

**NATIONAL TREASURY**

**FORENSIC INVESTIGATION:**

**ELECTORAL COMMISSION - RIVERSIDE OFFICE PARK**

**REPORT: 14 DECEMBER 2013**

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Ms Zanele Mxunyelwa  
Chief Director  
Specialised Audit Services  
National Treasury  
Private Bag X115  
Pretoria  
0001

14 DECEMBER 2013

Our Reference: TSW/TP

Dear Madam

**Forensic Investigation: Electoral Commission: Riverside Office Park**

Please find enclosed herewith our forensic report in respect of the investigation undertaken into the alleged irregularities involving the procurement by the Electoral Commission of Riverside Office Park as their Head Office.

We confirm that our report and the findings therein are for the exclusive use of yourselves and your legal advisors. No other party, whether referred to therein or not, is entitled to rely on any of the views expressed in the report. PricewaterhouseCoopers Incorporated will not accept any responsibility to any other party to whom our report may be shown or into whose hands it may come.

We used reasonable care and skill in the provision of the services set out in our terms of reference dated 29 October 2013. However, the procedures undertaken by us in performing this work did not constitute an examination in accordance with the International Standards on Auditing and hence, no opinions have been expressed based on these Standards.

Should you wish to discuss any aspect of this report, please do not hesitate to revert to me on +27(31)271 2000 or +27(82) 454 6864.

Yours faithfully

A handwritten signature in black ink, appearing to read 'T White', is placed above the printed name and title.

**Trevor White**  
**Director: Forensic Services**

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**ABBREVIATIONS AND TERMINOLOGY**

The following are abbreviations and terminology that have been used in this report:

<b>Abbreviated Name / Terminology</b>	<b>Full Name and / or Description</b>
PwC	PricewaterhouseCoopers Incorporated
Adv. Tlakula	Advocate Pansy Tlakula, former Chief Electoral Officer and Accounting Officer during the period covered by this investigation and current Chairperson of the Electoral Commission.
Hon Mufamudi	Honourable Thaba Mufamadi, Chairperson of Manaka Property Investments, and member of Parliament.
CEO	Chief Electoral Officer
Electoral Commission / IEC	The Electoral Commission is a State Institution Supporting Constitutional Democracy as envisaged in Chapter 9 of the Constitution of the Republic of South Africa.
Abland	Abland (Pty) Ltd, registration number 1996/013517/07.
Riverside Office Park	The office park situated at 1303 Heuwel Avenue, Centurion.
PFMA	Public Finance Management Act No 1 of 1999
Mr Steyn	Mr Marius Steyn, Manager Procurement and Asset Management
Mr Langtry	Mr Stephen Langtry, Manager in the Office of the CEO
PPPFA	Preferential Procurement Policy Framework Act
JHI	JHI Real Estate Limited
Dr Pretorius	Dr Jacob "Jake" Pretorius, Manager Support Services
Ms Da Silva	Ms Angelique Da Silva, Assistant Manager: Office Services
Manaka	Manaka Property Investments (Pty) Ltd

**LIST OF ANNEXURES**

**A Policy and Procedure Documents**

<b>Reference</b>	<b>Description</b>
<b>A1</b>	Extract from Constitution of the Republic of South Africa.
<b>A2</b>	Electoral Commission Act 51 of 1996.
<b>A3</b>	Government Gazette dated 19 May 2000: Electoral Commission Regulations on the Conditions of Service, Remuneration, Allowances and other Benefits of the Chief Electoral Officer and other Administration Staff.
<b>A4</b>	Government Gazette dated 15 May 1998: Electoral Court Rules Regulating the Conduct of the Proceedings of the Electoral Court.
<b>A5</b>	Public Finance Management Act 1 of 1999.
<b>A6</b>	This Annexure was not used.
<b>A7</b>	This Annexure was not used.
<b>A8</b>	National Treasury Practice Note Number SCM 3 of 2003.
<b>A9</b>	National Treasury Practice Note Number SCM 4 of 2003.
<b>A10</b>	National Treasury Circular : Implementation of Supply Chain Management dated 27 October 2004.
<b>A11</b>	National Treasury Circular dated 10 May 2005.
<b>A12</b>	National Treasury Practice Note 6 of 2007/2008.
<b>A13</b>	National Treasury Practice Note 8 of 2007/2008.
<b>A14</b>	Extract from Treasury Regulations 2005: 16A Supply Chain Management.
<b>A15</b>	Preferential Procurement Policy Framework Act.
<b>A16</b>	Preferential Procurement Regulations 2001.
<b>A17</b>	National Treasury Practice Note 8 of 2007/2008.
<b>A18</b>	Department of Public Works: Space Planning Norms and Standards for Office Accommodation Used by Organs of State.

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Reference	Description
A19	Electoral Commission's Draft Procurement Policy and Procedures.

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**B Proposal Documents**

<b>Reference</b>	<b>Description</b>
<b>B1</b>	Advertisements for Invitation to submit proposals
<b>B2</b>	Abland (Pty) Ltd proposals dated 9 March 2009 signed by Mr Thinus Delport. (This proposal contains the Commissions receipt stamp, dated 9 March 2009, on page 1 thereof.)
<b>B3</b>	Abland (Pty) Ltd proposal dated 9 March 2009 signed by Mr Willem van der Westhuizen. This document does not contain a receipt stamp.
<b>B4</b>	Khwela City proposal dated 9 March 2009.
<b>B5</b>	Extracts from the Proposal from RCP Brokers proposal dated 9 March 2009.
<b>B6</b>	Receipt of proposals for tender number IEC /55-003/2009 closing date 9 March 2009 at 17:00.
<b>B7</b>	Photographs of the stamp appended on all suppliers bid documents.
<b>B8</b>	Email from Stephen Langtry dated 13 May 2009 to Norman du Plessis re: National Office Accommodation including a spreadsheet containing the evaluation of all ten proposals received.
<b>B9</b>	Evaluation score sheets for preference points that was done by Mr Langtry.
<b>B9a</b>	Evaluation schedule where Abland's rate was changed.
<b>B10</b>	JHI Real Estate Limited letters dated 27 November 2008 marked for the attention of Jack Pretorius.
<b>B11</b>	Letter from Adv. Pansy Tlakula to Mr Norman du Plessis dated 11 February 2009 re: New Accommodation.
<b>B12</b>	Memorandum from Mr Norman du Plessis to the Chief Electoral Officer dated 13 February 2009 re: "New Accommodation"
<b>B13</b>	Email from Johann to Ms Angela Da Silva regarding Appointment: Menlyn Corporate Park dated 25 July 2008 12:56 PM.

