCEO signed off on a request to approve the appointment by “confinement” of companies listed in a memo dated 14 May 2012. 62 out of 63 SDP contractors were appointed as 'confinement suppliers'. A similar blanket appointment was not provided for the PEPCI. However, the appointments from that panel were either justified using “confinement” or no justification was provided at all.

In all cases where the database was used without an open tender, the investigators were unable verify the justification for such use. In the words on one investigator, TGR, “the automatic selection from the database, one that stipulates that companies are selected on a rotational basis, suggests the database usurped the functions of BSC.”

The investigators were unable to establish how and why particular suppliers were selected to the SDP or how and why particular professionals were appointed to do work from the PEPCI. In all cases PRASA’s own process of limited quotations, assessment of proposals and use of rotation appears to have been flouted.

The findings in all these cases where a competitive process was not followed, were that the tenders constituted irregular expenditure. This is a significant finding given that over R1.5b was allocated through the two programmes.

While the Panel of Emerging Professional in the Construction Industry was established in terms of Supply Chain Management Policy, the design of this Supplier Development Programme contravenes the law and PRASA policy.

Further details on the findings in relation to the SDP are contained in Annexure 2.

**Case Study 9: Swifambo**

PRASA urgently required locomotives and tendered to lease about 80 train engines in 2013. The Swifambo case investigations was not a part of the Treasury Investigation, it was investigated by PRASA under Mr. Popo Molefe and it is the only matter that has been considered by a court. The judgment’s conclusions is

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instructive for almost all areas of PRASA procurement and contract management, therefore, full finding by the Court on the tender specification is necessary. Justice Francis found the following:

The tailored specification and manipulated scoring

1. In terms of the procurement policy, specifications should have been designed by the Cross Functional Sourcing Committee (CFSC). Instead the specifications were prepared by Mr. Mtimkhulu, who was masquerading as an engineer with a doctorate. He did not have such qualifications. The specifications ought to have been drafted to promote the broadest possible competition, to be based on relevant characteristics or performance requirements, and to avoid brand names or similar classifications.

2. Mtimkhulu adopted precisely the opposite approach to the benefit of Swifambo. In numerous instances items appeared to have been included in the specifications to ensure that Swifambo was awarded more technical points in the technical evaluation phase of the procurement process.

3. A few examples would suffice:
   i. The specification stipulated the number of engine cylinders at a V12. The number of cylinders is irrelevant. Vossloh's locomotive had a V12.
   ii. The bore and stroke specified was 230,19mm x 279.4mm. The bore and stroke is irrelevant. The specified bore and stroke figures were a precise match for Vossloh's locomotive.
   iii. The engine speed of 904 rpm was specified. The engine speed is irrelevant. The engine speed of 904 rpm was a precise match for Vossloh's locomotive.
   iv. The locomotive weight was specified as 88 tons. This was a precise match with Vossloh's locomotive.
   v. A track gauge of 1065mm was specified. Vossloh's track gauge was 1067mm.
   vi. The traction effort was specified as 305KN. This was a precise match with Vossloh's locomotive.
   vii. A multi traction control with 27 pins was specified. The number of pins is irrelevant. Vossloh's locomotive had 27 pins.
   viii. A monocoque structure was specified. Monocoque structures are more difficult to service as access to components for maintenance is made more difficult. Vossloh's locomotive has a monocoque structure.
   ix. The specification repeatedly stipulated the UIC standard, which is a standard method of measurement published by the International Union of Railways and applied in Europe. In South Africa, the Association of American Railroads standards are applied, not the UIC standard.

4. The inclusion of irrelevant considerations meant that a manufacturer with different figures would receive far fewer points in the technical evaluation than Swifambo. The inclusion of the above items materially affected the award of the tender. If those items were excluded the tender would have been awarded to another bidder, GE South African Technology.

5. The uncanny consistency between irrelevant specifications and the locomotives supplied by Vossloh caused some members of the BEC to suspect that the tender had been rigged.
6. The inference is therefore irresistible that the specifications were tailored to benefit Swifambo. Swifambo did not attempt to provide an alternative explanation. The tailoring of the specification was insufficient for Swifambo to achieve the required 70% technical compliance threshold. Further manipulation of the scoring bids by members of the BEC was required. Without that intervention Swifambo would have been disqualified. The impact of the tailoring and intervention was so marked that Swifambo was the only bidder to achieve the technical threshold of 70%.

7. It is my finding that the methodology adopted in the scoring process was irrational and unreasonable. The items contained in the specification were weighted according to their technical importance. The very purpose of the weighting is to discriminate between more and less important items. The weighting is critical to the proper assessment of the bids. The scoring was not done according to the allocated weights given to each item. The failure to do so contravenes paragraph 9.9 of the SCM procurement policy which expressly states that the evaluation of bids should be in terms of the evaluation criteria and the weightings. The scoring of diesel locomotives and hybrid locomotives on the same score sheet and combining and averaging the scores resulted in an illogical evaluation.

The Court also found that Swifambo and its sole Director Auswell Mashaba was a front for the Spanish multinational company Vosloh:

“There is sufficient evidence placed before me that proves on a balance of probabilities that the arrangement between Swifambo and Vossloh constituted fronting. It is clear that Swifambo under the agreement with Vossloh was merely a token participant that received monetary compensation in exchange for the use of its B-BBEE rating. The B-BBEE points were the only aspect that Vossloh could not satisfy. Vossloh could not bid on its own. Instead it concluded an agreement with Swifambo in which its B-BBEE points were exchanged for money. Vossloh maintains complete control over the operations of the business and Swifambo’s role is constrained to minor administrative activities. There is no substantive empowerment evident under the agreement between Vossloh and Swifambo. There is no transfer of skills during the agreement or after.

