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Zondo commission – Investigations into Transnet contracts flawed, says Gama

Siyabonga Gama has told the state capture commission that in reading findings of investigative reports into Transnet's locomotives tenders entered into between 2012 and 2015, it must appreciate the nuanced nature of the processes, and not just the conclusions that there was bad governance.

Gama was the GCEO of Transnet from 2015 to 2018, succeeding Brian Molefe, and CEO of its subsidiary Transnet Freight Rail (TFR) before that. He gave evidence before the commission on Tuesday and Wednesday evenings, and was taken through the highlights of the procurement processes for the 95, 100 and 1 064 locomotive projects of Transnet that the commission has explored. Gama said of the three, he was most actively involved in the 1 064 project, as TFR was to be the main beneficiary.

However, he said, the reports from the national treasury-commissioned Fundudzi investigation concluded in 2018, and the later, broader investigation by Mncedisi Ndlovu Sedumedi (MNS) – commissioned by the incoming board of Transnet in early 2018 – do not tell a full picture of what actually transpired in the negotiations at different stages of the process. Gama called their findings tick box exercises that leave out important details of how he and other executives fared in the process and how they came to the decisions that they did.

He was being questioned on Transnet's decision to revoke an appointment, by confinement, of Japanese company Mitsui in 2013 for the procurement of 100 electric and diesel locomotives for use on the company's coal line between Mpumalanga and KwaZulu-Natal. The contract was then awarded to China South Rail (CSR), also by confinement.

The former lead engineer in the development of the business case for the project, Francis Callard, told the commission in 2019 that the change in suppliers meant that a new business case had to be developed. This happened after he had presented his business case successfully to Gama and the group's executives, including Molefe. Gama was at this time still heading TFR and had final say on the locomotives' specifications.

When he reviewed the CSR case later as part of an investigation into the process, Callard found material errors indicating that specifications he had included in the Mitsui case had been copied and pasted word for word into the CSR one that ended up going to the board. The pricing specifications also contained foreign exchange projections for Mitsui's Yen as opposed to CSR's Yuan, making the final costing estimate a flawed exercise.

Because of his technical experience in the area of specifications of locomotives, Gama had asked him in 2009 to develop a fleet plan for TFR that would help the division respond to market demand for fully-functioning locomotives.

Because of the change, the cost of the contract went up from R3.8-billion to R4.4-billion. Fundudzi found that Transnet would have saved R1.2-billion if it had remained with Mitsui. "I think it's the wrong conclusion. There were certain assumptions … Mitsui had priced on assumptions that they could use certain existing parts that were in Transnet's possession," said Gama.

"When you look at these things you must also look at the total cost of ownership. The frequent taking out of locomotives for maintenance and repairs of Mitsui is actually counter-productive. So you might say I'm going to save some money upfront if you thought you were saving."

Gama used the analogy of the difference between buying a bicycle and a VW Beetle car, arguing that buying the former may save money at the beginning, but it limits the rider in terms of distances they can cover with the bicycle, compared to the car.

MNS also found that while Molefe placed conditions for CSR relating to the payment and delivery schedules to be followed, CSR in turn demanded a 60% upfront payment of the contract value, and also promised to deliver its first locomotive only in February 2015, five months later than Transnet's projected delivery of September 2014.

Gama's response to MNS's findings was that Transnet had to make a tough choice to abandon Mitsui as the company had previously failed in post-production obligations. "You get MNS and you get Fundudzi, who become experts after the fact. I think what is not taken into account is what happened in the negotiations," he said.

On the bigger procurement project for 1 064 locomotives, Gama said there was nothing wrong with the increase in estimated total cost (ETC) from R38.6-billion at the beginning of 2014, to R54-billion in May, when Molefe submitted the final procurement proposal to the board. The memorandum motivating for the deal accounted for expected foreign exchange and hedging costs in terms of the pricing of the manufacture of the locomotives, he said. This was because all four original equipment manufacturers (OEMs) appointed were foreign. CSR was among these, as was China North Rail, with which it merged later; Germany's Bombadier Transport, and General Electric from the US. Even though care is given to arrive at the closest possible figures in estimation, said Gama, a lot of factors in reality may cause an increase in ETC because there are no guarantees.

"These numbers are likely to change. I don't think anybody would have assumed or would have known by how much. So you go on the assumption, that's really what I want to say.

"In the investment case, R38-billion escalated to R49.5-billion, because I think those are the two numbers that must be compared … there was a report that was given to me … from the finance negotiating team … that is the document that contained the final base costs."

The contract value of R49.5-billion was the figure arrived at by the finance team and entered into with all of the OEMs in March 2014. "Then what is called a 10% contingency was added, which came to about R4.95-billion. That moved it to the R54-billion."

Gama said the best people to deal with the final escalation were the finance team that made the inputs to him.

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