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Reference	Description
<b>B14</b>	Email from Ms L Dlamini to Trevor Parkes of PwC dated 6 December 2013 at 05:09PM with copies of the Original Tax Clearance Certificates of: Abland (Pty) Ltd; East & West Investments (Pty) Ltd; Manaka Property Investments (Pty) Ltd; South Central Investments 147CC; and Copper Circle Investments 55CC.

**C Lease Agreements**

<b>Reference</b>	<b>Description</b>
<b>C1</b>	Lease Agreement Between Abland (Pty) Ltd and the Electoral Commission signed by Adv. Tlakula on behalf of the Commission on 21 August 2010.
<b>C2</b>	Addendum to Lease Agreement between Abland (Pty) Ltd and the Electoral Commission signed by Adv. Tlakula on 12 April 2010.
<b>C3</b>	Second Addendum Agreement between Abland (Pty) Ltd and the Electoral Commission signed by Adv. Tlakula on 6 April 2011.
<b>C4</b>	Third Addendum Agreement Titled "second addendum Agreement" between Abland (Pty) Ltd and the Electoral Commission signed by Mr Moepya on 16 March 2011

**D Exco and Commission Minutes**

<b>Reference</b>	<b>Description</b>
<b>D1a</b>	Minutes of the Electoral Commission Meeting held in October 2008.
<b>D1</b>	Minutes of the Electoral Commission Meeting held on 03 November 2008.
<b>D2</b>	Minutes of the Electoral Commission Meeting held on 01 December 2008.
<b>D3</b>	Minutes of the Electoral Commission Meeting held on 12 January 2009.
<b>D4</b>	Minutes of the Electoral Commission Meeting held on 02 March 2009.
<b>D5</b>	Minutes of EXCO Meeting held on 15 May 2009.
<b>D6</b>	Minutes of EXCO Meeting held on 19 June 2009.
<b>D7</b>	Minutes of the Electoral Commission Meeting held on 06 July 2009.
<b>D8</b>	Report of the Chief Electoral Officer for the Commission Meeting of 06 July 2009.

**E Affidavits**

<b>Reference</b>	<b>Description</b>
<b>E1</b>	Affidavit of Lefosha Johannes Thipane, an Administration Officer in the Procurement Unit of the Electoral Commission.
<b>E2</b>	Affidavit of Rachel Mmimiki Malele, an Administration Officer in the Procurement Unit of the Electoral Commission.
<b>E3</b>	Affidavit of Marius Lötter Steyn, the Manager of Procurement and Asset Management of the Electoral Commission.
<b>E4</b>	Affidavit Lindiwe Lynette Dlamini, a Senior Administration Officer in the Procurement Unit of the Electoral Commission.
<b>E5</b>	Affidavit of Angela Maria Goncalves Da Silva, an Assistant Manager in Office Services at the Electoral Commission.
<b>E6</b>	Affidavit of Dr Jacob Hendrik Pretorius, a Manager in Support Services at the Electoral Commission.
<b>E7</b>	Affidavit of Stephen Langtry, including transcript of interview with PwC, a Manager in the Office of the Chief Electoral Officer at the Electoral Commission.
<b>E8</b>	Affidavits of Norman Du Plessis, including transcript of interview with PwC, Deputy Chief Electoral Officer, responsible for Corporate Services.
<b>E9</b>	Affidavit of Mosotho Moepya, Chief Electoral Officer.
<b>E10</b>	Affidavit of Libisi Maphanga, Chief Information Officer.

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**F Payment Information**

<b>Reference</b>	<b>Description</b>
<b>F1</b>	Real FMG report titled "IEC Lease Analysis Report for PricewaterhouseCoopers" dated 09 December 2013.
<b>F2</b>	Assessment of Costs for New IEC Office Premises prepared by Asman, Philips, McClure and Partners.

**G Commissioners Responses**

<b>Reference</b>	<b>Description</b>
<b>G1</b>	Commissioner Terry Ismael Tselane's response.
<b>G2</b>	Raenette Taljaard's response.
<b>G3</b>	Advocate Tlakula's response.

**H Abland Responses**

Reference	Description
<b>H1</b>	Letter from Hannes Kleynhans to Electoral Commission dated 06 November 2013 clarifying the processes and procedures employed in the procurement of movable and immovable items.
<b>H2</b>	Letter with supporting documentation from Abland to PwC dated 05 December 2013 clarifying information related to the proposal call for office accommodation in Pretoria/Centurion during March 2009.

**J Budget Information and Expenditure**

<b>Reference</b>	<b>Description</b>
<b>J1</b>	Riverside Office Park Immovable Budget.
<b>J2</b>	Riverside Office Park Movable Budget.
<b>J3</b>	Extract for Office Assets: Riverside Park and Capital: General Office Asset.
<b>J4</b>	Budgets Explanations and Supporting Documentation provided by Ms Ester de Wet from Budget Section at the Electoral Commission.
<b>J5</b>	Orders, Invoices and Budget for Immovable Items provided by Wild at Heart (Interior Designers).
<b>J6</b>	Abland Payment Documents for Planters.

**K PwC Photo Album**

Reference	Description
K1	Photo Album: Offices of the Electoral Commission at Riverside Office Park.

**L KreditInform Reports**

Reference	Description
L1	KreditSearch Report in respect of Manaka Property Investments (Pty) Ltd with registration number 2007/001590/07.

**A. INTRODUCTION**

**1.000 Terms of Appointment**

1.001 The terms of our appointment are detailed in our project implementation plan dated 9 October 2013, which was approved by Ms Z Mxunyelwa (CD: Specialised Audit Services).

**2.000 Objectives / Mandate**

**Background**

2.001 The Public Protector's Report,<sup>1</sup> Inappropriate Moves, details her findings and recommendations following an investigation performed by her Office after a complaint was lodged by the Honourable General Bantu Holomisa alleging suspected irregularities in the procurement of the Riverside Office Park premises from Abland (Pty) Ltd (**Abland**) to accommodate the Head Offices of the **Electoral Commission**.