The public has a clear interest in the social and economic rights sought to be give effect to in the B-BBEE Act. At the core of B-BBEE is viable, effective participation in the economy through the ownership of productive assets and the development of advanced skills. The B-BBEE Act criminalises conduct that retards the objectives of the Act. Section 130 of the B-
BBEE Act creates an offence where any person knowingly engages in a fronting practice.45

Abusing one’s racial classification to corruptly front for any White company or business person and in this case a European multinational is not only unlawful but immoral. Auswell Mashaba received R800 million for essentially doing nothing. From the judgment, it is also clear that Makhensa Mabunda had a direct stake in the Swifambo deal and investigative reporters have found that the then Board Chairperson Sfiso Buthelezi and his brother Nkanyiso Buthelezi were subcontracted “to manage the shipping and logistics” of the imported locomotives.46 Forensic evidence uncovered by PRASA points to Angolan business woman Maria Gomes (a close friend of Jacob Zuma) and the ANC beneficiaries of corruption.

The Spanish multinational Vosloh (now owned by a Swiss company Stadler Rail Valencia) altered the contract from a lease to a sale and the specifications of the locomotives which do not fit our rail lines. On 15 January 2018, investigative journalist Pieter-Louis Myburgh reported that Treasury investigations uncovered “payments of over R75m” made to “S-Investments whose sole director is Makhensa Mabunda” by Vosloh Spain.47 Justice Francis held:

Before doing so, if I take into account all the irregularities and the various steps that were taken by some employees of PRASA to hide those irregularities, this let Swifambo to gain a dishonest advantage which in this case was financial over other bidders and is tantamount to fraud. Fraud is defined as an act or course of deception, an intentional concealment, omission or perversion of truth to gain and unlawful or unfair advantage. The irregularities raised in this case have unearthed manifestation of corruption, collusion or fraud in this tender process. There is simply no explanation why Swifambo was preferred to other bidders.48

The #PrasaLeaks case studies demonstrate intentional concealment and perversions of truth by the Board, its Group CEO and a range of the agency’s employees from executive managers and chief procurement officers to middle-level staff. Corruption in these cases has caused immense harm to millions of people.

48 Swifambo judgment (para 84)
5. Findings: What the investigative reports tell of PRASA irregular expenditure

In compliance with the remedial action in the Public Protector’s report, *Derailed* (2015), National Treasury commissioned forensic investigations into all contracts PRASA had entered into after 2012, which had a value in excess of R10 million. In order to do this, Treasury contracted 13 forensic investigatory firms to carry out the investigations. These investigatory firms were: Deloitte, PwC, KPMG, Bowman Gilfillan, ENS, Nexus, PPM, Funduzi, Strategic Investigations and Seminars, JGL Forensic Services, Gobodo Forensic Investigative Accounting, Sekela Xabiso and TGR.49

The scope of the work carried out by the above forensic investigators was framed by a limited mandate, lack of investigative powers such as accessing bank records and time span. As such they do not constitute fully-fledged forensic audits, yet, they expose criminal syndicates and massive corruption in PRASA. The recommendations made by investigators are not legal opinions, but rather the reasoned conclusions drawn from the information, documentation and data made available to investigators by PRASA and the suppliers. The reports also reveal extreme levels of financial mismanagement and maladministration at PRASA.

5.1 R 2.5 billion in irregular expenditure: A look at the numbers

The 193 leaked forensic investigations available to Unite Behind reveal startling levels of corruption at PRASA. All thirteen investigators encountered a lack of documentation, irregular tendering or payment procedures relating to the contracts investigated. On various occasions, investigators noted an apparent unwillingness of senior PRASA officials to cooperate with the investigations and that for particular documents, PRASA either did not have, did not want to share, or had destroyed documents. For 124 out of the 193 reports, investigators cited a lack of documentation provided to them by PRASA. This figure represents the portion of investigations for which a lack of data was specifically mentioned in the report summaries/recommendations. Only 10 out of 193 reports mentioned that they had access to all necessary documentation. As a result, investigators were cautious in labeling expenditure as irregular, due to the insufficient evidence available to them, but noted that the lack of documentation in itself constitutes an irregularity which warrants disciplinary action and at times criminal action.

49 All reports are available via GroundUp: [https://www.groundup.org.za/topic/prasaleaks/]
In deriving the figures for expenditure presented here, expenditure was flagged as irregular when the relevant report explicitly deemed it “irregular expenditure” or as an “irregularly awarded” contract or extension, in the findings. It should be noted that many reports used more conservative language to describe clearly flawed or inadequate procurement processes and thus, the methodology we adopted to derive these figures is likely to yield a conservative estimate. Using this methodology, we were able to derive that R2.5 billion in irregular expenditure had taken place in the context of the 193 investigative reports we reviewed. This represents more than a quarter of expenditure in all the investigated contracts. Missing information could have implications for an additional R3.5 billion in irregular expenditure.

In addition to the revelations concerning the extreme levels of irregular spending, these reports also make recommendations that PRASA be compliant with both its own internal policies as well as national legislation, such as the Prevention and Combating of Corrupt Activities Act (PRECCA). When we survey these findings, we find that one in five investigative reports recommend that criminal charges be laid against PRASA officials. An additional 33 reports recommended disciplinary action against PRASA officials, including, on various occasions, the then GCEO Lucky Montana, the Board of Control including its then chairperson and current Deputy Minister of Finance Sfiso Buthelezi.

For 127 out of the 193 reports available to us, the investigators attest to compromised procurement procedures. Related to this, we find that a significant proportion of tenders were awarded via confinement, a non-competitive process that is usually only indicated in very specific and recognised circumstances, such as emergencies arising from disasters. In the majority of these cases, investigators find that the reasoning for confinement was not warranted and led to an irregular procurement process. In addition, we also find
that the proportion of contracts which did not have adequate documentation was higher for contracts awarded through confinement than those awarded via open tendering processes.

5.2 Documentation: Leaving no paper trail

As indicated above, a key finding in all the forensic reports that were reviewed is the lack of record keeping. Despite numerous requests for access, documents and data were either missing altogether, misplaced, possibly destroyed or not made available to the auditors. In many instances, where documents were found, they tended not to comply with PRASA’s Supply Chain Management (SCM) policy. Irregular documentation, in turn, renders expenditure to be irregular. We found that the problem of irregular or non-existent record keeping spanned the entire supply chain. All key SCM related offices in PRASA are implicated in the poor record keeping.

A further inference which may be drawn, based on the extent of the missing documentation, is that many of the steps in the normal supply chain process were simply not followed.

