

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO:**

In the matter between:

**CORRUPTION WATCH (RF) NPC**

Applicant

and

**ESKOM HOLDINGS SOC LIMITED**

2018 -11- 12

First Respondent

**MARK VIVIAN PAMENSKY**

Second Respondent

**ANOJ SINGH**

Third Respondent

**BRIAN MOLEFE**

Fourth Respondent

**VENETE JARLENE KLEIN**

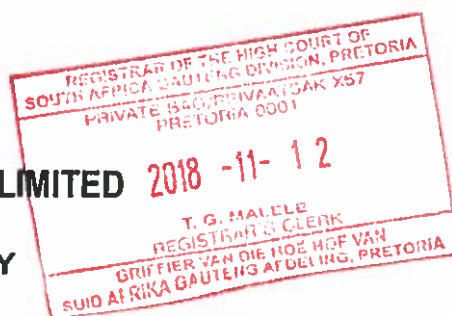
Fifth Respondent

**ZETHEMBE WILFRED KHOZA**

Sixth Respondent

**MINISTER OF PUBLIC ENTERPRISES**

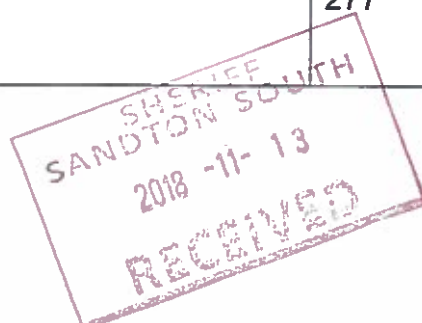
Seventh Respondent



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DATED at Johannesburg on this 12<sup>th</sup> day of NOVEMBER 2018




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TO: **THE REGISTRAR**  
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AND TO **ESKOM HOLDINGS SOC LIMITED**  
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AND TO:

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AND TO:

**ANOJ SINGH**  
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AND TO:

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**S&P Global**  
Ratings

## RatingsDirect®

Research Update:

**South African Utility ESKOM Holdings.  
SOC Rating Lowered To 'B+'  
Following Sovereign Downgrade;  
Outlook Negative**

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## Research Update:

# South African Utility ESKOM Holdings SOC Rating Lowered To 'B+' Following Sovereign Downgrade; Outlook Negative

## Overview

- On April 3, 2017, we lowered our ratings on South Africa (foreign currency: BB+/Negative/B; local currency: BBB-/Negative/A-3).
- While we continue to assess the likelihood that 100% government-owned South African power utility ESKOM Holding SOC Ltd. would receive extraordinary government support as extremely high, we believe the government's ability to provide support has weakened.
- We are therefore lowering our foreign and local currency long-term corporate credit ratings on ESKOM to 'B+' from 'BB-' and our national scale long-term rating to 'zaBB-' from 'zaBB+'.
- The negative outlook reflects that on the sovereign and uncertainty regarding the government's clear commitment and ability to provide timely support to ESKOM if needed.

## Rating Action

On April 6, 2017, S&P Global Ratings lowered its long-term foreign and local currency corporate credit ratings on South African utility ESKOM Holdings SOC Ltd. to 'B+' from 'BB-'. The outlook is negative.

At the same time, we lowered our long-term South Africa national scale rating on ESKOM to 'zaBB-' from 'zaBB+'. We affirmed our short-term national scale rating at 'ZaB'.

## Rationale

The downgrade follows our downgrade of South Africa (see "South Africa Long-Term Foreign Currency Rating Cut To 'BB+' On Political And Institutional Uncertainty; Outlook Negative," published April 3, 2017, on RatingsDirect.)

The lowering of the ratings on South Africa reflects our view that the deep divisions in the African National Congress-led government that have led to changes in the executive leadership of government, including key Ministry of Finance, may weaken political and institutional stability. We believe that the downgrade of the sovereign signals a weakening of the government's ability to provide support to ESKOM if needed.

The ratings on ESKOM continue to reflect our assessment of an extremely high

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likelihood of government support, but also factor in the continuing very substantial gap between ESKOM's stand-alone credit profile (SACP) of 'ccc+' and its global scale rating. Our expectation of government support to ESKOM is based on our view that:

- ESKOM's role for the government is very important, since it is the dominant electricity provider in South Africa;
- ESKOM provides an essential commodity to municipalities and large industrial customers;
- ESKOM's link with the government is integral, reflecting its full ownership by the government and explicit government support;
- The government considers ESKOM to be a strategic asset and privatization is unlikely in the medium term;
- ESKOM has obtained a dividend waiver during its building program;
- The government of South Africa has a strong track record of providing extraordinary support to critical government-related entities; and
- ESKOM has received capital injections and large guarantees from the South African government in the past.

However, although we still believe that ESKOM will benefit from considerable government support, the predictability of such full and timely government support in all circumstances is decreasing in our view, as highlighted in our research update on Nov. 25, 2016 "South African Utility ESKOM Downgraded To 'BB' Following Potential Risks To Government Support; Outlook Negative." We believe that the following factors contribute to increased financial pressure on ESKOM:

- Uncertainty as to whether the government would be willing to provide additional support to ESKOM over the course of the ongoing court case against ESKOM and its regulator NERSA, which is still in arbitration and could lead to ESKOM receiving considerably lower tariff increases in fiscal 2019 (ending March 31, 2019) than our assumptions of 8%-10%. A negative outcome would increase pressure on ESKOM's liquidity, which we already view as weak.
- We understand that ESKOM's South African rand (ZAR)350 billion (\$25.29 billion as of April 6, 2017) government guarantee line had ZAR152 billion left undrawn as of March 16, 2017. If the amount available drops markedly while an important amount of ESKOM's five-year plan through 2022 has still not been delivered, we would see further strain ESKOM's liquidity.

Our assessment of ESKOM's SACP at 'ccc+' is based on our view of the utility's weak liquidity, taking into account continuing and sizable negative free cash flow, combined with its unsustainable capital structure (without government support). We continue to assess ESKOM's management and governance as weak, due to factors such as resignations of board members, recently including the CEO.

Our view of ESKOM's weak business risk profile reflects our assessment of a weak regulatory framework supervised by NERSA. Although the regulator recently introduced multiyear tariff determinations to improve the predictability and stability of tariff-setting, the framework has been subject to negative intervention aimed at protecting consumers, which has hurt ESKOM's credit quality. Almost all of ESKOM's revenues are regulated.

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ESKOM's highly leveraged financial risk profile reflects our opinion that the company's credit metrics will remain weak over the medium term, despite some improvement in cash balances compared with last year. Weak metrics are a result of continued delays in implementing tariffs that reflect costs, investment needs, and the rising debt associated with ESKOM's large capex program.

We estimate the company's ratio of funds from operations (FFO) to debt after our adjustments will be 1%-3%, compared with about 10% in fiscal 2012. Under our base case, we anticipate that the ratio will remain weak until a larger bulk of the company's capital expenditures (capex) is completed beyond 2020. That said, our base-case scenario hinges on ESKOM receiving at least an 8%-10% tariff increase for fiscal 2019 and beyond. We may decide to revise our base case if NERSA is unable to repeal the decision by the courts on the ESKOM tariffs (a decision which we currently anticipate around end-July 2017) and, at the same time, does not grant ESKOM a guarantee tariff increase of 8%-10% in fiscal 2019.

### Liquidity

Our assessment of ESKOM's liquidity as weak reflects the pressure ESKOM faces with revenues insufficient to compensate higher costs, higher capex, and the continued challenging operating environment. In addition, we think that the company has a relatively high dependence on what we consider to be uncommitted sources of funding to support. For example, the company was still negotiating approximately ZAR40 billion of its about ZAR65 billion-ZAR70 billion funding requirements for fiscal 2018, as of Feb. 16, 2017. We forecast that ESKOM's liquidity sources will cover its uses by less than 1.0x over the 12 months from March 13, 2017.

In addition, we consider that prospects for liquidity to improve are now substantially reduced following NERSA's decision to grant just a 2.2% tariff increase for fiscal 2018. We anticipate that ESKOM's annual capex will be ZAR40 billion-ZAR60 billion through 2022. While we expect operational cash flows will be supported over the next two to three years by the onset of commercial operations for the bulk of the Ingula, Kusile, and Medupe assets to be built under the corporate plan, a substantial amount of revenue and earnings growth will remain tied to future tariff evolution, which at present is difficult to predict.

We expect ESKOM to have some flexibility in annual capex, reflecting capex flexibility of about 25% per year (or about ZARR10 billion-ZAR15 billion relative to our estimates below).

We calculate that ESKOM has the following liquidity sources for the 12 months started March 13, 2017:

- Cash and marketable securities of about ZAR37 billion at the group level;
- Committed credit lines of about ZAR6.2 billion;
- Cash FFO in of ZAR9 billion; and

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- We calculate the following liquidity uses for the same period:

- We note the company's success in issuing several new loans over the past 12 months, some of which (but not all) are listed here: a ZAR6 billion-equivalent short-term facility with the Chinese Development Bank, a ZAR20 billion-equivalent facility from the African Development Bank (encompassing two facilities), and a ZAR7.5 billion-equivalent facility from the Multilateral Investment Guarantee Agency. However, ESKOM has continued to rely heavily on government guarantees to obtain such financing. We expect this will continue to be the case.

The negative outlook reflects that on the sovereign and our view of uncertainty regarding the government's commitment and ability to provide timely support to ESKOM for any funding shortfalls. This could be exacerbated if the outcome of the ongoing legal battle against ESKOM and NERSA results in tariff growth remaining muted beyond March 31, 2018.

We could lower the long-term corporate credit rating on ESKOM if we were to consider that the likelihood of extraordinary government support had weakened or if we downgrade the sovereign, if at the same time, we considered there to be uncertainty regarding the government's clear commitment and ability to provide timely support to ESKOM if needed. We could negatively reassess the likelihood of government support if we determined that the predictability and ability of government support is less certain in terms of it being full and timely under all circumstances. This could occur if we see further deterioration of ESKOM's financial position over the next year or two without any offsetting measures taken by government or ESKOM. Such a scenario could occur, for example, if ESKOM faced prolonged lower tariffs and market conditions proved adverse in terms of ESKOM's ability to bridge any consequent funding shortfalls.

We could also lower the ratings if we considered that ESKOM's SACP had deteriorated further, since this could also indicate decreasing government support, and would lead us to reassess our view of the likelihood of government support. Hence, any negative rating actions would likely be due to a combination of our view of ESKOM's SACP weakening and its likelihood of receiving support, or as a result of negative sovereign rating actions.

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### Upside scenario

We would consider revising the outlook to stable if we revised our outlook on the sovereign to stable, if pressure on ESKOM's future liquidity position eased, and if government funding for ESKOM's continuing large negative free cash flow was forthcoming.

### Related Criteria

- General Criteria: S&P Global Ratings' National And Regional Scale Mapping Tables, June 01, 2016
- General Criteria: Rating Government-Related Entities: Methodology And Assumptions, March 25, 2015
- Criteria - Corporates - General: Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- General Criteria: National And Regional Scale Credit Ratings, Sept. 22, 2014
- General Criteria: Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- General Criteria: Methodology: Industry Risk, Nov. 19, 2013
- Criteria - Corporates - General: Corporate Methodology: Ratios And Adjustments, Nov. 19, 2013
- Criteria - Corporates - General: Corporate Methodology, Nov. 19, 2013
- Criteria - Corporates - Utilities: Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- General Criteria: Methodology For Linking Short-Term And Long-Term Ratings For Corporate, Insurance, And Sovereign Issuers, May 07, 2013
- General Criteria: Methodology: Management And Governance Credit Factors For Corporate Entities And Insurers, Nov. 13, 2012
- General Criteria: Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings, Oct. 01, 2012
- General Criteria: Stand-Alone Credit Profiles: One Component Of A Rating, Oct. 01, 2010
- General Criteria: Use Of CreditWatch And Outlooks, Sept. 14, 2009
- Criteria - Corporates - General: 2008 Corporate Criteria: Rating Each Issue, April 15, 2008

### Related Research

- South Africa Long-Term Foreign Currency Rating Cut To 'BB+' On Political And Institutional Uncertainty; Outlook Negative, April 3, 2017
- South African Utility ESKOM Downgraded To 'BB' Following Potential Risks To Government Support; Outlook Negative, Nov. 25, 2016

### Ratings List

Downgraded

To

From

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*etc!*

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*Research Update: South African Utility ESKOM Holdings SOC Rating Lowered To 'B+' Following Sovereign Downgrade; Outlook Negative*

ESKOM Holdings SOC Ltd.

Corporate Credit Rating

B+/Negative/--

BB-/Negative/--

Long-Term South Africa National Scale

zaBB-/--/--

zaBB+/--/--

Senior Secured

B+

BB-

Senior Unsecured

B+

BB-

Ratings Affirmed

ESKOM Holdings SOC Ltd.

Short-Term South Africa National Scale --/--/zaB

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Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of RatingsDirect at [www.globalcreditportal.com](http://www.globalcreditportal.com) and at [spcapitaliq.com](http://spcapitaliq.com). All ratings affected by this rating action can be found on the S&P Global Ratings' public website at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column. Alternatively, call one of the following S&P Global Ratings numbers: Client Support Europe (44) 20-7176-7176; London Press Office (44) 20-7176-3605; Paris (33) 1-4420-6708; Frankfurt (49) 69-33-999-225; Stockholm (46) 8-440-5914; or Moscow 7 (495) 783-4009.

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## MOODY'S

### INVESTORS SERVICE

#### Rating Action: Moody's downgrades Eskom's ratings to Ba2/Ba3; confirms A2.za NSR; negative outlook

Global Credit Research - 13 Jun 2017

London, 13 June 2017 -- Moody's Investors Service ("Moody's") has today downgraded to Ba2 from Ba1 the long-term corporate family rating (CFR) of Eskom Holdings SOC Limited (Eskom) and the zero coupon eurobonds to Ba2 from Ba1 in line with the CFR. Concurrently, Moody's has downgraded to (P)Ba3/Ba3 from (P)Ba1/Ba1 the global medium term note (GMTN) programme and the senior unsecured GMTNs of Eskom. It has downgraded the probability of default rating (PDR) to Ba2-PD from Ba1-PD. The national scale rating (NSR) long-term corporate family rating of A2.za has been confirmed. The outlook is negative. The rating action concludes the review for downgrade that was initiated on 5 April 2017.

Today's rating action on Eskom reflects the weakening of the sovereign rating's credit profile as reflected in Moody's recent decision to downgrade South Africa's government bond ratings to Baa3 from Baa2, negative outlook. For further information, refer to the sovereign press release [https://www.moody's.com/research/--PR\\_367769](https://www.moody's.com/research/--PR_367769).

A full list of affected ratings is provided towards the end of this press release.

#### RATINGS RATIONALE

Eskom's ratings are primarily driven by Moody's assumption of a high level of potential government support in case of financial distress. Given Eskom's strong linkage with the South African government and its high sensitivity to changes in the sovereign credit profile, the rating downgrades primarily reflect the one-notch downgrade of South Africa's ratings to Baa3 negative on 9 June 2017.

The one notch differential between the zero coupon Eurobonds (Ba2) and the GMTNs (Ba3) reflect that the former benefit from section 7 of the Eskom Conversion Act, 2001.

Moody's assumption of a high level of government support in the event of financial distress is underpinned by Eskom's strategic importance to the government's social and economic policy as the country's dominant electricity supplier. This view is further reinforced by: (1) the government's recent approval for the ZAR350 billion Guarantee Framework Agreement (GFA) to be extended from 31 March 2017 to 31 March 2023; (2) a ZAR60 billion shareholder loan which was converted into equity in 2015; and (3) a ZAR23 billion equity injection completed in March 2016.

Moody's understands from Eskom that extension of the GFA has now been finalised and the company's access to funding should, therefore, continue to be supported by ongoing availability under this agreement. Eskom has completed nearly half of its funding needs for 2017/18. In order to complete its funding for this fiscal year, it is likely to rely on additional facilities from development finance institutions and export credit agencies, which are under negotiation, as well as access to local and international capital markets. Market conditions may be more challenging as a result of South Africa's, and the company's, weakened credit profile.

The ratings continue to factor (1) the progress the company has made with regard to delivery on new power units, albeit initially marred by some delays; (2) moderately improving operational efficiency; as well as (3) a challenging regulatory environment; and (4) a weak financial profile.

Given Eskom's very weak standalone credit quality, its ratings rely on the support that Moody's considers would be provided by the government of South Africa (Baa3 negative) if necessary. Under the agency's rating methodology for government-related issuers (GRIs), Eskom's ratings combine (1) its standalone credit quality or Baseline Credit Assessment (BCA) of b3, and (2) an uplift for government support.

#### RATING OUTLOOK

The negative outlook reflects the negative outlook on the government of South Africa.

#### WHAT COULD CHANGE THE RATING UP/DOWN

R

DFG

The outlook on the ratings could stabilise if (1) the outlook on South Africa's ratings is changed to stable; (2) Moody's assessment of high government support for the company remains unchanged; and (3) the company's operational and liquidity profile were to continue to stabilise.

Conversely, Eskom's ratings could be downgraded if (1) Moody's were to downgrade the government's ratings; (2) Moody's assessment of high government support for the company were to change; and/or (3) Eskom's operational and liquidity profile failed to stabilise.

The methodologies used in these ratings were Regulated Electric and Gas Utilities published in December 2013, and Government-Related Issuers published in October 2014. Please see the Rating Methodologies page on [www.moodys.com](http://www.moodys.com) for a copy of these methodologies.

#### LIST OF AFFECTED RATINGS

##### Downgrades:

..Issuer: Eskom Holdings SOC Limited

....LT Corporate Family Rating, Downgraded to Ba2 from Ba1

.... Probability of Default Rating, Downgraded to Ba2-PD from Ba1-PD

....Senior Unsecured MTN Program, Downgraded to (P)Ba3 from (P)Ba1

.... Senior Unsecured Regular Bond/Debenture (Zero Coupon, XS0083589233), Downgraded to Ba2 from Ba1

.... Senior Unsecured Regular Bond/Debenture (Zero Coupon, XS0078528352), Downgraded to Ba2 from Ba1

....Senior Unsecured Regular Bond/Debenture (Zero Coupon, XS0079398250), Downgraded to Ba2 from Ba1

.... Senior Unsecured Regular Bond/Debenture (CUS:296464AA8), Downgraded to Ba3 from Ba1

....Senior Unsecured Regular Bond/Debenture (Global MTN, CUS:29646AAB2), Downgraded to Ba3 from Ba1

....Senior Unsecured Regular Bond/Debenture (Global MTN, CUS:29646AAA4), Downgraded to Ba3 from Ba1

##### Confirmation:

..Issuer: Eskom Holdings SOC Limited

....LT Corporate Family Rating, Confirmed at A2.za

##### Outlook Actions:

..Issuer: Eskom Holdings SOC Limited

....Outlook, Changed To Negative From Rating Under Review

Moody's National Scale Credit Ratings (NSRs) are intended as relative measures of creditworthiness among debt issues and issuers within a country, enabling market participants to better differentiate relative risks. NSRs differ from Moody's global scale credit ratings in that they are not globally comparable with the full universe of Moody's rated entities, but only with NSRs for other rated debt issues and issuers within the same country. NSRs are designated by a ".nn" country modifier signifying the relevant country, as in ".za" for South Africa. For further information on Moody's approach to national scale credit ratings, please refer to Moody's Credit rating Methodology published in May 2016 entitled "Mapping National Scale Ratings from Global Scale Ratings". While NSRs have no inherent absolute meaning in terms of default risk or expected loss, a historical probability of default consistent with a given NSR can be inferred from the GSR to which it maps back at that particular point in time. For information on the historical default rates associated with different global scale rating categories over different investment horizons, please see [https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC\\_1060333](https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_1060333).

Headquartered in Johannesburg, Eskom is South Africa's dominant, vertically integrated utility, generating 95% of the country's electricity. It is fully owned by the government of South Africa through the department of Public Enterprises. In the fiscal year to 31 March 2016, it reported revenues of ZAR163.4 billion.

## REGULATORY DISCLOSURES

For ratings issued on a program, series or category/class of debt, this announcement provides certain regulatory disclosures in relation to each rating of a subsequently issued bond or note of the same series or category/class of debt or pursuant to a program for which the ratings are derived exclusively from existing ratings in accordance with Moody's rating practices. For ratings issued on a support provider, this announcement provides certain regulatory disclosures in relation to the credit rating action on the support provider and in relation to each particular credit rating action for securities that derive their credit ratings from the support provider's credit rating. For provisional ratings, this announcement provides certain regulatory disclosures in relation to the provisional rating assigned, and in relation to a definitive rating that may be assigned subsequent to the final issuance of the debt, in each case where the transaction structure and terms have not changed prior to the assignment of the definitive rating in a manner that would have affected the rating. For further information please see the ratings tab on the issuer/entity page for the respective issuer on [www.moody's.com](http://www.moody's.com).

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**MOODY'S**  
INVESTORS SERVICE

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Media Room Moody's downgrades Eskom's credit rating

## Moody's downgrades Eskom's credit rating



**Friday, 26 January 2018:** Moody's Investor Services (Moody's) has downgraded to 'B1 from Ba3' the long-term corporate family rating (CFR) of Eskom; the zero coupon eurobonds rating has similarly been revised to 'B1' from 'Ba3' in line with the CFR and the global medium term note (GMTN) programme and the senior unsecured GMTNs of Eskom have been downgraded to '(P)B2/B2 from (P)B1/B1'. All Moody's ratings remain under review for further downgrades.

While the rating agency views the recent interventions, including the appointment of the Board by Deputy President Ramaphosa as favourable actions in bolstering the credit quality of Eskom; Moody's cited Eskom's deteriorating liquidity and the ability of Government to provide direct equity support to Eskom.

"We note the decision by Moody's to downgrade the company's rating; however we remain resolute in our endeavours to progressively turn this company around. The liquidity concerns raised by Moody's are starting to dissipate as we are already seeing investors and lenders revive their engagements and commitment to Eskom. We see this action by Moody's as a low point in the credit profile of Eskom and we are confident that we are on a path to recovery; supported by the new Board, the governance and leadership at Eskom is being stabilised to bolster the turnaround of the company".

Commenting on Moody's decision, Eskom's Acting Chief Financial Officer, Calib Cassim said, "We remain cautiously enthusiastic that we are geared towards improving the company's liquidity position and financial profile. We are acutely aware of the challenges that Eskom is confronted with; however, we are confident that we are on the verge of restoring a positive market sentiment that will assist with the execution of our funding plan".

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Media Room

Eskom notes Fitch's credit rating downgrade

## Eskom notes Fitch's credit rating downgrade

**Wednesday, 31 January 2018:** Fitch Ratings has downgraded Eskom's long-term local currency Issuer Default Rating (IDR) and unguaranteed local currency senior unsecured ratings to 'BB-' from of 'BB+' and maintained the ratings on Rating Watch Negative (RWN). The rating agency also affirmed the government-guaranteed local currency senior unsecured debt ratings at 'BB+'.

In their statement, Fitch cites weakening liquidity of Eskom and the company's uncertain capacity to fulfil its short-term financial commitments as the underpinning rationale for their decision.

Eskom's Interim Group Chief Executive Phakamani Hadebe ( #eskom\_ceo )said, "We take note of the decision by Fitch to downgrade Eskom's credit rating. We firmly believe that the measures being implemented to turn the company around are yielding the favourable results. We have seen renewed enthusiasm from financial markets to support Eskom's funding plan and the preliminary engagements with market participants have had positive outcomes. We are cognisant of the challenges that the company is dealing with and we are geared to effectively resolving these challenges and improve Eskom's operational and financial sustainability in the interest of the South African economy."

Acting Chief Financial Officer Calib Cassim said: "The next few months will be difficult, but we need to work speedily and with a level of urgency in order to resolve our financial challenge. We are making progress in expediently resolving Eskom's financial challenges; we will also continue engaging the rating agencies and the financial markets to address their concerns and improve investor sentiment and ultimately restore Eskom's healthy liquidity position."

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Media Room    Standard and Poor's Global Ratings downgrades Eskom's ratings to 'CCC+'

## Standard and Poor's Global Ratings downgrades Eskom's ratings to 'CCC+'

Wednesday, 28 February 2018: Eskom notes the decision by Standard and Poor's Global Ratings (S&P) to downgrade Eskom's long-term foreign and local currency corporate credit rating to 'CCC+' from 'B-'; outlook remains negative

The review of Eskom's credit rating is largely based on S&P's assessment of the assumed likelihood of sufficient and timely government support for Eskom from 'very high' to 'high'; this, given the company's current liquidity challenges

"Eskom notes the decision by S&P to downgrade the credit rating as largely based on the strain on our liquidity levels. We have been and continue to be in extensive engagements with key stakeholders to resolve Eskom's current governance related and liquidity issues. Further, we have demonstrated visible actions that have been implemented to turn this company around. We are comfortable that government has provided Eskom with tangible support to ensure that Eskom's governance related and liquidity challenges are expediently resolved," said Phakamani Hadebe, Eskom Interim Group Chief Executive.

"The timing of the downgrade is unfortunate as we believe that we are starting to see slight improvements in markets sentiments. We will continue to engage with the rating agencies and various key stakeholders on the implementation and progress of the turnaround strategy with the ultimate goal of providing enough comfort to investors that we are on a path to stabilizing Eskom's operational and financial profile," said Calib Cassim, Eskom Acting Chief Financial Officer.

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Media Room   Eskom comments on Moody's downgrade

## Eskom comments on Moody's downgrade

Thursday, 29 March 2018: Moody's Investor Services (Moody's) has downgraded to 'B2' from 'B1' Eskom's long-term corporate family rating (CFR). The zero coupon eurobonds rating has similarly been revised to 'B2' from 'B1' in line with the CFR and the global medium term note (GMTN) programme and the senior unsecured GMTNs of Eskom were also downgraded to '(P)B3/B3 from (P)B2/B2'. The outlook is negative.

While the downgrade is disappointing, it is worth noting that in its decision, Moody's acknowledges the positive strides that the new Board and the new Interim Group Chief Executive have made in the two-month period that they have led the organisation.

The three issues of concern raised by the rating agency centre around the inadequate tariff increases in the face of flat demand, no tangible government support and a lack of a resilient business strategy that will ensure Eskom's sustainability.

The new Eskom Board is investing a considerable amount of time in formulating a comprehensive long-term strategy and plan that will place Eskom's business on a firmer footing. We are confident that the execution of the turnaround strategy will be accompanied by positive gains.

Eskom's Interim Group Chief Executive, Phakamani Hadebe said "While we are disappointed with Moody's decision at this stage the future looks promising. We have addressed the liquidity issue and other key challenges. The new Board and Eskom leadership are swiftly moving into the second intervention stage by formulating an integrated strategy that will yield favourable results. The positive sentiments expressed by Moody's encourage us to work even harder to ensure the execution of this strategy. I am confident that we will stabilise the credit profile of Eskom and improve its credit rating."

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# Budget vote speech by Minister of Public Enterprises Pravin Gordhan

15/05/2018

Honourable Speaker  
Cabinet Colleagues and Deputy Ministers  
Members  
Boards of State Owned Companies  
Chief Executives of State Owned Companies  
Fellow South Africans  
Sanibonani  
Mokweni  
Goefe middag  
Thobela

I have the honour to present Budget Vote for the Department of Public Enterprises. This is the year in which we celebrate the centenary of the birth of our national icon, President Nelson Mandela. We also celebrate the centenary of one of the key architects of our democracy, Albertina Nontsikelelo Sisulu. Together with their generation of freedom fighters these giants of our democratic struggle sought to work for a society based on justice, fairness, equity, democracy and non-racialism.

State-Owned Enterprises constitute a key part of our national life and our national assets. They are central to our developmental and economic agenda. The reform of State-Owned Companies is part of a broader agenda of structural reforms in our country.

### President's commitment to investment and inclusive growth

It is their spirit and legacy of integrity, service and diligence that must inspire all of us to do what is right for our country and people. This is what we, as a "community of SOEs" must do also.

President Ramaphosa, in his State of the Nation Address set us all a challenge: to encourage significant new investment in our economy with the aim of achieving sustained inclusive growth, creating jobs, reducing poverty and transforming our economy. Inclusive growth and job creation are dependent on increased investment in our economy. South Africa needs as much local and foreign investment as possible to increase the growth and jobs momentum already on the way. This is the central priority for government this year.

We have embraced this objective.

In presenting our plans for this fiscal year, we have and will continue to ensure that the state owned companies make their invaluable contribution to new investments by using both public resources and by leveraging private sector resources.

Through its state-owned companies, government will be investing R368 billion over the next three years, of which Transnet and Eskom account for a significant share. Their investment will be directed toward upgrading and expanding the country's electricity generation and transmission infrastructure as well as acquisition and maintenance of rail rolling stock and the completion of the New Multi-product pipeline (NMPP).

Improving the quality of the country's infrastructure will ensure a reliable and cost-effective electricity supply and efficient freight logistics and port infrastructure. This will make South Africa a more attractive location for companies to do business. This will crowd in further investment by the private sector.

The infrastructure investments being undertaken by state owned companies also serve to improve the quality of life for our people. For instance, in the electricity sector, Eskom continues to connect new households to electricity, with the aim of achieving universal access by 2025. Over two hundred thousand new connections were achieved in the 2017/18 financial year.

### New dawn

Honourable members, a new dawn is upon us - A new dawn characterized by the spirit of Thuma M'na

The possibility and the actual emergence of this new dawn is a result of the hard and determined efforts of all South Africans. Key amongst those who worked to strengthen our democracy and create conditions for the new dawn, are ordinary people, trade-unions, the judiciary, non-governmental organizations, media, business, political formations and committees of parliament.

To sustain the new dawn will require vigilance, courage and a commitment so that we serve our country and our people. In the new dawn, we should work to entrench the democratic ethos of the Constitution, constitutionalism, social justice and fairness. Through our Institutions and State-Owned Companies, we must work to promote our constitutional values such as inclusivity, non-racialism and gender parity. The state-owned companies belong to all South Africans. They are not the preserve of only a few. They must be used to advance our national interests and play their part in development and inclusive economic growth.

#### Role of SOCs

The OECD, in the preface to its SOE-guideline on good governance, notes: "In many countries SOEs are the main providers of key public services, including public utilities. This means that their operations have an impact on citizens' everyday life and on the competitiveness of the rest of the economy. SOEs are increasingly prominent actors in international markets."

Traditionally, state-owned companies play an important role in addressing specific market failures or promoting a country's strategic interests.

In our case, an effectively managed, efficiently performing and well-governed public enterprise sector should play a dynamic role in:

- Delivering important public services and public goods that enable economic activity and improve the quality of the lives of our people;
- Investing in infrastructure to reduce the cost-structure in the economy so that other economic players become more efficient and competitive;
- Supporting and growing small- and medium-size businesses;
- Undertaking research to develop new technologies to equip the country to compete effectively in a world post the fourth industrial revolution;
- Transforming the patterns of ownership in the economy by directing their procurement spend to black-owned businesses; and
- Providing jobs, training and skills development.

We must get back to this basic mission. Not only must we contend with the present challenges, but also prepare for a very dynamic future. Re-establishing our public service culture and ethos is critical. This is our best antidote to greed and opportunism.

#### Role of the specific SOCs

In particular, these enterprises have a central role to play in the progressive reform and strategic transformation of our economy.

For instance:

- Eskom's mission is the provision of energy and electricity, as well as related services, for the enablement and development of economic growth. It achieves this by powering the economy and enabling businesses, particularly mining and manufacturing, to thrive and create employment;
- Transnet's port, rail and pipeline infrastructure facilitates the movement of goods from where they are produced to where they are consumed within the country. This promotes trade with our neighbours and provides a connection to export markets. It is critical as an enabler of cost-effective, efficient, and seamless movement of goods through our economic system.
- Denel supports a supply chain of both small and large companies operating in the defence sector. In addition to ensuring the country's security, through its research and development, the company contributes to the development of the advanced skills necessary for the company to compete in a world that is becoming increasingly sophisticated. Indeed, when functioning efficiently and in a well-governed manner, Denel has leading-edge technology and manufacturing capability that advances our national competitiveness.
- South African Express operates routes connecting secondary cities with the major metros as well as connecting South African with some of its neighbours such as Botswana, the Democratic Republic of Congo and Namibia. This contributes to promoting economic activity particularly tourism in the region as well as in secondary centres.

It is evident that by efficiently delivering on their core mandates, the state-owned companies can directly contribute to enabling economic growth and creating jobs and therefore advancing the developmental state.

#### State capture of the SOCs

Notwithstanding their potential role in growing the economy, the last few years have seen a progressive weakening and capture of these institutions.

In his State of the Nation Address, when speaking about the establishment of the Judicial Commission of Inquiry into State capture, the President said, "We are determined to build a society defined by decency and integrity that does not tolerate the plunder of public resources. The commission is critical to ensuring that the extent and nature of state-capture is established, that confidence in public institutions is restored, and that those responsible for any wrong-doing are identified. The commission should not displace the regular work of the country's law enforcement agencies in investigating and prosecuting any and all acts of corruption."

Priorities in the next year:

In advancing government objectives over the coming year:

- We will work to "re-capture" the state-owned companies, putting in place strong and ethical boards, re-establishing good governance. We will ensure that the companies function in line with their mandates, and halt the vicious looting and theft.
- We will work swiftly to stabilize these entities and return them to financial sustainability through the appointment of capable executive teams, refocusing the companies on their core mandates, ensuring that the companies have viable business and operating models. Improvements in operational performance, and engendering confidence among lenders and the bond market is critical.

- We will look how the collective resources and capabilities of SOEs can be used to promote inclusive growth, investment and the creation of jobs. We will restructure and reorient their businesses accordingly.
- SOEs must promote transformation through measures like preferential procurement to develop a new generation of black, woman and youth-owned enterprises.
- We will rebuild staff morale and restore the dignity of these entities and people who work in them.
- We will be holding to account those that have been directly involved in malfeasance as well as those that have neglected their responsibilities and allowed state-capture to happen. In addition, those audit firms, consulting companies and legal advisors that facilitated state capture must be answerable for the role that they have played.
- We will initiate processes which will enable government to recover stolen funds.

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Unfortunately, during my short time in this office, it has become evident that several of the state-owned companies will not be able to trade and borrow their way out of their financial difficulties and some funding will be required from government. Strong and creative measures must be taken to return these companies to solvency. Should any government support be provided this must be contingent on the companies diligently implementing interventions to return them to financial sustainability and enhance efficiency as well as restructure their operating models to effectively deliver on their strategy and developmental mandates.

What role will each of the companies in the Public Enterprises be playing in advancing this agenda?

#### Eskom

Eskom is responsible for the generation, transmission and distribution of electricity. The company has installed capacity in excess of 45 Gigawatts and generated 225.92 Terawatt hours of electricity in 2017/18. The key generation expansion projects are the Medupi and Kusile coal-fired stations. The reliability of the country's electricity supply has a major impact on the country's economy and its citizen's wellbeing: when the country experienced load-shedding, this was estimated to have wiped off at least 1 percent of GDP.

This critical institution was on the brink of collapse through state capture. A compromised Board and unscrupulous executives were installed, who were actively engaged in enabling the looting of the institution. A classic example is the Tegeta purchase of Optimum Coal Mine. In addition, there was a collapse in governance, an audit qualification and irregular expenditure.