2.002 In addition, further allegations were made relating to an alleged conflict of interest between Advocate Pansy Tlakula (**Adv. Tlakula**), the Electoral Commissions former Chief Electoral Officer (**CEO**), and the Honourable Thaba Mufamadi (**Hon Mufamadi**), the Chairperson of Manaka Property Investments, who is alleged to own a 20% share in Abland's development at Riverside Office Park, by virtue of their co-directorships in Lehotsa Investments (Pty) Ltd.

2.003 One of the recommendations detailed in the Public Protector's Report was that the Electoral Commission in consultation with National Treasury consider commissioning a forensic investigation to investigate the entire Lease Agreement and the related expenditure in order to determine a fair market value of the contract and related expenditure and to investigate the cession of the Agreement from Abland to Riverside Office Park Trust.

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<sup>1</sup> Report No. 13 of 2013/2014.

**Mandate**

- 2.004
- i. The forensic investigation is to be conducted into the entire lease agreement concluded between the Electoral Commission and Abland ("the Lease Agreement"), in terms of which the Electoral Commission leases from Abland the Riverside Office Park and the process followed to make the appointment;
  - ii. Objectively determine what would constitute a fair market value and related expenditure in respect of offices similar to the Riverside Office Park, at the time of concluding the Lease Agreement:
    - Compare the fair market value so determined to the rental amount agreed to between the Electoral Commission and Abland;
    - Determine whether or not there was any discrepancy between the fair market value and the rental amount paid by the Electoral Commission, which constituted an extravagant expenditure incurred by the Electoral Commission;
    - If any such extravagant expenditure was so incurred, recommend ways of recovering such expenditure on behalf of the Electoral Commission;
  - iii. Investigate the cession of the Lease Agreement from Abland to Riverside Office Park Trust:
    - Establish the identities of the trustees of the Riverside Office Park Trust during the time when the Lease Agreement was ceded to this trust;
    - Identify all other entities that were party to the cession and who the directors and shareholders of these entities are;
  - iv. Investigate the conduct of and the role that was played by the former CEO Adv Tlakulu, the CEO Mr Moepya, the Deputy CEO Mr Norman Du Plessis, Mr Langtry and other EXCO members, who participated in the procurement process and are still within the employ of the

Electoral Commission;

- v. Investigate if the Electoral Commission received value for money for payments (both immovable and movable items) made by Riverside Office Park Trust or any other entity on behalf of the Electoral Commission; and
- vi. Investigate if the suppliers who were paid by Riverside Office Park Trust or any other entity on behalf of the Electoral Commission are tax compliant.

### **Approach**

2.005 We undertook the following general approach to the investigation that was covered by our mandate:

- i. Obtained and received a copy of the Public Protector report “Inappropriate moves” dated April 2013;
- ii. Obtained copies of various documents that had been provided to National Treasury by the Electoral Commissions relating to this matter;
- iii. Obtained and reviewed relevant policies, procedures, circulars, practice notes and regulations where applicable;
- iv. Interviewed, and where considered necessary obtained affidavits or written representations from, Electoral Commission staff, Commissioners and Abland representatives.
- v. Appointed a firm of corporate real estate advisors, Real FMG, to assist with the review of various technical aspects of the procurement transaction.

### **3.000 Sources of Information**

3.001 The information dealt with in this report was obtained from various sources which include interviews conducted with employees of the Electoral

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Commission as detailed hereunder:

- |       |  |            |
|-------|--|------------|
| i.    | Mr Lefosha Johannes Thipane ( <b>Mr Thipane</b> ), Administration Officer in the Procurement Unit.   | <b>E1</b>  |
| ii.   | Ms Rachel Mmimiki Malele ( <b>Ms Malele</b> ), Administration Officer in the Procurement Unit.   | <b>E2</b>  |
| iii.  | Mr Marius Lotte Steyn ( <b>Mr Styen</b> ), Manager Procurement and Asset Management.   | <b>E3</b>  |
| iv.   | Ms Lindiwe Lynette Dlamini ( <b>Ms Dlamini</b> ), Senior Administration Officer in the Procurement Unit.   | <b>E4</b>  |
| v.    | Ms Angela Maria Goncalves Da Silva ( <b>Ms Da Silva</b> ), Assistant Manager Office Services.  | <b>E5</b>  |
| vi.   | Dr Jacob “Jake” Hendrick Pretorius ( <b>Dr Pretorius</b> ), Manager Support Services.  | <b>E6</b>  |
| vii.  | Mr Stephen Langtry ( <b>Mr Langtry</b> ), Manager in the Office of the CEO.  | <b>E7</b>  |
| viii. | Mr Norman William Du Plessis ( <b>Mr Du Plessis</b> ), Deputy Chief Electoral Officer responsible for Corporate Services.  | <b>E8</b>  |
| ix.   | Mr Mosotho Simon Moepya ( <b>Mr Moepya</b> ), Deputy Chief Electoral Officer responsible for Electoral Operations during the period covered by this investigation, and the current Chief Electoral Officer with effect from February 2012. | <b>E9</b>  |
| x.    | Mr Libisi Samuel Maphanga ( <b>Mr Maphanga</b> ), Chief Information Officer.   | <b>E10</b> |
| xi.   | Ms Fiona Rowley-Witley ( <b>Ms Rowley-Witley</b> ), current Chief Financial Officer but not at Electoral Commission during the period covered by this investigation.   |            |

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- 3.002 In addition to the above the Commissioners were requested to provide us with copies of any representations they made in writing to the Public Protector. In this regard the following was provided:
- i. Commission Terry Tselane provided a copy of a statement, together with annexures, that he made to the Public Protector dated 5 November 2012. **G1**
  - ii. Commissioner Raenette Taljaard provided a timeline she had prepared based on information given to the Public Protector. **G2**
- 3.003 Adv. Tlakula was requested to provided us with copies of all representations and/or submission that she made, or anyone else made on her behalf, to the Public Protector and/or any other entity or person with regards to the lease of Riverside Office Park and/or the procurement thereof. **G3**
- 3.004 In response to our request Adv. Tlakula replied as follows:
- “I refer to your email below. Please be informed that I have lodged an application in the North Gauteng High Court for the court to review and set aside the findings and recommendations that the Public Protector has made against me in her report. Since the matter is sub judice, I request you to direct all your correspondence relating to the Public Protector’s report to my attorney, Mr Leslie Mkhabela of Mkhabela, Huntley Adeyeke Inc.”.* **G3|3**
- 3.005 As a result of the email from Adv. Tlakula referred to above two emails were sent to Mr Mkhabela which stated as follows:
- 6 November 2013 **G3|2**
- The email below have reference.*
- I requested one of my colleagues, Trevor Parkes, to request copies of all representations and/or submissions that Adv Tlakula made, or anyone else on her half, to the Public Protector and/or any other entity or person with regards to the lease of Riverside Office Park and/or the procurement thereof.*

