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Zondo commission – former SAAT procurement head denies irregularities in R1.3bn tender

Advocate Nontsasa Memela, former head of procurement for SAA Technical (SAAT), has denied all claims of irregularities in the 2016 R1.3-billion tender for aircraft components and maintenance that was awarded by SAAT to a joint venture between South African company JM Aviation and US-based AAR Corp. The SAAT board approved the JM/AAR joint venture, despite recommendations from management of another supplier, Air France, following procurement process.

Memela appeared over four days before the commission of inquiry into state capture, defending her role – which she described as insignificant – in the tender, despite a forensic investigation finding that she acted irregularly and also benefited from the deal. SAAT, she said, was never prejudiced in the lead up to, or after the contract was finalised.

Memela was subpoenaed by the commission, and initially refused to appear, and also chose not to depose of a sworn affidavit, but only a statement, as evidence.

She has described her role in the tender process as being above board, but admitted that certain checks and balances were omitted, although these could not have weighed heavily against the validity of the contract. Part of her mandate, she explained, was to establish and manage a supplier development programme to benefit BEE companies through joint ventures with multinational companies, as many of SAAT's suppliers are based overseas. An undertaking of the board of parent company South African Airways (SAA) at the time, the programme often came across scrutiny and opposition, said Memela, as white-owned multinationals felt robbed of the opportunity to milk SAAT.

"I might have ruffled a lot of feathers by doing that because for the first time at SAAT, as a state-owned company, they had somebody who was pushing so hard for black people."

Through supplier development, Memela said she was able to coach black-owned initiatives that entered the aviation industry with the hope of benefiting from government contracts. SAAT often encouraged a 70:30 allocation of tender ownership, with the multinationals getting the bigger share.

JM Aviation, she added, was one of many such companies she had worked with, but the commission only chose to focus on it based on media reports on the contract.

Questions raised around the tender

Evidence leader Advocate Kate Hofmeyr pointed out to Memela that despite the bid documents clearly stating a 70:30 sharing between joint venture members, in the end, the JM/AAR contract held a 65:35 stipulation.

Memela responded to this by saying it was a more complicated conclusion than what Hofmeyr said, and because she did not have the role of contract management in this process, she could not take responsibility for its concluding stipulations.

It was only at a later stage, when Air France – the preferred bidder taken to the board after the bid evaluation process – took SAAT to court following the award to JM/AAR, that Memela had the first opportunity to look at the final contract.

SAAT is the technical support unit of SAA and also services several other airlines operating in the country. The components tender was one of three long-term ones entered into around the same time, although at the time SAAT was experiencing a strained cash flow situation, according to Memela's successor in an acting capacity, Schalk Human. SAA had itself been going through tough financial times for some time, at several points relying on bailouts from national treasury.

The components tender underwent several phases after it was first issued in February 2013. By the time it was finally awarded in July 2016, it had been retracted twice, mainly because SAAT wanted to deliver on its supplier development goals.

Private jets and limousines

Soon after the second retraction in April 2015, several SAAT executives, including board members, honoured an invitation from AAR to tour its headquarters in Chicago and then one of its facilities in Miami. Former supplier development beneficiary Sibongile Sambo, who told the commission it was through her doing that AAR got to do business with SAAT, told last week how she was not invited along, despite talks between her company SS Aviation and AAR, since 2011 to join forces.

Hofmeyr asked Memela if she had no concern over the trip, given that AAR was a bidder in the components tender at the time. Memela told the commission that her only role on the trip was to ensure that SAAT officials did not engage in discussions with AAR that may compromise the process of the tender. In fact, she said, she was only told on the date of departure that she would be joining the delegation.

The board had resolved to put the tender on hold just weeks before while it sought to finalise a memorandum of understanding (MoU) with the company.

Once there, the group was transported around the AAR facilities either on the company's private jet, or a limousine Memela believes also belongs to the company. Asked by commission chairperson Deputy Chief Justice Raymond Zondo if they were also dined and accommodated at the expense of AAR, Memela confirmed this as true.

Did Memela not see this as a concern, asked evidence leader Kate Hofmeyr. "You see that as a concern; I do not," Memela retorted.

Seeking an MoU was not an anomaly, she added, as SAAT had entered into several similar arrangements with other multinational bidders in the past. The point of the trip was to give AAR the same opportunity that all other multinational companies had also enjoyed.

Just over a year later, it was partly on the strength of the MoU that the board would award the five-year contract to JM and AAR.

Contract discrepancies

Once JM/AAR had been appointed, a negotiations phase started to establish a contract between the joint venture and SAAT.

One of Hofmeyr's arguments in this regard is that SAAT's contract negotiator Koekie Mbeki felt pressured at the time, telling the commission in an affidavit that she was left out of some of the details. Memela said in her defence, Mbeki never raised this with her, although she reported to Memela. Zondo argued, however, that since contract management fell under Memela's unit, it

ultimately was her responsibility to see that all points envisaged in bid requirements were adhered to in the final contract.

Hofmeyr pointed out that even the numbering format in the final contract was out of line with the norm, suggesting that it was a rushed process.

Further discrepancy, argued Hofmeyr, is that SAAT is left compromised as there is no clear indication on cancellation. For a state-owned company to enter into a contract that does not clearly outline how it can best withdraw should it not be happy with the service, is of concern.

Prepayment to JM Aviation

Another concern for Hofmeyr was that the contract did not specify an account into which SAAT should make a deposit payment to JM Aviation, but rather a stipulation in the bid document for the winning bidder to allow SAAT to provide a bank guarantee that would ensure security should it not be able to pay for services.

Memela argued that in the negotiations with AAR, the matter was a point of contention, where officials of the company expressed that this requirement went against its policy and the board would never approve it.

In the end, just over US\$4-million (R60-million) was paid to JM in cash before services could commence, despite queries raised by the SAA finance department in this regard.

Human has also told the commission that by the time the contract term ends in 2021, it will have cost SAAT up to R1.8-billion, according to projections made by SAAT. This is in part for penalties incurred by SAAT for delays in payment to JM/AAR, despite the same not being invoked against the supplier for occasional late deliveries.

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