There is a specific legislative requirement to keep an audit trail from the very start of a procurement process – i.e. from the needs analysis. The following are just some of the examples found in the forensic reports of missing records: needs analysis; bid specification documentation; tender advertisements; procurement documents on the tender process; tender evaluation sheets; bid submission documents from unsuccessful tenderers; bid scoring sheets; inventories and unsigned documents.

Of particular concern are instances where tender specifications were found to be lacking. This has far reaching implications as it not only results in a flawed tender process but also impacts negatively on contract specifications, the ability to manage and monitor implementation and delivery and ultimately on the actual
services delivered. In some of the most important areas of engineering technical competency, scores were not noted or were accepted well below the minimum threshold\textsuperscript{50}.

In a number of instances, the forensic auditors reported that findings could not be made regarding payments because of lack of documentation. The absence of an audit trail facilitates the siphoning off of public funds and resources with impunity.

Given how widespread the lack of record keeping is, it is not unreasonable to assume that this is a deliberate strategy and not simply a case of poor or incompetence record keeping. In the Swifambo case the judge found that documents had been concealed, spirited away or destroyed. This judge found further that even after the then GCEO, Montana, had left PRASA,

\begin{quote}
...he managed to obstruct the distribution of relevant information through a network of associates who were collaborating with him. Employees who did not follow were victimised or unfairly dismissed.\textsuperscript{51}
\end{quote}

It is therefore probable that the lack of documentation is, in many cases, a deliberate failure to undertake many of the critical steps in the procurement process, combined with a deliberate attempt to hide corrupt actions. Where one or two cases emerge, it may be reasonable to recommend that PRASA institute more adequate document management and disciplinary action against staff responsible for poor record keeping.

While all the investigators made similar findings, they were not all equally bold in their recommendations, sometimes erring on the side of caution, given the paucity of records available for scrutiny.

However, this investigation had access to 193 investigations and the patterns of process abuse emerge across the board. Where this is so widespread as to affect the overwhelming majority of tenders and involve all levels of management, different conclusions are unavoidable. This, coupled with an apparent lack of delivery, irregular procurement processes and extensions and inflated prices, point to criminal conspiracy.

5.3 Capture of the procurement process

"It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner", and further that ...deviations from fair process may themselves too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence the insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the


likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influence.\textsuperscript{52}

- Justice Froneman, in his judgement in Allpay Consolidated Investment Holdings (Pty) Ltd v CEO of SASSA

Various reports highlighted complete disdain on the part of PRASA senior management for both PRASA’s own Supply Chain Management policies as well as the Public Finance Management Act and other legislation and regulations. While not all the reports covered the full spectrum of the supply chain process, those that did reflected disregard of the entire supply chain process, from demand management requirements all the way through to contract management.

### Demand Management

The Reports showed that PRASA only established a Bid Specification Committee (BSC)\textsuperscript{53} in 2015. Prior to the establishment of the BSC, the Enterprise Project Management Office (EPMO) was responsible for approval of budget in respect of each project. It is unclear what further role the EPMO played in complying with PFMA demand management obligations. In the \textit{Swifambo} case different committees failed dismally in meeting the Demand Management requirements, as illustrated by the following extract from the Swifambo court judgement:

\begin{quote}
\texttt{“In terms of the procurement policy, specifications should have been designed by the Cross Functional Sourcing Committee (CFSC). Instead the specifications were prepared by Mr. Mtinkhulu, who was masquerading as an engineer with a doctorate. He did not have such qualifications. The specifications ought to have been drafted to promote the broadest possible competition, to be based on relevant characteristics or performance requirements, and to avoid brand names or similar classifications.”}\textsuperscript{54}
\end{quote}

The failure to undertake proper demand management undermined virtually every tender under investigation, ensuring that bids could not be properly assessed, scoring would not result in the best supplier being selected, pricing could not be easily judged, contracts were inadequate and payments could be made unrelated to actual delivery against an objective specification. This failure was too widespread to be considered a reflection of inadequate technical expertise. It was more likely to be a deliberate attempt to manipulate the tender process, and to allow corrupt suppliers to be appointed.

### Methods of procurement

A range of different procurement methods were used by PRASA management. There appear to have been very few instances where any of these methods were implemented in ways that were legislatively and policy

\textsuperscript{52} Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC) (29 November 2013)


compliant. This resulted in 203 out of the 216 tenders being deemed by the investigators as, at the very least, irregular. The scale of irregularity in the methods of procurement supports our conclusion that this is more likely to have been the result of criminal collusion than poor management.

Competitive tenders are the legally required default process, whether through open advertised tenders or whether through calling for quotations from an approved database of suppliers. In only a few instances was a competitive tender process followed. Even in these cases, there were examples of manipulation in the scoring framework through to the actual scoring, and allowing suppliers without the required technical or financial capability to be awarded tenders.

PRASA made generous use of supplier databases, suggesting that “the database usurped the functions of Bid Specification Committee.” as noted by forensic investigators TGR Attorneys. PRASA’s SCM policy encouraged the establishment of databases in order to support the development of emerging professionals and businesses, but limited to contracts under R350 000. However, all the tenders under investigation fall above this threshold, meaning supplier databases should not have been used. Secondly, when using the databases, the SCM management were still required to follow a competitive process by calling for quotations, assessing the proposals from the suppliers, and then awarding on a rotational basis to those who met the technical requirements.

There was no evidence submitted of any attempt to comply with PRASA policy or the PFMA when using the supplier or professional databases. Contracts were awarded both under the Supplier Development Programme and the Panel of Emerging Professional (sic).

The use of these databases was made worse in some cases, by allowing the appointed supplier to choose their own sub-contractors to support them. This meant contractors were undertaking PRASA work without having gone through any of verification on any of the required factors, from financial through to technical and B-BBEE status.

Confinement was the preferred method of procurement for many of the contracts, with the CGEO approving or ratifying the awarding of tenders based on this method. Confinement had strict rules which were routinely flouted by PRASA management. In the majority of such tenders, no documentation was provided to motivate or justify the use of confinement. Where documentation was provided to the investigators, the use of confinement could not be justified in terms of the SCM Policy.