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*Please can you inform me whether Adv Tlakula, or you on her behalf, will provide the requested information.*

11 November 2013

*Further to my email dated 6 November 2013 below. Please can you advise me if and when you will be able to respond to my request.*

*In addition to the request below we also in due course want to interview Adv Tlakula regarding the Riverside Office Park lease and her involvement in the procurement process. Please can you confirm whether your client is prepared to be interviewed in this regard and if so who we should contact to make the necessary arrangements once we reach that stage of the forensic investigation.*

G3|2

3.006 Mr Mkhabela responded as follows on 11 November 2013.

*Your emails below came while I was traveling overseas hence I could not respond to them earlier.*

G3|1

*As you will be aware from the email transmitted to you by Adv Tlakula on 5 November 2013, Adv Tlakula has instituted a review application in terms of which she seeks to review and set aside the findings made and the remedial action recommended by the Public Protector in the subject report. That application remains pending before the High Court.*

*Accordingly, until the review is finally determined, Adv Tlakula will not participate in any investigation related to the impugned report.*

*Naturally Adv Tlakula's rights remain reserved.*

3.007 Abland representatives Mr Richard Cottrill, Mr Thinus Delpont, Mr Hannes Kleynhans and Mr Pieter Rossouw (Aecom) were interviewed and subsequently provided a written reponse to the issues we requested further information about.

H1|1 –  
H2117

**NATIONAL TREASURY**

**FORENSIC INVESTIGATION: ELECTORAL COMMISSION: RIVERSIDE OFFICE PARK**

**14 DECEMBER 2013**

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3.008	Mrs Karen Lotter, an interior decorator from Wilde at Hart, who was recommended by Abland, was spoken to telephonically and corresponded with by email regarding the procurement process for immovable items.	<b>J5 1-89</b>
3.009	<p>Real FMG, a firm of corporate real estate advisors, was appointed by PwC in order to provide a review of the lease between the Electoral Commission and Abland (et al) over premises to be erected at Riverside Office Park, 1303 Heuwel Street, Centurion.</p> <p>The terms of their appointment were to review the lease and associated documentation in order to identify:</p> <ul style="list-style-type: none"><li>i. if there were any commercially unusual aspects to the transaction in terms of its scope and structure,</li><li>ii. to compare the actual terms to what we would have expected commercial terms to be for a similar transaction at the time,</li><li>iii. to identify the changes in the scope and pricing of the project that occurred after the tender was awarded,</li><li>iv. to comment on whether these changes were within the normal scope of a property transaction.</li></ul>	
3.010	Real FMG issued a separate report, aspects of which are incorporated into the body of this report, which is attached as annexure F1 to this report.	<b>F1 1-23</b>
3.011	Real FMG also used the services of a firm of Quantity Surveyors, Asman Phillips McClure and Partners and their report is attached as annexure F2 to this report.	<b>F2 1-25</b>

**B. SCOPE AND NATURE OF OUR INVESTIGATION**

- 4.000 We are not required to and did not undertake an audit in terms of the International Standards on Auditing. The scope of our work was limited to a review of documentary evidence made available to us and verbal information provided during our interviews. We have not verified the authenticity or validity of the records and documents made available to us.
- 4.001 The purpose of our exercise was to investigate and report on the issues identified and recorded under the heading "Mandate" and to gather evidence to support our findings.
- 4.002 Our findings are based on the results of our investigation and the documentary evidence and verbal evidence provided. We cannot guarantee that we have had sight of all relevant documentation that may be in existence and therefore cannot comment on the completeness of the documentation made available to us. Any documentation or information brought to our attention subsequent to the date of this report, which would affect the findings detailed herein, will require our findings to be adjusted and qualified accordingly.
- 4.003 This report has been prepared solely for the use of National Treasury and its legal advisors. As such, it should not be disclosed to any other party without our prior written consent, which we may, at our discretion withhold or give subject to conditions. It shall be a condition of such consent, if given, that PwC accepts no responsibility to that third party and that any such third party will hold PwC 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 report. This report may however be used by the National Treasury and/or the Electoral Commission in any future criminal, civil and/or disciplinary proceedings they may become involved in that relates to the issues covered in this report.
- 4.004 This report is a stand alone report and can be read without reference to the Public Protector's report: Inappropriate Moves.

**C. DETAILED PROCEDURES AND FINDINGS**

**5.000 Introduction**

5.001 The Electoral Commission relocated their Head Office from 260 Walker Street, Sunnyside, Pretoria to Riverside Office Park at 1303 Heuwel Avenue, Centurion, Pretoria on 1 September 2010.

5.002 The identification of the Electoral Commissions offices at Riverside Office Park was done subsequent to advertisements being placed in the Sowetan, Pretoria News, The Star, The Beeld and The Citizen where interested preferably blacked owned property companies and/or developers were invited to submit their proposals to Mr Langtry by no later than 9 March 2009 at 17:00.

5.003 Ten companies responded to the advertisement and it was eventually decided by the Electoral Commission to award the work to Abland (Pty) Ltd (**Abland**), based on their response, the Electoral Commission took occupation of Riverside Office Park on 1 September 2010.

5.004 Various allegations have been made in both articles that appeared in the City Press and in the Public Protector's report titled "Inappropriate Moves" issued in August 2013 regarding the alleged relationship between Adv. Tlakula and representatives of Abland through their black empowerment partner namely, Manaka Property Investments (Pty) Ltd. We shall not delve into the detailed content of the aforementioned Public Protector's report in our findings. In this regard we have not reinvestigated the alleged conflict of interest between Adv. Tlakula and Hon Mufamadi as this has been extensively covered by the Public Protector and she makes specific conclusions that there was a conflict of interest. Should the Public Protector's report be unavailable for any reason, this report can stand on its own.