A new Eskom board was appointed in January this year as well as an Acting GCE. Since then, the Board and GCE have achieved the following:

- It is instituting a culture of effective and transparent governance, including ensuring that those who were engaged in fraudulent activities are brought to account.
- This has resulted in the departure of 6 senior managers on the basis of serious allegations of misconduct. A further 3 senior employees remain on suspension of which 2 will be facing independent disciplinary hearings in the month of May 2018.
- This is only the first step in combating corruption. The Board will continue to pursue wrongdoing and take corrective action within the law.
- Employees as well as outsiders have been encouraged to use the whistleblowing facility to share information about corruption at Eskom. The response has been very positive. I am advised that almost 250 matters are being investigated, of which there have already been 42 cases where actual corruption, fraud or irregularity has been confirmed.
- Lifestyle audits have commenced and the process is projected to be finalised by the end of July.
- Progress has been made in clearing the qualified audit issued in the past financial year.
- There has been a positive change in investor sentiment and increased appetite for Eskom bonds. The company raised R43 billion between January and March 2018, providing sufficient liquidity for the company. This has allowed Eskom to recommence with its normal borrowing activities with the aim of securing a total of R72 billion over the 2018/19 financial year to enable ongoing implementation of its investment programme.
- To ensure financial sustainability Eskom is seeking to optimise its revenue and collect municipal arrears whilst driving down costs to ensure that the entity does not borrow to service debt.
- Under the circumstances, acceptable operational performance has been achieved, and the capital build programme is on track. The final units at Medupi and Kusile will achieve commercial operation by financial years 2021 and 2023, respectively, barring any delays in contractor performance, industrial action, or technical issues.
- No load shedding over the winter period is anticipated.

Whilst it is still too early to celebrate the full re-capture of this institution, the experience shows how, under the leadership a committed board and executive management team who take decisive action, confidence and staff morale can quickly be re-established. But much still needs to be done.

#### Transnet

Transnet is responsible for providing land freight transportation services through its port, rail and pipeline infrastructure. During (2017/18 financial year the company moved a total 226.3 metric tons by rail with general freight moving 90.6ml as well as 17 billion litres of fuel.

The most binding constraints to realise the accelerated and shared economic growth through Transnet's role in the developmental state includes:

- The inefficiency of the transport and logistics system that forms the backbone of the South African economy – the fact that South Africa is far from its major export markets and the fact that most production centres are situated inland away from the ports hampers South Africa's export competitiveness; and
- Limits to competition – the fact that the South African economy remains relatively concentrated and that monopoly or dominating players' prices have a negative impact on downstream sectors and the development of new industries is constrained.

The role of Transnet in addressing these challenges is critical and its ability to ensure that government's infrastructure network programme acts as a catalyst towards the broader development of the economy will be a seminal marker of the progress being made towards building a developmental state.

Transnet is in the unique position of owning and operating the bulk of South Africa's commercial freight rail, port and pipeline infrastructure. As an SOE, Transnet can leverage both government spend and commercial investment in transport infrastructure to make a significant contribution to economic growth and employment creation. By using the

SOE structure, Transnet can maximize efficiencies in freight transportation and enable large scale investment (by itself and the private sector) in a manner that is efficient for society in the long-term. Without a strategic SOE role, the freight network will depend on project-specific state revenue allocations and short horizon, non-integrated, costly private investment. Ensuring effective state custodianship of the port, rail and pipeline network is thus fundamental for the developmental state.

At Transnet, governance structures were repurposed to enable corruption and rent seeking. There is evidence that contracts were awarded to people with close links to some of the Transnet officials: there were clear conflicts of interest. The directors of Transnet as well as senior executives were derelict in their duties and there were regular violations of the Public Finance Management Act, Companies Act and the Prevention of Corruption and Criminal Activities Act.

During the month of April, the Board accepted the resignation of the CFO and I have approved the appointment of Mr Mohammed Mahomed CA (SA) to act in this capacity. I have accepted the resignation of the previous Chairperson of the Board of Transnet and several other non-executive directors. In line with the Companies Act, I met with the remaining Transnet Board members to allow them to make representations concerning their retention on the Board. Having carefully considered these representations, I decided to remove them as non-executive directors with immediate effect and install a new interim board, pending consultation with Cabinet.

Although the company has been growing the volumes that it transports by rail and handles in the port system, much more can be done to improve efficiency and remove bottlenecks in freight transportation from the economy. The structure of tariffs needs to be looked at, with a view to reducing the cost of doing business in the country in support of exporting high-value manufactured goods by domestic producers.

The new interim Board of directors will be directed to act on the findings of the Werksman's investigation and other forensic reports. They will also review the large contract that have been entered into in order to verify their legality.

#### Denel

Denel is responsible for the production of defence equipment, including small armaments, landward systems, missiles, unmanned aerial systems and military aircraft as well as maintenance, repair and overhaul and systems engineering.

Denel was one of the institutions where evidence of state capture began to emerge. Once again, it seems that a weak and captured board and executives were intent on facilitating the exploitation of the company's valuable intellectual property to enrich Gupta associates and potentially launder money off-shore. In doing so, the company flouted the Public Finance Management Act and other legislation.

The new board, which was appointed in April, has been tasked with implementing the findings of all forensic reports and holding those implicated to account. The CEO has resigned and his resignation has been accepted by the board. I have approved the appointment of Mr Mike Kgobe, current head of Denel Aviation, as acting CEO.

Over the past year Denel experienced severe liquidity constraints. This was largely linked to state capture at the company, which resulted in financial institutions withdrawing credit lines. Eventually, the company was unable to pay its employees – just one example of how the plundering of state resources directly impacts on workers. To ensure that Denel could meet its obligations, government increased its guarantees to the company. The company's cash flow position remains tight. The department will be working with the company to improve its liquidity position as well as reviewing the company's operations and improve performance.

#### SA Express

South African Express transports passengers and cargo as well as providing air charters and other related aviation services. The objective is to increase the frequency of services on lower density routes which are not viable for large aircraft and expand air services on regional and secondary routes. The airline transported close to 300 000 passengers during 2016/17.

As a result of resignations and suspensions, there are currently numerous vacancies at the airline. As a temporary stabilization measure, senior officials from the Department were seconded to South African Express, whilst the process of appointing a permanent CEO and CFO is underway. Simultaneously, I am reviewing the Board, with a view to strengthening its capacity. Reports of corruption at South African Express (which you all will have seen was covered by the media last week) are being reviewed.

In addition to addressing the governance and leadership challenges at the airline, government is working with South African Express to finalise a turnaround strategy to stabilise the company financially. The immediate steps that will be taken include rationalising routes to match capacity; improving cost-to-income ratios and consolidating operations with SAA.

Regrettably, extended mismanagement of the airline, means that it is likely to require a recapitalisation from government to strengthen its balance sheet, return it to solvency and improve its credit worthiness. The merger of state owned airlines will also receive attention soon. In the longer term, government will explore options for modernising the fleet and the possibility of introducing a strategic equity partner with the aim of reducing the burden they are currently place on the fiscus and instilling a commercial mind set into their operations.]

#### Safcol

Safcol manages 181 000 hectares of forest which equates to approximately 10% of the country's plantation forest land. In addition, Safcol owns 80% of a Mozambican State Owned Company, IFLOMA, with a total area of 16 200 hectares. Much of the land managed by Safcol is under land claim. Whilst awaiting finalisation of the land claims, the company has entered into social compacts with the local communities. Since 2017, the company's financial

performance has been improving and it is currently working on plans to further boost revenues including increasing the amount of logs that are beneficiated

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#### Alexkor

Alexkor currently participates in a joint diamond mining venture with the Richtersveld community which is governed by the settlement agreement reached in 2007 following from a land claim. Together with the community, Alexkor has been reviving the land diamond mining operations, which produced 162 000 carats of diamonds in 2016/17. There have been some challenges arising from governance arrangements between Alexkor and the Pooling and Sharing Joint Venture, which I will be reviewing in the coming year.

The company also has deep sea mining operation off the coast of Alexander Bay. Due to damage to a deep sea mining vessel, the operation produced only 41 000 carats of diamonds in 2017/18 compared with 110 000 carats in the 2016/17 financial year.

Forensic investigators have been appointed to investigate allegations of wrong-doing at the company including:

- Exclusion of certain contractors from marine mining procurement;
- Lack of transparency on the sales and marketing of diamonds; and
- Lack of information on the sales.

I am currently reviewing the boards of Safcol and Alexkor, with the aim of ensuring that there are directors with proven integrity and skills.

#### Recapture and RESTORE

In the next year, a central focus will be on recapturing the state-owned companies. Chairperson, the task of rectifying years of abuse of our state-owned companies not only by the Guptas and their associates, but also by other corrupt networks, has already begun in earnest. We have taken our marching orders from the President, who in his SONA provided the context of a New Dawn, when he said "We will intervene decisively to stabilize and revitalize state owned enterprises".

The first step in bringing stability to all our state owned enterprises has been to ascertain and begin to address the malaise, depth of corruption and criminal behaviour that seems to have become endemic in these institutions.

Together with the Boards of each state-owned company and following due process, corrupt executives will undergo disciplinary processes and be dismissed and new management appointed and existing vacancies filled with people with proven capability and a track record of ethical behaviour.

Government has established a Judicial Commission of Inquiry to investigate matters of public and national interest concerning allegations of state capture, corruption and fraud. We will be making a comprehensive submission to the commission. We expect that the commission will proceed expeditiously so that the stultifying effect of state capture can be dealt with decisively and uncompromisingly.

I have directed the Chairpersons to act swiftly on the findings from any investigations, including reporting matters to law enforcement authorities.

A team comprising the Hawks, NPA and SIU is working with SOC Forensic Investigators reviewing Eskom and Transnet forensic reports. The results of this process will be used for example, to seek that certain directors are declared delinquent, open criminal proceedings where a prima facie case of fraud and corruption exists, and where individuals must face the consequences of their actions.

We shall not only be satisfied with putting the criminals in jail. The money they have stolen from the SOCs and the things they have bought with them – expensive houses, flashy cars, jets – must be recovered and returned. The SOCs will liaise closely with and provide all the support they can to the law enforcement authorities, especially the Asset Forfeiture Unit and the Special Investigation Unit, to identify, trace and locate the stolen assets and to recover these, using criminal and civil processes. These are funds that have been stolen. They must be returned to the fiscus. They belong to our people not to crooks.

I am also seeking legal advice on how SOCs can best support our law enforcement authorities to identify stolen assets which have been hidden in other countries, such as in Dubai and India, so that these can be brought back.

Investigations by the Hawks into some of the matters covered by the President's proclamation are at an advanced stage. These include:

- The contracting for or the procurement of coal and coal transportation services;
- Maladministration concerning Medupi, Kusile and Ingula; appointment of McKinsey;
- Trillian and Regiments to render services to Eskom and Transnet;
- Defective performance by build programme service providers appointed by Eskom; and
- Unlawful appropriation or expenditure of public money or property concerning Transnet and Eskom.

Those that have been involved in corruption must not be under the illusion that their resignation absolves them from being held to account.

In the instances where I am convinced that non-executive directors have failed to discharge their fiduciary duties effectively or there has been dereliction of duty, these non-executive directors will go through the legal processes to declared delinquent directors in terms of the Companies Act.

In future, Board members shall play no role in the evaluation and adjudication of tenders. Where there are Board Tender Committees (or such like) these should be dissolved and the function delegated to management. Instead Boards (and not just sub committees) must step up and fulfil their important duty in overseeing procurement, to ensure that due process is followed.

Directors and employees will be prohibited from doing business with state-owned companies. Government will be reviewing the legislative framework governing procurement at state-owned companies in order to strengthen internal controls to prevent corruption.

The lifestyle audits on key officials within state-owned companies (for example procurement and SCM processes) are intended to be completed by the end of financial year.

The fact that state capture was able to happen is evidence of the weak internal controls at many of the state-owned companies. My department is working with the Auditor General to strengthen the external audit process. The Auditor General will be taking over responsibility for the some of the audits of the major state-owned enterprises.

Holding private institutions that colluded in state capture to account.

We have also learnt that firms from the private sector that we would have expected to have been reputable have played a destructive, possibly even collusive role, in the capture process at our state-owned companies. In this regard, sufficient prima facie evidence exists of their role in actively facilitating malfeasance. They have brought their businesses and their entire sectors into disrepute. Those firms and the persons involved must be thoroughly investigated and, if criminally prosecutable, the law must take its course and the proceeds of crime be recovered.

#### **SOC Council and SOC reforms**

During 2016, government established a State-owned Enterprise Council, chaired by the President, which is responsible for ensuring effective oversight of state-owned companies. In November 2016, the Council and Cabinet:

- Noted the proposal to determine and cost the developmental mandates of state-owned enterprises.
- Endorsed a framework to guide collaboration between state-owned companies and the private sector on infrastructure projects
- Adopted a guideline for the remuneration and incentive standards for directors of state-owned entities.
- Approved the broad thrust of a guide for the appointment of boards and executive officers.
- Recommended further consultation on the first draft of a new government shareholder policy, which will culminate in overarching legislation for state-owned companies.

Further work in this regard, and on a SOC Bill will be undertaken.

#### **Transforming and boosting the economy**

The historical evolution of the South African economy has been predicated on the domination, exploitation and marginalisation of the black majority. Colonial and Apartheid policies lead to significant structural distortions in the economy and society. The state-owned enterprises have a key role to play in creating opportunities for inclusion of black people in the ownership, management and control of economic activities in order to achieve sustainable development and prosperity – not of a privileged elite, but for all.

The state-owned companies will continue to leverage their procurement spend to achieve this transformation of the economy. The focus will be on increasing the amount they procure locally and growing the share supplied by small businesses and companies that are owned by black people.

- At Eskom, just over 80 percent of its spend went to B-BBEE companies, with 16 percent going to companies that are owned by black woman and 3 percent to youth-owned companies. Small and micro-enterprises accounted for 19 percent of the value of goods procured.
- In 2016/17 Transnet procured more than 80 percent of its spend locally, with 34 percent being supplied by black-owned firms, 13 percent from black woman-owned companies and close to 8 percent from small- and micro-enterprises.
- Likewise, local content made up 76 percent of Denel's procurement spend, with 27 percent coming from black-owned companies of which 9 percent were owned by women. The contribution from small- and micro-enterprises constituted a massive 73 percent.
- All of Alexkor's procurement was locally produced, of which 15 percent came from black-owned firms.

In addition, the state-owned companies are also focused on developing the skills of artisans, technicians and engineers in order to empower our people.

- Close to 5000 artisans, technicians and engineers were trained by Eskom and another 2300 by Transnet and a further 300 by Denel during 2017/18

Within the workplace environment, transformation has been occurring.

- 68 percent of the senior management team at Eskom and 75 percent of middle management are black.
- At the other companies, black people comprise between 57 and 83 percent of all employees.

State-owned companies like Safcol and Alexkor as well as Eskom and Transnet have operations in rural areas, generating important employment opportunities in these communities.

#### **Enhanced role of the department**

The Department of Public Enterprises needs to play an effective role in recapturing, stabilising and repositioning the state-owned companies. To do so the department will need to be appropriately capacitated with competent individuals with integrity and expertise who are committed to serving the public.

The Department's activities are grouped into three programmes:

- Programme 1: provides administrative, corporate management and support services to the department and Ministry. This includes providing strategic planning and reporting, financial management, human resource management, ICT, communications and security and facility management services.
- Programme 2: is responsible for legal support and advising on corporate governance matters. It assesses the financial and operational performance of the state-owned companies and provides support to the companies in securing adequate, diversified funding. The programme monitors the implementation of response plans to address the findings of both internal and external auditors at the state-owned companies. It also reviews the key accounting policies of the companies.

- Programme 3: aims at ensuring that the state-owned companies advance industrialisation, transformation and regional integration. It is also responsible for engagement on policy and regulatory issues oversight of initiatives to enhance the strategic role played by the companies.

These activities are aligned with government's priorities as set out in the National Development Plan and Medium-Term Strategic Framework as well as the priorities articulated by the President in the State of the Nation address of stabilizing and revitalizing state-owned companies, strengthening governance, rooting out corruption and restoring financial stability.

#### A CALL FOR RENEWAL AND ACTION

In these times of renewal, a new dawn and a new deal, we have to make the state-owned companies work. We have to make them the pride of the nation again.

I commend business for signing the integrity pledge. Government is looking forward to business having zero tolerance for corruption, working actively to combat corrupt practices, protecting whistle blowers and providing information about the corruption that has occurred in our midst. Auditors, accountants, lawyers and consultants have a role to play in restoring the standing, integrity and prestige of their professions and supporting the repositioning of state-owned companies to better deliver public value.

Our unions have a responsibility to ensure that a high ethical standard is upheld by business as well as at state-owned companies. It is ultimately the workers who will lose out, should companies fail.

The past year has witnessed unprecedented grassroots civil society activism focused on reclaiming our state-owned companies. This bears reflecting on, because it represents a remarkable development in our nation's history. Social movements and progressive civil society sectors of our body politic, which are accustomed to confronting the state and holding it accountable, assisted democratic forces to reclaim control over the state and its companies.

They did this not only to stamp out corruption. They did this because they recognise that our owned companies have an enormous developmental and social mandate to fulfil. Our state-owned companies should be central to delivering public services, investing in infrastructure, creating jobs, diversifying wealth and providing opportunities for people to realize their potential. Activists were able to take an abstract concept like "state capture" and demonstrate its direct impact on the lives of the most disadvantaged in our society.

We appeal to civil society today, saying that the work is not yet done. We want civil society to help us raise our game. Hold us accountable. Demand transparency. The reform of our state-owned companies and transformation of our society must be sincere, deep and long-lasting.

But insisting on transparency and accountability is not enough. We need moral and ethical leadership. We need people that act with integrity. And each one of us needs to have the courage to act on our beliefs. Working for the national interest is the duty of us all. This period requires all of us to have the clarity, humility and resolve to move South Africa to a fair, just, inclusive and prosperous society.

#### CONCLUSION

In conclusion let me summarise our plans and actions in the period ahead.

- Recapture the state;
- Hold to account those that have been involved in malfeasance;
- Strengthen governance;
- Stabilise the entities and return them to financial sustainability; and
- Use the companies to transform and boost the economy.

We shall seek to ensure that the SOCs are positioned so that they can facilitate

- inclusive growth
- massive investment, both foreign and local
- job creation
- skills development, and
- assist with enterprise-wide and business creation.

The actions will involve the Re-Capture of SOCs through

- Boards with capacity and integrity
- Skilled Management with Integrity
- Conduct forensics and ensure consequence management
- Integrity and Good Governance, including lifestyle audits and stopping officials from doing business with SOEs
- Auditors and Legal firms - clean up their act
- Merger of the Airlines
- Procurement processes with transparency and oversight
- Business models, both now and for the future where issues of sustainability will be integral to any solution we arrive at
- Role of the SOC in the economy so that they are able to promote investment, job development, enable skills acquisition and enable growth of business
- The Department of Public Enterprises itself needs to be enhanced so that it is able to accommodate these changes
- We need to identify locate and trace stolen assets so that these can be restored to SOCs and the South African people to whom they belong

Chairperson, I thank President Ramaphosa for allowing me the privilege of serving South Africa again in this capacity.

I am grateful to Acting DG Ms Makgolo and colleagues in the Department for their sterling role in difficult circumstances.

I am eternally grateful to my family for their courageous support and encouragement.

The Team in the Ministry have demonstrated their loyalty to the "New Dawn" and making government work. Finally I salute the patriotic and ethical South Africans who have made themselves available to serve on Boards and management.

In the words of Nelson Mandela: "Sometimes, it falls upon a generation to be great. You can be that great generation. Let your greatness blossom."

Thank you.

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Media Room

Eskom's operational performance remained strong despite tough trading conditions

## Eskom's operational performance remained strong despite tough trading conditions

Tuesday, 30 January 2018: Whilst Eskom's operational performance remained strong for the six months ending on 30 September 2017, the company is facing significant financial challenges going forward.

The company achieved generation plant availability of 83.2% against a target of 80% which matches our 80% energy availability 10% planned maintenance and 10% unplanned maintenance by 2020 Generation Sustainability Strategy.

The new build programme is on track with Medupi Unit 4 having achieved commercial operation on 28 November 2017 and Kusile Unit 1 having achieved commercial operation on 30 August 2017 adding a combined 1 594 MW to the national grid. In addition, 350km of transmission and distribution lines were constructed and 1 000MVA transformers commissioned.

Eskom has also concluded its interim results having connected 100 380 new households to the electricity grid.

Eskom's Interim Group Chief Executive Phakamani Hadebe during his presentation earlier today said that the financial challenges experienced during the first six months of the financial year are primarily due to flat revenue attributable to the 2.2% price increase for 2017/18 and sales volumes declining by 1.9%, exacerbated by escalating municipal arrear debt. "There was also the 2016/17 audit qualification on irregular expenditure which has led to access to funding being restricted," he said.

Hadebe ( #eskom\_ceo ) said Eskom has had a series of meetings with the bankers, lenders and investors over the course of last week, and that he was optimistic that Eskom would be able to raise the required funding for its capital investment programme.

"We are in discussions with the domestic financial institutions and the prognosis is positive. We are confident that we will be able to close the current R20 billion funding gap before the end of March 2018," he said.

Due to tough trading conditions that were exacerbated by the qualified audit opinion and lapses in corporate governance, Eskom's funding plans were limited during the period under review, resulting in a constrained liquidity position.

Eskom's Acting Chief Financial Officer, Calib Cassim said EBITDA (earnings before interest, tax, depreciation and amortization) decreased to R30 billion compared to R32 billion in the same period last year. Cash from operations also reduced to R22 billion from R32 billion. The liquidity position also slipped from R30 billion to R9 billion.

Revenue decreased by 2% to R96 billion, which is attributable to declining sales volumes and a 2.2% tariff increase for the 2017/18 financial year.

Cassim said good progress has been made and he is confident that the qualified audit opinion that was raised by Eskom's external auditors in the 2016/17 financial year would be closed out by year-end.

Eskom Chairperson Jabu Mabuza said that the new board, which has already met two times last week, has to take decisive action and find credible solutions to the complex challenges that impede Eskom's sustainability.

"As the Board, we strongly believe that what underpins the stabilisation of Eskom is fulfilling our duty to improve trust and restore investor confidence in order to access financial markets and to re-establish the credibility of this strategic

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organisation, which will be celebrating its 95th anniversary in March. The issuing of the interim results today is one of the many more necessary steps in the journey of its renewal," said Mabuza. 297

Commenting on rating agency Moody's decision to downgrade Eskom last week, Mabuza said: "The decision by Moody's to downgrade the company's rating on Friday is understandable but stands as a beacon of motivation to double our efforts in our united purpose to ensure financial sustainability. We are mindful that this will not be easy, but as a collective we have the skills, the strength and the courage to turn things around."

He added that: "Our mandate is non-negotiable: we need to root out financial mismanagement, malfeasance and maladministration as a critical foundation to restoring transparent and effective governance. We also need to entrench financial and business discipline in order to rebuild confidence in this great institution."

Eskom's efforts to improve trust and restore investors' confidence received a boost when five senior officials who were implicated in corporate governance lapses and impropriety left the employ of Eskom last week, including former chief financial officer Anoj Singh who resigned.

The investigations on other senior managers and executives who are implicated in various allegations of impropriety are ongoing, and disciplinary action will be taken against those whom evidence of misconduct exists.

"I believe that through a display of inspirational and ethical leadership, and through a collaborative and diligent approach between the Board, the Executive Committee and the 47 000 Eskom employees who are proud, and committed to living in, and serving, South Africa, Eskom remains motivated to move towards a successful future - to deliver on our mandate and to remain South Africa's trusted and credible electricity supplier," he said.

"With the right people and support structures in place, of priority is entrenching financial and business discipline as a foundation to restoring the credibility and integrity of the utility with financial markets. These are some of the key principles that are critical to stabilise, reform and ultimately set Eskom up for sustained success."

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AUD/ZAR

• 9.28 (-0.21%)

## Poor leadership drove Eskom to brink - new interim CEO

Jan 30 2018 15:26 Yolandie Groenewald

Johannesburg - According to new interim CEO Phakamani Hadebe, Eskom's poor leadership sparked the crisis that led to its financial woes.

Eskom announced its results for the six months to end-September on Tuesday. This showed the power utility's going concern status is indeed in question at the end of the cycle. Eskom's interim revenue declined by 2% to R95.5bn. Its after-tax profit plunged by 34% to R6.3bn from R9.5bn in the previous comparable period.

Hadebe said Eskom ended up with financial problems and a liquidity issue because of poor leadership, adding that the power utility faced considerable financial challenges in the last six months. Concerning liquidity, Eskom reached the point where funders felt they could no longer engage with the company, Hadebe said.

"But I am confident that Eskom can turn the corner," Hadebe said. However, he emphasised that Eskom can't simply keep on borrowing to stay afloat.

The interim CEO said the poor financial results were a product of an operative model that was "not so sufficient" in dealing with the key challenges Eskom faced.

"If we can deal with key challenges, Eskom will be in (a) total different league."

- **READ:** Eskom cash crunch concerns mounting, despite denials

### Camel's back

Hadebe said what has broken the back of the camel "which is Eskom" was firstly last year's qualified audit report, which was primarily due to irregular expenditure, and poor leadership. This could have been avoided, he said.

Secondly, the corporate governance breakdown led to the liquidity issues, because lenders had lost trust in the state entity.

Hadebe said Eskom would also engage energy regulator Nersa about tariff increases in a transparent manner, as Eskom's mounting debt is not the answer for the future sustainability of the state utility.

New Eskom chair Jabu Mabuza said the new board has started to form the foundation of restoring credibility.

"It will not be easy. But as collective we have the skills. Our mandate is non-negotiable."

### Review of contracts



Eskom acting CEO Phakamani Hadebe (Photo: Galo Images)

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He said the plan is on track to address the weakness auditors raised. "Irregular expenditure can be expected at year end, but should not result in an audit qualification," he said

Both Cassim and Hadebe reiterated irregular expenses did not imply fruitless and wasteful expenditure

Eskom will now have to convince auditors at the end of the year that it is a going concern, he said. It was forced to announce its long-awaited interim results on Tuesday, after its bonds faced suspension from the JSE.

• **READ: JSE scare forces Eskom to release results**

The bourse warned the state utility it would delist Eskom's bonds if it does not release its interim financial report within the three months stipulated by its debt listing requirements.

#### Worries about going concern

Cassim said the results were delayed because auditors were concerned about Eskom as a going concern, and Eskom was eager to engage to ensure that it was not handed a qualified audit again

The auditors said they were not convinced the company was out of the woods, and cautioned users about Eskom's abilities going forward. Its external auditors issued an unqualified review conclusion, but with an emphasis of matter regarding Eskom's going concern position.

Eskom's flat revenue is attributable to the 2.2% price increase for 2017/18 and a 1.9% drop in sales volumes, exacerbated by escalating municipal arrear debt. Because of the qualified audit, access to funding was restricted.

Hadebe said the government has to prioritise the resolution of governance and liquidity concerns affecting Eskom, and managing liquidity is a key focus area.

Eskom's revenue was R96bn, down by 2%. The state utility's liquid assets declined by 64% year-on-year to R16bn, as opposed to the R44bn of the previous year.

• **READ: JSE may suspend Eskom's bonds over late financials**

#### 'Teetering on edge of insolvency'

Fin24 reported in November that the power utility's poor governance had left it teetering on the edge of insolvency, with only R1.2bn of liquidity reserves expected to be in hand at the end of November. Hadebe confirmed at the announcement that all the reports were correct.

• **READ: EXCLUSIVE: Eskom's cash dries up**

Its latest report to its shareholder representative, Public Enterprises Minister Lynne Brown, estimated that the utility would have a R5bn negative liquidity position by the end of January. It also emerged in a Mail & Guardian report that the utility had to raise R20bn and R12.5bn last week to meet its immediate cash flow requirements.

Hadebe admitted that the R20bn is a concern. "Engagements on the R20bn has started. We are confident that we have R20bn in our account to meet the requirements."

The power utility's debt was downgraded by ratings agency Moody's on Friday.

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## Statement on measures to strengthen governance at Eskom

20 January 2018



Government today announces a number of measures to strengthen governance at Eskom, including the appointment of new board members and stabilising management at the energy parastatal.

This follows a meeting of President Jacob Zuma, Deputy President Cyril Ramaphosa, Public Enterprises Minister Lynne Brown and Minister of Finance Malusi Gigaba on Friday 19 January 2018 to address urgent challenges at the company. This intervention will be ratified by Cabinet at its next meeting.

Eskom is critical to the South African economy. As a key enabler of economic growth and social transformation, any further deterioration of Eskom's financial and operational conditions could have a severe impact on the country.

The company has been facing several challenges, including a weak financial position, declining revenues and governance failures, which are threatening the sustainability of the company going forward.

As a result, government has decided on the following immediate measures to strengthen governance and management. This is the first step towards restoring confidence in the company, improving its financial position and restoring its operational performance.

**The appointment of new board members:**

The new board will consist of:

1. Mr Jabu Mabuza as Chairperson
2. Mr Sifiso Dabengwa
3. Ms Sindi Mabaso-Koyana
4. Mr Mark Lamberti
5. Prof Tshepo Mongalo
6. Prof Malegapuru Makgoba
7. Ms Busisiwe Mavuso
8. Ms Nelisiwe Magubane
9. Dr Rod Crompton
10. Mr George Sebulela
11. Dr Pulane Molokwane
12. Dr Banothile Makhubela
13. Ms Jacky Molisane

#### **Stabilising management:**

Government has recommended the appointment of Mr Phakamani Hadebe as the Acting Group Chief Executive with immediate effect.

Further, the board is directed to appoint a permanent Group Chief Executive and Group Chief Financial Officer within the next three months.

The board is directed to immediately remove all Eskom executives who are facing allegations of serious corruption and other acts of impropriety, including Mr Matshela Koko and Mr Anoj Singh.

Government further calls on all Eskom employees and other stakeholders who may have evidence of wrongdoing to bring this to the attention of law enforcement agencies so that culprits can be brought to book.

The Ministers of Public Enterprises, Energy and Finance will work together under the leadership of the Deputy President, to deal with other structural issues, which include the funding model and other industry challenges identified by the Inter-Ministerial Committee on SOE Reform.

Deputy President Cyril Ramaphosa, Chair of the Inter-Ministerial Committee on SOE Reform, said: "We are confident this intervention will restore the important contribution Eskom makes to our economy. We are determined to address the damage that has been done to this institution and place it on a new path of efficiency and integrity.

"Government calls on all stakeholders, employees, suppliers and members of the public to work together to ensure that these measures are successful.

"For South Africa to flourish, Eskom must work and work well," he said.

With the appointment of the new board and acting Group Chief Executive, government firmly believes that Eskom can be returned to financial sustainability and contribute positively to the objective of shared prosperity.

Government will continue to act decisively to address challenges at key state owned enterprises

to restore public and investor confidence and to ensure that they fulfil their economic and developmental mandates. 302

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A 1.4% delay in

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▲ 14.55 (0.12%)

GBP/ZAR

▲ 16.37 (0.09%)

JPY/ZAR

▲ 0.11 (0.37%)

USD/ZAR

▲ 15.79 (-0.61%)

AUD/ZAR

▲ 3.20 (0.31%)

## Eskom could collapse SA economy, warns Gigaba

Jan 12 10:10:50 Yolanda Groenewald

Johannesburg - Finance Minister Malusi Gigaba warned on Thursday that if Eskom is not dealt with urgently, South Africa's whole economy could collapse by the time Team SA returns from the World Economic Forum (WEF) in Davos.

Gigaba said at a pre-WEF breakfast meeting in Johannesburg that the focus simply does not have the funds to bail out Eskom. He hinted that a major shake-up is on the cards for the power utility in the next few days.

"There would be no currency, and no economy for the country if Eskom went belly-up," Gigaba warned, adding that the crisis is extremely serious.

The finance minister also said there are problems at Eskom's board and senior management, who simply don't seem to grasp the seriousness of the situation.

- **READ:** Disdain grows for Eskom's hardly new board

Eskom is yet to publish its interim results, and could face severe penalties if it these are not made public before the end of the month, including lenders calling in loans.

Deputy President Cyril Ramaphosa also admitted at the breakfast that the challenges around Eskom are huge, and said the state-owned enterprise is top of mind. Ramaphosa will chair the South African delegation in Davos.

"The minister of finance is seized with this on an hourly basis," he said in answer to a question on the seriousness of Eskom's financial woes.

"Eskom is being addressed as we speak. We are coming up with solutions."

On Tuesday Gigaba said that Eskom is the biggest issue keeping him awake at night. He told reporters he would be meeting with lenders that afternoon.

Eskom's debt due to its new build programme is hefty. Treasury has issued R350bn of government guarantees to Eskom, of which R275bn has already been used. It needs to borrow about R60bn per year for the next four years to finish the new build programme, consisting out of Medupi and Kusile.

Gigaba said at the breakfast that the new urgent timeline did not come about as a result of the meeting with lenders, but because of new information which has come to light.

He has drawn up a new timeline because of new facts which have come to his attention, which require the finance ministry to act with the utmost urgency.

- **READ:** Gigaba had meeting with World Bank on Eskom

At an International Monetary Fund meeting in October, Gigaba already said that lenders had urged

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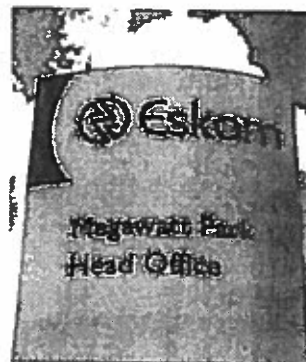
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"We have reached the stage where we can't be gradualist. We need to act now," he said.

Business Leadership SA CEO Bonang Mohale, meanwhile, also told reporters that Eskom is a huge concern. He said many BLSA members are banks that have lent money to Eskom.

"We have had conversations with them, urging to give Eskom slack, that government is now acting," he said.

Fin24 in November reported that the power utility's poor governance had left it teetering on the edge of insolvency, with only R1.2bn of liquidity reserves expected to be in hand at the end of the November.

In its latest report to its shareholder representative, Public Enterprises Minister Lynne Brown, estimated that the utility would have a R5bn negative liquidity position by the end of this month.

• **READ: EXCLUSIVE: Eskom's cash dries up**

Poor corporate governance has alienated the facility and the reinstatement of controversial executive Matshela Koko has not boosted confidence. Koko was reportedly negotiating a golden handshake, Business Day reported on Thursday after charges against him had been dismissed and the executive reported for duty at Eskom last week.

His disciplinary hearing has been widely criticised as a sham.

A further two Eskom bosses, Anoj Singh and Abram Masango, are still to have their disciplinary hearings. Eskom spokesperson Khulu Phasiwe told Fin24 allegations against them are still being investigated before a decision to charge them will be made.

• **READ: Big business bashes Koko's reinstatement**

In August Eskom narrowly avoided a crisis when its lenders threatened to recall their loans. The power utility was only saved at the time by an intervention to suspend Singh Phasiwe earlier told Fin24 that Eskom would not approach Treasury for a bailout.

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**MOODY'S**  
**INVESTORS SERVICE**

**Rating Action: Moody's downgrades Eskom's ratings to B1/B2/Baa2.za NSR; review for downgrade**

26 Jan 2018

London, 26 January 2018 – Moody's Investors Service ("Moody's") has today downgraded to B1 from Ba3 the long-term corporate family rating (CFR) of Eskom Holdings SOC Limited (Eskom) and the zero coupon eurobonds to B1 from Ba3 in line with the CFR. Concurrently, Moody's has downgraded to (P)B2/B2 from (P)B1/B1 the global medium term note (GMTN) programme and the senior unsecured GMTNs of Eskom. It has downgraded the probability of default rating (PDR) to B1-PD from Ba3-PD. The national scale rating (NSR) long-term corporate family rating has been downgraded to Baa2.za from A3.za. All ratings remain under review for further downgrade.