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In terms of the SCM Policy, confinement is allowed only where it is not possible to use a competitive bidding process and for practical reasons, only one or a select number of bidders are asked to provide a quotation. However this can still only be used under certain circumstance, such as: the appointment of professional services such as legal, financial, technical or security where unique expertise and/or security are required; in cases of emergency; in cases where the task represents a natural continuation of previous work carried out by a service provider and/or when only one or a limited number of firms are qualified and have met certain requirements.

It should be noted that in December 2015, PRASA’s own internal audit declared all confinements irregular and all relevant contracts were stopped or cancelled.59

There were a few examples of sole supplier tenders, use of closed tenders and unsolicited bids. These were often flagged as unwarranted by the investigators.60

An additional finding, across multiple tenders, and only in part linked to lack of documentation, was that the scoring processes appear to have been manipulated. Evidence of this was score sheets incomplete and unsigned, BBBEE scores incorrectly allocated, suspected collusion in scoring, changing of scores, different weighting criteria used by different members of the BEC, technical thresholds dropped, scoresheets and weightings differing from advertised tender documents, final scores which were incorrectly calculated against actual evaluation.61

5.4 Inadequate contract management

Where investigators had access to sufficient information, they found, in some instances, very serious anomalies in the pricing of services against set norms and industry standards62, leading to spectacularly inflated contracts, as demonstrated in some of the above case studies.

The investigators were unable to access the overwhelming majority of contracts and therefore were unable to make definitive findings on compliance with normal contracting processes. This included being unable to see how the work specifications and standards had been set out in the contract versus how they were set out in the tender.


To repeat our conclusions above, it is not unreasonable to assume that this lack of detailed contracting was deliberate. It meant suppliers could not be held accountable for the work they were contracted and paid to deliver.

In any event, where the investigators had the capacity to check what work had been done, they found instances of either a partial or a complete lack of delivery\(^\text{63}\), even though the suppliers had been paid in full, and in some cases, escalated amounts.

### 5.5 Payment processes

Across virtually every contract reviewed by the investigators, concerns are raised about payment processes. These include issues that range from simple ineptitude to gross legal violations. The various issues can be grouped under the following headings:

- Late payment, and paying contractors from the incorrect accounts;
- Incomplete payment documentation, including no records of payments or no sign-off on invoices where they do exist\(^\text{64}\);
- Making payments outside of the contract period (both before and after);
- Payments made by persons with no authorisation to do so\(^\text{65}\);
- Payments above the contractually agreed sum\(^\text{66 67}\);
- Payments broken down into smaller components in order to bypass the approval processes required for large amounts;
- Payments unrelated to delivery.

These violations are the deliberate consequence of the absence of sound demand, procurement and contract management, all pointing to criminal intent.

### 5.6 Total absence of accountability

Audit and Risk Committee statement from 2012/13 Annual Report “no matters were reported that indicate any material deficiencies in the system of internal control or any deviations there from. Accordingly, we can report that the system of internal control over financial reporting for the period under review was efficient and effective.” - M Salanje, Chairperson of ARMC

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\(^{64}\) Nexus, INTENSE - EXECUTIVE SUMMARY. Available: [https://www.groundup.org.za/media/uploads/documents/PRASALeaks/8.%20Nexus/INTENSE.pdf]


\(^{66}\) Gobodo, Appointment of Reutech Solutions (Pty) Ltd

The reports point to a complete absence of accountability throughout PRASA, from the Board, through to senior management, the Finance, Supply Chain and Internal Audit Departments, as reflected in the above quotation. While PRASA adopted generally sound Supply Chain Management policies which were aligned to national legislation, in practice the then Board and the senior management failed to implement both the letter and spirit of the policies and broader legislation.

The Board failed to exercise their duty to ensure the responsible protection of PRASA resources and services to the public and to hold the senior management to the highest professional and ethical standards. Deloitte made the following observation in their general findings:

“There is no evidence to suggest that the PRASA board questioned any of the deviations. There is no evidence that the board intervened at any stage to question the procurement procedures followed. The board did not act with the necessary fidelity, honesty and integrity in the best interests of PRASA in managing its financial affairs as the PFMA requires of an accounting authority and in fact appears not to have played any role in relation to exercising care to protect the assets and records of PRASA. This warrants further investigation by the SAPS for possible contraventions of sections 50 and 51 of the PFMA read with sections 49, 83 and 86.”

The senior management failed to honour their duty of care when carrying out the delegated authority of the then Board. Instead, they appear to have led a process which resulted in the systematic haemorrhaging of PRASA resources and a concomitant deterioration of PRASA services. This failure is reflected in the daily suffering of commuters across the Metrorail services.

6. #UniteBehind’s #PRASALeaks

Recommendations

Parliament oversees the immediate implementation of the following recommendations:

6.1 Remove and investigate Sfiso Buthelezi

Parliament to demand that the President immediately remove Sfiso Buthelezi from his post as Deputy Minister of Finance, pending the outcome of further investigation into his fitness to hold office.

The Standing Committee on Public Accounts (SCOPA) and the Portfolio Committee on Finance to immediately begin an inquiry into the fitness of Sfiso Buthelezi to hold office.

Parliament through the Portfolio Committee on Transport must amend the Legal Succession to South African Transport Services Act (No. 9 of 1989) to make the appointment of the PRASA Board an open process and accountable to the National Assembly.

6.2 Asset seizure & recovery of expenditure  
The National Director of the National Prosecuting Authority (NPA) be requested and if necessary compelled through a court order by the Minister of Justice, to protect PRASA’s assets and to institute asset forfeiture and investigations in terms of Section 22 of the Prevention and Combating of Corrupt Activities Act (12 of 2004) as well as the Prevention of Organised Crime Act (121 of 1998).  

Assets of all local and international entities complicit in corrupt tenders to be frozen, pending the appointment of an independent comprehensive forensic audit into all the irregular PRASA contracts and the recovery of fruitless and wasteful expenditure.

