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Zondo final report – Denel woes caused by state capture

The capture of Denel from 2014 was deliberate, and intended – just as in other parastatals – to enrich the Guptas. Former public enterprises minister Lynne Brown continued where her predecessor Malusi Gigaba left off in the state capture project, and Denel was no exception, the state capture commission has found. Brown appointed a board with pliable members, who would ensure that Gupta-linked VR Laser was favoured for lucrative contracts at Denel.

The board chaired by attorney Daniel Mantsha came into office in September 2015, at the tail end of a successful run of the previous board – and immediately put a plan in action to “neutralise” executives who might stand in the way, according to commission chairperson Acting Chief Justice Raymond Zondo. He notes in his second report on state capture that Brown and Mantsha’s intentions for Denel were clear from the start, and that explains the irrational procurement decisions made in respect of VR Laser, which was irregularly awarded three contracts under suspicious circumstances between 2014 and 2016.

Zondo writes: “Ms Brown participated in state capture by using the powers of her office to install as members of the Denel board of directors persons whom she believed, probably because she was told so, would facilitate or at least not oppose the Guptas’ state capture scheme.”

Deviation from procurement policy

Denel’s Hoefyster project was part of the arms manufacturer’s long-term strategy, conceived in the period predating Mantsha’s board, and would involve the manufacture of over 200 military combat equipment items over some time.

In 2014 subsidiary Denel Land Systems (DLS) sought to acquire platform hulls that are used for military vehicles, through a normal procurement process that attracted three bids, including VR Laser, Denel-owned LMT and a third company, DCD. VR Laser had at this point been taken over by Gupta associate Salim Essa the previous year after being a supplier to Denel for years, and was considered a leader in its field. Zondo’s report details the series of developments in the procurement process that appear to have favoured VR Laser, including the scoring by the bid evaluators.

Disputes arose over the fact that Denel had purchased LMT for the purpose of keeping some aspects of manufacturing in-house. But the arrival of VR Laser on the scene, Zondo argues, meant a deviation from the original strategy, and probably the reason for Denel’s descent into poverty. DLS CEO Stephan Burger, one of the advocates for VR Laser’s capabilities, defended the move to deviate from procurement principles during his testimony before the commission. An odd move, Zondo was told by Denel’s former head of procurement Dennis Mlambo, as Burger had previously been one of the strongest advocates for the purchase of LMT.

VR Laser’s bid for the hulls contract was originally priced at R260-million for 217 units, but was brought down significantly when the first evaluation phase of the process scored LMT the highest on price. VR Laser then revised its pricing, presumably having been warned, after DLS procurement head

Celia Malahlela made her submission noting their overpriced bid. The initial cost of the transaction had been estimated at around R365-million – which would have been at group board level of authority, and above Denel GCEO Riaz Saloojee’s R200-million cap, but after the final submissions were considered, the value was brought down to R192-million. With this change, the transaction would not have to be scrutinised and approved by the board.

“The award of the hulls contract was irregular. The process by which the hulls contract was awarded was flawed in the following respects:

- It was improper to approach VR Laser to reduce its tendered price without giving the other two tenderers a chance to revise their tenders.
- It was improper to sideline and then override [group executive: supply chain Dennis Mlambo] who was opposed to the award to VR Laser precisely because of flaws in the process.
- It was improper to accept the criticisms of LMT’s capacity to perform without giving LMT an opportunity to deal with those criticisms.
- It was improper not to start the tender process afresh once the flaws in the process were pointed out.
- The process was concluded in an overly hasty manner.”

Zondo found that two more contracts that were also awarded to VR Laser – one on a single source basis and the other for the supply of cradles – were also irregular. In all instances DLS opted to deviate from open tender processes, despite warnings from its procurement unit. The single source contract was awarded for a ten-year period, despite Malahlela’s advice that it be for three years.

“The requirements of s217 of the Constitution [which guides state institutions on how the principles that should govern public procurement] are not something that Denel could choose or not chose to follow. The provisions of s217 are binding on all organs of state, such as Denel, and all decision makers within Denel were obliged to implement its terms, both in letter and in spirit.

“In the commission’s view, the entry of Mr Essa and the Guptas into VR Laser was conceived for the purpose of using VR Laser as a vehicle to achieve the capture of Denel. While the capture process proceeded and broadened, the legitimate business of VR Laser would continue.”

Errant decisions by politicians

Zondo also concluded that even before the Guptas had found their vehicle of entry into Denel – namely VR Laser – they had already made plans for its capture, and made their initial move to get Saloojee to comply with their wishes.

“The Guptas were not prepared to compete for Denel’s business. From the outset, they put pressure on Mr Saloojee to privilege their chosen vehicle, VR Laser, above any other competitor suppliers.”

Zondo found Saloojee’s evidence, that he was requested on several occasions to meet with Essa and Rajesh Gupta to talk about the family’s prospects of doing business with Denel, plausible. Saloojee told the commission that whenever the issue arose, he would direct the two men to then business development head, Zwelakhe Ntshepe. Days after the board of Mantsha came into office and suspended Saloojee, it was Ntshepe who was appointed to act in his position.

“The first step was to remove control of Denel from the hands of a competent and honest board. The cover for this was the end of terms of office of the members of the 2011 board. By then the Guptas had taken control of VR Laser. Their cover was in place.”

Brown’s role in the process was to deviate from the usual process of the Department of Public Enterprises in sourcing board members.

“The evidence shows quite conclusively that the means used by minister Brown to replace the members of the 2011 board and replace them with her own appointees excluded the Department of Public Enterprises’ officials from any input into the process and ensured that no criticisms of minister Brown’s appointees would be raised by officials who might have had concerns about their lack of probity, skills and expertise.”

Such skills and expertise in the running of the specialised Denel were not possessed by its new chairperson, an attorney with a history of having been struck off the roll. For his efforts, Mantsha was rewarded, writes Zondo, with travels paid for by the Gupta, including a trip to Dubai soon after taking office.

“Mr Mantsha was one of the central actors in the Gupta and Essa scheme to capture Denel. He was not duped into acting as he did: he was a witting agent of state capture. He acted as he did in the expectation that he would be rewarded for his efforts on behalf of the Guptas, as he was when he travelled at their expense.

“Mr Mantsha almost certainly anticipated that, as the Guptas strengthened their grip of the South African state, he would be rewarded by access to positions of power and the fleshpots of power. Mr Mantsha enjoyed a taste of the fleshpots of power when he travelled overseas, in luxury, at the expense of the Guptas in early October 2015, only days after he had, with apparent success, managed the suspension of the three Denel executives.”

In his recommendations, Zondo notes, among others, that:

- further investigations be carried out into members of the board of 2015 to determine if they did not contravene sections of the Public Finance Management Act in pursuing the suspensions of Saloojee, GCFO Fikile Mhlontlo and company secretary Elizabeth Africa in September 2015;
- All VR Laser contracts with Denel in this period be investigated;
- The Legal Practice Council investigate whether Mantsha is fit to practice as an attorney;
- A stand-alone body be established to look into how board appointments at public institutions are carried out. The details of this will be included in his next report.

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