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Zondo Commission: SIU recommendations to prosecute Bosasa, DCS wrongdoers ignored

The Special Investigating Unit (SIU) recommended as far back as 2009 that the Department of Correctional Services (DCS) take action against its former national commissioner and CFO, Linda Mti and Patrick Gillingham respectively, for their irregular dealings with Bosasa. The SIU also recommended that the National Prosecuting Authority considers prosecuting the pair for their part in four tenders irregularly awarded to Bosasa.

The commission of inquiry into state capture continued on Wednesday morning to look at the findings of the 2007 SIU probe into the relationship between Bosasa and the department in relation to the catering, security, fencing and TV provision tenders the company got.

To date, neither Mti nor Gillingham have been officially charged for the role they allegedly played in the tenders which collectively are valued at billions of rands. They both resigned from the DCS under clouds of irregular conduct. Mti left in November 2006, while Gillingham resigned some time later while under investigation by his new commissioner, Vernie Petersen.

Former Bosasa COO Angelo Agrizzi, who is currently testifying before the inquiry, has told the commission that both Gillingham and Mti received monthly cash bribes from Bosasa of tens of thousands of rands. They also got other benefits like holidays, cars and even a house for Mti worth several millions, in return for the role they each played in facilitating the four tenders and their subsequent extensions. The extensions would be made, said Agrizzi, without following proper procedures – the SIU found, for instance, that the catering one has been irregularly extended twice. The unit also found that National Treasury guidelines on procurement were simply flouted without regard for taxpayers' money.

From the very first contract – for catering services at the country's prisons – the specifications for the tender, which was yet to be advertised or presented internally to the department, were discussed well in advance. A forensic cyber expert called in by the SIU found email correspondence between Bosasa executives and Gillingham that discussed and contained documents on the tender, including specifications.

Although the email address used for Gillingham was a false one meant to divert correspondence from his official one, the expert managed to trace it back to a Bosasa subsidiary, Consilium. The SIU found that in respect of all four contracts, Gillingham acted unlawfully by favouring Bosasa.

This he did by:

- Playing an actively and irregularly influential role in the processing of tender bids from Bosasa or its subsidiaries;
- Allowing the company to determine specifications for the tenders they would be bidding for;

- Scoring Bosasa or its subsidiaries higher than other bidders, despite their failure to comply with certain conditions in a specific tender;
- Motivating for the extension of Bosasa contracts without following proper procedure;
- Not being considerate of the financial consequences for the DCS when entering into contracts close to the end of its financial year end – contributing to “fiscal dumping”;
- Overlooking clear violations of tender requirements by Bosasa or its subsidiaries after the submission process.

Fiscal dumping refers to a practice in which a department will enter into a substantial programme or project, at a high expense, close to its financial year end, with the sole purpose of avoiding its unused funds being returned to National Treasury.

The SIU report highlights limitations to its investigation owing to some elements of apparent irregular conduct by Bosasa. Through the initial discussion between the two parties – where the SIU told Bosasa what sort of information their investigators would need to access – the period decided on for investigators to search through their servers was the first week of December 2007.

Although a data deletion tool was used to remove information from Bosasa servers, the SIU used a more advanced programme that found hundreds of documents and folders to have been overwritten, and then deleted between 2 and 6 December the same year. Of interest to the commission’s evidence leader Paul Pretorius was the fact that Bosasa had asked the SIU investigators for a postponement to their cyber probe, to the second week of December. Agrizzi said the reason for this was so that potentially incriminating evidence could be eliminated.

“We were instructed by our senior council not to do it [deletion of files], and then we were told ‘the senior council does not pay your salaries, I pay your salaries’, and that was it,” he told the inquiry. Agrizzi has consistently alluded in his testimony to orders in the company often being made by Watson.

Agrizzi continues to testify.

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