6.3 Prosecution  
The Directorate for Priority Crime Investigation (the Hawks/SIU) must be requested by Parliament to conduct an urgent and immediate investigations of all named people and companies, with the view to urgent prosecutions of all those who are implicated in corrupt activities relating to PRASA tenders, as required in terms of Section 17B and 17D of the South African Police Service Act.  

6.4 Investigation into the PRASA Board  
The Hawks/SIU to provide a timely and professional forensic investigation into the then PRASA board to determine whether members of the Board benefited individually from the siphoning of public money to selected suppliers.

6.5 National public procurement reform  
Amendments to the relevant legislation and Treasury guidelines to provide for much greater consequences for individuals and entities implicated in negligence, corruption and malpractice related to Public Procurement.
7. The Rogues Gallery: The network of corrupt individuals who stole from the public and wrecked passenger rail for millions

WANTED LIST - POLITICS & BUSINESS

Jacob Zuma
President of South Africa.
At the centre of State Capture.

Roy Moodley
Owner of Royal Securities.
Close friend of Jacob Zuma.
Engaged in corrupt deals at PRASA

Arthur Fraser
State Security Agency Director General.
Involved in corrupt company dealings with PRASA.

Makhensa Mabunda
Director of S-Group & Siyaya.
ANC donor and accused of corrupt dealings with PRASA.
Mario Ferreira
Co-owner of Siyangena Technologies. Company won irregular PRASA tenders worth billions.

Auswell Mashaba
MD of Swifambo – criminal front company for corrupt rail deal with PRASA.

Peter Spuhler
Ex-CEO of Stadler Rail – parent company involved in corrupt rail contract with Swifambo.
**Wanted List - PRASA**

**Lucky Montana**  
Group CEO  
Presided over looting and widespread corruption, signed hundreds of dodgy deals.

Deloitte: “Numerous appointments happened via deviations. Mr Montana ... appears to have been involved in all such appointments we investigated”

**Sfiso Buthelezi**  
Board Chair for 6 years. Current Deputy Finance Minister.

**Josephat Phungula**  
Former Chief Procurement Officer. Falsified qualifications.

"Fraud charges should be instituted against Dr Phungula,...”  
– ENS
Rebecca Setino
Former PRASA Head of Supply Chain Management
Current Country Head Procurement & Supply Chain for Bombardier Transportation SA. Bombardier received a contract in excess of R1 billion for signalling from PRASA.

“...institute disciplinary action against Rebecca Setino in accordance with section 64B(4) of the Public Service Act, 1994 for “irregularly appointing BEC members in breach of the PRASA SCM policy” - Gobodo

Chris Mbatha
Former PRASA Chief Information Officer and Procurement Officer

“institute disciplinary action against Mr Mbatha for failure to comply with Section 45 of the PFMA” - Gobodo

Daniel Mtimkulu
Chief Engineer. Falsified qualifications. Involved in awarding of irregular and illegal tenders.
8. Annexures

Annexure 1: Legal Framework: Legislation and policies

The Constitution provides the overarching framework for PRASA. The Constitution sets out the basic principles which must be followed when PRASA procures goods or services. Section 195 of the Constitution sets out the basic values and principles governing the PRASA administration. These pieces of legislation call for the promotion and maintenance of high standards of professional ethics as well as efficient, economic and effective use of resources. The use of these resources, and PRASA as a whole, should be transparent, accountable and should encourage public participation in policy-making. Furthermore, PRASA should be development-oriented and provide fair, equitable, unbiased services that are responsive to our needs. PRASA should provide us with timely, accessible and accurate information. Good human resources management and career-development practices should be cultivated in a way that is broadly representative of the South African people. Employment and personnel management should be based on ability, objectivity and fairness, while also focusing on the need to redress the imbalances of our past in order to achieve this broad representation.

Section 217 of the constitution deals with procurement of goods and services by PRASA. The legislation states that any procurement should be “fair, equitable, transparent, competitive and cost-effective.” Procurement policy is allowed to have categories of preference in the allocation of contracts but should protect or advance people or categories of people who are disadvantaged by unfair discrimination.

Legal Succession to the South African Transport Service Act, 9 of 1989 & the Legal succession to the South African Transport Services Amendment Act, 38 of 2008
These Acts set up PRASA as a State owned company. Sections 15 & 23 of the Act require the PRASA to provide a service that is in the public interest. Section 17 requires PRASA to act in the strategic and economic interests of the Republic and Section 3 of the Amendment Act requires PRASA to have due regard to key government social, economic and transport policy objectives.

National Land Transport Act, 5 of 2009
This Act places an obligation on the Minister of Transport to aim to further the process of transformation and restructuring of the national land transport system and to give effect to national policy, prescribe national principle, requirements, guidelines, frameworks and national norms and standards that must be applied.

The Minister must prescribe principles that apply to the determination, formulation, development and application of land transport policy in the Republic. The Minister must, among other, facilitate the increased use of public transport; ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner.

The Minister must accommodate national and international benchmarks and best practice; promote the safety of passengers; encourage efficiency and entrepreneurial behaviour on the part of operators and
encourage them to tender competitively for contracts and concessions; promote a strategic and integrated approach to the provision of public transport; promote the efficient use of energy resources, and limit adverse environmental impacts in relation to land transport.

The Minister must also promote public transport that is effective in satisfying user needs; operates efficiently as regards the use of resources; is of an acceptable standard and readily accessible and is operated in conjunction with effective infrastructure provided at reasonable cost; is safe;

**The Public Finance Management Act 1 of 1999 (PFMA)**
Principles from the Constitution are set out in various pieces of legislation - the most important being the Public Finance Management Act, and various National Treasury Guidelines set out in terms of that Act. The PFMA places detailed obligations on the Board of PRASA and the CFO to avoid unauthorised, irregular, fruitless and wasteful expenditure and to put in place controls to prevent those forms of expenditure occurring. The PFMA also defines these forms of expenditure. Unauthorised expenditure relates to overspending on a particular allocated budget or when expenditure not in accordance with the particular budget. Irregular expenditure is any expenditure, excluding unauthorised, which is in contravention of or not in accordance with any legislative requirement. Fruitless and wasteful expenditure is expenditure which was made in vain and would have been avoided if reasonable care had been exercised.