5.005 For the purposes of introducing a background to the investigation performed by PwC, we deem it necessary to mention that prior to the award to Abland, it was common cause that the Electoral Commission did not follow the normal procurement procedures when identifying suitable premises to lease.

5.006 In fact, it was the norm to consult with Estate Agents and request them to provide the Electoral Commission with a list of proposals of properties and/or developments that were suitable for the needs of the Electoral Commission to lease. Based on the responses received from these Estate Agents, representatives would make a decision on which property best met their needs. No evaluation was followed based on points in terms of the Preferential Procurement Policy Framework Act (**PPFA**).

5.007 The aforementioned process described above was initially followed by the Electoral Commission before the award was made to Abland, where they had identified Menlyn Corporate Park as a suitable property to which to relocate their head office. However, just prior to confirming this award, Adv. Tlakula stopped the process as she had some discomfort with this process since it was not a public process, in addition to the fact that there were concerns with accessibility to public transport and that the proposed building (Menlyn Corporate Park) was too opulent for the Electoral Commission.

**6.000 *Applicable Legislation and Procurement Policy and Procedures***

6.001 Before reporting on our detailed findings it is necessary to refer to the relevant/ applicable legislation and the prescribed procurement policies and procedures at the time (2008/2009) when the Electoral Commission commenced its procurement process for new National Office premises which ultimately resulted in Abland (and its related entities) entering into Lease Agreements the Electoral Commission. We shall only attach relevant sections of the legislation and policies where applicable as these documents are bulky and it is not necessary to attach the documents in their entirety. The complete documents are however available should they be required.

*i.) The Constitution of the Republic of South Africa Act 108 of 1996*

6.002	The Electoral Commission is a State Institution Supporting Constitutional Democracy as envisaged in Chapter 9 of the Constitution of the Republic of South Africa of 1996 ( <b>the Constitution</b> ).	A1 2
6.003	Section 181(1)(f) of the Constitution provides for the establishment of the Electoral Commission. The remaining provisions of Section 181 state:  (2) <i>“These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.”</i>  (3) <i>“Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.”</i>  (4) <i>“No person or organ of state may interfere with the functioning of these institutions.”</i>  (5) <i>“These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.”</i>	A1 2
6.004	Sections 190 and 191 of the Constitution respectively provide for the functions and composition of the Electoral Commission.	A1 4-5
6.005	Section 193 of the Constitution provides for the appointment of ( <i>inter alia</i> ) members of the Electoral Commission. The following applicable provisions of Section 193 are reflected below:  <i>“193 Appointments.-(1) The Public Protector and the members of any Commission established by this Chapter must be women or men who-</i>  <i>(a) are South African citizens;</i>  <i>(b) are fit and proper persons to hold the particular office; and</i>	A1 4

*(c) comply with any other requirements prescribed by national legislation.*

*(4) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and the members of-*

*(a).....;*

*(b).....; and*

*(c) the Electoral Commission.*

*(5) The National Assembly must recommend persons-*

*(a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and*

*(b) approved by the Assembly by a resolution adopted with a supporting vote-*

*(i) .....; or*

*(ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission.*

*(6) The involvement of civil society in the recommendation process may be provided for as envisaged in section 59 (1) (a)."*

6.006 Section 194 of the Constitution makes provision for the removal of (*inter alia*) members of the Electoral Commission. Section 194 states:

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*"194. Removal from office.-(1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on-*

*(a) the ground of misconduct, incapacity or incompetence;*

*(b) a finding to that effect by a committee of the National Assembly; and*

(c) *the adoption by the Assembly of a resolution calling for that person's removal from office.*

(2) *A resolution of the National Assembly concerning the removal from office of-*

(a) *the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly; or*

(b) *a member of a Commission must be adopted with a supporting vote of a majority of the members of the Assembly.*

(3) *The President-*

(a) *may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and*

(b) *must remove a person from office upon adoption by the Assembly of the resolution calling for that person's removal."*

6.007 Section 195 of the Constitution provides for the basic values and principles governing public administration and states (*inter alia*):

A1|5

*"(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*

(a) *A high standard of professional ethics must be promoted and maintained.*

(b) *Efficient, economic and effective use of resources must be promoted.*

(c) *Public administration must be development-oriented.*

(d) *Services must be provided impartially, fairly, equitably and without bias.*

(e) *People's needs must be responded to, and the public must be encouraged to participate in policy-making.*

(f) *Public administration must be accountable.*

(g) *Transparency must be fostered by providing the public with timely, accessible and accurate information."*

6.008 In terms of Section 195(2) of the Constitution the principles referred to in Section 195(1) apply to-

A1|6

(a) administration in every sphere of government;

(b) organs of state; and

(c) public enterprises.

Section 195(3) states that: National legislation must ensure the promotion of the values and principles listed in subsection (1).

6.009 Section 217 of the Constitution provides for the Procurement of goods and services:

A1|9

1) *"When an organ of state<sup>2</sup> in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.*

2) *Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for*

a) *categories of preference in the allocation of contracts; and*

b) *National legislation must prescribe a framework within which the policy*

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<sup>2</sup> Section 239 of the Constitution defines an "organ of state" as (*inter alia*) -  
(b) any other functionary or institution;

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or  
(ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

*referred to in subsection (2) must be implemented.*

- 3) *National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented*’.

