



24 May 2019

Zondo Commission – Transnet’s tender dispute regulations under discussion

Transnet’s tender dispute regulations came under scrutiny at the commission of inquiry into state capture on Friday during the testimony of Sharla Chetty (nee Pillay), the chief information officer of Transnet Port Terminals. The particular dispute in question was in relation to her award of a multi-million-rand network services tender to Neotel in October 2013, during the absence of group CEO Brian Molefe, in whose position Chetty was acting at the time.

Molefe returned to work shortly after Chetty had made the award, and sought to reverse it, citing among the reasons, that Chetty’s delegation authority in her acting capacity did not allow her to make a decision of this nature.

On receiving a recommendation from the state-owned entity’s evaluation committee that approved Neotel as the preferred bidder, Chetty signed off on the deal on 30 October. She had been given Molefe’s status of authority from 28 October to 1 November. Twenty days into Molefe return to the office, he distributed a second memorandum revoking Chetty’s decision, citing at the time that she had acted outside of her delegated authority, and listing several risks involved in the award decision.

Chetty told the inquiry that all gateway reports – which usually accompany the committee’s recommendation, to show that all required procurement procedures had been adhered to – were included in the documents sent to her to sign. Despite this, she said, Molefe made claims of material risks associated with the award, and proceeded to state that in revoking it, he would make the award to T-Systems instead.

According to Chetty, even if the committee or herself had acted improperly in awarding to Neotel, T-Systems would still not have automatically become the next preferred bidder, as they had come third on the evaluation committee’s overall scoring. Neotel came first, with Dimension Data second.

Commission chairperson, Deputy Chief Justice Raymond Zondo, had an issue with the relevance of Chetty’s evidence, and questioned if indeed Transnet’s procurement regulations did not allow for Molefe, as the GCEO, to override the award of the tender. “One of the witnesses, I think Mr Volmink, testified to whether or not Mr Molefe was entitled to reverse the decision, and from what I heard that decision was subject to the question of law.”

In response, evidence leader Refiloe Molefe argued that Chetty’s evidence did not aim to pursue that point of legal argument, but instead to clarify the position she held in making her decision, based on the recommendations brought before her.

Peter Volmink, Transnet’s executive manager for governance, testified earlier this month on Molefe’s reversal of the award, saying that legal opinion sought from Gilbert Marcus SC by the evaluation committee at the time advised that extraneous factors were taken into account in that decision, which was unfair, and that Transnet should go ahead with Neotel.

“There has not been direct evidence from the decision maker who was involved in the approval of the award of the tender to Neotel,” added Refiloe Molefe.

Chetty’s view is that, as per Transnet’s procurement procedure manual, the circumstances under which the CEO could take such a step would have to outline material risks involved with the decision having been taken in his absence. This, she said, was not the case in this situation. The issues raised by Brian Molefe as being material risks had already been covered and mitigated by the evaluation committee.

Among them, Molefe raised the point that T-Systems offered Transnet a discount of R248-million at a point in the procurement process where all bidders were asked to clarify their pricing mechanisms. They were the only bidder that included a discount offer, in addition to their clarified pricing. The discount offer, argued Molefe in his memorandum declaring the reversal of Neotel’s award, should have been considered in respect of the impact it would have had in the final contract cost implications for Transnet.

His view contradicted that of the evaluation committee, which concluded that consideration of the discount offer would not place T-Systems above the other bidders in any case, nor would it be fair of Transnet to consider it, seeing as the other bidders had not had been given the same opportunity to offer a discount.

Asked by Zondo if there is any other reason for opposing Molefe’s decision to revoke, Chetty said the way in which he had made the decision was suspect. “He cannot consider pricing [T-Systems discount offer included] after the best and final offer has been submitted.”

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