A full list of affected ratings is provided towards the end of this press release.

**RATINGS RATIONALE**

Today's rating action reflects the deterioration in Eskom's financial and liquidity position with no prospect of a near term equity injection by the government to shore up its weak financial profile. At the same time, the pressure on credit quality is mitigated by the strong likelihood that the steps announced on 20 January 2018 by Deputy President Ramaphosa, including replacing the Eskom Board, together with the support of the National Treasury, will allow the company to secure sufficient funding to address a looming liquidity crisis.

The company will, however, need to re-establish and maintain good access to the domestic and international debt markets if it is to meet ongoing liquidity needs, continue to refinance existing debt as it falls due and fund investments. Accordingly, the ratings remain under review for downgrade, pending (1) evidence of the company's ability to meet its financing needs and stabilise its financial position; and reflecting (2) the potential deterioration of the South African government's credit profile, in particular in the country's institutional, economic and fiscal strength, as captured by Moody's November 2017 decision to place South Africa's Baa3 government bond ratings on review for downgrade. For further information, refer to the sovereign press release ([https://www.moody.com/research/-PR\\_375816](https://www.moody.com/research/-PR_375816)).

Eskom has faced mounting liquidity risks in recent weeks, primarily driven by lenders' unwillingness to provide additional funding to the company in the context of serious questions around corporate governance, a lack of leadership and failing trust in the company. The government's announcement, on 20 January 2018, seeking to address these issues through the replacement of the existing Eskom Board members and the plan to tackle long term funding and structural issues is a positive first step towards restoring confidence in the company and, over time, operational performance and its financial position.

The rating action also factors in the December 2017 decision by the National Energy Regulator of South Africa (NERSA) to allow Eskom to increase revenue by 5.23% in FY2018/19, well short of the 19.9% proposed by the company. This decision follows a 2.2% tariff increase for 2017/18 and will put further pressure on the company's already weak cash flow. Nonetheless, NERSA have announced that they will consider Eskom's ZAR66 billion application for under-recoveries and overspending relating to the three prior years, which would benefit the company. Given users' sensitivity to tariff increases, these amounts may take some time to be monetised.

Moody's views positively the government's statement that the Ministers of Public Enterprises, Energy and Finance will work together under the leadership of the Deputy President to deal with structural issues including the funding model and other industry challenges. Nonetheless, the company's challenges are complex and are likely to take time to resolve. In addition to low tariff increases and a lack of visibility around their future development, the company faces (1) stagnant demand, potentially driving declining output from coal fired generation plants as renewables output increases; and (2) a large committed capex programme including the final units of the coal fired Medupi and Kusile power plants. Absent significant tariff increases or reductions in costs and investment, Eskom's large debt burden, amounting to ZAR365 billion as of 31 March 2017, will continue to rise - to potentially unsustainable levels - and will, in any event, continue to weigh on its very weak financial metrics. Moody's nonetheless expects the company, under its new management, to continue to focus on improving operational efficiencies and trimming capex where possible.

Eskom's ratings reflect the application of Moody's rating methodology for government related issuers (GRIs) which combines an assessment of the company's fundamental credit strength or Baseline Credit Assessment (BCA), the government rating and the likelihood of government support in case of distress.

The ratings benefit to a significant extent from Moody's assumption of a strong level of government support in the event of financial distress. This is underpinned by Eskom's strategic importance to the government's social and economic policy as the country's dominant electricity supplier and this view is further reinforced by the ZAR350 billion Guarantee Framework Agreement (GFA) available until 31 March 2023. Moody's understands that around ZAR208 billion, covering over 50% of Eskom's debt, is currently utilised and a significant proportion of the remainder is designated for the completion of Eskom's capital projects.

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The shift in Moody's view of the BCA of Eskom to caa2 from caa1 reflects a deterioration in the credit quality as described above and reflects that, whilst evidencing strong support, the government has stopped short of providing further direct support, such as through additional capital injections, to shore up Eskom's financial profile.

The one notch differential between the zero coupon Eurobonds and the GMTNs reflects that the former benefit from section 7 of the Eskom Conversion Act, 2001.

#### WHAT COULD MOVE THE RATING DOWN/UP

Eskom's ratings are under review pending resolution of (1) near term liquidity issues and (2) the sovereign rating which remains under review.

Eskom's ratings could be confirmed if the company demonstrates an ability to meet its funding needs.

The ratings could be downgraded if (1) the company's near term liquidity failed to stabilise; (2) the company subsequently failed to put in place a sustainable long term business, financial and funding plan; (3) Moody's assessment of strong government support for the company were to be revised downwards; and/or (4) the sovereign rating were to be downgraded.

#### LIST OF AFFECTED RATINGS

Issuer: Eskom Holdings SOC Limited

##### Downgrades:

....LT Corporate Family Rating , downgraded to B1 from Ba3; remains under Review for further Downgrade

....Probability of Default Rating , downgraded to B1-PD from Ba3-PD; remains under Review for further Downgrade

....NSR LT Corporate Family Rating, downgraded to Baa2.za from A3.za; remains under Review for further Downgrade

....Senior Unsecured MTN Program, downgraded to (P)B2 from (P)B1; remains under Review for further Downgrade

....Senior Unsecured Regular Bond/Debenture, downgraded to B2 from B1; remains under Review for further Downgrade

....Senior Unsecured Regular Bond/Debenture, downgraded to B1 from Ba3; remains under Review for further Downgrade

Outlook remains Rating under Review

The methodologies used in these ratings were Government-Related Issuers published in August 2017, and Regulated Electric and Gas Utilities published in June 2017. Please see the Rating Methodologies page on [www.moody's.com](http://www.moody's.com) for a copy of these methodologies.

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DL15<sup>DL15</sup>  
BT1

**From:** Atul Gupta<atul@ann7.com>  
**Sent on:** Friday, September 18, 2015 8:45:18 PM  
**To:** Varun(Oakbay) <varun@oakbay.co.za>; shivani@singhala.com; Tony Gupta <tony@sahara.co.za>  
**Subject:** Fwd: info  
**Attachments:** 1115\_001.pdf (834.43 KB), BDlive - Print Article.pdf (290.8 KB), BDlive - Print Article2.pdf (59.17 KB), image002.png (7.36 KB), 115091809422402206.gif (30.35 KB)

Hi Varun,

Please discuss with Mama and also reply accordingly.

Thanks

Atul Gupta

Chairman, TNA Media Pty Ltd

The correspondence was transmitted electronically without signature.

Begin forwarded message:

From: Mark Pamensky <markp@blts.co.za [mailto:markp@blts.co.za] >

Date: 18 September 2015 at 11:42:18 GMT+4

To: "atul@ann7.com [mailto:atul@ann7.com]" <atul@ann7.com [mailto:atul@ann7.com]>, "varun@shiva-u.com [mailto:varun@shiva-u.com]" <varun@shiva-u.com [mailto:varun@shiva-u.com]>, "Trevor Scott (trevors@oakbay.co.za [mailto:trevors@oakbay.co.za])" <trevors@oakbay.co.za [mailto:trevors@oakbay.co.za]>, "Dudu Nyamane (dnyamane@gmail.com [mailto:dnyamane@gmail.com])" <dnyamane@gmail.com [mailto:dnyamane@gmail.com]>, "Rensen, Terry" <twr@bca.co.za [mailto:twr@bca.co.za]>

Subject: info

[http://www.blts.co.za/]

-

This message has been scanned for viruses and

dangerous content by MailScanner [http://www.mailscanner.info/], and is

believed to be clean. IMG [cid:9b2ee71f-2fb2-45bf-b3f5-c10f10823fbc@internal.lan]

[http://www.blts.co.za/]

Hi All,

  
bel

Please find attached documentation(below are the web-links) for information purposes including Eskom's new procurement methods for coal.

This was one of the coal mines that I wanted us to buy. We need to move fast on certain asset acquisitions as Sibanye is picking up all these assets at low valuations which is what we should be doing. We should also look to do a deal with Eskom on the coal plus mines. I have some good thoughts on these assets that can we a win win for Eskom, the mine owners and ourselves.

Have a good weekend.

Kind regards

Regards,

Mark Pamensky

Chief Operating Officer

IMG [cid:489f3887-8d05-44be-8689-d348123fb0bb@internal.ian]

Direct Line : +27 11 523 3098

Office Line : +27 11 523 3030

Fax : +27 11 523 3031

Fax to email : +27 86 680 9896

Email : markp@blts.co.za [mailto:markp@blts.co.za]

Web : www.bluelabeltelecoms.com [http://www.bluelabeltelecoms.com/]

For Disclaimer and Confidentiality Note: (click here)  
[http://www.bluelabeltelecoms.co.za/mail\_disclaimer.php]

PPlease consider your environmental responsibility before printing this e-mail

<http://www.bdlive.co.za/business/mining/2015/09/17/sibanye-agrees-terms-with-waterberg-coal-group> [http://www.bdlive.co.za/business/mining/2015/09/17/sibanye-a...]

<http://www.bdlive.co.za/business/mining/2015/09/18/sibanye-seals-coal-deal-in-bid-to-get-off-eskom-grid> [http://www.bdlive.co.za/business/mining/2015/09/18/sibanye-s...]



DL16 DL 16  
BT7

From: Atul Gupta <atul@ann7.com>

Sent on: Sunday, November 22, 2015 8:08:55 PM

To: shivani@singhala.com; Rajesh Gupta Tony <tony@sahara.co.za>

Subject: Fwd: Meeting of even date.

Sent from my iPhone6+

Begin forwarded message:

From: MARK PAMENSKY <markpam2@mac.com>

Date: 22 November 2015 at 7:40:12 PM SAST

To: [atul@ann7.com](mailto:atul@ann7.com)

Cc: [varun@shivau.com](mailto:varun@shivau.com)

Subject: Meeting of even date.

Hi Chair,

Thank you for the conversation today. I will action all the items and ensure that they are completed.

I will send a mail to Terry regarding the lead independant role, and that you as chairman, have decided to take a more conservative approach and would like to appoint him. This is the correct business decision for ORE.

We will have the shiva uranium board sorted out by Tuesday. This will allow us to vote on the Tegeta acquisition with no related parties. I would like to conclude this approval urgently so ORE and Shiva Uranium can implement the transaction.

In terms of investment committee I am available to start straight away. As I'm at the tail end of the main acquisition of Optimal Coal, please ensure that a condition precedent is that the R2bn claim from Eskom is withdrawn or it becomes the sellers problem. I'm happy to get involved to assist with this acquisition and monthly monitoring/analyzing of all investments from today. I can meet anyone your require. If you need me in India or Dubai to discuss, I'll meet you there.

Travel safe and look forward to seeing you soon. Once again thank you for today.

Kind regards

Mark.

Sent from my iPhone

DL17<sup>DL17</sup>  
BT 2

From: Atul Gupta <atul@ann7.com>

Sent on: Wednesday, November 25, 2015 4:24:07 AM

To: varun@oakbay.co.za; Shivani <shivani@singhala.com>; Rajesh Gupta  
Tony <tony@sahara.co.za>

Subject: Fwd: Update

Hi Varun

Discuss with both Mamas and talk to Mark ASAP.

Thanks

Atul Gupta

Chairman, TNA Media Pty Ltd

The correspondence was transmitted electronically without signature.

Begin forwarded message:

From: MARK PAMENSKY <markpam2@mac.com [mailto:markpam2@mac.com]>

Date: 25 November 2015 at 00:47:03 GMT+4

To: atul@ann7.com [mailto:atul@ann7.com]

Cc: markpam2@mac.com [mailto:markpam2@mac.com]

Subject: Fwd: Update

Hi Chair,

I would like to discuss the following:-

1/ Concept on the potential law suit from Eskom to target Co;

2/ Copies of the DD reports when completed so I can comment, including the working capital/cash flow forecasts as they stand currently.

Please let me know if I'm overstepping the boundary. If not, who can I discuss same with.

This in my opinion links to investment committee and coordination there of.

Look forward to hear from you.

Mark

Sent from my iPhone

Begin forwarded message:

From: MARK PAMENSKY <markpam2@mac.com [mailto:markpam2@mac.com]>



Date: 24 November 2015 at 22:40:57 SAST

To: atul@ann7.com [mailto:atul@ann7.com]

Cc: varun@shivau.com [mailto:varun@shivau.com] , Trevor Scott <trevors@oakbay.co.za [mailto:trevors@oakbay.co.za] >

Subject: Update

Hi Chair,

The lead independent ("LID") SENS announcement will go out tomorrow with the interim results SENS announcement. This is more advantages instead of a stand alone SENS announcement of the LID. We can ratify the resolution on your return.

Further, I'm going to ask Varun and Trevor to meet with me or telephonically, so I can understand how we going to manage this target company, including where are the accounts going to operate from etc. we need strong internal controls.

I think we must plan this now as I understand take over date to be 1 Jan.

Thanks

Mark

Sent from my iPhone


DL18-18  
BT69

From: Atul Gupta <atul@ann7.com>

Sent on: Sunday, January 31, 2016 4:26:08 AM

To: shivani@singhala.com; Rajesh Gupta Tony <tony@sahara.co.za>

Subject: Fwd: Telephone call

Sent from my iPhone6+

Begin forwarded message:

From: Mark pamensky <markpam14@gmail.com [mailto:markpam14@gmail.com]>

Date: 31 January 2016 at 12:39:48 AM GMT+4

To: Nazeem Howa <nazeemh@tnamedia.co.za [mailto:nazeemh@tnamedia.co.za]>

Cc: "atul@ann7.com [mailto:atul@ann7.com]" <atul@ann7.com [mailto:atul@ann7.com]>

Subject: Re: Telephone call

Hence my thinking is for me to revert back tomorrow and ask him to bear 100% of the employment staff that we intend to retrench acting reasonably and to not charge us shared services until we transfer across the accounting and systems for a max period of 6 months. Normally in a deal of this size, these elements come across with the business. This is a show of good faith from them.

Let's discuss tomorrow when you have a chance. I know what his argument will be but we can counter it.

Thanks

Sent from my iPhone

On 30 Jan 2016, at 22:32, Nazeem Howa <nazeemh@tnamedia.co.za [mailto:nazeemh@tnamedia.co.za]> wrote:

Interesting

Nazeem Howa

Chief Executive

On 30 Jan 2016, at 21:57, Mark pamensky <markpam14@gmail.com [mailto:markpam14@gmail.com]> wrote:

<image2.png>

Sent from my iPhone

On 30 Jan 2016, at 21:11, Mark Pamensky <markp@blts.co.za [mailto:markp@blts.co.za]> wrote:

Hi Sir's



Just for info purposes but Clinton called me now to make sure that I reply back to you that Ivan is 100% behind the closing of the deal and that Glencor are not behind these press statements. I don't believe him about the press but do believe him about the fact the closing the deal is important to Glencor. The fact is that Eskom will not deal with Glencor and the business practitioner mentioned same to me.



Clinton was really concerned that I relay the message and ensure the deal closes.

These guys are not to be trusted in any way, form or shape but I have to pass on the message.

Thanks

Mark

Sent from my iPhone



DL19<sup>DL 19</sup>  
BT10

**From:** Atul Gupta <atul@ann7.com>  
**Sent on:** Tuesday, November 17, 2015 9:42:19 PM  
**To:** shivani@singhala.com; Rajesh Gupta Tony <tony@sahara.co.za>  
**Subject:** Fwd: Discussion  
**Attachments:** 115111721220400543.gif (30.35 KB)

FYI

Sent from my iPhone6+

Begin forwarded message:

From: Mark Pamensky <markp@blts.co.za [mailto:markp@blts.co.za] >

Date: 17 November 2015 at 21:21:59 SAST

To: "atul@ann7.com [mailto:atul@ann7.com]" <atul@ann7.com [mailto:atul@ann7.com] >

Cc: Mark Pamensky <markp@blts.co.za [mailto:markp@blts.co.za] >

Subject: Discussion

IMG (0) [http://www.blts.co.za/]

Hi Chair,

Hope you well. I wanted to have a chat with you on the lead independant role.

Based on ORE potential acquisition of Tegeta which has a contract with Eskom. I sit on the Eskom board and this can perceived to be a potential conflict as lead independent. I would then be independent.

I have got an opinion on this from external counsel and they believe it not to be an issue as do I.

This is a state of mind, and I don't believe there is any conflict whatsoever. I'm not involved at Eskom on those decisions. Those sit with tender board and I only chair the Investment committee and main board. These decisions are not taken at board level either.

I bring this to you attention so we can discuss in person. I don't want to cause any harm or potential press to ORE, if any. Terry can take that position if you chose, as an alternative solution, should you believe a conflict from my side and/or want to be very conservative.

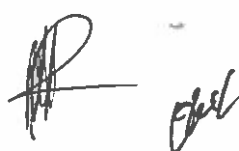
Can we meet prior to board meeting for few minutes.

Look forward to hear from you.

Kind regards

Mark.

Sent from my iPho



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## AFFIDAVIT

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I, the undersigned,

BENJAMIN [REDACTED] THERON

do hereby make oath and state:

1.

I am an adult male employed as a Chief Operating Officer by the Organisation Undoing Tax Abuse (OUTA) with business address 10<sup>th</sup> Floor, O'Keeffe & Swartz Building, 318 Oak Street, Ferndale, Randburg, Gauteng.

2.

The contents of this affidavit fall within my personal knowledge, unless stated otherwise and are in all aspects true and correct.

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**MANDATE**

3.

The Organisation Undoing Tax Abuse ("OUTA") is a proudly South African non-profit civil action organisation comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority with regards to taxpayers' money in South Africa.

4.

In recent months, headlines have been dominated by the leaked Gupta emails and documents ("Gupta emails") which were retrieved from the server of SAHARA Computers Pty (Ltd). These Gupta emails have substantiated most of the allegations pertaining to state capture and have unveiled evidence of misconduct by the Gupta family and many high-ranking government officials. OUTA has access to the emails, established the authenticity of such and released an extensive report on state capture on 28 of June 2017 titled "No room to hide: A President caught in the act."

5.

Amongst the emails and documents, were evidence of conduct that constitutes crimes of corruption and contraventions of the Public Finance Management Act 1 of 1999 ("PFMA") and the Companies Act 71 of 2008 ("the Act") on the part of Mark Vivian Pamensky

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("Pamensky"), who was a non-executive director at Oakbay Resources and Energy as well as a non-executive director at Eskom.

### BACKGROUND

6.

Shortly after her appointment as Minister of Public Enterprises in May 2014, Minister Lynne Brown ("Brown") recommended the appointment of a new Eskom Board to Cabinet. Cabinet confirmed the appointments in line with Brown's recommendation on 11 December 2014.

7.

These appointments included numerous individuals who had personal or business relationships with the Gupta family and their close business associates. One such person was Pamensky who sat on the board of the Gupta's Oakbay Resources and Energy (Pty) Ltd ("Oakbay") from September 2014 until May 2017.

8.

Pamensky also served as a director on the boards of numerous other companies in which the Guptas hold a stake, including Shiva Uranium (Pty) Ltd, Yellow Star Trading 1099 (Pty) Ltd, and BIT Information Technology (Pty) Ltd. Pamensky also had a direct business interests in Oakbay and Shiva Uranium and is a known friend of Salim Essa, who is part

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of the Gupta group of businesses. Pamensky has served as a non-executive director of Eskom from 11 December 2014 to November 2016.

9.

In his role as Non-Executive Board member of various companies, Pamensky was the conduit for the flow of privileged information between the companies. A copy of emails dated 18 September 2015, 25 November 2015, 3 December 2015 and 10 December 2015 which evidences same, are attached as Annexure "BT 1", "BT 2", "BT 3" and "BT 4" respectively.

10.

Pamensky further used his position and authority as non-executive board member on various boards to influence decisions and manipulate the outcomes of the various committees that he sat on. Copies of emails dated 29 October 2014, 7 September 2015, 22 November 2015, 19 January 2016 and 30 January 2016 which evidences same, are attached as Annexure "BT 5", "BT 6", "BT 7", "BT 8" and "BT 9" respectively.

11.

Pamensky failed to recuse himself from decisions in which conflicts of interest arose between his various stakes in business. Such failure to recuse himself aides in his willingness to assist in dubious transactions. A copy of an email dated 17 November 2015 which evidences same, is attached as Annexure "BT 10".

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**CHARGES**

## 12.

Section 76 of the Companies Act 71 of 2008 ("the Act") sets out the standards of directors' conduct:

- "(1) In this section, 'director' includes an alternate director, and-
- (a) a prescribed officer; or
  - (b) a person who is a member of a committee of a board of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company's board.
- (2) A director of a company must-
- (a) not use the position of director, or any information obtained while acting in the capacity of a director-
    - (i) to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or
    - (ii) to knowingly cause harm to the company or a subsidiary of the company; and
  - (b) communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director-
    - (i) reasonably believes that the information is-
      - (aa) immaterial to the company; or

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- (bb) generally available to the public, or known to the other directors; or
  - (ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality.
- (3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director-
  - (a) in good faith and for a proper purpose;
  - (b) in the best interests of the company; and
  - (c) with the degree of care, skill and diligence that may reasonably be expected of a person-
    - (i) carrying out the same functions in relation to the company as those carried out by that director; and
    - (ii) having the general knowledge, skill and experience of that director.
- (4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of director, a particular director of a company-
  - (a) will have satisfied the obligations of subsection (3) (b) and (c) if-
    - (i) the director has taken reasonably diligent steps to become informed about the matter;
    - (ii) either-
      - (aa) the director had no material personal financial interest in the subject matter of the decision, and had no reasonable basis

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- to know that any related person had a personal financial interest in the matter; or
- (bb) the director complied with the requirements of section 75 with respect to any interest contemplated in subparagraph (aa); and
- (iii) the director made a decision, or supported the decision of a committee or the board, with regard to that matter, and the director had a rational basis for believing, and did believe, that the decision was in the best interests of the company; and
- (b) is entitled to rely on-
- (i) the performance by any of the persons-
- (aa) referred to in subsection (5); or
- (bb) to whom the board may reasonably have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law; and
- (ii) any information, opinions, recommendations, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (5)."

13.

Section 213 of the Act states that:

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- "(1) It is an offence to disclose any confidential information concerning the affairs of any person obtained-
- (a) in carrying out any function in terms of this Act; or
  - (b) as a result of initiating a complaint, or participating in any proceedings in terms of this Act."

## 14.

In terms of section 214 of the Act:

- "(1) A person is guilty of an offence if the person-
- (a) is a party to the falsification of any accounting records of a company;
  - (b) with a fraudulent purpose, knowingly provided false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person;
  - (c) was knowingly a party to an act or omission by a company calculated to defraud a creditor or employee of the company, or a holder of the company's securities, or with another fraudulent purpose; or
  - (d) is a party to the preparation, approval, dissemination or publication of a prospectus or a written statement contemplated in section 101, that contains an 'untrue statement' as defined and described in section 95."

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Any person convicted of an offence in terms of this Act, is liable in the case of a contravention of section 213 (1) or 214 (1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment (section 216 of the Act).

## 16.

The fiduciary duties and general responsibilities of an accounting authority in terms of the PFMA, are stipulated in section 50 and section 51:

"50(1) The accounting authority for a public entity must-

- (a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
- (b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
- (c) on request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and
- (d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state."

"(3) A member of an accounting authority must-

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- (a) disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and
- (b) withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant."

17.

"51(1)An accounting authority for a public entity-

- (a) must ensure that that public entity has and maintains-
  - (i) effective, efficient and transparent systems of financial and risk management and internal control;
  - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and
  - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
  - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
- (b) must take effective and appropriate steps to-
  - (i) collect all revenue due to the public entity concerned; and

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- (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and
  - (iii) manage available working capital efficiently and economically;
- (c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;
- (d) must comply with any tax, levy, duty, pension and audit commitments as required by legislation;
- (e) must take effective and appropriate disciplinary steps against any employee of the public entity who-
  - (i) contravenes or fails to comply with a provision of this Act;
  - (ii) commits an act which undermines the financial management and internal control system of the public entity; or
  - (iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure; ....
- (h) must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity."

18.

In terms of section 86 of the PMFA:

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- "(2) An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section 50, 51 or 55."

### Corruption

19.

We allege that Pamensky's conduct, as detailed above, constitutes contraventions of the following sections of The Prevention and Combating of Corrupt Activities Act 12 of 2004 ("POCA"):

a. **Section 3** of the POCA, which states:

*"Any person who, directly or indirectly-*

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-*

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- (i) *that amounts to the-*
  - (aa) *illegal, dishonest, unauthorised, incomplete, or biased;*  
*or*
  - (bb) *misuse or selling of information or material acquired in*  
*the course of the, exercise, carrying out or*  
*performance of any powers, duties or functions arising*  
*out of a constitutional, statutory, contractual or any*  
*other legal obligation;*
- (ii) *that amounts to-*
  - (aa) *the abuse of a position of authority;*
  - (bb) *a breach of trust; or*
  - (cc) *the violation of a legal duty or a set of rules,*
- (iii) *designed to achieve an unjustified result; or*
- (iv) *that amounts to any other unauthorised or improper*  
*inducement to do or not to do anything, is guilty of the offence*  
*of corruption."*

b. Section 4 of the POCA, which states:

"(1) Any-

- (a) *public officer who, directly or indirectly, accepts or agrees or*  
*offers to accept any gratification from any other person,*

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*whether for the benefit of himself or herself or for the benefit of another person; or*

(b) *person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-*

(i) *that amounts to the-*

(aa) *illegal, dishonest, unauthorised, incomplete, or biased; or*

(bb) *misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;*

(ii) *that amounts to-*

(aa) *the abuse of a position of authority;*

(bb) *a breach of trust; or*

(cc) *the violation of a legal duty or a set of rules;*

(iii) *designed to achieve an unjustified result; or*

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- (iv) *that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to public officers.*

(2) *Without derogating from the generality of section 2 (4), 'to act' in subsection (1), includes-*

- (a) *voting at any meeting of a public body;*
- (b) *performing or not adequately performing any official functions;*
- (c) *expediting, delaying, hindering or preventing the performance of an official act;*
- (d) *aiding, assisting or favouring any particular person in the transaction of any business with a public body;*
- (e) *aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;*
- (f) *showing any favour or disfavour to any person in performing a function as a public officer;*
- (g) *diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or*

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- (h) *exerting any improper influence over the decision making of any person performing functions in a public body."*

c. **Section 7 of the POCA, which states:**

*"(1) Any-*

- (a) *member of the legislative authority who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*
- (b) *person who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the legislative authority, whether for the benefit of that member or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-*
- (i) *that amounts to the-*
- (aa) *illegal, dishonest, unauthorised, incomplete, or biased; or*
- (bb) *misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional,*

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*statutory, contractual or any other legal obligation;*

*(ii) that amounts to-*

- (aa) the abuse of a position of authority;*
- (bb) a breach of trust; or*
- (cc) the violation of a legal duty or a set of rules;*
- (iii) designed to achieve an unjustified result; or*
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,*

*is guilty of the offence of corrupt activities relating to members of the legislative authority.*

- (2) Without derogating from the generality of section 2 (4), 'to act' in subsection (1) includes-*

- (a) absenting himself or herself from;*
- (b) voting at any meeting of;*
- (c) aiding or assisting in procuring or preventing the passing of any vote in;*
- (d) exerting any improper influence over the decision making of any person performing his or her functions as a member of; or*

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per

- (e) *influencing in any way, the election, designation or appointment of any functionary to be elected, designated or appointed by, the legislative authority of which he or she is a member or of any committee or joint committee of that legislative authority."*

d. **Section 21 of the POCA, which states:**

*"Any person who-*

- (a) *attempts;*
- (b) *conspires with any other person; or*
- (c) *aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person, to commit an offence in terms of this Act,*

*is guilty of an offence."*

e. **Section 34 of the POCA, which states:**

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"(1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed-

(a) an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2;  
or

(b) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more;

must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act, 1995, (Act 68 of 1995)."

20.

In terms of Section 26 of POCA:

"(1) Any person who is convicted of an offence referred to in-

(a) Part 1, 2, 3 or 4, or section 18 of Chapter 2, is liable-


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- (i) *in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment up to a period for imprisonment for life;*
  - (ii) *in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years; or*
  - (iii) *in the case of a sentence to be imposed by a magistrate's court, to a fine or to imprisonment for a period not exceeding five years.*
- (3) *In addition to any fine a court may impose in terms of subsection (1) or (2), the court may impose a fine equal to five times the value of the gratification involved in the offence."*

21.

With reference to the contents of this affidavit, I humbly request that the evidence set out above be thoroughly investigated by the SAPS and other relevant law enforcement authorities.

Signed at RANDBURG on this 14<sup>th</sup> day of AUGUST 2017.

  
DEPONENT



I hereby certify that the deponent declares that the deponent knows and understand the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at **RANDBURG** on this the 14<sup>th</sup> day of August 2017 and the regulations contained in Government Notice R1478 of 11 July 1980 as amended by Government Notice R774 of 20 April 1982 concerning taking an oath have been complied with.

**ANDREA KORFF**  
PRAKTISERENDE PROKUREUR/PRACTISING ATTORNEY RSA  
KOMMISSARIS VAN EDE/COMMISSIONER OF OATHS  
1035 JUSTICE MAHOMED STREET  
BROOKLYN  
TEL: 087 701 5874

  
COMMISSIONER OF OATHS

BT1

**From:** Atul Gupta<atul@ann7.com>  
**Sent on:** Friday, September 18, 2015 8:45:18 PM  
**To:** Varun(Oakbay) <varun@oakbay.co.za>; shivani@singhala.com; Tony Gupta <tony@sahara.co.za>  
**Subject:** Fwd: info  
**Attachments:** 1115\_001.pdf (834.43 KB), BDlive - Print Article.pdf (290.8 KB), BDlive - Print Article2.pdf (59.17 KB), image002.png (7.36 KB), 115091809422402206.gif (30.35 KB)

Hi Varun,

Please discuss with Mama and also reply accordingly.

Thanks

Atul Gupta

Chairman, TNA Media Pty Ltd

The correspondence was transmitted electronically without signature.

Begin forwarded message:

From: Mark Pamensky <markp@blts.co.za [mailto:markp@blts.co.za]>

Date: 18 September 2015 at 11:42:18 GMT+4

To: "atul@ann7.com [mailto:atul@ann7.com]" <atul@ann7.com [mailto:atul@ann7.com]>, "varun@shiva-u.com [mailto:varun@shiva-u.com]" <varun@shiva-u.com [mailto:varun@shiva-u.com]>, "Trevor Scott (trevors@oakbay.co.za [mailto:trevors@oakbay.co.za])" <trevors@oakbay.co.za [mailto:trevors@oakbay.co.za]>, "Dudu Nyamane (dnyamane@gmail.com [mailto:dnyamane@gmail.com])" <dnyamane@gmail.com [mailto:dnyamane@gmail.com]>, "Rensen, Terry" <twr@bca.co.za [mailto:twr@bca.co.za]>

Subject: info

[http://www.blts.co.za/]

-

This message has been scanned for viruses and

dangerous content by MailScanner [http://www.mailscanner.info/], and is

believed to be clean. IMG [cid:9b2ee71f-2fb2-45bf-b3f5-c10f10823fbc@internal.lan]

[http://www.blts.co.za/]

Hi All,



Please find attached documentation(below are the web-links) for information purposes including Eskom's new procurement methods for coal.

This was one of the coal mines that I wanted us to buy. We need to move fast on certain asset acquisitions as Sibanye is picking up all these assets at low valuations which is what we should be doing. We should also look to do a deal with Eskom on the coal plus mines. I have some good thoughts on these assets that can we a win win for Eskom, the mine owners and ourselves.

Have a good weekend.

Kind regards

Regards,

Mark Pamensky

Chief Operating Officer

IMG [cid:489f3887-8d05-44be-8689-d348123fb0bb@internal.lan]

Direct Line : +27 11 523 3098

Office Line : +27 11 523 3030

Fax : +27 11 523 3031

Fax to email : +27 86 680 9896

Email : markp@blts.co.za [mailto:markp@blts.co.za]

Web : www.bluelabeltelecoms.com [http://www.bluelabeltelecoms.com/]

For Disclaimer and Confidentiality Note: (click here)  
[http://www.bluelabeltelecoms.co.za/mail\_disclaimer.php]

PPlease consider your environmental responsibility before printing this e-mail

<http://www.bdlive.co.za/business/mining/2015/09/17/sibanye-agrees-terms-with-waterberg-coal-group> [http://www.bdlive.co.za/business/mining/2015/09/17/sibanye-a...]

<http://www.bdlive.co.za/business/mining/2015/09/18/sibanye-seals-coal-deal-in-bid-to-get-off-eskom-grid> [http://www.bdlive.co.za/business/mining/2015/09/18/sibanye-s...]



BT 2

From: Atul Gupta <atul@ann7.com>

Sent on: Wednesday, November 25, 2015 4:24:07 AM

To: varun@oakbay.co.za; Shivani <shivani@singhala.com>; Rajesh Gupta  
Tony <tony@sahara.co.za>

Subject: Fwd: Update

Hi Varun

Discuss with both Mamas and talk to Mark ASAP.

Thanks

Atul Gupta

Chairman, TNA Media Pty Ltd

The correspondence was transmitted electronically without signature.

Begin forwarded message:

From: MARK PAMENSKY <markpam2@mac.com [mailto:markpam2@mac.com]>

Date: 25 November 2015 at 00:47:03 GMT+4

To: atul@ann7.com [mailto:atul@ann7.com]

Cc: markpam2@mac.com [mailto:markpam2@mac.com]

Subject: Fwd: Update

Hi Chair,

I would like to discuss the following:-

1/ Concept on the potential law suit from Eskom to target Co;

2/ Copies of the DD reports when completed so I can comment, including the working capital/cash flow forecasts as they stand currently.

Please let me know if I'm overstepping the boundary. If not, who can I discuss same with.

This in my opinion links to investment committee and coordination there of.

Look forward to hear from you.

Mark

Sent from my iPhone

Begin forwarded message:

From: MARK PAMENSKY <markpam2@mac.com [mailto:markpam2@mac.com]>

Date: 24 November 2015 at 22:40:57 SAST

To: atul@ann7.com [mailto:atul@ann7.com]

Cc: varun@shivau.com [mailto:varun@shivau.com] , Trevor Scott <trevors@oakbay.co.za [mailto:trevors@oakbay.co.za] >

Subject: Update

Hi Chair,

The lead independent ("LID") SENS announcement will go out tomorrow with the interim results SENS announcement. This is more advantages instead of a stand alone SENS announcement of the LID. We can ratify the resolution on your return.

Further, I'm going to ask Varun and Trevor to meet with me or telephonically, so I can understand how we going to manage this target company, including where are the accounts going to operate from etc. we need strong internal controls.

I think we must plan this now as I understand take over date to be 1 Jan.

Thanks

Mark

Sent from my iPhone



**From:** Atul Gupta <atul@ann7.com>  
**Sent on:** Thursday, December 3, 2015 10:42:10 PM  
**To:** srikant <srikant@singhala.com>; Rajesh Gupta Tony <tony@sahara.co.za>  
**CC:** varun@oakbay.co.za; Kamal Singhala <kamals@vrlaser.co.za>  
**Subject:** Fwd: ANN7 worst place in SA to work: Cosatu | TechCentral

Hi Srikant  
 Please ask T and suggest me the answer

Thanks

Atul Gupta

Chairman, TNA Media Pty Ltd

The correspondence was transmitted electronically without signature.