**ii.) The Electoral Commission Act No 51 of 1996**

		<b>A2</b>
6.010	The Electoral Commission Act No 51 of 1996 provides for the legislative framework within which the Electoral Commission must operate, conduct its activities and perform its functions.	<b>A2 2</b>
6.011	The following definitions contained in Section 1(1) of Act 51 of 1996 are highlighted:  <b>'chairperson'</b> means the chairperson designated in terms of section 8 (1);  <b>'chief electoral officer'</b> means the chief electoral officer appointed in terms of section 12 (1);  <b>'Commission'</b> means the Electoral Commission established by section 3 (1);  <b>'Electoral Court'</b> means the Electoral Court established by section 18;  <b>'prescribe'</b> means prescribe by regulation;  <b>'regulation'</b> means a regulation made under section 23; and  <b>'this Act'</b> includes the regulations.	<b>A2 2</b>
6.012	Section 3 of Act 51 of 1996 provides:  <i>“Establishment of Commission</i>  <i>(1) There is an Electoral Commission for the Republic, which is independent and subject only to the Constitution and the law.</i>  <i>(2) The Commission shall be impartial and shall exercise its powers and perform its functions without fear, favour or prejudice.”</i>	<b>A2 3</b>

- 6.013 The objects of the Electoral Commission are set out in Section 4 of Act 51 of 1996. The powers, duties and functions of the Commission are set out in Section 5 of the Act. Section 5(2) of the Act states:
- “(2) The Commission shall, for the purposes of the achievement of its objects and the performance of its functions-*
- (a) acquire the necessary staff, whether by employment, secondment, appointment on contract or otherwise;*
  - (b) establish and maintain the necessary facilities for collecting and disseminating information regarding electoral matters;*
  - (c) co-operate with educational or other bodies or institutions with a view to the provision of instruction to or the training of persons in electoral and related matters; and*
  - (d) generally, perform any act that is necessary for or conducive to that.”*
- 6.014 Section 6 of Act 51 of 1996 provides for the composition of the Commission and the appointment of commissioners and reads:
- “(1) The Commission shall consist of five members, one of whom shall be a judge, appointed by the President in accordance with the provisions of this section.*
- (2) No person shall be appointed as a member of the Commission unless he or she-*
- (a) is a South African citizen;*
  - (b) does not at that stage have a high party-political profile;*
  - (c) has been recommended by the National Assembly by a resolution adopted by a majority of the members of that Assembly; and*
  - (d) has been nominated by a committee of the National Assembly,*

*proportionally composed of members of all parties represented in that Assembly, from a list of recommended candidates submitted to the committee by the panel referred to in subsection (3).*

- (3) *The panel shall, subject to subsection (6), consist of-*
- (a) *the President of the Constitutional Court, as chairperson;*
  - (b) *a representative of the Human Rights Commission established by section 115 (1) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993);*
  - (c) *a representative of the Commission on Gender Equality established by section 119 (1) of the said Constitution; and*
  - (d) *the Public Protector established by section 110 (1) of the said Constitution.*
- (4) *The panel shall submit a list of no fewer than eight recommended candidates to the committee of the National Assembly referred to in subsection (2) (d).*
- (5) *The panel shall act in accordance with the principles of transparency and openness and make its recommendations with due regard to a person's suitability, qualifications and experience.*
- (6) *If any person referred to in subsection (3) (b) to (d) should for any reason not be available to serve on the panel, the chairperson shall, after consultation with the remaining members of the panel, designate any other person as a member of the panel."*

6.015 Section 7 of Act 51 of 1996 sets out the terms of office, conditions of service, removal from office and suspension of commissioners, and reads:

*"(1) The term of office of a member of the Commission is seven years unless-*

**A2|4-5**

- (a) *he or she resigns or dies at an earlier date;*
  - (b) *he or she is removed from office in terms of subsection (3); or*
  - (c) *the President, on the recommendation of the National Assembly, extends the member's term of office for a specified period.*
- (2) *The conditions of service, remuneration, allowances and other benefits of commissioners shall from time to time be determined by the President after consultation with the Commission on Remuneration of Representatives established by section 2 of the Commission on the Remuneration of Representatives Act, 1994 (Act 37 of 1994), and a distinction may be made between commissioners appointed in a fulltime and part-time capacity.*
- (3) *A commissioner may-*
- (a) *only be removed from office by the President-*
    - (i) *on the grounds of misconduct, incapacity or incompetence;*
    - (ii) *after a finding to that effect by a committee of the National Assembly upon the recommendation of the Electoral Court; and*
    - (iii) *the adoption by a majority of the members of that Assembly of a resolution, calling for that commissioner's removal from office;*
  - (b) *be suspended from office by the President at any time after the start of the proceedings of the committee contemplated in paragraph (a) (ii);*
  - (c) *be reappointed, but only for one further term of office."*

6.016 Section 8 of Act 51 of 1996 reads as follows regarding the Chairperson of Commission:

A2|5

*“(1) The President shall designate a chairperson and vice-chairperson from among the members of the Commission.*

*(2) In the absence of both the chairperson and vice-chairperson, the remaining members shall elect an acting chairperson from their number.”*

6.017 Section 9 of Act 51 of 1996 sets out the conduct of commissioners as follows:

**A2|5**

*“(1) Every member of the Commission shall-*

*(a) serve impartially and independently and perform his or her functions as such in good faith and without fear, favour or prejudice;*

*(b) if appointed in a full-time capacity, serve as such to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office, unless specifically authorised thereto by the President.*

*(2) No member of the Commission-*

*(a) shall during his or her term of office be eligible for appointment or nomination to any political office;*

*(b) may, whether directly or indirectly, in any manner give support to, or oppose, any party or candidate participating in an election, or any of the issues in contention between parties or candidates;*

*(c) may, by his or her membership, association, statement, conduct or in any other manner place in jeopardy his or her perceived independence, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;*

*(d) may make private use of or profit from any confidential information gained as a result of his or her appointment and functions as such member;*

*(e) may divulge any such information to any third party save in the*

*course and scope of his or her official functions;*

- (f) shall during his or her term of office be eligible to serve as a member of Parliament, a provincial legislature or a local government body, and such ineligibility shall continue for a period of 18 months reckoned from the date upon which such term of office has terminated.”*

6.018 Section 10 of Act 51 of 1996 provides for the disclosure of conflicting interests and reads:

**A2|5-6**

*“(1) Subject to subsection (2), a member may not at any meeting of the Commission during the discussion of any matter before such meeting in respect of which he or she has any financial or other interest which might preclude him or her from performing his or her functions in a fair, impartial and proper manner-*

- (a) be present;*
- (b) cast a vote; or*
- (c) in any other manner participate in the proceedings thereof.*

*(2) If at any stage during the course of any proceedings before the Commission it appears that any member has or may have an interest which may cause such a conflict of interests to arise on his or her part-*

- (a) such member shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether such member is precluded from participating in such meeting by reason of a conflict of interests; and*
- (b) such disclosure and the decision taken by the remaining members regarding such determination, shall be recorded in the minutes of the meeting.*

