



**27 October 2020**

### **Zondo commission – Red flags ignored over Gupta-linked VR Laser, Zondo hears**

The commission of inquiry into state capture heard on Tuesday of the decision for Denel Land Systems (DLS) to enter into three contracts – by means of deviations – with Gupta-linked VR Laser between 2014 and 2016, despite warnings from the then head of procurement that the company’s own policies were being flouted.

Celia Malahlela was the executive in charge of procurement at Denel subsidiary DLS, having joined the company in 2012 as a contract manager. She testified to numerous attempts to halt deviations from the DLS procurement policy to accommodate VR Laser, in some instances at the expense of LMT, a company majority-owned by Denel.

In the first transaction, started in 2014, a normal procurement process attracted three bids for the supply of 217 hulls (for military vehicles). VR Laser, LMT and a third company DCD submitted quotations for evaluation, with VR Laser being the lowest priced, and LMT being the highest priced. When LMT complained that DLS was deviating from the shareholding agreement binding both companies by inviting external bids, DLS’s next step was to ask all bidders to give breakdowns of their pricing specifications. LMT’s breakdown returned with a substantially reduced overall price, more than half the original.

The breakdowns were discussed, and Malahlela made the final submissions to her immediate line manager, DLS COO Reenen Teubus, only to receive an e-mail from then VR Laser director JP Arora on the same day, proposing a reviewed price from the company. “I never received information as to who requested it, but I know I didn’t. My supply chain team, as far as I know, didn’t request them to re-submit.”

Teubus’s reaction to the e-mail, when Malahlela forwarded it to him, was to simply say it was “interesting”, without advising on a plan of action. He would later ask Malahlela to include VR Laser’s reviewed pricing in her submission, but she refused. At a later meeting discussing the final stages of the process, then DLS CEO Stephan Burger instructed Malahlela to make the final submission of bids to Denel GCEO Riaz Saloojee, instead of the board, for approval. Saloojee’s delegation of authority was above that of the DLS board. The initial cost of the transaction had been estimated at around R365-million – which would have been at group board level of authority, and above Saloojee’s R200-million, but after the final submissions were considered, the value was brought down to R192-million.

Burger had asserted that he would defend VR Laser’s submission, despite Malahlela’s reservations, she said. Around the time that the recommendation of VR Laser was signed in October 2014, media reports surfaced of its links with the Gupta family. Malahlela told the commission that she raised this with Teubus, before sending an e-mail to VR Laser itself. The response from the company, which gave a shareholding breakdown, showed that a company listing Gupta associate Salim Essa

as a director had a majority shareholding, while another entity was named as a minority shareholder. Members of the Gupta family and Duduzane Zuma had shareholding in the Essa company, but this detail was not specified in the response to Malahlela. She accepted the response, citing a clause in the agreement that gave DLS ability to terminate links with VR Laser should the latter be found to be unethical.

When the second transaction came up in 2015, Malahlela again raised concern over the need for an open tender. This time, DLS sought a strategic supply partner, and despite her insistence on open tendering and that the project timeframe not exceed three years, a memorandum of agreement (MoA) was instead entered into with VR Laser for a 10-year partnership, without Malahlela's knowledge. Despite this, the final submission to Denel reflected her department as having supported this.

A frustrated Malahlela felt sidelined within DLS. She raised her concerns with GCFO Fikile Mhlonto, neither knowing that the latter would soon be suspended along with Saloojee and company secretary Elizabeth Africa over an unrelated matter. Following this development, Malahlela's next stop was her counterpart at group level, Dennis Mlambo, who would later refuse to approve the deviation submission, given to him only after the MoA signing at DLS level.

In the case of the third contract in 2016, DLS sought a deviation after an order placed with LMT for cradles, FCM outer shields and armour components encountered challenges. "The order had already been placed on LMT. DLS changed the specs and LMT couldn't meet, I believe, the timelines and the pricing as well," said Malahlela.

After this development, VR Laser submitted a proposal to effect the reviewed specifications. "There were a lot of discussions between LMT and management. It was my understanding that following this issue where LMT couldn't meet our requirements, there was some discussion with them, and Mr Teubus asked me to draft a letter to say that instead of cancelling the order on LMT, we're just going to move it to a different programme."

Some of the order items were removed from LMT and delivered to VR Laser to do the work, said Malahlela. "At the time we had this MoU [sic], which we were told we would have to follow. We were following the prohibitions of the MoU, [so] we could place that order, and then at the same time we could give the other one to LMT later." She pointed out that in different discussions, the status of the document varied between MoA and MoU.

When Malahlela again raised concerns with the executive committee, legal advice was sought from within the organisation, and it said LMT should be given a right of refusal before VR Laser could be granted an award to continue. Burger, however, cited the importance of the VR Laser partnership MoA, saying that because it was signed by Saloojee, it superseded the LMT agreement, or any other situation where it was in conflict with another document.

With all these developments happening internally, Malahlela said, the profile of VR Laser as a Gupta-linked company was attracting controversy through media reports, and when the company CEO Pieter van der Merwe mentioned the Zuma link in passing to Malahlela during a 2016 meeting, she again raised the issue of ethics with Burger, to whom she was now reporting.

Malahlela wrote a letter to him the day after the meeting, reiterating her concerns with DLS having entered into contracts with VR Laser without due process. "I was asking him to reconsider the agreements we had with VR Laser and terminate them."

But the response she received, in which Burger scolded her for having an afterthought, despite her involvement in the processes that she was now criticising, only served to make her consider leaving the employ of DLS for the first time in four years.

Commission chairperson Deputy Chief Justice Raymond Zondo came in: “As I understand it, the position is that you had a role to play in a process that ended up with VR Laser being appointed, but you were not involved in the appointment, and you did not support that. Your involvement was earlier, that’s why you took the point that there should be an open tender.”

Malahlela agreed to this, adding: “Correct. I said right in the beginning that due process should be followed ... it also depends on how you interpret it. I was not involved in the appointment of VR Laser.

“I did not hate or dislike VR Laser. It was what was happening that I had a problem with.”

Malahlela resigned at the end of 2016, and while serving her notice received an offer from Denel, which she took. She resigned in 2019.

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