Begin forwarded message:

From: MARK PAMENSKY <markpam2@mac.com [mailto:markpam2@mac.com] >

Date: 03 December 2015 at 10:20:25 GMT+4

To: Atul Gupta <atul@ann7.com [mailto:atul@ann7.com] >

Subject: Re: ANN7 worst place in SA to work: Cosatu | TechCentral

Hi Chair,

Thank you for the mail.

I thought I would leave you with my thinking below, further to our discussion, at your home, prior to your trip. We we can progress on your return in the New Year. I will be away from 14 Dec in Cape Town, so if you need me, please don't hesitate to ask. Have a good rest.

Structure and the implementation of Investment Committee is important. I will implement this for weekly meeting at your home at a time that suits all. We must be disciplined on this. This too brings the group worldwide co-ordination together. To grow huge, we need this element.

I have been discussing with Varun the implementation of certain acquisitions operationally so we manage these deals and operate correctly from day 1, such as shared services etc.

Where I can advise and implement for the group via the CEO's, I would love to add that value. I can see clearly the group needs an interface between the family and Group. Many strategy idea's I'll pick up from quarterly monitoring of investments and discussion with all of you, weekly and worldwide group CEO's.

I would like assist you personally wherever I can but let's start here to prove myself and the value add. I'm very pushy and pro-active so please let me know if I step over the line, which I'm sure I will. This creates good relationships if we communicate. We will hopefully get to know each other much better and how each of us trade and inter-act. This will make the working relationship work optimally in my opinion.

My primary role is property and to then assist and help grow that property group's Holding Company. I start that from January, hence we need co-ordination as one specific item that has come to my attention is that Broll (large property broker firm) is running around town looking for new office for the group. We need to be specific and specify what we require and hear from each CEO etc all their requirements, size, growth forecasts etc and then we plan and implement. I don't want to give an incorrect brief to the market and then we look stupid. This is just an example. I'll will work on this and improve. This group is very large and can grow quicker.

I look forward to get your thoughts when we meet. Once again enjoy the rest.

Speak soon.

Kind regards

Mark

Sent from my iPhone

On 26 Nov 2015, at 21:24, Atul Gupta <atul@ann7.com [mailto:atul@ann7.com] > wrote:



Hi Mark

Thank you for the kind Nd thoughts, we should do more in new year, we will discuss when we meet next.

Best Regards

Atul Gupta

Chairman, TNA Media Pty Ltd

The correspondence was transmitted electronically without signature.

On 26 Nov 2015, at 17:24, MARK PAMENSKY <markpam2@mac.com [mailto:markpam2@mac.com] > wrote:

Hi Chair,

Please see article. These people do not stop attacking us, which is something I'm used to in business and we will overcome this. As I always say this will make us stronger and a more united group. I don't believe this article at all as I know how good, generous, hospitable and respectful you guys are to people.

In terms of this article, we must make a point that you visit all the staff every second or third month and we put into place, within the group, HR procedures to improve the overall ratings. If we manage to be housed in one building, this I'm sure will assist and make it easier.

I will drive this for you, subject to your approval, in the new year with HR and all the group CEO's.

Kind regards

Mark

[http://www.techcentral.co.za/ann7-worst-place-in-sa-to-work-](http://www.techcentral.co.za/ann7-worst-place-in-sa-to-work-cosatu/61588/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+co%2FUqJF+%28TechCent)

[cosatu/61588/?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+co%2FUqJF+%28TechCent](http://www.techcentral.co.za/ann7-worst-place-in-sa-to-work-cosatu/61588/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+co%2FUqJF+%28TechCent)



B<sup>346</sup>T4

**From:** Mark Pamensky <markp@blts.co.za>  
**Sent on:** Thursday, December 10, 2015 8:32:22 PM  
**To:** atul@ann7.com  
**CC:** varun@shivau.com; Rajesh Gupta Tony <tony@sahara.co.za>  
**Subject:** Closure of OM  
**Attachments:** 115121020321901201.gif (30.35 KB)

Hi Chair

Congratulations (Mazeltov) on a brilliant and well thought out, planned and strategized acquisition of the Optimum Group of companies.

Well done and I'm proud of you all. This is only the beginning of the resource group growth and many more to come into play.

I'm more than sure that you and the team will make a huge success of this acquisition. I wish you all the success on the deal.

The hard work begins now and we as a team will produce the results. Let's me know when you ready to discuss the operational implementation. I'm truly proud to be part of this group.

Enjoy the well deserved holiday.

Mark

Sent from my iPhone



**From:** George van der Merwe <george@shiva-u.com>  
**Sent on:** Wednesday, October 29, 2014 2:10:45 PM  
**To:** Tony Gupta <tony@sahara.co.za>  
**Subject:** FW: Committee  
**Attachments:** 114102912503102202.gif (30.35 KB), image001.png (51.9 KB)

FYI Sir

George van Der Merwe  
Chief Operating Officer  
Direct Fax: 086 733 5016  
E-mail: [george@shiva-u.com](mailto:george@shiva-u.com)

**From:** Mark Pamensky [mailto:markp@blts.co.za]  
**Sent:** Wednesday, October 29, 2014 12:51 PM  
**To:** Annamarie van der Merwe; George van der Merwe  
**Subject:** RE: Committee

Hi Annemarie and George,

I had a chat to George yesterday and the essence of the conversation was the chairman of audit and risk committees. As I understand it is the preference of all parties to have the committee separate which I have no issue either way as the chairman of both committees will have to report back to the board.

In terms of the chairmanship of the audit committee, it is still my preference that Terry remains chairman, but in the interest of time and based on Terry's travel plans, I will be willing to assist the process and act as acting chairman until Terry returns. I will sign all the documentation accordingly



after applying my mind with the information. As I have seen via all the emails today, the documents are coming forward with the title of chairmanship under my name. I believe this should be acting chairman after our conversation with Terry on Friday. I do believe Terry has grey hair and more experience as this is a true FD type of role and I suggest he maintains the chair and I'll act in his absence as mentioned above. Also I believe from a market perspective this will also add more value and credibility.

I trust you will find the above in order and I look forward to discuss the above on Friday.

Kind regards

Mark

-----Original Message-----

From: Mark Pamensky

Sent: 25 October 2014 10:59 AM

To: Annamarie van der Merwe

Cc: Mark Pamensky

Subject: Committee

Hi Annamarie,

I have reviewed the amended PLS. Please revert back to the original version regarding the Audit and Risk committee to be one committee as the items overlap and functions better as one unit, in my opinion.

If this is not possible, then please replace me as chairman of the audit committee and put Mr T Rensen as chairman. I feel more comfortable with this arrangement, as defined in the prior PLS, and with Mr Rensen as chairman of both committees respectively.

I trust you will find the above in order and I look forward to hear from you.



Kind regards

Mark.

Sent from my iPhone

---

No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 2015.0.5315 / Virus Database: 4189/8443 - Release Date: 10/24/14

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- PLEASE NOTE -

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of Shiva Uranium. Finally, while Shiva Uranium attempts to ensure that all email is virus-free, Shiva Uranium accepts no liability for any damage caused by any virus transmitted by this email.

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BT 6

**From:** Atul Gupta<atul@ann7.com>  
**Sent on:** Monday, September 7, 2015 5:44:16 AM  
**To:** Mark Pamensky <markp@blts.co.za>  
**Subject:** Re: IDC  
**Attachments:** 115090508345700465.gif (30.35 KB)

Hi Mark

For sure we will discuss as I back

Best Regards

Atul Gupta

Chairman, TNA Media Pty Ltd

The correspondence was transmitted electronically without signature.

On 05 Sep 2015, at 10:34, Mark Pamensky <markp@blts.co.za [mailto:markp@blts.co.za] > wrote:  
<115090508345700465.gif> [<http://www.blts.co.za/>]

Hi Chair,

Thank you for yesterday. I have another thought and passed it on to Varun last night. As I keep on talking about the "35" free ride for those people, I hear, from Trevor, that the IDC want wants to off-load their shares.

A solution is for the IDC equity to be purchased by a BEE consortium, funded by the PIC, and therefore we get more BEE points, specially when we considering acquiring certain assets. We as Oakbay, can purchase half back, as a share buy back and then the balance for BEE. In this way all parties benefit as ORE gets more BEE and the current shareholders increase their equity stake. We can decide to give all to BEE, and lock them in for 5 years and then to allow them to sell down 1/36 thereafter, making sure that the market is not flooded with stock overhang.

I will discuss more when we meet.

Kind regards

Mark.

Sent from my iPhone

--

This message has been scanned for viruses and

dangerous content byMailScanner [<http://www.mailscanner.info/>]



BT7

From: Atul Gupta <atul@ann7.com>

Sent on: Sunday, November 22, 2015 8:08:55 PM

To: shivani@singhala.com; Rajesh Gupta Tony <tony@sahara.co.za>

Subject: Fwd: Meeting of even date.

Sent from my iPhone6+

Begin forwarded message:

From: MARK PAMENSKY <markpam2@mac.com>

Date: 22 November 2015 at 7:40:12 PM SAST

To: [atul@ann7.com](mailto:atul@ann7.com)

Cc: [varun@shivau.com](mailto:varun@shivau.com)

Subject: Meeting of even date.

Hi Chair,

Thank you for the conversation today. I will action all the items and ensure that they are completed.

I will send a mail to Terry regarding the lead independant role, and that you as chairman, have decided to take a more conservative approach and would like to appoint him. This is the correct business decision for ORE.

We will have the shiva uranium board sorted out by Tuesday. This will allow us to vote on the Tegeta acquisition with no related parties. I would like to conclude this approval urgently so ORE and Shiva Uranium can implement the transaction.

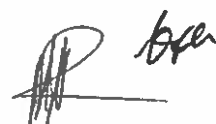
In terms of investment committee I am available to start straight away. As I'm at the tail end of the main acquisition of Optimal Coal, please ensure that a condition precedent is that the R2bn claim from Eskom is withdrawn or it becomes the sellers problem. I'm happy to get involved to assist with this acquisition and monthly monitoring/analyzing of all investments from today. I can meet anyone your require. If you need me in India or Dubai to discuss, I'll meet you there.

Travel safe and look forward to seeing you soon. Once again thank you for today.

Kind regards

Mark.

Sent from my iPhone



BT 8  
35

**From:** Atul Gupta <atul@ann7.com>  
**Sent on:** Tuesday, January 19, 2016 7:49:39 PM  
**To:** shivani@singhala.com; Rajesh Gupta Tony <tony@sahara.co.za>  
**Subject:** Fwd: Mining contractor

FYI

Sent from my iPhone6+

Begin forwarded message:

**From:** MARK PAMENSKY <markpam2@mac.com [mailto:markpam2@mac.com] >

**Date:** 19 January 2016 at 6:01:09 PM SAST

**To:** Atul Gupta <atul@ann7.com [mailto:atul@ann7.com] >

**Subject:** Fwd: Mining contractor

FYI.Begin forwarded message:

**From:** MARK PAMENSKY <markpam2@mac.com [mailto:markpam2@mac.com] >

**Subject:** Mining contractor

**Date:** 19 January 2016 at 6:00:45 PM SAST

**To:** Nazeem Howa <nazeemh@tnamedia.co.za [mailto:nazeemh@tnamedia.co.za] >

Hi Nazeem,

In terms of Gordon the mining contractor, I suggest that we all meet with him to build the relationship. Clinton did not want to discuss with him the price increase which is, according to Clint, 3% to 4%, and he says is small in the big picture. I don't agree with this at all and we should have the same discussion with Gordon. I explained to Clinton that the Business Practitioner can stop any clause in the agreement but it seems that Glencore are controlling him. I also said that there is a 3 month negotiation in the contract for price increases and Clinton lied and said that Gordon has been discussing with him since November so the price increase is from February.

He said that Gordon will take R450m of which R300m upfront and R150m over a period, say within year 3. (This is down from Clinton original R600m). We can choose which staff we want and Gordon will handle the rest. It will be a debt free acquisition. He further explained that there is a full rebuild of two underground cutters worth R50m. Clinton said the equipment would cost us more that R450m should we buy the equipment ourselves.

I still believe we can get it for R300m max as Clint said that Gordon does not know us and not sure if he wants to work with us. I think Clint said this to scare me which i ignored. Gordon needs us as much as we need him.

Let me know if you want me to meet Gordon with you guys.

Thanks

Mark



BT 3 9

From: Atul Gupta <atul@ann7.com>

Sent on: Sunday, January 31, 2016 4:26:08 AM

To: shivani@singhala.com; Rajesh Gupta Tony <tony@sahara.co.za>

Subject: Fwd: Telephone call

Sent from my iPhone6+

Begin forwarded message:

From: Mark pamensky <markpam14@gmail.com [mailto:markpam14@gmail.com] >

Date: 31 January 2016 at 12:39:48 AM GMT+4

To: Nazeem Howa <nazeemh@tnamedia.co.za [mailto:nazeemh@tnamedia.co.za] >

Cc: "atul@ann7.com [mailto:atul@ann7.com]" <atul@ann7.com [mailto:atul@ann7.com] >

Subject: Re: Telephone call

Hence my thinking is for me to revert back tomorrow and ask him to bear 100% of the employment staff that we intend to retrench acting reasonably and to not charge us shared services until we transfer across the accounting and systems for a max period of 6 months. Normally in a deal of this size, these elements come across with the business. This is a show of good faith from them.

Let's discuss tomorrow when you have a chance. I know what his argument will be but we can counter it.

Thanks

Sent from my iPhone

On 30 Jan 2016, at 22:32, Nazeem Howa <nazeemh@tnamedia.co.za [mailto:nazeemh@tnamedia.co.za] > wrote:

Interesting

Nazeem Howa

Chief Executive

On 30 Jan 2016, at 21:57, Mark pamensky <markpam14@gmail.com [mailto:markpam14@gmail.com] > wrote:

<image2.png>

Sent from my iPhone

On 30 Jan 2016, at 21:11, Mark Pamensky <markp@blts.co.za [mailto:markp@blts.co.za] > wrote:

Hi Sir's



Just for info purposes but Clinton called me now to make sure that I reply back to you that Ivan is 100% behind the closing of the deal and that Glencor are not behind these press statements. I don't believe him about the press but do believe him about the fact the closing the deal is important to Glencor. The fact is that Eskom will not deal with Glencor and the business practitioner mentioned same to me.

Clinton was really concerned that I relay the message and ensure the deal closes.

These guys are not to be trusted in any way, form or shape but I have to pass on the message.

Thanks

Mark

Sent from my iPhone

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a series of loops and a final flourish.

BT 10  
85

**From:** Atul Gupta <atul@ann7.com>  
**Sent on:** Tuesday, November 17, 2015 9:42:19 PM  
**To:** shivani@singhala.com; Rajesh Gupta Tony <tony@sahara.co.za>  
**Subject:** Fwd: Discussion  
**Attachments:** 115111721220400543.gif (30.35 KB)

FYI

Sent from my iPhone6+

Begin forwarded message:

From: Mark Pamensky <markp@blts.co.za [mailto:markp@blts.co.za] >

Date: 17 November 2015 at 21:21:59 SAST

To: "atul@ann7.com [mailto:atul@ann7.com]" <atul@ann7.com [mailto:atul@ann7.com] >

Cc: Mark Pamensky <markp@blts.co.za [mailto:markp@blts.co.za] >

Subject: Discussion

IMG [0] [http://www.blts.co.za/]

Hi Chair,

Hope you well. I wanted to have a chat with you on the lead independant role.

Based on ORE potential acquisition of Tegeta which has a contract with Eskom. I sit on the Eskom board and this can perceived to be a potential conflict as lead independent. I would then be independent.

I have got an opinion on this from external counsel and they believe it not to be an issue as do I.

This is a state of mind, and I don't believe there is any conflict whatsoever. I'm not involved at Eskom on those decisions. Those sit with tender board and I only chair the Investment committee and main board. These decisions are not taken at board level either.

I bring this to you attention so we can discuss in person. I don't want to cause any harm or potential press to ORE, if any. Terry can take that position if you chose, as an alternative solution, should you believe a conflict from my side and/or want to be very conservative.

Can we meet prior to board meeting for few minutes.

Look forward to hear from you.

Kind regards

Mark.

Sent from my iPho



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Companies and Intellectual  
Property Commission

a member of dti group

## Disclosure Certificate: Companies and Close Corporations

Registration Number 2006 / 014492 / 07

Enterprise Name TEGETA EXPLORATION AND RESOURCES

### ENTERPRISE INFORMATION

Registration Number 2006 / 014492 / 07  
Enterprise Name TEGETA EXPLORATION AND RESOURCES (PTY) LTD  
Registration Date 15/05/2006  
Business Start Date 15/05/2006  
Enterprise Type Private Company  
Enterprise Status Business Rescue  
Compliance Status Compliant  
Financial Year End February  
TAX Number 9112268165  
Addresses

#### POSTAL ADDRESS

POSTNET SUITE 458  
PRIVATE BAG X9  
BENMORE

2010

#### ADDRESS OF REGISTERED OFFICE

GRAYSTONE RIDGE OFFICE PARK  
144 KATHERINE STREET  
SANDOWN  
SANDTON  
2146

### ACTIVE MEMBERS / DIRECTORS

Surname and First Names	Type	ID Number / Date of Birth	Contrib. (R)	Interest (%)	Appoint. Date	Address
KNOOP KURT ROBERT	Business Rescue Practitioner	8803275037084	0 00	0 00	20/02/2018	Postal P O BOX 181 PIETERMARITZBURG 3200  Residential 19 HOSKING ROAD ATHLONE PIETERMARITZBURG 3201
KLOPPER JOHAN-LOUIS	Business Rescue Practitioner	5607125051083	0 00	0 00	22/02/2018	Postal P O BOX 22465 GLENASHLEY 4022  Residential 7 FURN RIDGE 1 BURNE CRESCENT GLENASHLEY 4000
CHAWLA ASHU	Director	1971-05-24	0 00	0 00	14/09/2009	Postal 3 SAXONWOLD DRIVE SAXONWOLD SANDTON GAUTENG 2196  Residential 3 SAXONWOLD DRIVE, SAXONWOLD SANDTON GAUTENG 2196
NATH RAVINDRA	Director	1955-11-18	0 00	0 00	02/04/2007	Postal 52 HILLVIEW SPARROW HAWK STREET, AMBERFIELD CREST, ROOIHUISKRAAL  Residential 52 HILLVIEW SPARROW HAWK STREET AMBERFIELD CREST

Page 1 of 8

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the dti Campus - Block F  
77 Mentjies Street  
Sunnyside 0001

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Pretoria  
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RAGAVAN RONICA Director 7709170007081 0 00 0 00 01/11/2007 Postal PRIVATE BAG X180,  
HALFWAY HOUSE 0 1685  
Residential 129A BISHOP BIRD  
STREET, CENTURION 0 0149

**AUDITOR DETAILS**

Auditor Name	Type	Status	Appointment Date	Resignation Date	Email Address
--------------	------	--------	------------------	------------------	---------------

DOUGLAS DIX-PEEK AND COMPANY	Auditor	Resign			
------------------------------	---------	--------	--	--	--

Profession Number:

SEKELA INCORPORATED	Auditor	Resign			
---------------------	---------	--------	--	--	--

Profession Number: 3349006

H GORDON AND PARTNERS INCORPORATED	Auditor	Resign			
---------------------------------------	---------	--------	--	--	--

Profession Number: 914487E

KPMG INCORPORATED	Auditor	Resign	2008-02-28		0
-------------------	---------	--------	------------	--	---

Profession Number: 0000

SIZWENTSALUBAGOBODO INC	Auditor	Resign		2018-01-29	
-------------------------	---------	--------	--	------------	--

Profession Number: 946016

NERIDHA MOODLEY	Designated Auditor	Resign		2018-01-29	
-----------------	--------------------	--------	--	------------	--

Profession Number: 803979

SIZWENTSALUBAGOBODO INC	Auditor	Resign	2018-01-29	2018-02-16	SHARDHA JUGNAIK
-------------------------	---------	--------	------------	------------	-----------------

Profession Number: 946016

MOODLEY NERIDHA	Designated Auditor	Resign	2018-01-29	2018-02-16	011 231 0600
-----------------	--------------------	--------	------------	------------	--------------

Profession Number: 803979

**CHANGE SUMMARY**

31/10/2008 Accounting Officer Change on 31/10/2008

Change Record  
Name = KPMG INCORPORATED  
Status = Current

16/05/2005 Registration of CC/CO on 15/05/2006

17/07/2006 Member Change on 17/07/2006

Surname=BISHOP  
Full ForeNames=DENNIS JACOBUS  
Id No=5011075078008  
Status RESIGNEDNature of Change=RESIGNATION

17/07/2006 Member Change on 17/07/2006

Surname=MATONGO  
Full ForeNames=MOHAMED VICTOR  
Id No=601215  
Status ACTIVENature of Change=APPOINTMENT

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77 Meintjies Street  
Sunnyside 0001

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17/07/2006 Registered Address Change on 07/08/2006  
101 OXFORD ROAD  
SAXONWOLD  
JOHANNESBURG  
2196

17/07/2006 Postal Address Change on 07/08/2006  
P O BOX 8305  
JOHANNESBURG  
2000

25/07/2006 Accounting Officer Change on 11/07/2006  
Change Record  
Name = DOUGLAS DIX-PEEK AND COMPANY  
Status = Resign

25/07/2006 Accounting Officer Change on 11/07/2006  
Add Record  
Name = SEKELA INCORPORATED  
Status = Current

25/08/2006 Name Change on 25/08/2006  
T-JUNCTION TRADE AND INVEST 58

15/03/2007 Postal Address Change on 02/04/2007  
P O BOX 8305  
JOHANNESBURG  
2000

15/03/2007 Registered Address Change on 02/04/2007  
101 OXFORD ROAD  
SAXONWOLD  
JOHANNESBURG  
2196

24/04/2007 Member Change on 24/04/2007  
Surname=MATONGO  
Full ForeNames=MOHAMED VICTOR  
Id No=601215  
Status ACTIVENature of Change=NO CHANGES

24/04/2007 Member Change on 01/08/2006  
Surname=LETTE  
Full ForeNames=SEEDY MOMODOU  
Id No=5308285210185  
Status ACTIVENature of Change=NEW APPOINTMENT

24/04/2007 Member Change on 01/08/2006  
Surname=PAHADIA  
Full ForeNames=RAJENEESH  
Id No=7303156873185  
Status ACTIVENature of Change=NEW APPOINTMENT

02/05/2007 Accounting Officer Change on 16/04/2007  
Change Record  
Name = SEKELA INCORPORATED  
Status = Resign

02/05/2007 Accounting Officer Change on 16/04/2007  
Add Record  
Name = H GORDON AND PARTNERS INCORPORATED  
Status = Current

05/07/2007 Member Change on 05/07/2007  
Surname=MATONGO  
Full ForeNames=MOHAMED VICTOR  
Id No=601215  
Status ACTIVENature of Change=NO CHANGES

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05/07/2007 Member Change on 05/07/2007  
Surname=LETTE  
Full ForeNames=SEEDY MOMODOU  
Id No=5308285210185  
Status ACTIVE Nature of Change=NO CHANGES

05/07/2007 Member Change on 05/07/2007  
Surname=PAHADIA  
Full ForeNames=RAJENEESH  
Id No=7303156873185  
Status ACTIVE Nature of Change=NO CHANGES

05/07/2007 Member Change on 02/04/2007  
Surname=NATH  
Full ForeNames=RAVINDRA  
Id No=551118  
Status ACTIVE Nature of Change=NEW APPOINTMENT

02/11/2007 Member Change on 11/07/2006  
Surname=MATONGO  
Full ForeNames=MOHAMED VICTOR  
Id No=601215  
Status ACTIVE Nature of Change=NO CHANGE

02/11/2007 Member Change on 01/08/2006  
Surname=LETTE  
Full ForeNames=SEEDY MOMODOU  
Id No=5308285210185  
Status ACTIVE Nature of Change=NO CHANGE

02/11/2007 Member Change on 01/08/2006  
Surname=PAHADIA  
Full ForeNames=RAJENEESH  
Id No=7303156873185  
Status ACTIVE Nature of Change=NO CHANGE

02/11/2007 Member Change on 02/04/2007  
Surname=NATH  
Full ForeNames=RAVINDRA  
Id No=551118  
Status ACTIVE Nature of Change=NO CHANGE

02/11/2007 Member Change on 01/11/2007  
Surname=GOVENDER  
Full ForeNames=RONICA  
Id No=7709170007081  
Status ACTIVE Nature of Change=NEW APPOINTMENT

03/11/2007 Member Change on 31/10/2007  
Surname=MATONGO  
Full ForeNames=MOHAMED VICTOR  
Id No=601215  
Status RESIGNED Nature of Change=RESIGNATION

03/11/2007 Member Change on 01/08/2006  
Surname=LETTE  
Full ForeNames=SEEDY MOMODOU  
Id No=5308285210185  
Status ACTIVE Nature of Change=NO CHANGE

03/11/2007 Member Change on 01/08/2006  
Surname=PAHADIA  
Full ForeNames=RAJENEESH  
Id No=7303156873185  
Status ACTIVE Nature of Change=NO CHANGE

03/11/2007 Member Change on 02/04/2007  
Surname=NATH  
Full ForeNames=RAVINDRA  
Id No=551118  
Status ACTIVE Nature of Change=NO CHANGE

03/11/2007 Member Change on 01/11/2007

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Enterprise Name TEGETA EXPLORATION AND RESOURCES

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28/08/2008 Surname=GOVENDER  
Full ForeNames=RONICA  
Id No=7709170007081  
Status ACTIVE Nature of Change=NO CHANGE  
Accounting Officer Change on 26/02/2008  
PRIVATE BAG X9  
PARKVIEW  
2122

28/08/2008 Status Address Change  
Accounting Officer Change on 26/02/2008

19/10/2009 Member Change on 14/09/2009  
Surname=LETTE  
Full ForeNames=SEEDY MOMODOU  
Id No=5308285210185  
Status ACTIVE Nature of Change=NO CHANGE

19/10/2009 Member Change on 14/09/2009  
Surname=PAHADIA  
Full ForeNames=RAJENEESH  
Id No=7303156873185  
Status RESIGNED Nature of Change=RESIGNATION

19/10/2009 Member Change on 14/09/2009  
Surname=NATH  
Full ForeNames=RAVINDRA  
Id No=5511180000000  
Status ACTIVE Nature of Change=NO CHANGE

19/10/2009 Member Change on 14/09/2009  
Surname=GOVENDER  
Full ForeNames=RONICA  
Id No=7709170007081  
Status ACTIVE Nature of Change=NO CHANGE

03/08/2011 Status changed to Cancellation of De-registration Process on 03/08/2011  
Annual Return Non Compliance - Cancellation of Deregistration

23/11/2011 Member Change on 23/11/2011  
Authorising Director Details Director Full ForeNames=ASHU  
Surname=CHAWLA  
ID Number=7106245929185  
Customer Details  
Director Full ForeNames=ANNAMARIE  
Surname=VAN DER MERWE  
ID Number=6311160028085

23/11/2011 Member Change on 23/11/2011  
Authorising Director Details Director Full ForeNames=ASHU  
Surname=CHAWLA  
ID Number=7106245929185  
Customer Verified=8102166115184

25/11/2011 Member Change on 25/11/2011  
Unlock Password Unlocked by JMU39 Password successfully sent to STAT3@ITHEMBAONLINE.CO.ZA

25/11/2011 Member Change on 25/11/2011  
Unlock Password Unlocked by JMU39 Password successfully sent to STAT3@ITHEMBAONLINE.CO.ZA

25/11/2011 Member Change on 01/11/2007



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Enterprise Name TEGETA EXPLORATION AND RESOURCES

25/11/2011 Member Change on 01/08/2006  
Full ForeNames=RONICA  
Surname=RAGAVAN  
AppointmentDate=01/11/2007  
Status=A

25/11/2011 Member Change on 02/04/2007  
Full ForeNames=SEEDY MOMODOU  
Surname=LETTE  
AppointmentDate=01/08/2006  
Status=C

12/02/2011 Postal Address Change on 04/10/2011  
P O BOX 2473  
PRETORIA

12/02/2011 Registered Address Change on 04/10/2011  
0001  
FIRST FLOOR BYRON PLACE  
320 SCHUBART STREET  
PRETORIA

06/08/2013 Annual Return completed on 06/08/2013  
Company / Close Corporation AR Filing - Web Services Ref No 51418000

07/02/2014 Postal Address Change on 02/12/2013  
P O BOX 25160  
MONUMENT PARK

07/02/2014 Registered Address Change on 02/12/2013  
0105  
MONUMENT OFFICE PARK  
BLOCKS-105  
79 STEENBOK AVENUE  
MONUMENT PARK

04/06/2014 Annual Return completed on 04/06/2014  
Company / Close Corporation AR Filing - Web Services Ref No 52381510

05/05/2015 SMS Notification that Annual Return is due was sent on 05/05/2015  
E-Mail send to ASHU CHAWLA for 2015

05/05/2015 Status changed to Unknown  
No Valid SMS or Email Address for enterprise M2006014492

18/05/2015 Annual Return completed on 18/05/2015  
Company / Close Corporation AR Filing - Web Services Ref No 526461932

17/12/2015 Member Change on 08/12/2015  
Add Record  
Surname = HOWA  
First Names = HAZEEM  
Status = Active

01/05/2016 SMS Notification that Annual Return is due was sent on 01/05/2016  
E-Mail send to ASHU CHAWLA for 2016

01/05/2016 Status changed to Unknown  
No Valid SMS or Email Address for enterprise M2006014492

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16/05/2016 Annual Return completed on 16/05/2016  
Company / Close Corporation AR Filing - Web Services Ref No 534626962

19/10/2016 Accounting Officer Change on 14/10/2016  
Change Record  
Name = KPMG INCORPORATED  
Status = Resign

19/10/2016 Accounting Officer Change on 14/10/2016  
Add Record  
Name = SIZWENTSALUBAGOBODO INC  
Status = Current

19/10/2016 Accounting Officer Change on 14/10/2016  
Add Record  
Name = NERIDHA MOODLEY  
Status = Current

19/01/2017 Member Change on 19/01/2017  
Change Record  
Surname = NATH  
First Names = RAVINDRA  
Status = Active

19/01/2017 Member Change on 19/01/2017  
Change Record  
Surname = RAGAVAN  
First Names = RONICA  
Status = Active

19/01/2017 Member Change on 19/01/2017  
Change Record  
Surname = HOWA  
First Names = NAZEEM  
Status = Resigned

01/05/2017 Email Notification that Annual Return is due was sent on 01/05/2017  
E-Mail sent to ASHU CHAWLA for 2017

01/05/2017 Status changed to Unknown  
No Valid SMS or Email Address for enterprise M2006014492

29/06/2017 Annual Return completed on 29/06/2017  
Company / Close Corporation AR Filing - Web Services Ref No 575886508

26/07/2017 Member Change on 26/07/2017  
Director RAVINDRA NATH details was Changed

26/07/2017 Member Change on 26/07/2017  
Director RONICA RAGAVAN details was Changed

26/07/2017 Member Change on 26/07/2017  
Director ASHU CHAWLA details was Changed

30/01/2018 Accounting Officer Change on 30/01/2018  
Notice of change of auditor NERIDHA MOODLEY resigned

01/02/2018 Accounting Officer Change on 01/02/2018  
Notice of change of auditors SIZWENTSALUBAGOBODO INC appointed

01/02/2018 Accounting Officer Change on 01/02/2018  
Notice of change of auditors MOODLEY NERIDHA appointed

20/02/2018 Accounting Officer Change on 20/02/2018  
Notice of change of auditor MOODLEY NERIDHA resigned

20/02/2018 Status changed to Unknown  
CoR123 1 received and processed

27/02/2018 Status changed to Unknown

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27/02/2018 Add Record  
Surname = KNOOP  
First Names = KURT ROBERT  
Status = Active  
Status changed to Unknown

01/05/2018 Add Record  
Surname = KLOPPER  
First Names = JOHAN LOUIS  
Status = Active  
Status changed to Unknown

01/05/2018 Column msg\_address\_to does not belong to table Table1 - M2008014492  
Status changed to Unknown

01/05/2018 Column msg\_address\_to does not belong to table Table1 - M2008014492

01/05/2018 Email Notification that Annual Return is due was sent on 01/05/2018  
E-Mail sent to ASHU CHAWLA for 2018

01/05/2018 Email Notification that Annual Return is due was sent on 01/05/2018  
E-Mail sent to RAVINDRA NATH for 2018

01/05/2018 Email Notification that Annual Return is due was sent on 01/05/2018  
E-Mail sent to RONICA RAGAVAN for 2018

11/06/2018 Annual Return completed on 11/06/2018  
Company / Close Corporation AR Filing - Web Services Ref No 5122392769

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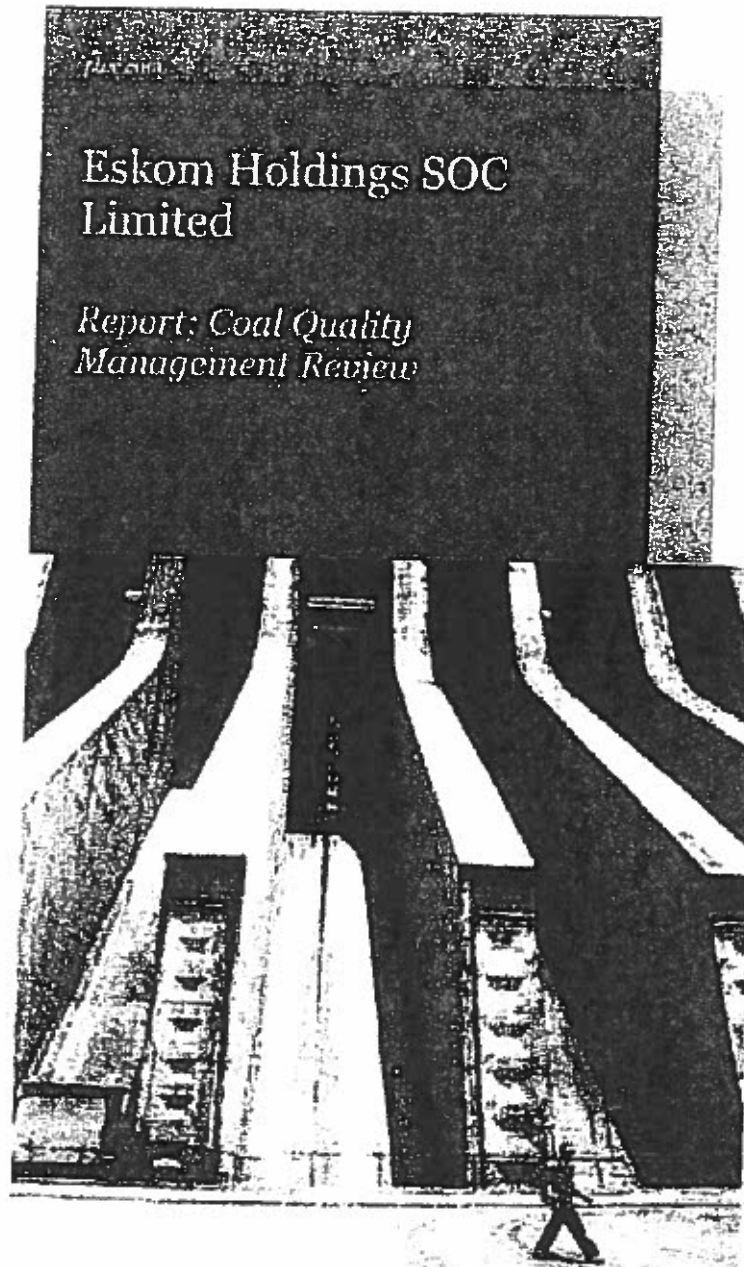
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*[Handwritten signature]*



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*R* *ben*



**Strictly private and confidential**

26 November 2015

Molefi Nkhabu  
Eskom Holdings SOC Limited  
Assurance and Forensics  
Megawatt Park  
Sunninghill  
2157

Dear Mr Nkhabu

**Report: Coal Quality Management review**

1. PricewaterhouseCoopers Advisory Services (Pty) Ltd was recently appointed to assist Eskom Holdings SOC Limited with an independent "Coal Quality Management Review" In accordance with our Proposal and the scope of work detailed therein, we have pleasure in presenting our report.
2. This Report has been prepared solely for the use of Eskom Holdings SOC Limited and should be used for information purposes only. As such, it should not be disclosed to any other party without our prior written consent. It shall be a condition of such consent, if given, that PricewaterhouseCoopers Advisory Services (Pty) Ltd. accepts no responsibility to that third party and that any such third party will hold PricewaterhouseCoopers Advisory Services (Pty) Ltd. harmless in respect of any consequences of such disclosure. Whether or not we have given our consent, we will not accept liability or responsibility to any other party who may gain access to this document.
3. Should you have any comments, please do not hesitate to me at +27 (11) 797 5526 or +27 (79) 599 4677.