(3) *If any member fails to disclose any interest as required by subsection (2) or, subject to that subsection, is present at a meeting of the Commission or in any manner whatsoever participates in the proceedings of the Commission in relation to such matter, such proceedings may be reviewed and varied or set aside by the Commission.*

6.019 Sections 12 to 14 of Act 51 of 1996 set out the administration, staff and accountability of the Commission. Section 12 provides the following in respect of the administration and staff of the Commission:

A2|6

*“(1) As soon as possible after the composition of the Commission and whenever necessary thereafter, the Commission shall appoint a suitably qualified and experienced person as chief electoral officer.*

*(2) The chief electoral officer-*

*(a) shall be the head of the administration of the Commission;*

*(b) shall be the accounting officer of the Commission for the purposes of the Exchequer Act, 1975 (Act 66 of 1975), and shall cause the necessary accounting and other related records to be kept; and*

*(c) may exercise all such powers and shall perform all such duties and functions as may be entrusted or assigned to him or her by the Commission or this Act or any other law.*

*(3) Whenever the chief electoral officer is for any reason absent or unable to perform his or her functions, or whenever a vacancy in the office of chief electoral officer occurs, the Commission may designate a member of its staff to act in that capacity until the chief electoral officer resumes his or her functions, or a chief electoral officer is appointed in terms of subsection (1), and that member has, while so acting, such powers and shall perform such functions of the chief electoral officer as may be delegated or assigned to him or her by the Commission.*

*(4) The chief electoral officer shall in consultation with the Commission*

*appoint such officers and employees of the Commission as he or she may consider necessary to enable the Commission to exercise its powers and to perform its duties and functions effectively.*

(5) *The conditions of service, remuneration, allowances, subsidies and other benefits of the chief electoral officer, an acting chief electoral officer and the other administrative staff of the Commission shall be prescribed by the Commission.*

(6) *Notwithstanding the provisions of the Government Employees Pension Law, 1996 (Proclamation 21 of 1996)-*

*(a) any person appointed in terms of this section who, immediately before the date of such appointment was a member of the Government Employees Pension Fund referred to in section 2 of that Law, may remain such member notwithstanding such appointment; and*

*(b) any person so appointed who is not a member of the said fund may become a member of that fund as from the date of such appointment and, if applicable, shall contribute thereto.”*

6.020 Section 13 of Act 51 of 1996 sets out the following with regards to the finances and auditing of the Commission:

**A2|7**

*“(1) The expenditure in connection with the exercise of the Commission's powers and the performance of its duties and functions shall be defrayed out of money appropriated by Parliament for that purpose or received by the Commission from any other source.*

*(2) The Commission shall budget for the necessary resources or additional resources to enable it to exercise its powers and perform its duties and functions effectively.*

*(3) The records referred to in section 12 (2) (b) shall be audited by the Auditor-General in terms of the Auditor-General Act, 1995 (Act 12 of*

1995).”

6.021 Section 14 of Act 51 of 1996 reads as follows with respect to reports by Commission: **A2|7**

“(1) *The Commission shall annually, as soon as possible after the end of each financial year, submit to the National Assembly an audited report of all money received from other sources as contemplated in section 13 (1), as well as the audited statement on income and expenditure and a report in regard to the functions, activities and affairs of the Commission in respect of such financial year.*

(2) *The Commission shall furnish the President with such information and particulars as he or she may from time to time in writing require in connection with the activities of the Commission.*”

6.022 The powers, duties and functions of the Electoral Court are set out in Section 20 of Act 51 of 1996. It should be noted that in terms of Section 20(7) of the Act the Electoral Court may investigate any allegation of misconduct, incapacity or incompetence of a member of the Commission and make any recommendation to a committee of the National Assembly referred to in section 7 (3) (a) (ii) of the Act. **A2**

**iii.) Electoral Commission: Regulations on the Conditions of Service, Remuneration, Allowances and other benefits of The Chief Electoral Officer and other Administration Staff (General Notice No. R. 514 Of 19 May 2000 Regulation Gazette, No. 6816)** **A3**

6.023 The following provisions of the abovementioned Regulations pertaining to the conditions of service of the CEO and other administration staff were also considered for the purposes of this report: **A3**

Definitions (Regulation 1):

- i. "Act" means the Electoral Commission Act, 1996 (Act No. 51 of 1996);
- ii. "Chief Electoral Officer" means the chief electoral officer appointed in

terms of section 12 of the Act as head of the administration of the Commission;

- iii "Commission" means the Electoral Commission established in terms of section 3 of the Act;
- iv. "employee" means the chief electoral officer and any person who is appointed in terms of section 12(4) of the Act as an officer or employee;
- v. "employer" means the Commission.

Outside work – Regulation 7:

*“(1) Employees shall serve the employer in a full-time capacity and at the places and times determined by the Commission.*

*(2) Employees shall not perform any other remunerated work nor receive any other income in respect of work performed or material produced without the written permission of the employer.”*

Conflict of interest – Regulation 19:

*“Where a possible conflict of interest arises or where an employee has an interest, whether financially or otherwise, or obtains an interest in a company or firm with which the employer enters into business transactions, or where the interest is of such nature that it may influence the outcome of any decision or benefit any person or company or firm, such interest must be disclosed in writing to the employer as soon as it arises and the employee must refrain from participation in any way in related business dealings.”*

**iv.) Rules Regulating the Conduct of the Proceedings of the Electoral Court (Government Notice 794 of 1998 of 15 May 1998)**

6.024 The rules regulating the conduct of the Electoral Courts were gazetted on 15 May 1998. The following rule with regard to the investigation of misconduct, incapacity or incompetence of a member of the Commission should be considered in conjunction with Section 20(7) of the Electoral Commission Act

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A3

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A4|4

51 of 1996 referred to above:

“8. (1) *An allegation of misconduct, incapacity or incompetence on the part of a member of the Commission must be -*

*(a) in writing and, if possible, accompanied by supporting evidence;  
and*

*(b) lodged with the Secretary.*

*(2) The member concerned must respond in writing to the allegations within the time prescribed by the Court.*

*(3) Upon receipt of the response of the member concerned or after the expiry of the time prescribed by the Court in terms of sub rule (2), the investigation must be dealt with in accordance with the directives of the Court.*

*(4) The Secretary must submit the written recommendation of the Court and any other documents which the Court may deem fit to the National Assembly without delay.”*

**v.) The Public Finance Management Act No 1 of 1999**

**A5**

6.025 The Public Finance Management Act No 1 of 1999 (**the PFMA**) was assented to on 2 March 1999 *“to regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith”*.