**The Broad-based Black Economic Empowerment (B-BBEE) Act 53 of 2003**
This Act aims to redress the legacy of exclusion of black people from the economy pre-1999 through imposing preferential treatment for business composition and equity considerations in the tendering process.

**The Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA)**
This Act provides guidance on striking a balance between weighting the functionality of the goods and services, incorporating pricing and ability to deliver, including considerations of equitable access to state contracts based on B-BBEE status.

**The Prevention and Combatting of Corrupt Activities Act, 12 of 2004 (PCCA)**
The PCCA Act requires any person who holds a position of authority at any level in PRASA or a supplier company, or anyone else who knows or ought to have known or suspected that another has committed an offence of corruption, fraud or theft involving R100 000 or more, to report this to SAPS.

**PRASA Supply Chain Management (SCM) Policy**
PRASA, like all other SOEs, are required to adopt Supply Chain Management policies so that the various pieces of legislation and regulations mentioned above are put into practice. PRASA’s SCM policy was adopted by their Board in February 2009 and amended in September 2013. Compliance with this policy is critical. Vast sums of money are spent by PRASA on goods and service providers; the incentive for corruption is equally large.

Strict compliance with the SCM Policy by all levels of management is a critical check in curbing corrupt practices. This includes maintaining a full audit trail (paper or electronic) for scrutiny of all actions, recommendations and decisions.
The key Policy steps in PRASA’s procurement process

1 Declaration of interest
All PRASA employees involved in bids must declare any conflict of interest and withdraw from the process if the employee, a close family member, partner or associate has any relationship of any kind with a bidder.

2 Demand Management
Treasury requires that there must be an identified need for the service and this need must be to fulfil one or more of PRASA’s functions. A needs analysis must be undertaken and there should be a defined procurement strategy. Precise specifications of this need must be determined and it should be linked to budget. The industry which could supply this need should be fully analysed.

A Bid Specification Committee (BSC) must be established for all tenders above R350,000. This committee will undertake to develop the technical specifications for the tender document. The technical specifications will set out a need-specific method for procuring and disposing of the specific goods or services at PRASA. This should include preferential requirements, an appropriate preference point system for evaluation of any tenders, and deliverable or performance indicators against which the tender will be assessed. The BSC must also ensure that the technical specifications of tenders are legislatively compliant. These specifications will form the foundation on which the proposals from different service providers are evaluated. These will also form the substance of the contract with the selected service provider and the basis on which the contract is managed and paid for.

3 Inviting Tenders
The default process for inviting tenders is a competitive one and differs according to the value of the tender. A professional services database exists, from which tenders under R350,000 can be awarded. This process would involve requesting quotes from service providers who are established on the database and quotes can be approved by the CPO. The database should however, in the first instance, be created through a competitive process, which would also have verified the capability and preferential status of the various service providers. Any service provider on this database would be there for three years and their rates will also be set for those three years. Furthermore, the work must be allocated on a rotational basis to ensure equitable distribution. The competitive database cannot be used for tenders over the value of R350,000.

The PPPFA sets out the preferential points system for all procurement above R30 000. A weighted points system is applied to those bidders who do not fail on the technical assessment (which will be described below):

- 80/20 price/B-BEEE for bids up to R1 million
- 90/10 price/B-BEEE for bids over R1 million

The following Preference Point Systems are applicable from 1 April 2017 to all Organ of State bids:

- the 80/20 Preference Point System for bids with a Rand value of more than R30,000-00 but not exceeding R50,000,000-00 (all applicable taxes included); and
- the 90/10 Preference Point System for bids with a Rand value above R50,000,000-00 (all applicable taxes included).
The Bid Evaluation Committee (BEC) makes recommendations to the Bid Adjudication Committee (BAC) that the tender be awarded to the bidder with the highest score, unless there are objective criteria which justify awarding the tender to another bidder. The BEC is required to maintain records relating to this process, to ensure the existence of an audit trail.

As a general rule, all other tenders (bar the exceptions set out below) must be competitive. This competitive process requires tenders to be publicly advertised with detailed information to prospective bidders on the specifications and bid assessment process. Exceptions to a competitive tender are allowed in cases of emergency, sole source, confinements and unsolicited bids.

The case of an emergency tender may occur in cases of disasters, system failures and security risks. When procuring emergency goods, work or services, this may be obtained by means of quotation, preferably using the departmental supplier database. The GCEO would have to ratify the motivation for emergency purchases.

Sole sourcing applies when there is actually only one supplier in the market. The GCEO must approve the use of sole sourcing prior to opening negotiations with a supplier.

Confinement occurs where it is not possible to use a competitive bidding process and for practical reasons, only one bidder is asked to provide a quotation, however this can still only be used in certain instances. This may include: the appointment of professional services such as legal, financial, technical or security where unique expertise and/or security are required, in cases of emergency, in cases where the task represents a natural continuation of previous work carried out by a service provider and/or when only one or a limited number of firms are qualified and have met certain requirements. Confinement was used extensively by PRASA during the period under review. Any motivation for confinement would need to be approved but the GCEO.

Unsolicited bids are those bids where a reverse situation occurs in that the supplier approaches PRASA with a proposal outside of any request put out by PRASA. Accepting such bids can only be done after PRASA confirms a need for the goods or services and once they have tested the market through an “Expression of Interest”. This would help to ensure that the concept is unique and that there is no one else who can provide this good or service.

4 Assessing Bids
A Bid Evaluation Committee (BEC) is established to evaluate any bid against the specifications and points system set out in the Tender document (prepared by the Bid Specifications Committee described above).