Yours sincerely

Trevor Hills  
Director  
trevor.hills@za.pwc.com

PricewaterhouseCoopers Advisory Services (Pty) Ltd, Reg. no. 1999/024417/07  
2 Eglin Road, Sunninghill 2157, Private Bag X36, Sunninghill 2157, South Africa  
T: +27 (11) 797 4000, F: +27 (11) 797 5800, www.pwc.co.za

M A O'Flaherty - National Advisory Leader  
The Company's principal place of business is at 2 Eglin Road, Sunninghill where a list of Creditors' names is available for inspection.



<i>Contents</i>		
Section	Title	Pages
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VIII	Recommendations	83



# List of appendices

Appendix	Description
Appendix 1	Signed Proposal dated 7 September 2015
Appendix 2	March, April and June 2014 combustion test reports for AC Colliery
Appendix 3	AC Colliery combustion test report dated 12 March 2014
Appendix 4	Coal Supply Agreement concluded with "A Co" dated 10 March 2014
Appendix 5	Combustion test report dated 18 June 2015 report by Chief Advisor Eskom Research, Testing and Development Division, Eskom
Appendix 6	Technical evaluation report dated 10 April 2015 in respect of the AC Colliery
Appendix 7	'Addendum' to the AC Coal Supply Agreement in the form of a letter signed by General Manager fuel sourcing on 11 May 2015
Appendix 8	"2008 Medium Term coal procurement mandate"
Appendix 9	The Board of Directors Tender Committee resolution pertaining to the extension of the Medium Term mandate for Coal Supply
Appendix 10	"CCc" Colliery Coal Supply Agreement signed in November 2014
Appendix 11	Financial evaluation report of "D Co" Mining Resources (Pty) Ltd, performed by "Ms Senior Advisor, Financial Accounting" of Eskom dated 20 October 2014
Appendix 12	Letter signed by Acting Labs Contract Manager, Quality Assurance Manager, Eskom as Acting Quality and Quantity Manager on 14 July 2015 to amend clauses in the "D Co" Mining Resources (Pty) Ltd Coal Supply Agreement
Appendix 13	Coal Supply Agreement concluded with "B Co" Mining on 25 March 2011
Appendix 14	Technical memo dated 21 July 2011 compiled by Middle Manager Plant Engineering on [REDACTED]
Appendix 15	Eskom's Financial Evaluation Report dated 24 February 2010 on [REDACTED]
Appendix 16	Coal Supply Agreement concluded on 26 March 2013 with "E Co" Coal
Appendix 17	List of Tenders received and signed off by the Middle Manager Coal Contracts on 10 October 2009 and date stamped 14 October 2009
Appendix 18	Technical Evaluation report for the "AM" Mine
Appendix 19	Eskom's Procurement and Supply Chain Management Procedure (32-1034) dated 12 August 2011
Appendix 20	Minutes of a Strategy Pre Alignment Meeting held on 15 October 2013
Appendix 21	A printout of the approved Purchase Requisition in respect of the tender for the appointment of Labs and Roving companies
Appendix 22	Contracting Strategy in respect of the procurement of Lab and Coal Sampling services
Appendix 23	Invitation to Tender dated 26 November 2013





Appendix	Description
Appendix 24	Copy of Eskom's Tender Bulletin reflecting the advertised tender from 26 November 2013 to 14 January 2014
Appendix 25	Attendance Register for a clarification meeting held on 12 December 2013
Appendix 26	Tender Evaluation Report
Appendix 27	Health and Safety Score Sheets in respect of the Lab services tender
Appendix 28	Quality Evaluation Score Sheet / Report in respect of the Lab services tender
Appendix 29	Evaluation Report to the Procurement Tender Committee dated 7 March 2014
Appendix 30	Feedback Report to the Procurement Tender Committee dated 28 March 2014
Appendix 31	Copies of contracts concluded with the 9 service providers (5 Labs and 4 Sampling, Roving and Observation companies)
Appendix 32	Labs Acting Contract Manager's Training Record
Appendix 33	Eskom Lab Audit Procedure dated 4 February 2014
Appendix 34	Summary of the "Blind Sampling" sample analysis results
Appendix 35	Non-conformance, Adequacy Assessment and Blueprint Development





### Definitions and abbreviations

Throughout this document, unless otherwise stated, the words in the first column have the meanings stated opposite them in the second column:

#### Definitions

GM	General Manager
Lab/Labs	Laboratory/Laboratories
LIMS	Laboratory Information Management System
NDA	Non-Disclosure Agreement
PED	Primary Energy Division
PTC	Procurement Tender Committee
PTC	Procurement Tender Committee
QA	Quality Assurance
QA	Quality Assurance
SD&L	Supplier Development and Localisation
SHEQ	Safety, Health and Quality
SLA	Service Level Agreement

#### Entities

Eskom	Eskom Holdings SOC Limited
"B Co" Mining/"BC"	"B Co" Mining ("BC" Colliery)
"C Co"	"C Co" (Pty) Ltd
PwC	PricewaterhouseCoopers Advisory Services (Pty) Ltd.
"TEST CO"	"TEST CO" Limited
"ANA"	"ANA" South Africa (Pty) Ltd
"Analyt"	"Analyt" Coal Laboratory Services CC
"Lab"	"Lab" Coal Services CC
"A Co"/AC	"A Co" Exploration and Resources (Pty) Ltd (AC Colliery)
"D Co" Mining/"CCc"	"D Co" Mining ("CCc" Colliery)
"E Co" Coal/"AM"	"E Co" Coal ("AM" Colliery)

#### Individuals

	Senior Manager, Fuel Sourcing, Primary Energy Division
	Previous Senior General Manager, Primary Energy Division
	Senior Manager Fuel Sourcing, Primary Energy Division, Eskom
	Plant Manager, AC Colliery
	General Manager, AC Colliery
	Fuel Sourcing, PED
	Coal Supply Unit Manager, Eskom
	QA Senior Advisor A, Eskom
	Advisor, AC Colliery



	Senior Advisor, Supplier Development and Localisation, Eskom
	Senior Advisor Internal Control, Eskom
	Senior Geologist, Primary Energy Division
	QA Senior Advisor B, Eskom
	Human Resources, Eskom
	Procurement Division, Eskom
	Acting Quality Manager, Eskom
	Financial Evaluator, Eskom
	Geologist, Technical analyst, Eskom
	SD&L Strategist, Eskom
	Acting General Manager, Primary Energy Division
	Acting Labs Contract Manager, Quality Assurance Manager, Eskom
	Senior Advisor Procurement, Eskom
	Health & Safety Analyst, Eskom
	Acting Procurement Manager (Tactical Procurement), Eskom



## **I. BACKGROUND AND MANDATE**

- 1.1 We were appointed by Eskom to conduct a Review of the Coal quality management of certain coal suppliers (Mines") and Eskom's Contracted Laboratories ("Labs") following aspects pursuant to the allegations discussed in the clarification meeting held in September 2015. Our signed Proposal details our Approach (Appendix 1).
- 1.2 The Findings have been discussed under two main work streams, namely "Mines" and "Labs", and the following headings have been used:
  - a) Procurement;
  - b) Contracting;
  - c) Contract Management; and
  - d) Quality & Assurance.
- 1.3 We have also been requested to perform a review of the following in relation to the above:
  - a) Non-conformance (to existing protocols and guidelines);
  - b) Adequacy (assessment) of existing protocols and guidelines; and The "Blue Print Development", which includes suggested areas for improvements to existing controls to enhance the effectiveness of processes.

## **II. SCOPE AND NATURE OF THE REVIEW**

- 2.1 The scope of our review was limited to the information obtained from Eskom, the relevant Mines and Labs and interviews with Eskom officials and other external parties deemed relevant.
- 2.2 The nature of the assignment included the inspection of electronic and hardcopy records and other related supporting documentation deemed necessary to comply with the mandate. We relied on records provided by Eskom, the relevant Mines and Labs.
- 2.3 We were not appointed to, and did not conduct an audit in terms of International Standards on Auditing. The findings herein do not constitute an external audit opinion and the information included in this report does not form part of any external audit report.

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- 2.4 The findings contained herein are based on the work performed to date of this report. We have taken reasonable steps to ensure that the information obtained is authentic and complete but we cannot guarantee the authenticity and completeness of the information. As a consequence, we cannot conclude that the outcome of our investigation to date has been exhaustive and we reserve the right to withdraw this report or amend our findings should subsequent information come to our attention that warrants amendments to these findings.
- 2.5 We were not required to, nor do we express any legal opinion in this document, nor should anything stated herein be regarded as such.
- 2.6 This report contains evidence based on interviews conducted, information reviewed and documents perused. We deem the aforementioned evidence to be appropriate to gain an understanding of the issues to be reviewed.

### III. PROCEDURES PERFORMED

- 3.1 For ease of reference, we segmented our procedures performed as follows:

- A. Coal Supply pertaining to 4 Mines (Sources); and
- B. Laboratory, Roving, Observation and Sampling services.

#### Coal Supply relating to the 4 Mines (Sources)

- 3.2 We performed the following procedures:

- 3.2.1 Consulted with the following Eskom officials to identify the Mines to be reviewed;
- a) Eskom's Audit & Forensics Manager;
  - b) Eskom's Audit & Forensics Head; and
  - c) Chief Advisor Eskom Research, Testing and Development Division, Eskom.
- 3.2.2 We interviewed the following Eskom Fuel Sourcing officials to understand the process followed in the procurement of the Mines:
- a) Acting General Manager, Primary Energy Division;
  - b) Senior Manager Fuel Sourcing, Primary Energy Division, Eskom; and
  - c) Fuel Sourcing, PED.

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3.2.3 We interviewed the following persons involved with the procurement of the AC Mine to understand their involvement;

- a) Geologist, Technical analyst, Eskom;
- b) Chief Advisor Eskom Research, Testing and Development Division, Eskom;
- c) Senior Geologist, Primary Energy Division;
- d) Coal Supply Unit Manager, Eskom;
- e) SD&L Strategist, Eskom;
- f) Acting General Manager, Primary Energy Division; and
- g) Health & Safety Analyst, Eskom.

3.2.4 We obtained and reviewed the following;

- a) The Eskom Procurement and Supply Management Procedure (32-1034) (signed as at 19/08/2011);
- b) Governance documentation relating to Eskom's Coal Procurement;
- c) Primary Energy Division's Potential Coal Supplier Evaluation and Registration Process (Short/Medium Term);
- d) Coal Quality Specifications for Eskom Power Stations;
- e) Various technical memorandums;
- f) Internal documents and other Eskom records relating to the procurement of the Coal Supply from the four Mines;
- g) Pre-qualification Document requirements as per Primary Energy Division checklist;
- h) Coal Supply Agreements;
- i) Various evaluation reports;
- j) Minutes of meetings; and
- k) Various supplier documentation and informations.

3.2.5 We performed a site visit at the AC and "AM" Mine.

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### **Laboratory, Roving, Observation and Sampling services**

- 3.2.6 We reviewed the relevant Eskom Supply Chain Management policy to understand the prescribed procurement process;
- 3.2.7 We interviewed the following Eskom officials to understand the process followed in the appointment of the Labs;
- a) Acting Quality Manager, Eskom;
  - b) Acting Procurement Manager (Tactical Procurement), Eskom;
  - c) Acting Labs Contract Manager, Quality Assurance Manager, Eskom
  - d) Senior Advisor Procurement, Eskom;
  - e) Acting Senior Manager Commercial, Eskom;
  - f) Senior Advisor Internal Control, Eskom;
  - g) Health & Safety Analyst, Eskom; and
  - h) Senior Advisor, Supplier Development and Localisation, Eskom.
- 3.2.8 We obtained and reviewed the following:
- a) Eskom Procurement and Supply Management Procedure (32-1034), signed as at 19 August 2011;
  - b) Procurement related information which included the following:
    - i. The approved Contracting Strategy;
    - ii. Purchase Requisition;
    - iii. Invitation to tender;
    - iv. Responses from prospective services providers;
    - v. Evaluation reports by the respective evaluation teams, particularly, reports for technical, quality and health and safety;
    - vi. Evaluation report submitted to the tender board;
    - vii. Contracts entered into with the respective service providers (Labs);
    - viii. Invoices from inception of all contracts until August 2015;
    - ix. Audit reports pertaining to the Labs; and
    - x. List of payments made to the Labs.
- 3.2.9 Performed site visits at two Labs ("Analyt" Coal Laboratory Services and "TEST CO" Limited).



3.2.10 Interviewed representatives at the following Labs;

- a) "Analyt" Coal Laboratory Services; and
- b) "TEST CO" Limited.

3.2.11 We interviewed the following Quality Assurance team members:

- a) Acting Quality Manager, Eskom;
- b) Acting Labs Contract Manager, Quality Assurance Manager, Eskom
- c) QA Senior Advisor A, Eskom; and
- d) QA Senior Advisor B, Eskom.

3.2.12 Reviewed the Lab audits results from April 2014 to September 2015, performed by the Quality & Assurance team at the various Eskom contracted Labs.

3.2.13 We observed "special audits" commissioned by Eskom at the Eskom contracted Labs and reviewed the audit results.

3.2.14 Observed a "blind sampling" process at Eskom in Witbank and the Lab where these samples were analysed.

#### IV. SOURCES OF DOCUMENTATION AND INFORMATION

4.1 We summarised documentation and information obtained as follows:

**Table 1: Sources of documentation and information relating to the Coal Supply**

Ref	Description	Source
1	Medium Term Sourcing Strategy dated 29 August 2009	Senior Manager, Fuel Sourcing, Primary Energy Division
2	Submission: Mandate Request to Negotiate and Conclude Contracts for the Supply and Delivery of Coal for the period October 2008 to March 2018 dated July and August 2008	Senior Manager, Fuel Sourcing, Primary Energy Division
3	Process Control Manual (PCM) for Source Internal and State Owned Suppliers dated 4 December 2014	Senior Manager, Fuel Sourcing, Primary Energy Division



Ref	Description	Source
4	Process Control Manual (PCM) for Source External Suppliers dated 04 December 2014	Senior Manager, Fuel Sourcing, Primary Energy Division
5	Process Control Manual (PCM) for Procurement Management	Senior Manager, Fuel Sourcing, Primary Energy Division
5	Extract of minutes of special Board Tender Committee meeting held on 3 December 2010	Senior Manager, Fuel Sourcing, Primary Energy Division
6	Submission: Interim Feedback on Negotiations and Contracts concluded with Suppliers for the Supply and Delivery of Coal for the period October 2008 to March 2018	Senior Manager, Fuel Sourcing, Primary Energy Division
7	Request for Proposal (RFP) - Gen 3031 for the Supply of Coal to Eskom Power Stations dated 14 September 2009	Senior Manager, Fuel Sourcing, Primary Energy Division
8	MTCS Evaluation of Request for Proposal (RFP) - Gen 3031 - Spreadsheet dated 3 December 2009	Senior Manager, Fuel Sourcing, Primary Energy Division

**Table 2: Sources of documentation and information relating to the Labs**

Ref	Document description	Source
1	The Eskom Procurement and Supply Management Procedure (32-1034) (signed as at 19/08/2011)	Acting Quality Manager, Eskom
2	Purchase Requisition in respect of the tender for the procurement of Lab services	Eskom Audit & Forensics Manager
3	Contracting Strategy: Tactical Sourcing compiled the QA team (End User)	Eskom Audit & Forensics Manager
4	Invitation to Tender	Eskom Audit & Forensics Manager
5	Lab Kick off Meeting register	Eskom Audit & Forensics Manager
6	Lab negotiation meeting registers	Eskom Audit & Forensics Manager



Ref	Document description	Source
7	Clarification meeting Registers and Minutes	Eskom Audit & Forensics Manager
8	Strategy alignment meeting Minutes	Eskom Audit & Forensics Manager
9	Revised tender prices	Eskom Audit & Forensics Manager
10	Feedback report to PTC after price negotiations	Eskom Audit & Forensics Manager
11	Quality scoresheet compiled by the Senior Advisor "PQA"	Eskom Audit & Forensics Manager
12	Evaluation report to the PTC	Eskom Audit & Forensics Manager
13	Letters of acceptance and regret to the unsuccessful service providers	Eskom Audit & Forensics Manager
14	Value contracts concluded with the 9 Service Providers	Eskom Audit & Forensics Manager
15	Non-Disclosure Agreements signed by the 9 Service Providers	Eskom Audit & Forensics Manager
16	Declarations of Interest signed by the 9 Service Providers and the Evaluation and Negotiation Team Members	Eskom Audit & Forensics Manager
17	Invoices submitted by the 9 Service Providers for the period March 2014 to August 2015	Eskom Audit & Forensics Manager / Acting Quality Manager, Eskom
18	Tender documents submitted by the 9 successful Service Providers	Senior Advisor Procurement, Eskom / Procurement Division, Eskom
19	Technical Evaluation score sheets	Senior Advisor Internal Control, Eskom / QA Senior Advisor, Eskom
20	Safety Evaluation Score Sheets and relevant correspondence	Health and Safety Analyst, Eskom





Ref	Document description	Source
21	Qualifications and Experience records of the Lab Procurement Team	Human Resources, Eskom
22	Financial Evaluation Score Sheets	Financial Evaluator, Eskom
23	The Eskom Procurement and Supply Management Procedure (32-1034) signed as at 19/05/2014	Senior Advisor Internal Control, Eskom
25	"Analyt" Coal Laboratory Services Quality Manual	Eskom Audit & Forensics Manager
26	Technical Evaluation Site Visit Score Sheets	Procurement Division, Eskom
27	Blind Sampling Analysis results	Audit & Forensics, Eskom



## V. FINDINGS: MINES

### Procurement process followed in contracting with the Mines

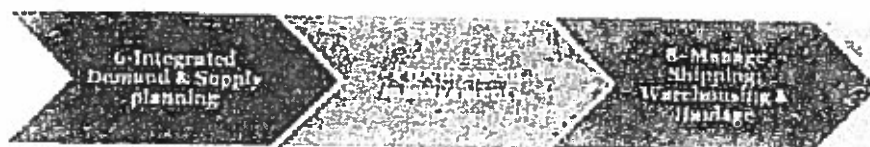
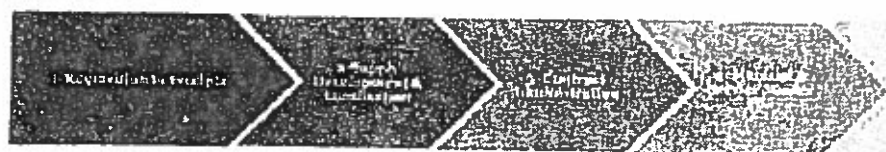
- 5.1. The Eskom Procurement and Supply Management Procedure (32-1034) (signed as at 19/08/2011) is largely dedicated to the Procurement of suppliers through a request for proposal (RFP) or a formal tender process.
- 5.2. Section 2.6 of this procedure deals with the Process for Monitoring and contains the following elements particularly relevant to the review:
  - a) The requirements to conform to the PMFA requirement that Eskom is represented by accountable persons at every level (Cost Centre Managers), who must "prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity";
  - b) All Procurement Practitioners are obliged to attend training on both the Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527), and the Eskom Cardinal Rules for Safety (32-421) in order to ensure that all commercial activities are conducted in an ethical and safe manner as prescribed therein; and
  - c) Managers within the Group Commercial Division must review all declarations of conflicts of interests made by their employees, and ensure that appropriate measures are put into place to eliminate any perceived, potential or actual conflicts of interest within the procurement and supply chain environment. A formal declaration of interest must be signed by all members of evaluation / negotiation teams prior to the commencement of formal competitive tender evaluations and mandated negotiations estimated at R500,000 or more. It is the responsibility of the Buyer / Commodity Manager to ensure that such declarations of interests are completed and filed for audit purposes.
- 5.3. Section 3.1 of the procedure deals with Delegation of Authority to approve procurement Strategies and Award Orders / Contracts. It sets out the delegation of authority framework for procurement and in particular states that "Sole adjudication (sole signature) authorities (i.e. execution and approvals of procurement / disposals by individual Procurement Practitioners or delegates, without reference to any other delegate, Procurement Practitioner, or to a PTC), are no longer permitted, at any level of delegation."
- 5.4. The procurement of the coal supply from "AC" and "CCc" Collieries was secured by means of an unsolicited offer and was thus received outside a competitive tender / enquiry process. Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure; distinguishes between two types of unsolicited offers:  
 "The first type is an offer that is made by a supplier when there is no procurement process, while the second type is made during a closed commercial process (tender or competitive negotiations) where an "uninvited" supplier has approached an Eskom employee / director before the closing date requesting to submit an offer."



- 5.5. Through various interviews conducted with the Acting General manager for the Primary Energy Division, Acting General Manager, Primary Energy Division, it was clear that the procurement of the "AC" Coal Supply was conducted as one in which there was no formal procurement process.
- 5.6. Albeit that there is no defined 'procurement initiation process' for this type of offer, section 3.7.3.9 does however require that:
  - a) "This type of unsolicited offer be referred to the SD & L Department for supplier pre-qualification and registration, as per 3.2 of the Procedure. Only once evaluated and pre-qualified after application, the supplier may then be given a vendor number confirming registration on the Eskom supplier database, and may be considered for any future tenders / enquiries."; and
  - b) It further states that "Eskom employees that are approached with this type of unsolicited offer should immediately refer the supplier to the SD & L Department within the Group Commercial Division to engage in this registration process without further representation, engagement or commitment."
- 5.7. The Eskom Process Control Manual for Procurement (32-1223) (signed as at 8/12/2014) provides a conceptual framework for the elements in the Eskom procurement management process and highlights *inter alia* the requirements for a Supply chain Strategy and Integrated Demand and Supply Planning to precede and inform the Procurement Management process.
- 5.8. Eskom's Process Control Manual for Source External Suppliers (240-7891684) (signed as at 4/12/2014) provides the requirements and key process steps in the procurement process. It indicates how the process of dealing with unsolicited offers integrates with the more formal RFP process.
- 5.9. With the above in mind, and through the interviews conducted with the Team Leader of the "AC" Colliery Procurement process, the Acting General Manager, Primary Energy Division, and having sight of the draft Primary Energy Division's Potential Coal Supplier Evaluation and Registration Process (Short/ Medium Term- March 2015) we were able to compile the standard process followed in the Primary Energy Department.



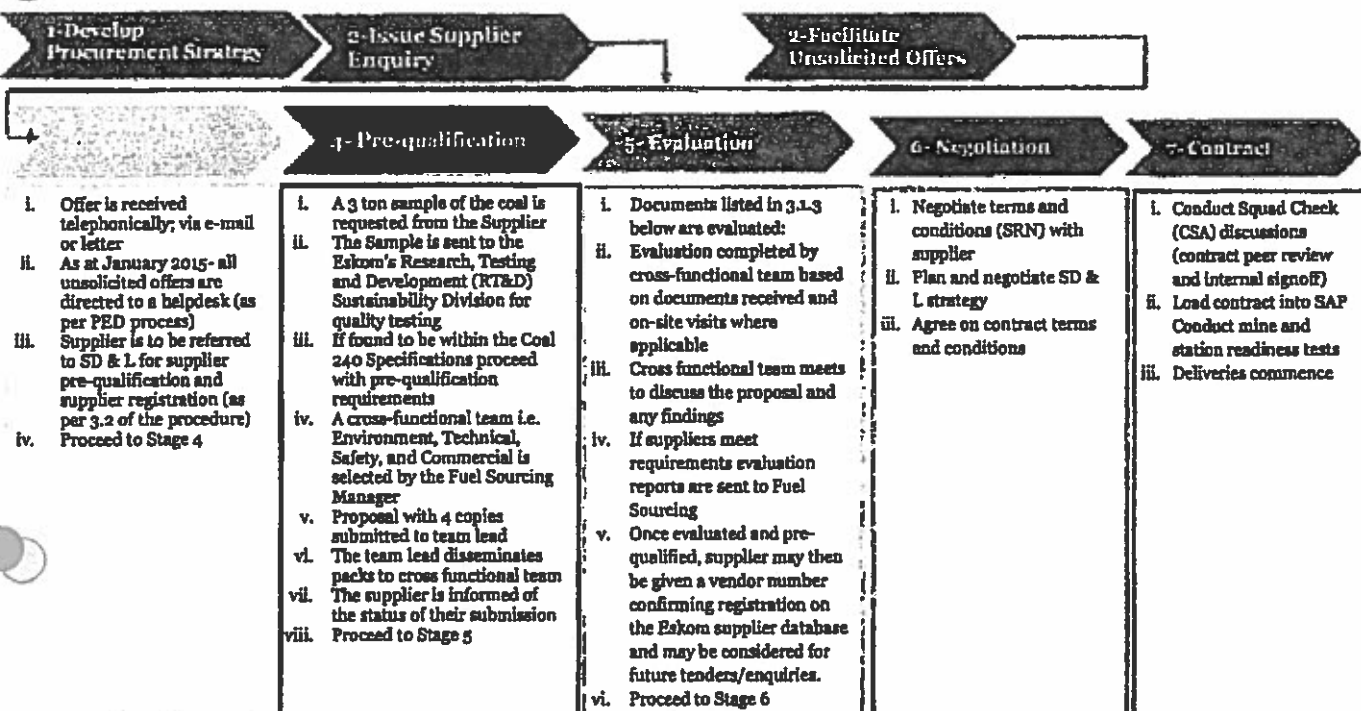
**Eskom supply chain Management Model (Eskom PCM for Procurement Management 32-1223)**



*[Handwritten signature]*



Coal Supply Procurement Process (Draft PED checklist and PCM for Source External Suppliers 240-7891684:






### Salient Strategic and Commercial risk management requirements

5.10. In addition to the processes and requirements highlighted above, we have also paid attention to the following in the review:

- a) It was reported that all four of the coal supply procurement processes was conducted under a mandate to negotiate and conclude contracts on a medium term basis for the supply and delivery of coal to various Eskom power stations for the period October 2008 to March 2018 (dated 11<sup>th</sup> September 2008) (The 2008 MT Mandate) and the interim feedback on negotiations and contracts concluded with suppliers for the supply of coal delivered to various Eskom power stations for the period 1 October 2008 to 31 March 2018 to the BoD-TC on 3 December 2010, where the mandate was extended and expanded to contract for life of mine; to extend current contracts, and; powers with sub delegation was granted to the Divisional Executive, Primary Energy Division to execute (The 2010 MT Mandate Extension);
- b) The MT Coal Supply Strategy and the 2010 MT Mandate Extension specifies Contracting Principles and Standards for the negotiation teams and coal supply agreements and standards for the process and contracts in the areas of:
  - i. Legislative Compliance: The key principles listed here are that Eskom will not contract with suppliers who do not operate legally, contracts with the owners of mining resources or value-adding agents and the standards include a list of laws and statutory instruments pertaining to the mining industry;
  - ii. Coal Quantities: This section list as principles inter alia that suppliers should give warranties that they have sufficient coal reserves to meet contractual quantities; Eskom should contract for energy rather than coal mass; volume flexibility should be built in and it should come at no extra cost; and penalty principles for under performance that would put the non-defaulting party in the same financial position it otherwise would have been in. The standards defined include the following; the reserves and resources must be SAMREC Code compliant in the reporting; that the base CV must be the geologically assessed average for the contracted reserve; and lists the monthly, annual and full contract volume flexibility standards. It further sets standards for dealing with supply shortfall and under off-take;
  - iii. Coal Qualities: The specified contracting principles list the requirements for pre-certification of stockpiles; Eskom's rights to monitor and audit; compliance to a Coal Quality Management Procedure (CQMP) and that the coal quality requirements will be power station specific and based on a Coal Quality Effects Model that seeks to optimize the coal qualities to the economic impact on the power station. The standards set include but is not limited to; Suppliers have to commit to the CQMP, PED's technical services department must audit the CQMP compliance monthly; and an Eskom - appointed independent laboratory, will do analysis of the contractual



samples;

- iv. **Price:** Contracting principles for pricing include; price will be based on efficient cost plus risk adjusted fair return; mine technical information will be used as inputs to PED's techno-economic models to do a cost estimate of the mining operation; prices will be based on energy; and price choices should be on total cost of ownership of the power station. The required standards identified for pricing include the use of a supplier data as well as industry benchmark information in the techno-economic modelling; and WACC plus a benchmarked return for the type of investment is mentioned while recognising that other methods do exist;
- v. **Contract Price Adjustments:** Contract Price adjustments or escalation clauses are meant to cater for the movement of cost components over the duration of the contract. The principles set include; that the base price should be clearly stated and a base date set before contracting; a basket of cost categories and associated indices should be used that represent the different cost drivers of the mining operation; at least 10% of the price will be fixed and free of escalation in order to build in efficiency gains; the profit component of the price should escalate at most with CPI; and the Contract Price Adjustments should be analyzed annually to determine whether there have been material shifts. Standards set include; prices should escalate annually except for diesel escalation, upwards or downwards, that is done monthly; and a standard cost basket with relative weights is specified; and
- vi. **Logistics (Transport and related issues):** The principles stipulate that; conveyor is the preferred mode, followed by rail and then road; contracts should be flexible in order to allow switching between road and rail and free on truck and delivered mode.

**Mine 1: "A Co" Mining & Exploration: "AC" Colliery (Unsolicited, CSA Signed 10 March 2015) ("A Co"/ "AC")**

- 5.11. Our findings regarding the "AC" Mine are discussed below:

**Background**

- 5.12. The procurement process that led to the signing of the "AC" Colliery CSA was treated by PED as an unsolicited offer outside of any procurement process.
- 5.13. The supplier offered two resources, "AC" and "VC", the latter was withdrawn later due to environmental challenges. Various Eskom Coal Sourcing managers interacted with the supplier over time. The mine started production in 2013 (not for Eskom) but stopped for a period and started production again in February 2015, a month before concluding the CSA with Eskom.
- 5.14. The Acting General Manager, Primary Energy Division led negotiations of which the first was formally "minuted" on 9 May 2014, which led to a formal letter of offer from "A Co" in September 2014.



- 5.15. The General Manager, Fuel Sourcing, took over negotiations as demonstrated by the 20<sup>th</sup> January 2015 meeting with the "A Co" and the contract was signed on 10 March 2015.

#### **Procurement**

##### Receipt of offer/proposal

- 5.16. Previous offers from the supplier were reportedly received from 15 May 2012 via a phone call and followed by an e-mail sent to Eskom executive, the previous Acting General Manager, Primary Energy Division received a letter of offer on 23 September 2014 from "A Co".
- 5.17. The supplier was not referred to SD & L for supplier pre-qualification and supplier registration as per Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure.
- 5.18. An email request for vendor registration was sent by the Acting General Manager, Primary Energy Division on 23 February 2015 to [REDACTED] stating that Eskom intended to award a contract to "A Co" on 1 April 2015.

##### Selection of evaluation team

- 5.19. The evaluation team selected did not complete declaration of interest forms prior to the pre-qualification stage as required by the Eskom Supply Chain Management procedure 32-1034.
- 5.20. No evidence was provided that the team underwent the required training on the Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527) and the Eskom Cardinal Rules for Safety (32-421).

##### Sample Quality Testing

- 5.21. We were not provided with the June and August 2014 sample test results.
- 5.22. We were provided with the March 2015, April 2015 and June 2014 reports for review. The reports indicated that the June 2014 and the March 2015 test samples were similar in most characteristics and thus within the acceptable range for "X" and "Y" power stations but marginal for the "Z" power station due to ash that was at the limit of rejection range (Appendix 2).
- 5.23. The 12 March 2015 Report clearly stated that the 'mixed "AC" seam 4 upper (S4U) and Seam 4 lower (S4L) blend is not recommended for the "Z" power station as there is a high probability that the blend will frequently exceed "Z"s 240 rejection specification because of the poorer quality of the S4U which exceeds the "Z" 240 rejection specifications. The report recommended that if S4U was de-stoned and blended with S4L the qualities could be acceptable, if de-stoning is not feasible then supplying only S4L to "Z" was an option' (Appendix 3).



5.24. The contract was signed on 10 March 2015 which was 2 days prior to the 12 March 2015 report being published (Appendix 4).

5.25. The S4L resource estimate (on the original mining right tenement offered which did not include "AC" Extension) was insufficient to sustain the quantity required for the "Z" Power Station over the life of the contract. The revised report submitted by the Middle Manager Plant Engineering, the Fuels and Combustion Manager, confirmed this finding and recommendation. The 18 June 2015 report by the Chief Advisor Eskom Research, Testing and Development Division, Eskom confirmed the same as the above and added that the high sulphur content of "AC" was also a concern (Appendix 5).

#### Environmental & Legal Requirements

5.26. We were not provided with the detailed Closure Cost Assessment reports and therefore could not confirm that these were received at pre-qualification stage. We however found that an on-site environmental evaluation was performed on 11 March 2014. The Water Use Licence was granted to the Mine on 22 December 2014.

#### Health and Safety Requirements

5.27. The first evaluation was conducted on 18 March 2015 which was 8 days after the contract was signed.

5.28. The on-site visit was conducted on 26 March 2015 which was 16 days after the contract was signed.

5.29. Some of the required pre-qualification documents were not received but the Health and Safety Evaluator Health & Safety Analyst, Eskom confirmed that she had sight of them during the on-site assessment and never made copies for Eskom's records.

5.30. The Health & Safety Analyst, Eskom confirmed the evaluation dates were correct and stated that she was not aware that the contract had been signed on 10 March 2015

#### Technical and Quality Requirements

5.31. During the technical evaluation process, we found that consistent and multiple burn tests were performed, 3 in particular. The last two tests were dated after the contract was signed, as is evident from the e-mail correspondence between the Middle Manager Plant Engineering and Geologist, Technical analyst, Eskom from 23 March to 14 April 2015 Re: feedback on Full Combustion Test- "AC" Colliery.

5.32. The 10 April 2015 report stated that *"When Hardgrove is considered in the overall assessment, based only on the laboratory analysis then the March 2015 sample is not suitable for all power stations as the required mill throughput to meet full load will not be achieved"* (Appendix 6).



#### Commercial and Financial Requirements

- 5.33. We were not provided with any documents pertaining to commercial evaluations. We were however informed that financial evaluations were performed. We also could not find any evidence that a financial modeling and evaluation process was followed, or a clear commercial motivation for entering into the contract on the commercial terms provided.

#### Negotiation

- 5.34. Minutes of meetings provided shows that meetings were held on:

- a) 9 May 2014;
- b) 10 July 2014;
- c) 23 September 2014;
- d) 23 January 2015; and
- e) 30 January 2015.

- 5.35. The first three meetings took place prior to the pre-qualification requirements being met. The Health and Safety function was not represented at any of the above meetings. SD&L were also not included during the meetings as required by the Eskom Supply Chain Management procedure. The PED General Manager, Fuel Sourcing at the time, led the meeting which took place on 20 January 2015.

#### Contracting

- 5.36. The Coal Supply Agreement, herein referred to as 'the Contract', was signed as at 10 March 2015. An 'Addendum' to the contract in the form of a letter was signed by the General Manager fuel sourcing on 11 May 2015 (Appendix 7).

- 5.37. Our review of the contract showed the following:

- a) The contract was poorly formatted in that it contains numbering errors, e.g. paragraph 10 was duplicated;
- b) The contract contains irrelevant or unreferenced information, these include: the second paragraph of 20.8.1.2 has irrelevant paragraphs or factually incorrect clauses (reference to "existing dome cameras" in clauses 21.5.1 and 21.7.4, also reference to short term contract in 21.5.2);
- c) The contract contains ambiguities (clause 20.8.1.2 refers to a flow diagram that shall form part of the final Agreement);
- d) The Coal Quality Management Procedure ("CQMP"), containing obligatory requirements referred to in the body of the contract is in draft, incomplete and not yet agreed or implemented;

A handwritten signature in black ink, appearing to be a stylized 'R' followed by a flourish.



- e) An 'Addendum' to the contract dealing with a change to coal quality parameter is in the form of a letter addressed to the Chief Executive of "A Co". The Acting General Manager, Primary Energy Division confirmed that this 'Addendum' has not been signed by the "A Co" and thus cannot be legally in force as per section 44 of the contract. The parties however have implemented this change;
- f) Addendum E of the contract dealing with the BEE ownership undertaking is in the form of a letter from the supplier. Legal drafting of the agreed terms and undertakings is considered a more appropriate way in order to avoid misinterpretation and ambiguity; and
- g) The contract appears to have been compiled hastily by copying and pasting sections from other contracts. The Acting General Manager, Primary Energy Division stated that it had been put together by an Official in Legal Services, who has since left Eskom.

#### Procurement Mandate

- h) We were informed that the procurement of coal supply from "A Co" was performed under the "2008 Medium Term coal procurement mandate" set up originally for emergency coal procurement. During an update to the Board of Directors Tender Committee in 2010, the mandate was extended and expanded to include contracting for "life of mine", to extend current contracts, and granted sub-delegation powers to the Divisional Executive Primary Energy Division for execution (**Appendix 8**);
- i) We did not receive evidence of compliance to some of the specified criteria, e.g. financial evaluation. The 2010 mandate motivates that the financial justification will be performed on a cost *plus* a risk adjusted fair return. Further that it should comply with the long term coal sourcing strategy;
- j) On 14 April 2014, PED provided an update to the Board of Directors Tender Committee on the Medium Term Procurement and motivated that the mandate be kept open and that the Divisional Executive be granted authority with powers to delegate to give effect to the Mandate. The Board of Directors Tender Committee resolution provided however only reflects that "feedback on the results of negotiations and Coal Supply Agreements is noted." It is therefore unclear if the Board of Directors Tender Committee approved the continuation of the 2010 revised mandate that authorised the Divisional Executive as a sole signatory authority which is specifically prohibited by the Eskom Procurement Management Policy (32-1034) effective 20 September 2011 (**Appendix 9**);
- k) Although it was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in accordance with this approved strategy;
- l) The Senior Manager Fuel Sourcing, Primary Energy Division, Eskom confirmed that PED has a Coal Supply Optimization Model and that an integrated demand



and supply planning process exists, but that it is not generally used to confirm that a supply contract fits with the optimised plan;

- m) We found no evidence that a financial evaluation was performed; and
- n) The relative percentages in the price escalation basket differs from the prescribed basket (Mandate standards). Together with qualities and price per energy unit, price adjustments are critical financial parameters in multi-year contracts and justifies tight oversight and consideration. No rationale for the deviation from the standard was provided.

### **Contract Management**

5.38. Our reviews relating to contract management showed the following:

- 5.39. It is unclear if the condition precedent in clause 10.2.1 of the contract which states that "by no later than 16:00 on 31 March 2015, the supplier had completed and reported a successful combustion test for coal supply to "Z" power station" was fulfilled or waived by Eskom, as no documentation was provided to us to verify this. \*
- 5.40. The Coal Quality Management Procedure ("CQMP"), containing obligatory requirements referred to in the body of the contract, is in draft, incomplete and not yet agreed or implemented.
- 5.41. The coal specification was amended in a letter from the General Manager Fuel Sourcing to "A Co". The letter amended the quality criteria as allegedly discussed with "A Co". This amendment could be unenforceable as the contract specifies that both contracting parties should agree to any amendment in writing, and no evidence to this effect was supplied.

### **Implementation**

- 5.42. A formal hand over process between the Coal Sourcing Manager (Contracting) and the Coal Supply Unit Manager could not be demonstrated. As such, key elements like the outstanding quality testing and confirmation (Condition Precedent), potential risks identified by the Bulk Sample test results and the finalisation of the outstanding CQMP were not identified by the team managing the implementation of the contract.

### **Quality Assurance**

- 5.43. It is evident from our findings above that Coal Supply from the "AC" Colliery was contracted prior to the receipt of some of the required evaluation documents and requirements. The contract was signed on 10 March 2015, despite the supplier having failed pre-qualification technical requirements for the supply of coal to "Z" Power Station. It further appears that the condition precedent (Clause 10.2.1 of the contract) of a successful combustion test was not met. Notwithstanding this, Eskom continued to implement the agreement with "A Co". \*



**Mine 2: "D Co" Mining: "CCc" Colliery (Unsolicited, CSA Signed November 2014) ("D Co"/"CCc")**

5.44. Our reviews relating to the above Mine showed the following:

Background

- 5.45. The "D Co" Mining's coal resource identified as "EF", has been registered on Eskom's coal resource database and was identified as a strategic block of coal as part of Eskom's identified long-term coal supply sources in the Coal Supply Strategy.
- 5.46. In 2012, the Senior Manager Fuel Sourcing, Primary Energy Division, Eskom engaged with the holders of the mineral rights to "EF" block 1 which at that stage were "F Co" Coal (Pty) Ltd. and an "off shore" company styled "G Co". "F Co" Coal bought out "G Co" at the end of 2012.
- 5.47. "F Co" Coal made a formal proposal to Eskom early in 2014 and the procurement process was taken over by Fuel Sourcing, PED (Fuel Sourcing).
- 5.48. The procurement process was considered by PED as an unsolicited bid and dealt with under the 2010 amendment of the "2008 Medium Term Mandate". An Eskom Official provided the supplier with a full set of pre-qualification documentation requirements and used it as a basis to evaluate and negotiate with the supplier.
- 5.49. Negotiations were concluded in October 2014 and the "CCc" Colliery CSA was signed in November 2014 (Appendix 10).

**Procurement**

Receipt of offer/proposal

- 5.50. Eskom initiated discussions with the owners of the mining rights to certain coal blocks it had on its coal resources database. The "EF" reserve was a targeted reserve in Eskom's Long Term Coal Supply Strategy.

Selection of Evaluation Team

- 5.51. At the time when a formal proposal was made by the supplier in respect of "EF" block 1, the designated Coal Sourcing lead, selected the team in consultation with the departmental heads.
- 5.52. The evaluation team selected did not complete 'declaration of interest' forms prior to the pre-qualification stage as required by Eskom Supply Chain Management procedure 32-1034.
- 5.53. No evidence was provided that the team underwent the required training on the Eskom's Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527) and the Eskom Cardinal Rules for Safety (32-421).



#### Sample Quality Testing

- 5.54. Coal qualities were provided as part of pre-qualification information supplied to Eskom.

#### Environmental and Legal requirements

- 5.55. The NEMA and IWULA were outstanding at the time of pre-qualification. However it was reflected as in place on the PED supplier documentation checklist. The following were supplied:

- a) Mining Right granted on 24 February 2011;
- b) Approved Environmental Management Program Report; and
- c) A Tax clearance certificate dated 4 June 2014.

- 5.56. An Environmental report prepared by an Eskom official, dated 03 July 2014 was provided.

- 5.57. A site evaluation was undertaken on 4 June 2014.

- 5.58. A Water use licence was applied for but not issued at the time of contracting.

#### Health and Safety Requirements

- 5.59. An internal Health and Safety report was signed by an Eskom Safety Officer on 27 October 2014.

#### Technical Requirements

- 5.60. The following reports were supplied:

- a) Internal Geological report dated 30 March 2009;
- b) Independent Geological report dated 31 March 2011; and
- c) Feasibility report dated August 2012.

#### Commercial and Financial Requirements

- 5.61. Financial status evaluation of "D Co" Mining Resources (Pty) Ltd was performed by the Senior Advisor, Financial Accounting of Eskom on 20 October 2014. Concerns were raised by the financial status reviewer that the company may not have the required cash reserves to cover the increased working capital requirements and that funding for expansions was not secured (Appendix 11).

*R*  
*Box*



- 5.62. An internally developed technical cost model was used during the evaluation process. A financial evaluation model was developed to determine a "fair price" and 16% was assumed as a "fair return" on investment.
- 5.63. No evidence was supplied to demonstrate that coal quality options were performed taking a Total Cost of Ownership of the targeted Power Stations into account.
- 5.64. The standard escalation clause as required by the mandate was implemented.

#### Logistics

- 5.65. Route Assessment reports were produced on 20 March 2014 for "W" Power Station and again on 07 July 2015 for "X" and "W" Power Stations.

#### Supplier Development and Localisation

- 5.66. A BBBEE certificate dated 7 November 2014 was supplied.
- 5.67. No documentation was provided to indicate that SD&L were involved as per normal procedure, however it is noted that the supplier is 52.13% black owned from company records supplied during the pre-qualification stage and further supported by a B-BBEE certificate dated 7 November 2014.

#### Negotiation

- 5.68. Minutes of seven meetings held between 18 April 2012 and 30 July 2014 were supplied. A summary report of results of negotiations for contract drafting was signed by both parties on 23 October 2014.
- 5.69. Term sheet/record of negotiations was signed on 23 October 2014.

#### Contracting

- 5.70. A Coal Supply Agreement, herein referred to as 'the Contract' was signed in November but the date of the month was not recorded.
- 5.71. Prior to signing the contract, the draft contract was reviewed by Legal Risk and assessed by "Corporate Legal" on 24 November 2014.
- 5.72. At the time of signature, the vendor number was not captured on the contract. However, a vendor number was issued for the supplier on 27 November 2014 by Eskom.
- 5.73. Although it was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy.



- 5.74. The Senior Manager Fuel Sourcing, Primary Energy Division, Eskom confirmed that PED has a Coal Supply Optimization Model and an integrated demand and supply planning process, but that it is not generally used to confirm if a supply contract fits with the optimised plan.
- 5.75. A financial model was used to perform a price determination in accordance with the mandate requirements.

#### **Contract Management**

- 5.76. Clause 17 and Appendices 1, 2 and 3 of the CQMP were amended *via* a letter signed by the Acting Labs Contract Manager, Quality Assurance Manager, Eskom on 14 July 2015. Although we did not review the delegated authority of the official, amendments to contracts of this nature should be dealt with by Senior Management (Appendix 12).

#### **Mine 3: "B Co" Mining. ("BC") (RFP. Signed 25 March 2011)**

- 5.77. Our reviews relating to the above Mine showed the following:

##### **Background**

- 5.78. The procurement of the "BC" coal supply was the result of a formal RFP process, which closed on 14 October 2009, following the 2008 MT Coal Supply Strategy and mandate as approved by the Board of Directors Tender Committee.
- 5.79. A formal team under the leadership of a Senior Manager, Previous General Manager, Primary Energy Division was established to manage the procurement process. Tenders were evaluated, ranked and formal negotiations initiated with all the qualifying suppliers.
- 5.80. The Middle Manager, Coal Contracts, Eskom was appointed lead negotiator for this supplier. Negotiations started in December 2009 and continued until the parties signed a formal offer and acceptance form dated 10 June 2010. The final version of the CSA was signed on 25 March 2011 (Appendix 13).

##### **Receipt of offer/proposal**

- 5.81. The RFP was issued in 2009.
- 5.82. List of tenders received and signed off by the Middle Manager Coal Contracts, Eskom on 10 October 2009 and date stamped 14 October 2009.



#### Selection of evaluation team

- 5.83. The formal evaluation team was appointed under the Medium Term Coal procurement Strategy. The Middle Manager, Coal Contracts, Eskom was appointed as the Lead.
- 5.84. No evidence was provided to indicate that the team completed 'declaration of interest' forms prior to the pre-qualification stage.
- 5.85. We could not find any evidence to show that the team underwent the required training on the Eskom Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527) and the Eskom Cardinal Rules for Safety (32-421).

#### Sample quality testing

- 5.86. We were not provided with the relevant documentation.

#### Environmental and Legal Requirements

- 5.87. An Environmental assessment and due diligence on regulatory documents was performed. An Environmental Evaluation scoresheet dated 17 September 2010 was supplied. The scoresheet does not indicate who compiled it and is not signed off.
- 5.88. The Mining Right was granted on 23 February 2010.

#### Technical Requirements

- 5.89. A Technical Memorandum dated 21 July 2011 was compiled by the Middle Manager Plant Engineering four months after the contract was signed (Appendix 14).
- 5.90. No formal internal PED technical evaluation report was supplied for review.
- 5.91. The Bulk test for characterisation and mineralogy was performed and the report dated three months after signature of the CSA indicated that the 4 lower seam for "HC" and "BC" met requirements for "V" and "Z" power station.

#### Health and Safety Requirements

- 5.92. No proof of assessment provided.

#### Commercial and Financial Requirements

- 5.93. A Financial Evaluation Report dated 24 February 2010 was supplied. The report expressed concern over the ability of "B Co" Mining (Pty) Ltd to be able to fund a project of this size and recommended that a guarantee from the parent company "B Co" Energy Holdings Limited be obtained. No evidence could be found that the recommendations of the report have been addressed (Appendix 15).



5.94. No evidence was supplied to indicate a modelling and financial analysis of the supply was performed. However the supplier returnable cost spreadsheets supplied as part of the RFP were used instead and contracted costs are in line with this.

5.95. The relative percentages in the price escalation basket differs from the prescribed basket (Mandate standards). Together with qualities and price per energy unit, price adjustments are critical financial parameters in multiyear contracts and justifies tight oversight and consideration. No rationale for the deviation from the standard was provided at the time of contracting.

#### Logistics

5.96. A Route Assessment Form was completed on 2 July 2010 and route option evaluations were also performed.

#### Supplier Development and Localisation

5.97. This was not a requirement at the time of contracting with the Mine.

#### Negotiation

5.98. We found evidence (minutes and agenda packs) of the following negotiation meetings:

- a) 9 December 2009;
- b) 15 February 2010;
- c) 18 May 2010;
- d) 10 August 2010;
- e) 16 February 2011 and
- f) 4 July 2012.

#### Contracting

5.99. An Offer and Acceptance Form dated 22 June 2010 was signed by both parties.

5.100. A Briefing Note dated 24 March 2011 was signed by the GM: Fuel Sourcing.

5.101. A Coal Supply Agreement herein referred to as 'the Contract' was signed on 25 March 2011.

5.102. A Modification to the contract was signed on 15 November 2012.



- 5.103. Although it was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy.
- 5.104. The Senior Manager Fuel Sourcing, Primary Energy Division, Eskom confirmed that PED has a Coal Supply Optimization Model and an integrated demand and supply planning process exists, but that it is not generally used to confirm that a supply contract fits the optimized plan.

**Mine 4: "E Co" Coal, "AM" Colliery ("E Co" Coal/"AM") (RFP, Signed 26 March 2013)**

**Background**

- 5.105. "E Co" Coal offered this resource under the 2009 RFP process, which closed on 14 October 2009, following the 2008 Medium Term Coal Supply Strategy and mandate as approved by the Board of Directors Tender Committee.
- 5.106. A formal team under the leadership of the Previous General Manager, Primary Energy Division was established to manage the procurement process. Tenders were evaluated, ranked and formal negotiations initiated with all the qualifying suppliers.
- 5.107. A Lead negotiator for this supplier was appointed and negotiations continued for an extended time as the mine feasibility studies continued and regulatory approvals were sought. A CSA was signed on 26 March 2013 under the revised 2010 Medium Term Mandate (Appendix 16).

**Receipt of offer/proposal**

- 5.108. A List of Tenders was received and signed off by the Middle Manager Coal Contracts on 10 October 2009 and date stamped 14 October 2009 (Appendix 17).

**Selection of Evaluation Team**

- 5.109. No information regarding the appointment of the team, team lead, or declaration of interest or training was provided.

**Sample quality testing**

- 5.110. No information was provided.



#### Environmental and Legal Requirements

- 5.111. The following reports were supplied:
- a) National Environmental Management Act 98 (NEMA) Authorisation dated 31 January 2012;
  - b) Mining Right granted on 3 May 2012;
  - c) Approved Environmental Management Program Report dated 3 May 2012;
  - d) Water Use Licence issued on 25 May 2012; and
  - e) Amended Water Use Licence issued on 8 April 2013.
- 5.112. An Environmental Report dated 28 February 2013 was prepared by the Senior Advisor, Environmental Management, Eskom.

#### Health and Safety Requirements

- 5.113. No information was provided.

#### Technical Requirements

- 5.114. The Technical Evaluation report for "AM" Mine deals with general geological and technical data. It makes no reference to the normal Eskom chemical and mineralisation characterisation analysis and burn rate trials. Furthermore, the report does not indicate who the author is and neither is it dated or signed (Appendix 18).

#### Commercial and Financial Requirements

- 5.115. No evidence of any costing or financial analysis was provided.
- 5.116. The relative percentages in the price escalation basket differs from the prescribed basket (Mandate standards). Together with qualities and price per energy unit, price adjustments are critical financial parameters in multi-year contracts and justifies tight oversight and consideration. No rationale for the deviation from the standard was provided.

#### Logistics

- 5.117. No information was provided.

#### Supplier Development and Localisation

- 5.118. Not a requirement at the time, however the supplier complied with the Mining Charter.



#### Negotiation

- 5.119. We found minutes of a negotiation meeting which took place on 22 July 2011.

#### Contracting

- 5.120. A Coal Supply Agreement herein referred to as 'the Contract' was signed on 26 March 2013.
- 5.121. Although "E Co" Coal was a successful correspondent to the 2009 RFP and ranked 6<sup>th</sup> out of 32 respondents based on technical and commercial valuation criteria, they were not contracted in the first round of the process, but contracted under the revised MT mandate obtained in 2010.
- 5.122. It was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy.
- 5.123. The Senior Manager Fuel Sourcing, Primary Energy Division, Eskom confirmed that PED has a Coal Supply Optimization Model and an integrated demand and supply planning process exists, but that it is not generally used to confirm a supply contract fits the optimized plan.

#### Contract Management

- 5.124. The contract Modification dated 4 September 2014: For the upgrading of coal to meet the "X" Specifications was accepted by Eskom on 4 September 2014. However, the modification was signed but not dated by the Supplier.
- 5.125. During a visit to the Mine, the following was observed:
- a) Sampling plant bias tests are not done and signed off as per the contractual requirements;
  - b) Sampling plant splitter boxes, sample bins and samples are not tamper proof;
  - c) The mine plant supervisor was unaware of the requirements that adjustments to the sampling plant can only happen with Eskom's consent; and
  - d) Sampling operators and supervisors, including observers are not properly trained about the sampling process and critical parameters.

A handwritten signature in black ink, appearing to be 'R. H. H. H.', located in the bottom right corner of the page.



### General observations/comparisons between the four CSAs

- 5.126. The "BC" CSA (signed 25 March 2011) and the "AM" CSA (signed 26 March 2013) resulted from a 2009 Coal Procurement RFP process. The former was concluded under the 2008 MT Mandate, while the latter was concluded under the 2010 MT Mandate Extension.
- 5.127. The AC CSA (signed 10 March 2015) and the "CCc" CSA (signed November 2014) resulted from unsolicited bids, was deemed to be medium term contracts and concluded under 2010 MT Mandate Extension.
- 5.128. The "CCc" CSA procurement process was the only one of the four reviewed that could provide a techno-financial model compiled by Eskom to calculate mining costs and determine a price estimate based on the principle of 'efficient cost plus a fair return'. It was also the only contract where the escalation basket corresponds exactly to the original mandate basket.
- 5.129. Documentation management and recordkeeping appears to be a common shortcoming.
- 5.130. The absence of any reference to the Coal Supply Optimization Plan or demonstration that the planned supply to the relevant power station fits the optimized demand and supply plans during the contracting decisions and motivations, as well as the lack of focus on the techno-financial evaluations could indicate a significant financial risk to Eskom.
- 5.131. The contract structure, form and commercial principles of all four contracts appear to originate from a template and standard terms and conditions developed as a result of the Medium Term Coal Sourcing Strategy and the Contracting Principles as set out in the 2010 MT Mandate Extension.
- 5.132. The wording in some of the corresponding clauses of the four CSA's are slightly different, for example the formula to calculate the financial penalty, general warranties, requirements of surveillance cameras in the sampling, pre-certification process and the Alienation or Disposal of an Interest. This appears to be as a result of "evolution" of the "standard contract terms" over time.
- 5.133. Some corresponding clauses contain variations in order to cater for specifics relevant to the specific agreement, for example in the introduction, conditions precedent clauses and the escalation table elements and weights.
- 5.134. In contrast to the "BC", "AM" and "CCc" contracts, the "AC" contract is poorly formatted, contains numbering errors (paragraph 10 is duplicated), contains irrelevant or unreferenced information (some of the references below table 3, the second paragraph of 20.8.1.2, has irrelevant paragraphs or factual incorrect clauses (reference to "existing dome cameras" in clauses 21.5.1 and 21.7.4, also reference to short term contract in 21.5.2), contains ambiguities (clause 20.8.1.2



refers to a flow diagram that shall form part of the final Agreement). The CQMP, acritical addendum is incomplete and not signed by the parties.

- 5.135. The above could indicate that the "A Co" contract, or at least the execution copy was not prepared or reviewed by legal Counsel of the parties. It is standard practice in industry for a contract of this value and duration to have undergone a legal drafting risk review. It appears to have been hastily put together through a process of cutting and pasting from various drafts or standard templates. It is considered irregular for the executives of the parties who have signed this contract to have done so without ensuring legal review or at least a detailed proof read by themselves.

#### General observations on Mine Management

- 5.136. From site visits to "AM", "BC" and "AC" mines the following was observed:

- a) "AM" and "BC" mines are well-established mines with experienced mining engineers and geologists on site, while "AC" is in construction or development phase and make use of a mining contractor (subsidiary of "A Co") with limited coal mining experience;
- b) "AC" has no coal beneficiation facilities, the Mine crushes and screens various ROM stockpiles from different coal seams from the pit and sells or blends from these stockpiles for the different markets. According to the GM of the Mine, they supply to Eskom only "4 Seam Lower" coal and the rest to various other coal mines or vendors with washing facilities that blends or "washes" into other quality specification products for Eskom; and
- c) "AM" and "BC" Collieries mine the same coal seams as that of "AC" in the Delmas coalfields. The former two mines have well controlled grade control practices that start in the pit and continue with selective mining and selective beneficiation, and crushing and screening schedules in order to make the required Eskom grade coal. Both considers that Sulphur as a critical parameter to manage constantly as pockets of coal can have an extraordinary high sulphur content due to the frequency of pyrite intrusions.

- 5.137. We summarised and discussed our findings with management to obtain their input. Management provided the following comments in relation to the findings below:

**Table 3: Mine 1 ("A Co" Mining & Exploration: "AC" Colliery)**

Ref	Findings	Management Comments
1	The supplier was not referred to SD & L for supplier pre-qualification and supplier registration as per Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure.	This was an oversight



Ref	Findings	Management Comments
2	The evaluation team selected did not complete 'declaration of interest' forms prior to the pre-qualification stage as required by Eskom Supply Chain Management procedure 32-1034.	A formal Declaration of Interest process is now being implemented.
3	No evidence was provided that the team underwent the required training on the Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527) and the Eskom Cardinal Rules for Safety (32-421).	Some PED staff members have undergone Ethics training. The rest of the staff have been given a December 2015 deadline.
4	<p>The March, April and June Reports however mention that the June 2014 and the March 2015 samples were similar in most characteristics and thus within the acceptable range for "X" and "Y" but marginal for "Z" due to ash that is at the limit of rejection range.</p> <p>The 12<sup>th</sup> March Report clearly stated that the 'mixed "AC" seam 4 upper (S4U) and Seam 4 lower (S4L) blend is not recommended for the "Z" Power Station as there is a high probability that the blend will frequently exceed "Z"'s 240 rejection specification, and because of the poorer quality of the S4U which exceeds the "Z" Power Station's 240 rejection specifications'.</p> <p>The report recommended that if S4U was de-stoned and blended with S4L the qualities could be acceptable and if de-stoning was not feasible, then supplying only S4L to "Z" Power Station was an option'.</p>	Management does not interpret "marginal" in the Technology & Research division reports as unsuitable for the Power Stations indicated. Management was unaware that the reports indicate that it was not recommended for "Z" for which it is contracted. Management will review the reports and act accordingly.
5	We were not provided with the latest detailed Closure Cost Assessment reports.	The environmental assessment was performed in 2014. Management cannot however confirm the exact date. The environmental team should have the report. If they cannot produce the report, the finding should stand.
6	The first Health and Safety evaluation was conducted 8 days after the contract was signed. The on-site visit was conducted 2 and a half months after the contract was signed	Health and Safety checks could not be performed as the mine was, at the time, not operating. The checks could only be performed at least 6 weeks after the mine became operational.





Ref	Findings	Management Comments
7	During the technical evaluation process, we found that consistent and multiple burn tests were performed, 3 in particular. The last two tests were dated after the contract was signed.	Management is certain that combustion tests had been conducted before the contract was signed and the results were communicated to the team. The signed combustion report was probably signed afterwards.
8	There appears to be a discrepancy in the dates of the Environmental and Legal report. The first page of the report shows the effective date as April 2014 while the second and third pages show the effective date as March. The report was signed by the Environment Senior Advisor on 15 April 2014, supported by the Environment Senior Advisor, who signed on 16 April 2015 and then wrote a number "4" over the "5" on the year 2015. This could indicate that the report was backdated.	These were mistakes. All reports were signed in 2014.
9	The Health and Safety Report was finalised 2 and 1/2 months after the contract was signed.	Health and Safety checks could not be performed as the mine was not operating at the time. The checks could only be performed at least 6 weeks after the mine became operational.
10	The Technical Report was finalised after the contract was signed.	The technical evaluator was present during evaluations and negotiations and all his views were noted. He only signed the report later as he was not available at the time.
11	Although requested, the Commercial and Financial evaluation report was not provided to us. We also could not find any evidence that a financial modeling and evaluation process was followed, or a clear commercial motivation for entering into the contract on the commercial terms provided.	Two meetings were held with the supplier in which a comprehensive financial discussion was performed, including financial models. A spreadsheet was compiled and projected on the screen for all to comment.
12	Three negotiation meetings took place prior to the pre-qualification requirements being met. The Health and Safety function was not represented at any of these meetings. SD&L were also not included during the negotiation meetings as required by the Eskom Supply Chain Management procedure.	SD&L plays an oversight role during negotiations and they do not always attend the meetings. Health and Safety checks could not be performed as the mine was not operational at the time.





Ref	Findings	Management Comments
13	<p>We noted the following discrepancies in the "AC" CSA:</p> <ul style="list-style-type: none"> <li>• The contract is poorly formatted and contains numbering errors (paragraph 10 is duplicated);</li> <li>• It contains irrelevant or unreferenced information such as the second paragraph of 20.8.1.2 has irrelevant paragraphs or factually incorrect clauses (reference to "existing dome cameras" in clauses 21.5.1 and 21.7.4, also reference to short term contract in paragraph 21.5.2;</li> <li>• The contract contains ambiguities (clause 20.8.1.2 refers to a flow diagram that shall form part of the final Agreement);</li> <li>• The Coal Quality Management Procedure ("CQMP"), containing obligatory requirements referred to in the body of the contract is in draft, incomplete and not yet agreed or implemented;</li> <li>• An 'addendum' to the contract dealing with a change to coal quality parameter is in the form of a letter addressed to the Chief Executive of "A Co". Acting General Manager, Primary Energy Division confirmed that this 'Addendum' has not been signed by the Supplier and thus cannot be legally in force as per section 44 of the contract. The parties however have implemented this change;</li> <li>• Addendum E of the contract dealing with the BEE ownership undertaking is in the form of a letter from the supplier. Legal drafting of the agreed terms and undertakings is considered a more appropriate way in order to avoid misinterpretation and ambiguity; and</li> <li>• The contract appears to have been put together hastily by copying and pasting sections from other contracts.</li> </ul>	<p>The contract was compiled by [REDACTED] of Corporate Legal with input from PED.</p> <p>PED is in the process of developing revised standard conditions of contract and that could be the reason for the inconsistencies in the "AC" CSA.</p>





Ref	Findings	Management Comments
14	<p>It was stated that the procurement was performed under the 2008 Medium Term coal procurement mandate set up originally for emergency coal procurement.</p> <p>During an update to the Board of Directors Tender Committee in 2010, the mandate was extended and expanded to contract for life of mine, to extend current contracts, and powers with sub-delegation authority were granted to the Divisional Executive Primary Energy Division to execute.</p> <p>We could not find evidence of compliance to some of the criteria specified, specifically pertaining to financial evaluation. The 2010 mandate motivates that the financial justification will be performed on cost plus a risk adjusted fair return. Further that it should comply with the long term coal sourcing strategy.</p> <p>On 14 April 2014 PED provided an update to the Board of Directors Tender Committee on the Medium Term Procurement and motivated that the mandate be kept open and that the Divisional Executive be given authority with powers to delegate to give effect to the Mandate. The Board of Directors Tender Committee resolution however only reflects that "feedback on the results of negotiations and Coal Supply Agreements is noted." It is therefore unclear if the Board of Directors Tender Committee approved the continuation of the 2010 revised mandate that authorised the Divisional Executive as a sole signatory authority which is specifically prohibited by the Eskom Procurement Management Policy (32-1034) effective 20 September 2011.</p> <p>Although it was reported that an updated Coal Procurement Strategy exists, this was not provided to us for review, nor was any evidence found that demonstrates that the procurement was in accordance with this approved strategy.</p> <p>The Senior Manager Fuel Sourcing, Primary Energy Division, Eskom confirmed that PED has a Coal Supply Optimization Model and that an integrated demand and supply planning process exists, but that it is not generally used to confirm that a supply contract fits the optimized plan.</p> <p>It was stated that a financial evaluation was performed, no evidence of this was provided. We therefore could not be established that a mining and production cost analysis was performed.</p> <p>The relative percentages in the price escalation basket differs from the prescribed basket (Mandate standards). Together with qualities and price per energy unit, price adjustments are critical financial parameters in multi-year contracts and justifies tight oversight and consideration. No rationale for the deviation from the standard was provided.</p>	<p>Management interpreted the board minutes which read "noted" as providing approval as requested.</p> <p>Management is considering implementing a formal process which includes sign off by the planning manager that the negotiated contract is in line with the best alternatives for coal supply to the Power Station at that time and prior to contracting.</p> <p>Suppliers push back on the standard escalation basket. PED is considering a new standard that will be taken through the required governance processes.</p>





Ref	Findings	Management Comments
15	<p>It is unclear if the condition precedent in clause 10.2.1 of the "AC" CSA which states "by no later than 16:00 on 31 March 2015, the supplier had completed and reported a successful combustion test for coal supply to "Z" power station" was fulfilled or waived by Eskom, as no documentation was provided to verify this.</p> <p>The Coal Quality Management Procedure ("CQMP"), containing obligatory requirements referred to in the body of the contract, is in draft incomplete and not yet agreed or implemented.</p> <p>The coal specification was amended in a letter from the General Manager fuel sourcing to "A Co". The letter amended the quality criteria as allegedly discussed with "A Co". This amendment could be unenforceable as the contract specifies that both contracting parties should agree to any amendment in writing, and no evidence to this effect was supplied.</p>	<p>The CQMP was not signed as some of the conditions in it, such as the fact that the Mine had to have an automatic sampler, could not be fulfilled as the supplier did not have one yet.</p> <p>Management is considering the recommendation that the "AC" CSA be redrafted and re-signed by the parties.</p>
16	A formal hand over process between the Coal Sourcing Manager (Contracting) and the Coal Supply Unit Manager could not be demonstrated.	<p>PED and Coal Ops have recently developed an official Contracts Management handover checklist. Management will however expand on the checklist to address loopholes. Furthermore, Coal Ops will, from now on, be involved in negotiations.</p>

Table 4: Mine 2 ("D Co" Mining: "CCc" Colliery)

Ref	Findings	Management Comments
1	NEMA and IWULA were outstanding at the time of pre-qualification. However it was indicated as in place on the PED supplier documentation checklist.	Due to time delays at the Department of Environmental Affairs, the practice was adopted to proceed as long as formal applications for the licences were made.
2	We found no proof that the Coal Operations division was involved.	This could be due to poor handover processes between negotiators.
3	Water use licence was applied for but not issued at the time of contracting.	Due to time delays at the Department of Environmental Affairs, the contract could be awarded if proof of application was provided.





Findings	Management Comments
<p>4 The PED technical report provided is not dated and unsigned.</p>	<p>The PED technical evaluator was present during evaluations and the negotiations and all his views were noted. He only signed the report later as he was not available at the time.</p>
<p>5 A financial evaluation model was developed to determine a "fair price". 16% was assumed as a "fair return" on investment.</p> <p>The internally developed technical cost model used was used in the evaluation process.</p> <p>No evidence was supplied to demonstrate that coal quality options were performed taking a Total Cost of Ownership of the targeted Power Stations into account.</p> <p>The standard escalation clause as required by the mandate was implemented.</p>	<p>PED is considering a new standard that will be taken through the required governance processes.</p>
<p>6 The CSA was signed in November but the date of the month was not recorded. At the time of signature the vendor number was not captured on the contract but a vendor number was issued to the supplier on 27 November 2014 by Eskom.</p>	<p>The contract was compiled by [REDACTED] of Corporate Legal with input from PED. PED is in the process of developing revised standard conditions of contract and that could be the reason for the inconsistencies in the CSA.</p>
<p>7 No proof of Health and Safety Assessment was provided.</p>	<p>This could be lost due to poor handover between negotiators.</p>
<p>8 No formal internal PED technical evaluation report was supplied for review.</p>	<p>At the time of contracting, an internal PED evaluation was not a requirement.</p>
<p>9 Although it was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy. The Senior Manager Fuel Sourcing, Primary Energy Division, Eskom confirmed that PED has a Coal Supply Optimization Model and an integrated demand and supply planning process exists, but that it is not generally used to confirm a supply contract fits the optimized plan.</p>	<p>Management is considering implementing a formal process which includes sign off by the planning manager that the negotiated contract is in line with the best alternatives for coal supply to the Power Station at that time and prior to contracting.</p>





Table 5: Mine 3 ("B Co" Mining: "BC")

Ref	Findings	Management Comments
1	No information regarding the appointment of the evaluation team, team lead, or declaration of interest and training was provided.	It was not a requirement at the time of this procurement.
2	There was no information relating to Health and Safety Assessments provided.	This could be because of poor handover processes.
3	We found no evidence that the Supplier Development and Localisation team were involved.	This was not a requirement at the time. Suppliers had to comply with the Mining Charter.
4	We found no evidence that the Coal Operations division was involved.	This was not a requirement at the time.