The BEC is required to conduct (and document) the following verifications:

- Administrative compliance including tax clearance certificates, B-BBEE verification, capacity signatory, accreditation, VAT registration, price, number of items and declaration of past SCM practices. Failure to provide any of this information should result in the bid being disqualified.
- Bidders whose company or directors are on a restricted database, those who don’t provide a valid tax clearance certificate from SARS, or those who have failed to perform against a previous contract, may not be awarded a tender.
• Evaluation in accordance with the technical criteria specified in the bid document and the prescripts of the PPPFA
  ○ The capability of the bidder to execute the contract, from a technical, managerial and financial perspective
  ○ Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.
  ○ The number of contracts granted in the previous 12 months
  ○ Allocation of preference points
  ○ Representivity in the composition of the bidder and the possibility of fronting
  ○ Whether it is value for money
• Ensure all potential suppliers are legally compliant through ensuring completion of background checks

5 Awarding a tender
The Bid Adjudication Committee (BAC) recommend to the delegated authority who the bid should be awarded to. The SCM policy sets out who has the authority to sign off on tenders and contracts, subject to the total value of the contract. The thresholds approved by the Board authorised the following people to approve contracts within PRASA:

• Operating Tenders
  ○ GCEO: R100 million
  ○ CEOs of subsidiaries: R50 million
  ○ CFO: R50 million

• Maintenance & materials
  ○ CEOs of subsidiaries: R20 million
  ○ CFO: R20 million
  ○ CPO: R10 million

6 Entering into the contract
Once a bid is awarded, the Accounting Officer is required to undertake checks, once again, that the bidder, and all directors, shareholders or trustees, are not registered on a restricted database or tender defaulting register. The bidder must also be assessed, once again, to confirm they have the necessary facilities, capacity, capabilities and financial resources to deliver the goods and services promised. For contracts over R10 million, the financial capability must be confirmed in writing.

Once the bidder has been cleared, a contract is signed between the parties which assumes all original bid documents are part of the contract. The contract may include a service level agreement. Neither document may deviate from the original bid specifications.

Information about the award should be published, including contract number and description, name of successful bidder, details of B-BBEEE preference points of bidder, contract price, date the contract ends and when goods are being supplied, the brand name of these goods. The contract is not published.

7 Managing the contract
The National Treasury published Contract Management Framework and Contract Management Guidelines in 2010. The Framework and guidelines support various sections in the PFMA which set out PRASA’s financial managerial functions, including the effective, efficient, economic and transparent use of resources; and that all contractual obligations are settled and monies owing are paid within terms.

The two documents apply to the whole of government, including PRASA. They set out best practice and are not binding in the same way legislation and regulations are.

The Framework is a high level document and is supported by the detailed Guidelines. They recommend PRASA manage all stages of a contract life cycle. This starts with demand management and continues through to managing supplier relationships, managing the performance of suppliers according to the specifications in the contract, paying suppliers against actual services delivered, applying incentives and penalties and managing risks they emerge during a contract.

The Framework explains how poor contract management would result in poor supplier, buyer or other stakeholder relationships, negative public perception of PRASA, drawn out legal disputes, cost overruns, goods and services being purchased outside of specifications and in the worst case scenario, a complete failure of service delivery. The current dire state of services across PRASA’s rail services are close to collapse and highlight the importance of proper contract management.

**Consequences of failure to follow legislation and policy**

The PRASA SCM Policy contains a Code of Conduct which provides for all role players involved in procurement processes to adhere to the National Treasury’s Code of Conduct for SCM practitioners.

The consequences of PRASA’s GCEO, CFO and SCM management not following proper processes range in severity. These include:

- Disregarding/disqualification of a bid
- Termination of tender process and instituting of legal processes
- Termination of contract and instituting of legal processes
- Disciplinary action which could result in dismissal
- Recovery of unauthorised, irregular or fruitless and wasteful expenditure from an employee who is responsible for non-compliance
- Asset forfeiture in the case of any individual who has benefitted from a corrupt act
- Criminal charges
Annexure 2: Summary of Bowman’s detailed findings on the Supplier Development Programme (SDP) and the use of confinement

The contracts awarded by confinement constitute irregular expenditure

The key finding of investigators is that all 62 contracts awarded by confinement constitute irregular expenditure. This is a significant finding given that R1.5b was allocated through this programme. In the view of investigators, all payments are irregular expenditure given the appointment irregularity. Procurement procedures used in SDP are in contravention of PRASA SCM policy and the PFMA. The PRASA Supply Chain Management (SCM) Policies do not make any specific provision for the SDP process.

The investigators note that the conditions for not applying a competitive tendering process in the allocation of contracts and, instead applying ‘confinement’ do not apply to the SDP. According to PRASA SCM policy “confinement” occurs “where the needs of the business preclude the use of the competitive tendering process and for practical reasons only one or a select number of tenderers are approached to quote for goods and/or services”. Situations where the method of ‘confinement’ are used include but are not limited to the following:

1. The task that represents a natural continuation of previous work carried out by the firm;
2. An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment;
3. Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/or security are required; and
4. It is an emergency.

Ad hoc contracts terminated by PRASA as declared irregular

In December 2015 PRASA internal audit declared all confinements irregular and all relevant contracts were stopped or cancelled. Reasons given were that:

1. The preferential point system had not been applied as required by the Preferential Procurement Policy Framework Act for contracts above R30 000, especially the application of the 90/10 point system.
2. The lack of transparency of placing emerging suppliers on the ad hoc supplier list for the provision of infrastructure and rolling stock on an ‘as and when’ basis.
3. The technical capability and capacity of suppliers placed on the ad hoc supplier lists was not assessed as contractors were not appointed on the basis of a confinement.
4. The suppliers placed on the ad hoc list did not have the CICB grading applicable to their allocated contract values in case of construction projects.

Apart from the fact that the design of the SDP contravenes PRASA SCM policy and the provisions of the PFMA in general, significant specific additional irregularities were found in contracts falling under the programme in relation to the process of appointment, the payments and the services rendered. The following summarises issues arising from the investigator's findings into only 12 of the 63 contracts and in

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69 Bowman, EXECUTIVE SUMMARY OF FINDINGS AND OPINION. Available: [https://www.groundup.org.za/media/uploads/documents/PRASALeaks/1.%20Bowmans/PRASA%20GENERAL%20REPORT%202010%20ENTITIES%20JK%202016%20JAN%202017.pdf]
9 of those, investigators were unable to make findings on payments or goods supplied due to the absence of relevant information or documents. In all cases, missing documentation posed a significant challenge for investigators.