Table 6: Mine 4 ("E Co" Coal: "AM" Colliery")

Ref	Findings	Management Comments
1	No information regarding the appointment of the evaluation team, team lead, or declaration of interest and training was provided.	It was not a requirement at the time of this procurement.
2	There was no information relating to Health and Safety Assessments provided.	This could be because of poor handover processes.
3	We found no evidence that the Supplier Development and Localisation team were involved.	This was not a requirement at the time. Suppliers had to comply with the Mining Charter.
4	We found no evidence that the Coal Operations division was involved.	This was not a requirement at the time.



## VI. FINDINGS: LABS

### **Eskom Procurement and Supply Chain Management procedure**

- 6.1 We detail below, the procurement process as explained in Eskom's Procurement and Supply Chain Management Procedure (32-1034) (Appendix 19):

#### Introduction

- 6.2 The policy states that all procurement practices must be performed within the Approved Procurement Framework as set out in the following policies and guidelines:
- a) The approved Delegation of Authority Framework;
  - b) Eskom's Procurement and Supply Chain Management Policy (32-1033);
  - c) Eskom's Procurement and Supply Chain Management Procedure (32-1034);
  - d) Approved internal Process Control Manuals governing the procure-to-pay processes within Eskom; and
  - e) Any other mandatory legislative and policy frameworks that govern and have a direct impact on Eskom's procurement and supply chain management operations.
- 6.3 This framework ensures that the procurement of any goods and services within Eskom is conducted in a manner that is fair, equitable, transparent, competitive and cost effective. To this end, all stakeholders involved must ensure that all procured goods and services are commercially, financially and technically sound.
- 6.4 Eskom's Procurement and Supply Chain Management Procedure further provides guidance regarding how procured service providers should be handled post procurement. This includes the management of the contracts as well as quality assurance requirements to ensure that all service providers perform as per the contracts concluded. Our review also focused on this requirement to determine the extent to which such requirements are compliant.
- 6.5 As part of the review, we tested compliance to this Framework specifically regarding the procurement of services from laboratories and roving, observation and sampling service providers.

#### Summary of the Tender Process (As per Eskom Supply Chain Management Procedure (32-1034))

- 6.6 According to Eskom's Procurement and Supply Chain Management Procedure (32-1034), the following process must be followed when procuring services by means of a tender process:



- a) The End User should conduct a "Needs Analysis" by considering whether the need could be met by Eskom sources or existing contracts;
- b) Where applicable, a pre-qualification enquiry is sent out to suppliers with all required information after which applications are verified and pre-qualified by a Supplier Verification Officer;
- c) The End User loads a Purchase Requisition ("PR") on SAP, which is received by the Buyer and approved by the Cost Centre manager;
- d) The End User is responsible for formulating the Scope of Work required;
- e) The Buyer/cross-functional team, SD&L Functionary and/or technical experts conduct a formalised and structured market analysis, in the form of a Contracting Strategy, before sending out a competitive enquiry to determine sourcing method, evaluation criteria and the evaluation methodology;
- f) The Contracting Strategy is signed off by the cross functional team as well as a senior Eskom Official as set out in the Delegation of Authority Framework;
- g) Evaluation criteria for each discipline is determined and signed off by the Buyer / Commodity Manager and the End User / Cross Functional Team for incorporation in the tender document;
- h) The Evaluation Team covering all disciplines is selected. It is however unclear from the procedure, who must choose the Evaluation Team and what criteria such a person must adopt in selecting the team;
- i) A clarification meeting is held with potential suppliers to clarify the requirements of the contract;
- j) The invitation to tender document is populated, including in the document, all information approved in the Contracting Strategy;
- k) The tender is advertised in the Eskom Tender Bulletin for a minimum of 20 working days;
- l) Tender submissions are received, date stamped and initialed by at least 2 Eskom Officials on each page, upon receipt;
- m) All members of the Evaluation and Negotiation Team should sign declarations of interest;
- n) A pre-evaluation of tender submissions is conducted by Commercial procurement division, with the assistance of the End User, wherein tenders that do not meet the gatekeeper's mandatory requirements, are disqualified;
- o) The remaining tenders are evaluated by the evaluation teams in the different disciplines based on documents received and on-site visits, where applicable;



- p) The evaluation outcomes per discipline are consolidated into an evaluation report, specifying recommended suppliers;
- q) The evaluation report is presented to and signed off by the Procurement Tender Committee ("PTC");
- r) Where mandated, the Buyer together with a suitably represented team, negotiates with suppliers post tender, on price and other terms such as an SD&L strategy;
- s) The tenders are awarded and contracts signed as per the approved Eskom Standard Contracts;
- t) The results of the tender evaluation is advertised in the Eskom Tender Bulletin;
- u) A contract file is opened for each supplier/contractor;
- v) Delivery as per the contract commences; and
- w) The contracts manager manages the contracts by, amongst others, ensuring compliance by the supplier to the conditions of the contract, ensuring suppliers remedy any non – conformance and dealing with supplier queries and disputes.

#### Summary of the Tender Process followed in the procurement of the Labs

- 6.7 We discuss in this section, the processes followed in procuring the services of the Labs and the roving, observation and sampling service providers and assess compliance of the process to the Eskom Supply Chain Management procedure discussed above. We summarised the process as follows:
- a) Acting Labs Contract Manager, Quality Assurance Manager, Eskom, who was the End User at the time, conducted a needs analysis as set out in the Strategy Pre Alignment meeting minutes. The meeting was held on 15 October 2013 (**Appendix 20**). It is however unclear from the procurement file, who attended this meeting;
  - b) We found no evidence that a pre-qualification process was followed. According to Acting Procurement Manager (Tactical Procurement), Eskom, Acting Procurement Manager, Tactical Procurement, this step was not applicable as the procurement was conducted via an "open tender";
  - c) A PR appears to have been approved by the Cost Centre Manager as per the SAP printout provided to us. It is however unclear when it was approved as the purchase requisition printout does not indicate the date of approval (**Appendix 21**);
  - d) A Contracting Strategy was compiled and addressed, amongst others, the scope of work, sourcing method; evaluation methodology and budget.



According to the Contracting Strategy, the required services were to be procured by means of an open tender. The estimated budget amounted to R213 million (Appendix 22);

- e) The above Contracting Strategy was signed by representatives from Technical, Health and Safety, SD&L, Commercial and Environmental. The strategy appears to have been approved by the Project Manager, the Procurement Middle Manager, the Acting Senior Manager Commercial, Eskom and the General Manager Commercial;
- f) The Contracting Strategy listed the evaluation criteria and minimum scores as follows:
  - i. Health and Safety: 70%; and
  - ii. Engineering: 70%.
- g) Senior Advisor Procurement, Eskom (Commercial Buyer) compiled the invitation to tender document. The document invited potential service providers to tender for provision of Coal Sampling, Sampling oversight, Analysis of Eskom Coal imports and technical audits of the sampling plant (Appendix 23);
- h) We noted that the minimum scores were amended in the Invitation to Tender document with a further evaluation criteria being added. We summarized the new evaluation criteria as per the Invitation to Tender document as follows:
  - i. Health and Safety – 80%;
  - ii. Engineering – 70%; and
  - iii. Quality – 60%.
- i) An ISO 17025 Certification (for Labs only) and a Quality Manual were set as minimum Gatekeepers (mandatory requirements). Failure to comply with the Gatekeepers would result in disqualification;
- j) The attendance of a clarification meeting was compulsory and failure to attend same would result in disqualification;
- k) The tender was advertised in Eskom Tender Bulletin from 26 November 2013 to 14 January 2014, which exceeded the required 20 days (Appendix 24)
- l) A clarification meeting was held on 12 December 2013 and according to the attendance register, it was attended by 16 service providers (Appendix 25);
- m) Tender submissions were received on 14 January 2014 and date stamped accordingly. 14 service providers responded to the invitation to tender, namely:
  - i. "Transport and Projects";
  - ii. "MPG CC";
  - iii. "MF Management Resources";



- iv. "NS Services CC";
  - v. "ANA" South Africa (Pty) Ltd;
  - vi. "Analyt" Coal Laboratory Services;
  - vii. "Lab" Coal Services CC;
  - viii. "TEST CO" Ltd;
  - ix. "AN" Analytical Services;
  - x. "HC Services";
  - xi. "IM (Pty) Ltd";
  - xii. "BS Laboratories";
  - xiii. "U Services"; and
  - xiv. "D Lab".
- n) The tenders were however not initiated by any Eskom official as required by the Supply Chain Management Procedure;
- o) Senior Advisor Procurement, Eskom stated that she performed the pre-evaluation of the 14 tenders against the two gatekeepers as set out in the Invitation to Tender (ISO 17025 Certification (Labs only) and a Quality Manual). She was assisted by the Acting Labs Contract Manager, Quality Assurance Manager, Eskom. We found no evidence of the date upon which the pre-evaluation was performed;
- p) Senior Advisor Procurement, Eskom further stated that she relied on the Acting Labs Contract Manager, Quality Assurance Manager, Eskom's assistance for the pre-evaluation phase as she was not familiar with the gatekeepers and as such, was not be able to recognize them;
- q) Following the pre-evaluation phase against the two gatekeepers (ISO 17025 Certification and Quality Manual), 4 service providers were disqualified, namely:
- i. "HC Services";
  - ii. "IM (Pty) Ltd";
  - iii. "BS Laboratories"; and
  - iv. "U Services".
- r) The 5th service provider, being "D Lab", was disqualified as they had failed to attend the compulsory clarification meeting. This was verified on the attendance register;
- s) We reviewed tenders submitted by the disqualified service providers to ascertain if they were properly disqualified during the pre-evaluation phase and noted the following:
- i. "HC Services" submitted another entity's ISO 17025 Certification and were therefore duly disqualified;
  - ii. "IM (Pty) Ltd" submitted a Quality Manual only and did not submit an ISO Certificate. The ISO Certificate was however not necessary as they had tendered only for roving, observing and sampling services. "IM (Pty) Ltd" should therefore not have been disqualified;



- iii. "BS Laboratories" submitted both an ISO 17025 Certificate and a Quality Manual and should therefore not have been disqualified; and
  - iv. "U Services" submitted a Quality Manual only and did not submit an ISO Certificate. The ISO Certificate was however not necessary as they tendered only for roving, observing and sampling services. "U Services" should therefore not have been disqualified.
- t) After the pre-evaluation phase, the remaining 9 tenders were evaluated further by the cross functional evaluation team, excluding SD&L. Based on the declarations of interest on file, the evaluations were conducted between 21 January 2014 and 29 January 2014;
  - u) The Acting Labs Contract Manager, Quality Assurance Manager, Eskom stated that she formulated the technical evaluation criteria on her own and also selected the Technical Evaluation Team (From Quality Assurance). She further stated that the evaluation score sheets were provided to her by the various cross functional team members;
  - v) The Cross Functional Evaluation Team comprised of the following officials:
    - i. Technical evaluation by the Acting Labs Contract Manager, Quality Assurance Manager, Eskom, Senior Advisor Internal Control, Eskom, and QA Senior Advisor, Eskom;
    - ii. Health and Safety evaluation by the Health & Safety Analyst, Eskom (Senior Advisor, Health and Safety);
    - iii. Quality evaluation by the Senior Advisor, PQA; and
    - iv. Financial evaluation by the Financial Evaluator, Eskom.
  - w) The score sheets and recommendations were consolidated and provided to Senior Advisor Procurement, Eskom for inclusion in the Evaluation Report;
  - x) Based on the evaluation report addressed to the Procurement Tender Committee, the service providers obtained the following scores (Appendix 26):

Table 7: Functionality

Ref	Service Provider	Health and Safety (%)	Engineering (%)	Quality (%)	Average Total (%)
1	"Transport and Projects"	100	88.5	20.5	70
2	"MPG CC"	93	100	85.42	93
3	"MF Management Resources"	93	100	81.11	91
4	"NS Services CC"	100	83.6	8.64	64
5	"AN" Analytical Services	100	94.6	46.33	80



Ref	Service Provider	Health and Safety (%)	Engineering (%)	Quality (%)	Average Total (%)
6	"ANA" South Africa (Pty) Ltd	100	96.5	78.42	92
7	"Analyt" Coal Laboratory Services	93	97.3	16.58	69
8	"Lab" Coal Services CC	79	96.1	18.25	64
9	"TEST CO" Ltd	100	96.1	24.03	73

- y) The evaluation report stated that the minimum average qualifying score for functionality (threshold) is 60%. All tenders that fail to achieve the minimum qualifying score on functionality shall not be considered for further evaluation on Price and BEE. This was however incorrect as the minimum score of 60% was for the Quality threshold as set out in the Invitation to Tender. The above table shows that only 3 service providers attained the minimum required score for Quality.
- z) The evaluation report also reflected scores for Price which together with the BEE scores, were used to rank the service providers according to the total combined scores attained. The entity with the highest score was ranked 1<sup>st</sup> with the entity that attained the lowest score occupying the last ranking on the list. Although we requested same, we were not provided with the Price scoring sheets. It is also unclear who performed the Price scoring. According to the Financial Evaluator, Eskom, who performed the financial evaluation, the Price scores were not provided by her.
- aa) The above Health and Safety and Quality scores were verified to the actual score sheets (Appendix 27). We were not provided with the Technical score sheets by QA Senior Advisor, Eskom and therefore could not verify the Technical scores reflected in the evaluation report.
- bb) We noted that the following service providers did not attain the minimum score of 60% for Quality. In her report after Quality evaluations, the Senior Advisor PQA stated that service providers who attained below 60% for Quality should not be contracted (Appendix 28):
- "Transport and Projects";
  - "NS Services CC";
  - "AN" Analytical Services;
  - "Analyt" Coal Laboratory Services;
  - "Lab" Coal Services; and
  - "TEST CO" Ltd.
- cc) The Senior Advisor Procurement, Eskom advised during an interview that she aggregated the scores and made the recommendations to the PTC based on the aggregated scores. She admitted that aggregating the scores was an oversight on her part and did not enquire whether or not the aggregated or individual scores had to be used for recommendation purposes;





- dd) In the evaluation report dated 7 March 2014, it was recommended that contracts should be awarded to the service providers as follows (Appendix 29):

*Package A (Laboratory Services):*

- i. "AN" Analytical Services;
- ii. "Analyt" Coal Lab Services;
- iii. "Lab" Coal Services;
- iv. "ANA" SA (Pty) Ltd; and
- v. "TEST CO" Ltd.

*Package B (Roving, Observing and Sampling Services):*

- i. "MF Management Services";
- ii. "MPG CC";
- iii. "NS Services CC"; and
- iv. "Transport and Projects".

- ee) Contracts with the 9 service providers were signed by Acting Senior Manager Commercial, Eskom on behalf of Eskom on 22 April 2014 except "ANA" SA (Pty) Ltd which was signed on 23 April 2014. The contracts were signed by representatives of the service providers as follows:

- i. "AN" Analytical Services: 7 April 2014;
- ii. "Analyt" Coal Laboratory Services: 26 March 2014;
- iii. "Lab" Coal Services: 28 March 2014;
- iv. "ANA" SA (Pty) Ltd: 7 April 2014;
- v. "TEST CO" Limited: 8 April 2014;
- vi. "MF Management Resources": 26 March 2014;
- vii. "MPG CC": 27 March 2014;
- viii. "NS Services CC": 5 August 2014; and
- ix. "Transport and Projects": 31 March 2014.

- ff) The above evaluation report was signed by the Chairperson of the PTC on 15 October 2015, which was after the contracts were concluded. The Senior Advisor Procurement, Eskom stated that the Procurement Tender Committee had granted them the mandate to "negotiate the prices and conclude". As such, the agreements were concluded before feedback to the PTC. We requested evidence of such mandate and it has not been provided to us as yet.

- gg) A feedback report dated 28 March 2014 was sent to the PTC Chairperson. The report indicated the new negotiated prices with the services providers and also confirmed that contracts were awarded to the 9 service providers. This report was not signed by the PTC Chairperson (Appendix 30).

- hh) We could not find any evidence that the tender results were advertised in the Eskom Tender Bulletin;



- ii) We found no evidence that contract files for each service provider were opened and maintained;
- jj) The appointed service providers commenced rendering services as per the agreements in April 2014; and
- kk) The End User (Acting Labs Contract Manager, Quality Assurance Manager, Eskom) was appointed as the Contracts Manager for the 9 contracts concluded.

#### Contracting

6.8 We reviewed the contracts concluded with the 9 service providers (Appendix 31). During the procurement process, Eskom's NEC3 Term Service Contract was selected as the suitable contract.

6.9 We summarise below, the contract conclusion dates and the relevant signatories:

**Table: 8**

Ref	Service Provider	Signatory (Service Provider)	Date Signed	Signatory (Service Provider)	Date Signed
1	"AN" Analytical Services	Director	7 April 2014	Acting Senior Manager, Commercial, Eskom	22 April 2014
2	"Analyt" Coal Laboratory Services	Managing Director	26 March 2014	Acting Senior Manager, Commercial, Eskom	22 April 2014
3	"Lab" Coal Services	Managing Director	28 March 2014	Acting Senior Manager, Commercial, Eskom	22 April 2014
4	"ANA" SA (Pty) Ltd	Business Manager Minerals	07 April 2014	Acting Senior Manager, Commercial, Eskom	23 April 2014
5	"TEST CO" Ltd	Chief Financial Officer	08 April 2014	Acting Senior Manager, Commercial, Eskom	22 April 2014



Ref	Service Provider	Signatory (Service Provider)	Date Signed	Signatory (Service Provider)	Date Signed
6	"MF Management Resources"	Business Development Executive	26 March 2014	Acting Senior Manager, Commercial, Eskom	22 April 2014
7	"MPG CC"	Lab Manager	27 March 2014	Acting Senior Manager, Commercial, Eskom	22 April 2014
8	"NS Services CC"	Director	05 August 2014	Acting Senior Manager, Commercial, Eskom	22 April 2014
9	"Transport and Projects"	Managing Director	31 March 2014	Acting Senior Manager, Commercial, Eskom	22 April 2014

6.10 We summarized the contract pricing as follows:

**Package A: Laboratory Services**

Table removed, containing details of Service providers

**Package B: Roving, Observing and Sampling**

Table removed, containing details of Service providers



6.11 The contracts addressed the scope of work, payment terms, parties involved and included the following key conditions, amongst others:

- a) Sampling, Observing, Roving and Analysis services are to be performed in line with applicable ISO standards and Eskom CQMPs;
- b) The Service Providers are expected to provide Eskom with specific deliverables such as sampling reports, signed delivery notes, timesheets, site reports, analyst reports and risk reports;
- c) Monthly meetings are to be held with each service providers and *ad hoc* meetings if and when required;
- d) The service providers are to maintain a quality management system that is ISO 9001:2008 compliant and will be audited regularly by Eskom in this regard. The Service Providers are also required to conduct internal audits on operations at regular intervals;
- e) Service Providers are required to submit a valid BBBEE certificate annually and each supplier was given and requested to achieve specific developmental and localization goals;
- f) Observers, Rovers and Sampling Personnel are required to a minimum have a Grade 12 certificate, a driver's license (rovers) and the ability to communicate in English. Laboratories are required have a senior analyst with a National Diploma or Degree in Chemistry or related qualification; and
- g) All Laboratories are required to have all equipment (balances and analytical instruments) linked to Laboratory Information Management System (LIMS).

#### Accreditation Requirements of the Laboratories

6.12 The contracts further specified that Laboratories contracted to analyse Eskom samples shall have accreditation in the following methods:

- a) ISO 17025 Certificate: General requirements for the competence of testing and calibration;
- b) ISO 1928 Certificate: Determination of gross calorific values by the bomb calorimetric method and calculation of net calorific value;
- c) ISO 1171 or SANS 131: Determination of Ash content;
- d) ISO 562: Determination of volatile matter or equivalent method;
- e) ISO 540: Determination of fusibility of Ash high temperature tube method in reducing atmosphere or equivalent method;
- f) ISO 589 or SANS 589: Determination of total moisture or equivalent method;



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- g) ISO 331 or ISO 11722: Determination of moisture in analysis samples / general analysis test sample by drying in nitrogen;
- h) ISO 13909-4 or ISO 18283: Preparation of test samples or hard coal and coke manual sampling;
- i) ISO 3310-1 or ISO 1953: Test sieves - technical requirements and testing / size determination by dry method or equivalent method;
- j) ISO 567: Bulk density is equivalent method;
- k) ASTM D4239: Total Sulphur or equivalent method, and
- l) ISO 5074: Determination of hard grove grindability index or equivalent method.

6.13 Our review of the tenders submitted by the Labs showed that they complied with the above accreditation requirements as follows:

**Table: 9**

Ref	Accreditation Standard	"AN" Analytical Services	"Analyst" Coal Lab Services	"Lab" Coal Services	"ANA" SA Pty Ltd	"TEST CO" Ltd
1	ISO 17025	Yes	Yes	Yes	Yes	Yes
2	ISO 1928	Yes	Yes	No indication in file	No indication in file	Yes
3	ISO 1171 or SANS 131	Yes	Yes	No indication in file	No indication in file	Yes
4	ISO 562	Yes	Yes	No indication in file	No indication in file	Yes
5	ISO 540	No indication in file	No indication in file	No indication in file	No indication in file	No indication in file
6	ISO 589 or SANS 589	Yes	Yes	No indication in file	No indication in file	Yes
7	ISO 331 or ISO 11722	Yes	Yes	No indication in file	No indication in file	Yes
8	ISO 13909-4 or ISO 18283	Yes	Yes	No indication in file	No indication in file	Yes
9	ISO 3310-1 or ISO 1953	Yes	No indication in file	No indication in file	No indication in file	Yes
10	ISO 567	No indication in file	No indication in file	No indication in file	No indication in file	No indication in file



OK



Ref	Accreditation Standard	"AN" Analytical Services	"Analyt" Coal Lab Services	"Lab" Coal Services	"ANA" SA Field	"TEST" CO" Ltd
11	ASTM D4239	Yes	Yes	No indication in file	No indication in file	Yes
12	ISO 5074	No indication in file	No indication in file	No indication in file	No indication in file	No indication in file

#### Quality Management Protocols, Minimum Specifications and Methodologies

- 6.14 According to the Acting Labs Contract Manager, Quality Assurance Manager, Eskom, the Technical Evaluation Team (From Quality Assurance) as part of their evaluation, were required to ensure that the Labs adhered to required Quality Management Protocols, Minimum Specifications and Methodologies as set out in applicable standards.
- 6.15 The technical evaluation was conducted by reviewing the service providers' Quality Manuals and site visits focusing specifically on whether resources were adequately trained, existence and efficiency of equipment used (focusing specifically on calibration certificates) and documented sampling and testing procedures in line with the different ISO standards.
- 6.16 The Acting Labs Contract Manager, Quality Assurance Manager, Eskom further advised that a detailed review of the service provider's quality management protocols and methodologies could not be conducted due to time constraints. She stated that a normal review would require 2 to 3 days to complete. She said that the evaluation team therefore focused on the above mentioned areas only, as these were critical to the performance of the Eskom contracts.
- 6.17 She stated that the technical evaluation team however did not compile detailed site visit reports outlining their specific findings. She said the service providers had the above areas in order at the time of procurement.

#### **Contract Management**

- 6.18 In this section of our report, we address the training requirements of a contracts Manager and relevant Contract Management protocols.
- 6.19 Section 3.13 of the Eskom Procurement and Supply Chain Management procedure (32-1034) relating to Contract Management stipulates the mandatory training requires for Contract Managers as follows:
- The Approved Procurement Framework;
  - Process Control Manual on Contract Management and other related Process Control Manual;



- c) The New Engineering Contracts and other approved contracts;
- d) SAP; and
- e) Foreign Exchange and Commodity Exposures policies and procedures.

6.20 We reviewed the Acting Labs Contract Manager, Quality Assurance Manager, Eskom's Training record provided by Human Resources, Eskom of Human Resources (Appendix 32). According to her training record, Acting Labs Contract Manager, Quality Assurance Manager, Eskom has undergone the following training:

- a) Coal Quality Management;
- b) SAP QIM Incident Investigate & Action Management;
- c) Eskom Financial Management;
- d) Coal Fired Power Station Overview;
- e) Making document offline and online;
- f) Eskom Hyperwave Contributor;
- g) Combustion;
- h) Thermodynamics;
- i) Eskom Personal Finance Videos;
- j) Navigating with Hyperwave explorer;
- k) Eskom Hyperwave;
- l) Eskom Hyperwave Document Management Overview;
- m) Draught Groups;
- n) Milling Plant, and
- o) Ethics at Eskom.

6.21 Her training record further shows that she has the following academic qualifications;

- a) BTech Engineering Degree; and
- b) Certificate in Management Development Program.



6.22 Based on her training record, it appears that the Acting Labs Contract Manager, Quality Assurance Manager, Eskom has not undergone training in the following areas as required the Procurement policy:

- a) The Procurement Framework;
- b) Foreign Exchange and commodity exposures policies and procedures; and
- c) New Engineering Contracts.

6.23 Section 3.13 of the Eskom Procurement and Supply Chain Management procedure (32-1034) further states that it is a requirement for all Contract Managers to maintain a contract file which will as a minimum contain the Contracting strategy, the Contract, the Contract manager's letter of appointment, Delegations of Authority, all correspondence with the supplier including an assessment of amounts due and a final completion certificate, where relevant.

6.24 We requested the above contract files as prescribed by the Policy from the Acting Labs Contract Manager, Quality Assurance Manager, Eskom but these were not provided to us. She however provided us with an electronic folder titled "2017 Lab Contracts" which contained some information pertaining to the Labs. The file does not meet the requirements of a Contract file as envisaged by the Policy.

#### Quality Assurance

6.25 We interviewed relevant Quality Assurance officials at Eskom to understand the applicable processes and procedures. We were informed of the following:

- a) Labs are audited on a regular basis to assess their compliance with the relevant ISO standards;
- b) During the audits, the Labs' procedure manuals are assessed for compliance with the relevant ISO standards;
- c) When a Lab is found to be in contravention of the relevant standards, a non-conformance notice is issued to the Lab;
- d) The non-conformance notices are acknowledged by the Labs in writing;
- e) Where the nature of the non-conformance is found to be "major" (Major non-conformance), the Lab is given 24 hours to remedy the non-conformance;
- f) For minor non-conformances, the Labs are given 7 days to remedy the non-conformance;
- g) It is the Lab's responsibility to provide evidence within 24 hours that the non-conformance has been remedied/resolved;



- h) Follow up audits/Close out audits are also performed to establish how/if the non-conformances have been resolved. There is however no set time period within which such follow up audits are to be performed;
- i) The relevant Quality Assurance auditor also follows up with the Lab to ascertain whether a non-conformance has been resolved;
- j) Reports in respect of each Lab audit are produced; and
- k) At the commencement of each audit, the previous audit findings are followed up to ascertain if the pertinent issues (non-conformances) were resolved.

6.26 The Senior Advisor Internal Control, Eskom provided us with Eskom's Laboratory Audits procedure (Appendix 33) signed 4 February 2014. The procedure specified the following:

- a) The Coal Quality Team must determine identify the lead auditor;
- b) On the day of the audit, the lead auditor must conduct an opening meeting, introduce the audit team, discuss the audit outcomes with the Lab and conduct a closing meeting;
- c) The Lab audit must then be conducted against requirements set out in ISO 17025, the CQMP and the Lab contract;
- d) All non-conformances must be recorded on the CAR (Corrective Action Request) form and acknowledged by the Lab;
- e) Audit findings must be registered on the Achiever Plus System;
- f) The audit report must be compiled within 7 days of conducting the audit and findings must be circulated to other Eskom auditors for comment;
- g) Where audit findings exist, a follow up audit must be conducted within 14 working days;
- h) The Coal Quality team must send out a close out report within 7 days of conducting the follow up audit;
- i) All audit reports must be stored on the "H/Drive" in "pdf" format.

6.27 The Quality Assurance team further informed us that they did not have access to the current Lab Contracts and as such, did not audit the Labs for compliance with the Terms and Conditions of the contract.



### Review of Lab Audit Reports (April 2014 to August 2015)

6.28 We obtained and reviewed the Lab audit reports to understand how many audits were carried out at each Lab, the number of non-conformances identified and the resolution of such non-conformances. The period covered by the audits was April 2014 to August 2015. We summarised our findings as follows:

**Table: 10**

Service Provider	Number of Audits	Major non-conformances	Minor non-conformances	Non-Conformances Closed	Non-Conformances not addressed
"Lab" Coal Services CC	7	46	14	16	44
"AN" Analytical Services	8	10	7	8	9
"ANA" SA (Pty) Ltd	16	46	20	24	42
"TEST CO" Ltd	8	8	11	4	15
"Analyt" Coal Laboratory Services	10	38	14	31	21
<b>Total</b>	<b>49</b>	<b>148</b>	<b>66</b>	<b>83</b>	<b>131</b>

6.29 The above table shows that a total of 49 audits were carried at the 5 Labs from April 2014 to August 2015. During these audits, 214 non-conformances were identified (148 major and 66 minor). Of the total non-conformances, 83 were resolved. We could not find any evidence that the remaining 131 non-conformances were addressed. We were not provided with all the close-out audit reports and as such, we could not determine, of the 131 unresolved non-conformances, which were major or minor.

6.30 We discuss below, our findings relating to the Lab audit reports:

- a) We were not provided with the close out reports in respect of the 44 non conformances at "Lab" Coal Services. We therefore could not confirm whether the Lab remedied these non-conformances. We noted that a critical non-conformance relating to the Lab having only one qualified technical signatory, was labelled as pending. No reference to staff competency was made in the subsequent audit report. We could therefore not confirm if this finding was addressed;
- b) We were not provided with the close out reports in respect of 9 non-conformances at "AN" Analytical Services. We therefore could not confirm if the Lab had remedied these non-conformances. Based on one of the follow up reports, it appears there were audits conducted at the Lab on 10 October 2014 and 5 December 2014. We were not provided with these audit reports;



- c) We were not provided with the close out reports for the 42 non-conformances at "ANA" SA (Pty) Ltd and thus cannot confirm if the Lab had remedied the non-conformances. Based on one of the follow up reports, it appears there was an audit performed on 7 August 2014. We were not provided with this audit report. We were also not provided with close out reports for 5 lab audits performed from March to July 2015;
- d) We were not provided with close out reports for 15 non-conformances at SABS, it is therefore unclear if the non-conformances were resolved; and
- e) We did not receive close out reports for 21 non-conformances at "Analyt" Coal Laboratory Services and it is therefore unclear if the non-conformances were resolved.

6.31 Based on our review of the Lab audit reports, we noted that in certain instances, some of the non-conformances were recurring. We discuss the recurring non-conformances below:

**Table: 11**

Service Provider	Recurring non-conformances
"ANA" SA (Pty) Ltd	<p>Not all Lab equipment is linked to the LIMS as required by the contract;</p> <p>Several deficiencies were identified at most QA review with regard to the Lab's procedures. This included the Lab failing to adhere to its own procedures, obsolete standards being used, and procedures not encompassing all required information as per the relevant standards;</p> <p>Quality charts evaluated on air dry basis instead of dry basis; and</p> <p>Samples were analyzed several times and analyst decided which results to report.</p>
"Analyt" Coal Laboratory Services	<p>Not all Lab equipment is linked to the LIMS as required by the contract; and</p> <p>Several issues were reported on regarding the recording and verification of blades.</p>

*R* *ace*



Service Provider	Recurring non-conformances
"Lab" Coal Services CC	<p>Not all Lab equipment is linked to the LIMS as required by the contract;</p> <p>The calibration of equipment is not controlled leading to constant findings regarding the calibration dates having passed;</p> <p>Procedures are not detailed enough, missing some clauses required by the applicable standards;</p> <p>Positive Bias on CV and AFT were not addressed speedily; and</p> <p>Training records were not kept for some personnel.</p>
"TEST CO" Ltd	<p>The calibration of equipment is not controlled leading to constant findings regarding the calibration dates having passed;</p> <p>Training records were not kept for some personnel;</p> <p>Poor maintenance of records were noted across various disciplines; and</p> <p>Requirements required by the different ISO standards are not adequately addressed in the procedures.</p>
"AN" Analytical Services	Not all Lab equipment is linked to the LIMS as required by the contract.

- 6.32 We reviewed the Lab audit reports including follow up reports to assess whether the QA team complied with the provisions of Eskom's Lab Audit procedure provided to us, i.e, all audit reports were compiled within 7 days and where non-conformances were found, follow up audits were conducted within 14 days to ensure that the Labs resolving all non-conformances. We summarise our findings as follows:





Table 12

Ref	Lab	Date of Audit	QA Team Member	Date Signed Off	Report Completed within 7 days	Date Follow up Audit	QA Team Member	Audit followed up within 14 days	Date of close out report	Report Completed within 7 days
1	"Lab" Coal Services CC	19-Jun-14	Senior Advisor Internal Control, Eskom	25-Jun-14	Yes	01/07/2014 (1st Follow Up) 09 July 2014(2nd Follow Up)	QA Senior Advisor, Eskom	Yes Yes	16/07/2014 15/07/2014	No Yes
2		01-Oct-14	QA Senior Advisor, Eskom	08-Oct-14	Yes	16-Oct-14	Senior Advisor Internal Control, Eskom	Yes	17-Oct-14	Yes
3	"AN" Analytical Services	10-Oct-14	Unknown - Report not received	Unknown - Report not received	Unknown - Report not received	16-Oct-14	Senior Advisor Quality and Quantity Assurance, Eskom	Yes	17-Oct-14	Yes
4		05-Dec-14	Unknown - Report not received	Unknown - Report not received	Unknown - Report not received	21-Jan-15	Acting Labs Contract Manager, Quality Assurance Manager, Eskom	No	12-Feb-15	No






Ref	Lab	Date of Audit	QA Team Member	Date of Report	Report Completed within 2 days	Date of Follow up Audit	QA Team Member	Audit followed up within 10 days	Date of Follow up Report	Report Completed within 2 days
5	"ANA" SA (Pty) Ltd	10-Jun-14	QA Senior Advisor, Eskom	25-Jun-14	No	15-Jul-15	Senior Advisor Quality and Quantity Assurance, Eskom	Yes	18-Jul-14	Yes
6		16-Jul	QA Senior Advisor, Eskom	29-Jul-14	No	30-Jul-14	QA Senior Advisor, Eskom	Yes	01-Aug-14	Yes
7		07-Aug	Unknown - Report not received	Unknown - Report not received	Unknown - Report not received	14-Oct-14	Senior Advisor Internal Control, Eskom	No	27-Oct-14	No
8		09-Sep	Senior Advisor Internal Control, Eskom	19-Sep-14	No	16-Sep-14	QA Senior Advisor, Eskom	Yes	22-Sep-14	Yes
9		24-Feb	Acting Labs Contract Manager, Quality Assurance Manager, Eskom	20-Mar-15	No	12-Mar-15	Acting Labs Contract Manager, Quality Assurance Manager, Eskom	No	30-Mar-15	No






R-1	Lab	Date of Audit	QA Team Member	Date Report Out	Report Complied within 7 days	Date Follow up Audit	QA Team Member	Audit followed up within 14 days?	Date of close out report	Report Complied within 7 days?
10	"TEST CO" Ltd	23-Sep-14	QA Senior Advisor, Eskom	29-Sep-14	Yes	01-Oct-14	Senior Advisor Quality and Quantity Assurance, Eskom	Yes	02-Oct-14	Yes
11	"Analyt" Coal Lab Services	25-Apr-14	QA Senior Advisor, Eskom	06-May-14	No	06-May-14	Senior Advisor Quality and Quantity Assurance, Eskom	Yes	19-Jun-14	No
12		10-Oct-14	Unknown - Report not received	Unknown - Report not received	Unknown - Report not received	16-Oct	Senior Advisor Quality and Quantity Assurance, Eskom	Yes	17-Oct	Yes
13		17-Feb-15	Acting Labs Contract Manager, Quality Assurance Manager, Eskom	06-Mar-15	No	12-Mar-15	Acting Labs Contract Manager, Quality Assurance Manager, Eskom	No	26-Mar-15	No
14		16-Apr-15	QA Senior Advisor, Eskom	25-May-15	No	12-May-15	QA Senior Advisor, Eskom	No	27-Jul-15	No





6.33 The above table shows that:

- a) Of the 14 audits conducted, 7 Lab audit reports were signed off after the required time limit of 7 days;
- b) 15 follow up audits were conducted, of which 7 audit reports were signed off after the required time limit of 7 days; and
- c) 5 of the above follow up audits were conducted after the 14 day time limit.

6.34 Our summary was based on the available Lab audit reports and subsequent follow up audit reports. We were not provided with follow up reports for some of the Lab audits undertaken.

"Special Lab Audits commissioned by Eskom"

6.35 We were requested by Eskom to observe the performance of Lab audits by the Quality Assurance team from 12 October 2015 to 16 October 2015. The audits took place at the Lab premises in the areas of Middelburg and Witbank. The following Quality Assurance advisors performed the audits:

- a) QA Senior Advisor, Eskom;
- b) Senior Advisor: quality & Quantity Assurance, Eskom; and
- c) Acting Quality Assurance Manager, Eskom.

6.36 The objective of the reviews was to evaluate the Laboratory's Quality Management Systems and compliance to the relevant ISO standards. Reports were produced for each Lab audited. We summarised the Lab audit results as follows:

Two handwritten signatures in black ink, one on the left and one on the right, located at the bottom right of the page.



Table: 13

Lab	Detail of non-conformances
"TEST CO" Ltd	<p>Overall implementation and maintenance of the Lab's quality management system was found to be satisfactory. 5 major and 6 minor non-conformances were identified, namely</p> <p><u>Major Non-Conformances:</u></p> <p>Critical steps in the screening of Ash were omitted, impacting results;</p> <p>The volatile matter crucible and lid exceeded the required weight specifications, affecting the validity of results;</p> <p>Sulphur calibration was done using the incorrect standard;</p> <p>Balances used for preparation and analysis were past their calibration dates; and</p> <p>The table used for the Top Pan Balance for the Total Moisture was unstable.</p> <p><u>Minor Non-Conformance:</u></p> <p>The CO<sub>2</sub> sensor in the AFT instrument area was not functional, posing a safety hazard as the instrument flushes with CO<sub>2</sub> and the instrument produces CO;</p> <p>Internal Temperature verification on the ash furnace was not done using calibrated temperature probe;</p> <p>There were concerns regarding the simultaneous performance of Ash and Volatiles analysis;</p> <p>The method used to declare staff competent was not clear from the procedure;</p> <p>The humidity in the Lab is not controlled; and</p> <p>The Total Moisture procedure does not indicate when single stage and 2 stage moisture analyses should be conducted.</p>



No.	Detail of non-conformances
"ANA" SA (Pty) Ltd	<p>Overall implementation and maintenance of the Lab's quality management system was found to be satisfactory. 3 major and 2 minor non-conformances were identified, namely</p> <p><u>Major Non-Conformances:</u></p> <p>The Lab's AFT instrument was not linked to the Laboratory Information Management System (LIMS) as required by the contract;</p> <p>The general analysis sample was not evenly spread by the operator as per the Labs procedure; and</p> <p>Annual training of some of the personnel was not conducted as per the Lab's training procedure.</p> <p><u>Minor Non-Conformances:</u></p> <p>One of the sample delivery notes was not adequately marked; and</p> <p>Some of the screening equipment was not labelled.</p>





Lab	Detail of non-conformances
<p><b>"AN" Analytical Services</b></p>	<p>The Lab's quality management system was found to be unsatisfactory. 10 major and 3 minor non-conformances were identified, namely</p> <p><b>Major Non-Conformances:</b></p> <p>Eskom reference samples were stored outside the lab area and were exposed to sunlight and rain;</p> <p>Humidity and temperature monitoring for Sulphur and CV was not done according to the lab procedure;</p> <p>Calibration of some volatile furnaces were not done according to the lab equipment schedule;</p> <p>Many of the Lab procedures were past their review dates;</p> <p>The Sulphur instrument was not linked to the (LIMS), all the Sulphur data was captured manually;</p> <p>Not all the samples were split using the rotary splitter as required by Eskom; and</p> <p>Many of the Labs procedures were not adequately detailed.</p> <p><b>Minor Non-Conformances:</b></p> <p>The Lab failed to produce training records for one of the Lab analysts;</p> <p>The unique Id of the ash equipment were not captured on the certificate and the next calibration date for the Volatile furnace sticker did not correspond on the certificate; and</p> <p>The Lab failed to produce the procedure for monitoring / changing desiccant.</p>





Lab	Detail of non-conformances
<p>"Analyt" Coal Laboratory Services</p>	<p>The Labs quality management system was found to be unsatisfactory. 11 major and 2 minor non-conformances were identified, namely</p> <p><u>Major Non-Conformances:</u></p> <p>Concerns were raised about the efficiency of the Lab's 3mm crusher;</p> <p>Verified temperature for the inherent moisture oven was higher (1240C) than the expected limits of 105±100C as per ISO requirement. An incorrect probe was used for verifying the oven. The values captured on the inherent moisture verification form were questionable as they do not reflect the actual probe value of 395.80C;</p> <p>The hygrometer used for measuring temperature and humidity at the conditioning room produced/yields incorrect readings;</p> <p>The oven used for drying total moisture samples had passed its calibration date;</p> <p>The CV and AFT equipment as well as the total moisture balance were not linked to LIMS as required by Eskom;</p> <p>One of the samples did not meet the minimum sample mass requirement of 170kg as stipulated in the CQMP;</p> <p>The procedure for determination of AFT was silent on the frequency of analysis. Analysts used their own discretion;</p> <p>Lab personnel were not trained on the mass required after crushing the sample to 3mm;</p> <p>Lab personnel were further unaware of the documented procedures for CV and Sulphur; and</p> <p>The Lab failed to produce evidence of lab personnel qualifications.</p> <p><u>Minor Non-Conformances:</u></p> <p>Some of the calibration certificates were not uniquely identified;</p> <p>Room temperature and humidity in the conditioning room were not recorded on the correct form as required by the Lab's procedure;</p> <p>The maintenance of equipment is not prioritized as expected; and</p> <p>No refresher training is provided to Lab personnel.</p>





Lab	Detail of non-conformances
"Lab" Coal Services CC	<p>The Labs quality management system was found to be satisfactory. However, 3 minor non-conformances were identified, namely:</p> <p><u>Minor Non-Conformances:</u></p> <p>Positive bias on CV analysis was detected and the root cause, being one of the instruments used, was found. The Lab however carried on using this instrument;</p> <p>The verification of crusher and pulveriser equipment was performed. However, the acceptance criteria were not determined through statistical analysis; and</p> <p>Not all sample delivery notes were signed off by Lab personnel indicating what the conditions of the bags received were.</p> <p>It was further noted that the Lab's AFT instruments and weighing scales were not linked to LIMS. The Lab has however purchased an AFT instrument with software that can be linked to LIMS and is awaiting connection</p>

6.37 The Lab audit reports raised concerns about the training and competency of the Lab staff. We summarized some of the concerns raised as follows:

- a) "TEST CO" Limited does not have a method to declare competency of their staff;
- b) "ANA" SA (Pty) Ltd had failed to adhere to their schedule of training;
- c) Most of the staff at "AN" Analytical Services only had a Grade 12 certificate, supplemented by experience; and
- d) Most of the "Analyt" Lab staff only had a Grade 12 certificate, supplemented by experience.

6.38 Following the above Lab staff competency concerns, we reviewed the Lab contracts to establish the academic requirements as per the contracts. We noted that the contracts require each Lab to at least have a Senior Analyst with a National Diploma or Degree in Chemistry. We therefore requested the Labs to provide us with a list of all technical signatories and their qualifications. We summarized our findings as follows:

- a) "Analyt" Coal Laboratory Services has 3 technical signatories with the following qualifications:
  - i. "EG": National Diploma in Engineering;
  - ii. "OO": National Diploma in Analytical Chemistry; and
  - iii. "KK": Grade 12 Certificate.



- b) "AN" Analytical Services has 2 technical signatories with the following qualifications:
    - i. "TW": Grade 12 with on the job experience; and
    - ii. "EGR": Grade 10 with "on the job" experience.
  - c) "TEST CO" Limited: Did not provide the requested information;
  - d) "ANA" SA (Pty) Ltd: Did not provide the requested information; and
  - e) "Lab" Coal Services: Did not provide the requested information.
- 6.39 Based on the information provided, it appears that "AN" Analytical Services does not comply with the contract requirements pertaining to the academic qualifications of staff. We did not receive any information pertaining to qualifications from the 3 Labs as indicated above.

#### Blind sampling

- 6.40 We requested by Eskom to observe a "Blind Sampling" process at Eskom premises in Witbank. During this process, we observed the receipt of 47 samples from various sources. The samples were relabelled in order conceal the identity of the sources and relevant stockpiles. The labels from the sources were removed (all visible labels on the inside and outside of each bag) and new labels (with a unique numbers) were assigned to each sample. The label numbers were recorded on the register next to the source they came from, i.e. 47 new label numbers were generated. The bags were sealed with cable ties and the new labels were attached on the outside of each bag.
- 6.41 We noted that some of the bags contained labels from the source on the inside which revealed the identity of the source and the stockpile.
- 6.42 We escorted the 47 samples to the designated laboratory ("TEST CO" in Middelburg) and noted the following:
- a) 1 x bag was damaged and the coal was leaking; and
  - b) A tag on one of the samples was missing.
- 6.43 The samples were analysed at the "TEST CO" Laboratory in Middelburg. The analysis results were provided to Eskom. The sample results were reconciled back to the original sources by Eskom and summarised in a spreadsheet which was provided to us (Appendix 34).
- 6.44 We reviewed the summarised sample results and noted the following:
- a) "Lab" Coal Services provided only 7 samples instead of the requested 10; and
  - b) The rest of the laboratories (four) provided the requested 10 samples.



6.45 The summarised results provided to us by Eskom compared the initial sample results to the blind sample results (both pulverised and bulk) and also provided an acceptable variance range.

6.46 The pulverised sample results showed the following:

- a) "TEST CO" Laboratory had 5 failures out of 40 tests performed (variance fell outside of the acceptable range). This represents a failure of 12.5%;
- b) "AN" Analytical Services had 7 failures out of 40 tests performed which represents a 17.5% failure;
- c) "Lab" Coal Services had a failure of 9 out of 28 tests performed, which represents a 32% failure;
- d) "Analyt" Coal Laboratory Services had 23 failures out of 40 tests performed, which represents a failure of 57.5%; and
- e) "ANA" South Africa had 25 failures out of 40 tests performed, which represents a 62.5% failure.

6.47 We summarised and discussed our findings with management to obtain their input. Management provided the following comments in relation to the findings below:

**Table: 14**

Ref	Findings	Management Comments
1	There is no evidence to show that the End User consulted any stakeholders or received approval of her Scope of Work. It seems like she formulated and concluded on the Scope of Work on her own.	Management agrees. However, the Scope of Work was carried over from the expired contracts and while it had been updated, it did not differ much from the previous scope. The Technical Services Manager should have had sight of the Scope before inclusion in the Contracting Strategy.
2	Although evidence of a Contracting Strategy was provided, the contracting strategy was not dated.  The Contracting Strategy was signed off by the General Manager: Commercial.	The General Manager: Commercial signs off on the Contracting Strategy because the commercial department is responsible for the procurement process.  The General Manager Commercial signs to confirm that all the necessary competencies were consulted in the formulation of the Contracting Strategy.



Ref	Findings	Management Comments
3	The technical evaluation criteria was compiled by the End User, without input from other technical experts. As a result, the technical evaluation team members indicated, during interviews, that the criteria did not enable them to adequately evaluate the technical competence of the labs and items which in their opinion, should have been included in the criteria, were excluded.	The entire technical evaluation team should have been consulted. However, the evaluation criteria appears to be sufficient as it covers critical areas such as accreditation, resource competence and adherence to applicable ISO standards.
4	The technical evaluation team was selected solely by the End User, without input or approval from other independent stakeholders.	This is an exception and it was the first time that the technical evaluation team was pre-selected. The evaluation of tenders is normally conducted by the entire QA team.
5	Besides a register of tenders submitted on the closing date, there is no audit trail of how these documents were handled throughout the process by the different evaluation disciplines.	<p>The Buyer should take custody of the tender documents and keep them in a secure place.</p> <p>Evaluations are performed after the Buyer has acquired a secure room. The evaluation team should only access and evaluate the tender documents in a secure room. The tender documents should be locked away when evaluations are complete and the Buyer should have evidence of this.</p>
6	There was no indication in the tender submissions that 2 Eskom officials initialed each page as required by the tender process.	The tenders are submitted in duplicate and the original tender documents might have been initialed as required. Management will make follow ups.
7	<p>The Buyer, during an interview on 7 October 2015, indicated that she was not suitably qualified to identify the 2 gatekeepers and the End User had to, therefore, conduct the pre-evaluation of the Labs on her own.</p> <p>The disqualification of the 5 service providers was therefore essentially done by one person, with no review or approval.</p>	<p>The finding was accepted. Evaluation against the gatekeepers should ideally be performed by the same team which performs the technical evaluation of the tenders.</p> <p>The results of the disqualified tenders should be reviewed and approved by a senior official.</p>





Ref	Findings	Management Comments
8	<p>An analysis of the disqualified tender submissions revealed the following:</p> <p>Three of the disqualified tenderers appear to have submitted the mandatory gatekeepers, contrary to what the End User and Buyer advised.</p> <p>Furthermore, disqualified tenderers were not given adequate reasons for disqualification. The regret letters sent to the suppliers only indicated that they were "unsuccessful", not necessarily that they were "disqualified" and the reasons provided in the evaluation report were not specific, that is, the report only says the tenders were disqualified because they "Did not submit the qualifying mandatory requirement"</p>	<p>Reasons for disqualification are normally provided on request by the supplier. However, where tenders are disqualified based on failure to submit mandatory gatekeepers, they should be advised accordingly. The finding is therefore accepted.</p>
9	<p>Technical evaluation sheets used by the different members of the technical evaluation team were electronic, not dated and no names were depicted on the sheet, predisposing them to manipulation.</p> <p>Furthermore, the technical evaluation team members did not compile a detailed site visit report of the site visit performed as part of the technical evaluation. We only received score sheets in respect of the site visits. These did not include any detail on them.</p>	<p>The technical evaluation team normally sits together in one room and scores the tenderers. Their scores are then consolidated by the End User who then copies all evaluation team members on the mail to the Buyer for inclusion in the Evaluation Report.</p> <p>With regard to the site visit report, the evaluation team members are required to fill in a detailed checklist which contains all requirements observed.</p>
10	<p>Evaluation team members do not have sight of the consolidated scores presented to the Procurement Tender Committee and there is also no 4 eye review of the consolidated scores to ensure accuracy.</p>	<p>It is adequate for the QA Manager to sign off the evaluation report. This indicates that he has reviewed it and that its contents are satisfactory.</p>
11	<p>There is no audit trail, including PTC minutes of what transpired during the presentation to the PTC. It is therefore not clear what the PTC reviewed and questioned.</p>	<p>There should be a mandate in place. Management will make follow ups.</p>
12	<p>There is no evidence in the documents provided that the SD &amp; L team was consulted before going out on Tender as required by the Procurement Procedure. SD&amp;L Objectives were referred to following an instruction from the PTC.</p>	<p>Management will look into formulating a checklist encompassing all disciplines to be consulted before going out on tender.</p>



Ref	Findings	Management Comments
13	<p>There were disparities and no commercial reasoning in the pricing accepted between the 9 service providers, considering that these service providers were providing exactly the same services.</p> <p>It appears Eskom does not perform price benchmarking prior to going out on tender.</p>	<p>A comparison on pricing is not done per service that is rendered but rather on the overall tendered price per service provider. The overall cost per package should be comparable.</p>
14	<p>The feedback Report showing negotiation outcomes to the PTC is dated 28 March 2014. However, some of the contracts were signed as early as 26 March 2014. The Buyer has indicated that they received a mandate to negotiate and conclude the contract. We have requested minutes of the PTC meeting to confirm this.</p> <p>The Feedback report does refer to the mandate, but there is no signature and date from the PTC chairperson.</p>	<p>This is a normal process. The feedback report is compiled after conclusion of the contracts.</p>
15	<p>No indication of contract files for each Lab was provided and the Contracts Manager could not produce any when requested.</p>	<p>There could be some of the information stored on Eskom data warehouse. Especially correspondence with the Labs but management accepts the finding.</p>
16	<p>There are several concerning disparities in the payments made to some of the Labs indicating that there might be preference in the allocation of work.</p>	<p>Previously, Eskom followed a percentage allocation of work to each service provider. This however did not work as some of the allocations were not aligned to the service providers' capacity. Allocations are therefore done by the contracts manager and should be fair.</p> <p>Management however agrees with the finding.</p>
17	<p>The "TEST CO" "location" Lab failed to obtain the minimum score of 70% for technical competence. The contract signed by "TEST CO" is however quiet on this and does not specifically prohibit the use of this Lab.</p> <p>The End User has confirmed that there are no controls currently in place to ensure that "TEST CO" does not use the "location" Lab.</p>	<p>Management agrees. However, the Lab is required to obtain permission from Eskom should they want to use the Lab.</p>



Ref	Finding	Management Comments
18	The contracts manager failed to keep a detailed contract file for each service provider as required by the procedure. Records of contracts management provided were inadequate.	Management agrees. However, some correspondence with service providers may have been stored on Hyperwave, Eskom's shared drive.
19	We could not find evidence that non-conformances were remedied for some of the Labs as close out reports for some of the audits were not provided.	Management agrees, however this may be due to system constraints.
20	4 of the 5 Labs were found to be in breach of their contractual agreements in that some of their Lab equipment was not linked to LIMS. There is no indication that the Labs are being reproached by Eskom for such non-conformances.	Management agrees. However it was only discovered recently that this was a contractual requirement as the contract manager did not provide the contracts to the QA team. The Labs are also experiencing difficulties with LIMS linkages and suspending them would impact on Eskom coal quality management process.
21	The Lab contracts require each Lab to at least have a Senior Analyst with a National Diploma or Degree in Chemistry. We have not seen any evidence that the Labs are complying with this requirement.	The QA team only recently found out about this requirement. It will be monitored going forward.

#### Non-conformance, Adequacy Assessment and Blueprint Development

- 6.48 We performed an assessment of the adequacy of existing protocols, policies and guidelines as part of our review. Subsequently, we made recommendations for potential enhancements to the existing protocols and for relevant "Blueprint" development based on the identified inadequacies. A summary of the identified inadequacies, recommendations and a "Blueprint" development is attached to the report as Appendix 35.





## VII. CONCLUSIONS

### Mines

- 7.1 We reviewed the procurement of coal supply from 4 Mines. The procurement was conducted *via* an unsolicited tender process on two of the Mines and *via* an RFP on the remaining two.
- 7.2 Despite the gaps in supporting documentation provided, which was largely as a result of poor record keeping and document management, the coal supply procurement from the two mines that were part of the RFP process followed a structured process of documentation submission, evaluation and negotiation with a commercial governance system set out in requirements and standards as listed in the MT Coal Supply Strategy and the subsequent BoD Mandate.
- 7.3 The two contracts concluded outside a formal RFP process shared similar shortcomings in non-conformance to registration and prequalification. However the contrast in quality of documentation, compliance to contracting standards and financial evaluation is obvious. Due to the fact that the two contracts were concluded recently and were overseen by the same leadership (SGM and GM), the reason for the obvious difference in standards can only be ascribed to competence of the individual team leaders and team members and/or external factors. The quality of the AC contract document and its 'addendums' were found to be concerning in that it contained numerous typographical errors.
- 7.4 It is evident that although Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure provides certain requirements for these types of unsolicited offers, and the Eskom Process Control Manual for Source External Suppliers (240-7891684) provide direction for how it integrates into the normal procedures, PED have not integrated this into a concise and robust enough internal process to constitute a formal control process and procedure, nor has it stream lined and controlled the rest of the required practices and procedures.
- 7.5 Very few of the interviewees seemed familiar with the requirements of Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure. Interviewees could not link the procurement decisions to a commodity (coal) supply strategy and also not to a contracting strategy, furthermore, the commercial or financial rational for entering into the contracts at the negotiated terms and conditions were generally weak or absent on at least two of the four procurement events reviewed. This is surprising given the fact that primary energy is the predominant cost driver of Eskom, and reported to be one of the significant areas of above inflation cost increases recently.
- 7.6 Negotiation Team Leaders evidently are in full control of the process from beginning to end. There was no evidence to indicate that there was any oversight from the PED General Manager during the processes of the unsolicited offers, although he attended some of the meetings with suppliers and led the final negotiation meeting on one of the contracts. Further, despite Eskom's procurement policy prohibiting single adjudication, PED continued, seemingly with a mandate from the BoD TC to enter into contracts in excess of R3bn each committing Eskom for 10 years or more with single signing authority. Despite having properly constituted tender committees at various levels in the organisation, and the



fact that these negotiations were lengthy (6 to 24 months), no evidence was provided that tender committees were consulted.

- 7.7 It is questionable if similar coal market conditions and Eskom's urgent procurement needs of 2009 still exists today that might justify perpetuating the coal price aspirations and governance systems proposed originally. The 2010 MT Mandate outlived most if not all senior executives and BoD members and it is quite conceivable that the current senior executives and BoD does not have sight of the original intent, strategy and tactics. BoD TC should review the Coal Supply Strategy, contracting strategy and the associated procurement mandates as soon as possible.

#### **Labs**

- 7.8 The Lab, roving, observation and sampling services were procured *via* an open tender. The tender process commenced during October 2013 and the contracts were concluded between March and August 2014 to the value of R213 million over three years;
- 7.9 A total of 14 service providers responded to the tender, 4 service providers were disqualified at pre evaluation stage for failing to comply with the mandatory requirements and 1 service provider was disqualified for failing to attend a compulsory clarification meeting;
- 7.10 We found that of the 5 disqualified service providers, 3 were unfairly disqualified as they had submitted the mandatory requirements;
- 7.11 All disqualified service providers were not notified as to the reasons why they were disqualified. The letters sent to them simply stated that they were unsuccessful. As such, the disqualified service providers were not afforded an opportunity to challenge their disqualification;
- 7.12 No contract files were opened for the suppliers and such, we could not assess the extent of contact management;
- 7.13 The Acting Labs Contract Manager, Quality Assurance Manager appears to have not completed all mandatory training required for the position of Contract Manager;
- 7.14 We could not find any evidence that the non-conformances are followed up and remedied. In this regard, we identified 131 non-conformances in respect of the 5 Labs which were not remedied;
- 7.15 Lab audit reports were not produced on time and in certain instances, there is evidence that the follow up audits were performed where major non-conformances had been identified; and
- 7.16 Some of the major non-conformances identified posed a potential threat of manipulation of coal sample analysis results, especially Labs failing to connect their equipment to LIMS which resulted in the manual input of results;



- 7.17 There is no evidence that the Labs are compliant with the contractual requirements pertaining to qualifications of staff; and
- 7.18 During our observation of Lab audits during October 2015, we verified the existence of some of the non-conformances.

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## VIII. RECOMMENDATIONS

8.1 We recommend the following pertaining to the Mines:

**Table: 15**

Key area identified	Observation	Recommendations
Process	<ul style="list-style-type: none"> <li>It is evident that although Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure provides certain requirements for these types of unsolicited offers, and the Eskom Process Control Manual for Source External Suppliers (240-7891684) provide direction for how it integrates into the normal procedures, PED have not integrated this into a concise and robust enough internal process to constitute a formal control process and procedure.</li> </ul>	<ul style="list-style-type: none"> <li>We recommend that the draft Primary Energy Division's Potential Coal Supplier Evaluation and Registration Process (Short/ Medium Term- March 2015) should be enhanced to include all relevant steps in the process e.g. obtaining prior approval from the relevant delegation authority for and the process of engaging the potential supplier and on-site assessments.</li> <li>Once a final process and procedure has been agreed to, it should be formally documented, assented as an official Eskom procedure and communicated to all affected staff.</li> <li>The requirements of the latest Coal Supply Strategy, the Coal Contracting Strategy and Coal Supply Optimisation Modelling and Planning should be built into the formal PED business processes.</li> <li>The draft CSA Sign-off Checklist should be amended to include: <ul style="list-style-type: none"> <li>All steps agreed to (from start to finish) in the formal procedure;</li> <li>all relevant documents, records and decisions dated i.e. so as to ensure an audit trail can be established;</li> <li>minimum standards to adhere to i.e. to ensure the appropriate level of detail and quality of the work to be performed; and</li> <li>Sign-off by senior management/oversight at the end of critical stages of the process.</li> </ul> </li> <li>The final checklist should form part of the formal procedure and be annexed thereto.</li> </ul>



Key area identified	Observation	Recommendations
Staffing and Training	<ul style="list-style-type: none"> <li>• Very few of the interviewees seemed familiar with the requirements of Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure.</li> <li>• Interviewees could not link the procurement decisions to a commodity (coal) supply strategy and also not to a contracting strategy.</li> <li>• The commercial or financial rationale for entering into the contracts at the negotiated terms and conditions are weak or absent on two of the four procurement events reviewed</li> </ul>	<ul style="list-style-type: none"> <li>• We recommend that once a formal procedure has been implemented, the relevant affected staff be trained to ensure that they understand the process and the steps that are required to be followed.</li> <li>• A record of this training should be maintained.</li> <li>• The complexity, duration, uncertainty and risk involved in these kind of contracts results invariably into a situation where Eskom negotiating teams face senior mining executives and experienced advisors as counterparties. Eskom will do well to increase the level of seniority, techno-financial and contract competency level of its negotiating teams.</li> <li>• Given the varying risk and complexity, formal appointment and mandating of teams with regular executive oversight is strongly advised.</li> </ul>
Oversight and Sign-off	<ul style="list-style-type: none"> <li>• Negotiation Team Leaders evidently are in full control of the process from beginning to end. There was no evidence to indicate that there was any oversight from the PED General Manager during the process, although he attended some of the meetings with suppliers and led the final negotiation meeting on one of the contracts.</li> </ul>	<ul style="list-style-type: none"> <li>• Oversight and sign-off by senior management must be embedded in all relevant process steps, starting with formal appointment and mandating of the teams to ensure that the documented process is followed throughout the procurement life-cycle.</li> <li>• Departmental routine business processes must be formalised to include the supply and demand situation, progress and forecasting relating to the coal supply procurement process and performance tracking.</li> <li>• BoD TC should review the Coal Supply Strategy, contracting strategy and the associated procurement mandates as soon as possible.</li> </ul>



Key area identified	Observation	Recommendations
Risk Management	<ul style="list-style-type: none"> <li>• The team leader and team members selected for the procurement of the coal supplies did not complete declaration of interest,</li> <li>• The Acting General Manager, PED Division, Eskom stated that all unsolicited offers made by suppliers are considered due to the demand of coal supply. No evidence were provided that due consideration has been given to needs analysis, alternatives considered, negotiating and or contracting strategy. Financial and commercial evaluations or analysis was only evident in two of the contracts reviewed.</li> </ul>	<ul style="list-style-type: none"> <li>• A mandatory 'declaration of interest' should be implemented as part of the procedure to ensure that there are no conflicts of interest between procurement staff and potential suppliers.</li> <li>• All suppliers and their beneficial owners should be screened to ensure that Eskom does not conduct business with individuals and companies that can potentially affect Eskom's reputation.</li> <li>• Eskom is by far the dominant buyer in the domestic coal market. Strong competition for its higher quality coal requirements has developed over time in the export market. Furthermore, coal procurement Eskom need to carefully consider and execute both a coal sourcing strategy and a contracting strategy.</li> </ul>
Document Quality Control	<p>The quality of the "AC" contract document and its 'addendums' were found to be concerning in that it contained numerous typographical errors.</p>	<ul style="list-style-type: none"> <li>• We recommend that formal sign-off by a contracts lawyer of the execution copy of an agreement be implemented as a mandatory requirement.</li> <li>• It is recommended that the current contract and its addenda be cleaned-up and redrafted where necessary by a competent contract lawyer.</li> </ul>



Key area identified	Observation	Recommendations
Records Management	<ul style="list-style-type: none"> <li>• It was difficult to establish a timeline and audit trail of the process as many of the documents that were reviewed were not dated.</li> <li>• Document management and retention is concerning as there is no central repository for all documents received related to the supplier.</li> <li>• Different people have different documents stored on their computers.</li> <li>• Not all required documents were made available.</li> <li>• Some of the required safety related documents were not obtained and retained. The Safety team reportedly had sight of them during their on-site visit</li> </ul>	<ul style="list-style-type: none"> <li>• Formal Records Management Policy and Procedures should be drafted to ensure that all relevant procurement documents be dated and filed correctly.</li> <li>• We recommend that a central repository be established for all supplier documents to be stored.</li> <li>• The Records Management Policy should follow a detailed filing convention and retention discipline to ensure that all documents in the process (including supplier correspondence) can be retrieved when required.</li> </ul>





Key area identified	Observation	Recommendations
Mandate and Delegation of Authority	<ul style="list-style-type: none"> <li>The procurement was done under the 2008 Medium Term coal procurement mandate set up originally for emergency coal procurement. During an update to the BoD-TC in 2010 the mandate was extended and expanded to contract for life of mine, to extend current contracts and powers with sub delegation was granted to the Divisional Executive Primary Energy Division to execute.</li> <li>PED in a feedback note to the BoD-TC in 2014 gave feedback of procurement action against the MT mandate and requested continuation of the same. The BoD-TC minutes only reflect that the feedback was noted.</li> <li>It was the interpretation of this mandate that allowed the DE PED to commit Eskom to 10 year CSA with nominal values in excess of R3nb each without having to refer to any committee or other oversight process.</li> </ul>	<ul style="list-style-type: none"> <li>It is questionable if the conditions still exist that justifies extraordinary or emergency procurement as envisaged by the MT strategy and motivation for the 2008 MT mandate and the subsequent 2010 modification.</li> <li>It is recommended that in future, in addition to value and volume requirements, other conditions be used to limit the duration and scope of extraordinary practices. In this case a time limit of say 12 months could have been used.</li> </ul>
Validity of the contract	<ul style="list-style-type: none"> <li>The combustion tests done to date on the AC coal supply are inconclusive and it is unclear if the condition precedent of clause 10.2.1 of the contract has been met. Clause 10.3 of the agreement specifically stipulates that if 10.2.1 is not fulfilled or waived, the contract shall never become effective.</li> </ul>	<ul style="list-style-type: none"> <li>A technical and legal review of the AC CSA is urgently required to inform Eskom's actions relating to the further implementation and management of the relationship with the supplier.</li> <li>This situation could well provide Eskom with leverage in finalising a range on unresolved issues like the insisting on only 4 lower seam coal, insisting on the supplier implementing a coal washing plant if coal seams are going to be blended and finalisation of the CQMP.</li> </ul>





Key area identified	Observation	Recommendations
Contracts management	<ul style="list-style-type: none"> <li>Neither the Coal Sourcing Manager (contracting process) and the Coal Supply Unit Manager (implementation and operational management) were clear on key outstanding elements of the contract like the quality testing and confirmation (Condition Precedent), potential risks identified by the Bulk Sample test results and the finalisation of the outstanding CQMP.</li> </ul>	<ul style="list-style-type: none"> <li>Functional roles and responsibilities need to be clearly documented and formal handover processes and procedures implemented.</li> </ul>

8.2 We recommend the following pertaining to the Labs:

**Table: 16**

Key area identified	Observation	Recommendations
Records Management	<ul style="list-style-type: none"> <li>Contract Management files pertaining to the Labs were not opened as requirement the Eskom Procurement policy.</li> </ul>	<ul style="list-style-type: none"> <li>Lab contract management files should be maintained as required by the Procurement policy and all relevant records maintained.</li> </ul>
Systems improvement	<ul style="list-style-type: none"> <li>Several inadequacies were identified in the Procurement, Contracting, Contract Management and Quality Assurance systems.</li> </ul>	<ul style="list-style-type: none"> <li>Eskom should consider implementing enhancements recommended in our report to address the inadequacies identified in the system.</li> </ul>



Key area identified	Observation	Recommendations
Contract enforcement	<ul style="list-style-type: none"> <li>Instances of major non-conformance pertaining to connection of Lab equipment to LIMS and non-compliance to contractual terms relating to staff qualifications were identified.</li> </ul>	<ul style="list-style-type: none"> <li>Measures should be put in place to ensure all Labs comply with the contractual requirements, particularly around staff qualifications and connection of equipment to LIMS.</li> </ul>
Quality Assurance	<ul style="list-style-type: none"> <li>All contractual Labs were found to have a high number to recurring major non-conformances during the Audits.</li> </ul>	<ul style="list-style-type: none"> <li>Labs should be encouraged to limit the number of major non-conformances identified during audits. The Labs should be encouraged to perform their own internal audits as per their contracts to identify these weaknesses and remedy them in time.</li> </ul>

8.3 We recommend the following pertaining to further Forensic Work:

Table: 17

Period	Areas of focus	Areas to be covered by the investigation/scope
2013 to 2015	<ul style="list-style-type: none"> <li>Procurement</li> <li>Work Allocation to Labs and Roving companies</li> <li>Payments to Labs and Roving companies</li> </ul>	<ul style="list-style-type: none"> <li>The "raw data" extracted from the Labs in comparison to what was sent to the Mines and Eskom, to establish the extent of any manipulation and/or irregular conduct;</li> <li>The role played by certain staff members during the procurement process;</li> <li>Payments made to a roving company for services not allegedly rendered</li> <li>Payments to one service provider for waste removal. This service was not provided for in the contract;</li> <li>Unusually high payments made to one particular Lab, in relation to the other Labs and</li> <li>Potential conflict of interest involving certain staff members.</li> </ul>

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