**Additional irregularities with the process of appointment:**

1. The investigators do not mention any evidence that the emerging suppliers were partnered with established suppliers and were eventually accredited as having the capacity and competence to undertake the work; the suppliers appear to have been simply granted technically complex work without a process of preparation and accreditation. Suppliers performed electrical and mechanical refurbishment of coaches when the nature of their business is registered as ‘agriculture, hunting, forestry and fishing’ with the Companies and Intellectual Property Commission (CIPC). This obviously poses significant safety risks for passengers and staff of PRASA apart from the potential for fruitless and wasteful expenditure it suggests.

2. Irregular contract periods were applied – for example, a contract was awarded for a period of 5 years in breach of PRASA SCM policy which does not allow for contracts exceeding a 3 year period.

3. Possible evidence of grooming / manufacturing of companies in order to specifically benefit from the SDP which is contrary to the design of the programme which was intended to target existing emerging suppliers. In one case, the company appears to have been registered only shortly before being allocated a contract.

4. Companies were appointed to the SDP which were not registered in the CIPC data base as working in a relevant industry, for example as noted above, two companies that received contracts to provide “ad hoc repair work, call out and technical support on an ‘as and when’ required basis”, indicate on the CIPC that the nature of their business is ‘agriculture, hunting, forestry and fishing’.

5. Contracts were awarded in instances where there is no evidence that the supplier had been issued with an accreditation certificate before being awarded the contract or had accreditation certificates that would expire before the contract was completed. An accreditation certificate is issued when the competence and capacity of a supplier has been verified.

6. Contracts were awarded without any evidence of a competitive bidding process or evidence that the supplier awarded the contract had provided a quotation.

7. Vendor registration information could not be provided by PRASA for particular suppliers.

8. Contracts were awarded to people who had been directly implicated in previous cases of fraud, one for example, involving R3.6m, and where the PRASA contract was also found to include over-charging of approximately R9m where the goods were not supplied as specified.

9. In at least one instance, two directors of one supplier awarded a contract were also directors in a large and well-established long term supplier to PRASA already benefiting from large tenders.

10. In one case, investigators found that the exact matching of bid evaluation scores suggests collusion may have taken place and in other cases, there is no clear reason evident for the selection made.

11. In one case, an approximately R22m contract was awarded to a company that had not been approved for the SDP list of suppliers and did not appear on the list.

**Additional irregularities related to payments found by investigators:**

1. Investigators were not able to verify a significant percentage of the amounts paid by PRASA to suppliers in the SDP because documentation was incomplete. In one example, the investigators were unable to verify 81% of the amounts paid by PRASA, that is, they were unable to verify just under R7m, against physical invoices. In another case 64% of payments or approximately R22.5m could not be verified against
physical invoices. Out of just 12 of the 63 contracts, therefore, R29.5m in payments could not be matched to invoices.

2. Over-invoicing was not picked up / corrected by PRASA. In one example, PRASA failed to notice / correct over-invoicing amounting to R4 360 500 overcharge over 24 months in the case of a company contracted to supply 16 minibuses and 16 drivers but which only supplied 10 minibuses with the remaining 6 being supplied by PRASA depots. In this case the contract was extended by a further 5 months and then a further 4 months while a new tender was prepared. This company was then again awarded the new contract and continued to over-change by R4 360 500. This resulted in at least R9m payment for goods not provided, that is fruitless and wasteful expenditure. In a second case, the investigators establish that the standard contract price for vegetation control was R0.15 per square meter for clearing and R0.22 for spraying herbicides when the actual contractor was paid R6.60 per square meter.

3. Payments were made contrary to the terms stipulated in the contract, for example, just under R2m payment was made to a company before the conclusion of the contract despite the contract stipulating that no payment would be made until completion.

4. Significant percentages of payments could not be verified against acceptance certificates. An acceptance certificate indicates that all conditions required to be met have been met before payment is made. In one instance, investigators were unable to reconcile R7 207 991 (86%) against PRASA acceptance certificates indicating that all conditions have been met for payment. In another case, investigators were unable to reconcile 81% of the total of just under R33m paid against acceptance certificates.

Bowmans’ conclusions and recommendations for action
Investigators had the following conclusions and recommendations:
1. Appointment of vendors in terms of the SDP are in contravention of the PRASA SCM policies and the PFMA.
2. All awards and appointments of contractors made under SDP can be considered in contravention of PRASA’s SCM policy and should be regarded as irregular expenditure and reported as such.
3. The PRASA board should consider its legal remedies against individuals involved with regard to possible disciplinary action, criminal investigation and / or civil recovery of losses. Further investigation would be needed.
4. All fruitless and wasteful expenses should be recovered from the supplier.
5. Internal control processes as per National Treasury guidelines for irregular expenditure should be developed and implemented.
6. The identical scoring of the Technical Executive Committee creates the suspicion that there was at least some collusion or discussion between TEC members with regard to the awarding of this contract.

Specific PRASA staff involvement
Requests for approval of suppliers to Supplier development programme were compiled by:
1. Request 1: Mr. Bopape (Snr manager SCM),
2. Requests 2. and 3 ‘Dr’ Mtimkhulu (EM: Engineering Services). ‘Dr’ Mtimkhulu was fired in August 2015 for falsely claiming to have engineering qualifications. He claimed to have designed the Afro 400 while in fact he had ordered it. It was later delivered and proved to be unsuitable for the gauge used on South African railways.
3. Request 4. Dr Phungula (Group CPO).
4. Requests were recommended by Mr. Mofi PRASA Rail CEO and Mr. Zamxaka PRASA Technical CEO.
5. Requests were approved by GCEO Lucky Montana or acting GCEO Ms Ngoye.

The four Technical Executive Committee members whose bid evaluation scoring of a contract worth just over R22.5m, and reported to be highly inflated in relation to standard pricing, was so identical that the investigator suspected collusion were:
1. Ms Phumeza Cwayi
2. Mr. Vukosi Shirinda
3. Ms Sarah du Plessis
4. Mr. Sydney Bonongo.

It should be noted that the responsibility of the Board in regard to the SDP was not mentioned in the investigations. Given that the programme ran from 2012 to 2015, it seems likely that the Board will have been aware of it. It is not clear who initiated the process of declaring the SDP programme irregular in 2015 and who decided it should be closed.