**A5/1**

6.026 The following definitions are relevant:

1) **“Accounting officer”** means a person mentioned in section 36.

**A5/5**

**A5/5**

2) **“Department”** means a national or provincial department or a national or

**A5/5**

provincial government component.

- 3) “**constitutional institution**” means an institution listed in Schedule 1 (one of which is the “Electoral Commission”);
- 4) “**Fruitless and wasteful expenditure**” means expenditure which was made in vain and would have been avoided had reasonable care been exercised.
- 5) “**Irregular expenditure**” means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including: the PFMA; the State Tender Board Act No 86 of 1968, or any regulations made in terms of that Act; or any provincial legislation providing for procurement procedures in that provincial government.

A5/5

6.027 In terms of section 3(1)(c) the PFMA, to the extent indicated in the Act, applies to amongst others “*constitutional institutions*”.

A5/8

6.028 Subsection (1) of Section 36 (of the PFMA) provides for “accounting officers”: “*every department and every constitutional institution must have an accounting officer*”. Subsection (2) (b) of Section 36 further adds that: subject to subsection 3 the chief executive officer must be the accounting officer for a constitutional institution. Sub-section (3)(a) of Section 36 provides that: the relevant treasury may, in exceptional circumstances, approve or instruct in writing that a person other than the person mentioned in subsection (2) be the accounting officer for a constitutional institution.

A5/9

6.029 Section 36(5) of the PFMA states: “*The employment contract of an accounting officer for a department, trading entity or constitutional institution must be in writing and, where possible, include performance standards. The provisions of sections 38 to 42, as may be appropriate, are regarded as forming part of each such contract.*”

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6.030 Section 38 of the PFMA provides for “*general responsibilities of accounting officers*”, including:

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(1) The accounting officer for a constitutional institution-

(a) must ensure that the constitutional institution has and maintains:

**A5/10**

(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;

**A5/11**

(b) is responsible for the effective, efficient, economical and transparent use of the resources of the constitutional institution;

(c) must take effective and appropriate steps to-

(ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and

(iii) manage available working capital efficiently and economically;

(d) is responsible for the management, including the safeguarding and the maintenance of the assets, and for the management of the liabilities, of the constitutional institution;

(g) on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board;

(h) must take effective and appropriate disciplinary steps against any official in the service of the constitutional institution 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 constitutional institution; or

(iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;

(n) must comply, and ensure compliance by the constitutional institution, with the provisions of this Act.

(2) An accounting officer may not commit a constitutional institution to any liability for which money has not been appropriated.

6.031 Section 44 of the PFMA provides for the assignment of the accounting officer's powers or duties. The following provisions of Section 44 relevant to this report are set out below:

**A5|4**

44(1) The accounting officer for a constitutional institution may-

(a) in writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to an official in that constitutional institution; or

(b) instruct any official in that constitutional institution to perform any of the duties assigned to the accounting officer in terms of this Act.

44(2) A delegation or instruction to an official in terms of subsection (1)-

(a) is subject to any limitations and conditions prescribed in terms of this Act or as the relevant treasury may impose;

(b) is subject to any limitations and conditions the accounting officer may impose;

(c) may either be to a specific individual or to the holder of a specific post in the relevant constitutional institution; and

(d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

44(3) The accounting officer may confirm, vary or revoke any decision taken

by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision.

- 6.032 The PFMA also prescribes duties and responsibilities for officials who are not the accounting officers of their respective institutions. Section 45 of the PFMA reads as follows:

A5|14

***“45 Responsibilities of other officials***

*An official in a department, trading entity or constitutional institution-*

- (a) must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;*
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;*
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;*
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and*
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.”*

- 6.033 In terms of Section 76 (4) (c) of the PFMA, the National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning *“the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent,*

A5|19

*competitive and cost-effective”.*

- |       |  |              |
|-------|--|--------------|
| 6.034 | In terms of Section 79 of the PMFA, “the National Treasury may on good grounds approve a departure from a treasury regulation or instruction or any condition imposed in terms of this Act and must promptly inform the Auditor-General in writing when it does so”.   | <b>A5 19</b> |
| 6.035 | Section 81 of the PFMA provides for financial misconduct by officials in departments and constitutional institutions and reads:<br><br><i>“(1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer willfully or negligently-</i><br><br><i>(a) fails to comply with a requirement of section 38, 39, 40, 41 or 42; or</i><br><br><i>(b) makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.</i><br><br><i>(2) An official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.”</i> | <b>A5 20</b> |
| 6.036 | Section 84 of the PFMA sets out the applicable legal regime for disciplinary proceedings and reads:<br><br><i>“A charge of financial misconduct against an accounting officer or official referred to in section 81 or 83, or an accounting authority or a member of an accounting authority or an official referred to in section 82, must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority, or member or official, and any regulations prescribed by the Minister in terms of section 85.”</i>   | <b>A5 21</b> |

- 6.037 Section 85 (1) of the PFMA requires the Minister of Finance to make Regulations on financial misconduct procedures prescribing:
- (a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General, including-
    - (i) particulars of the alleged financial misconduct; and
    - (ii) the steps taken in connection with such financial misconduct;
  - (b) matters relating to the investigation of allegations of financial misconduct;
  - (c) the circumstances in which the National Treasury or a provincial treasury may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;
  - (d) the circumstances in which a disciplinary board which hears a charge of financial misconduct must include a person whose name appears on a list of persons with expertise in state finances or public accounting compiled by the National Treasury;
  - (e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General; and
  - (f) any other matters to the extent necessary to facilitate the object of this Chapter.
- 85(2) A regulation in terms of subsection (1) may-
- (a) differentiate between different categories of-
    - (i) accounting officers;

**A5|21**

(ii) accounting authorities;

(iii) officials; and

(iv) institutions to which this Act applies; and

(b) be limited in its application to a particular category of accounting officers, accounting authorities, officials or institutions only.

6.038 Section 86 of the PFMA makes provision for criminal offences and penalties, including: **A5|21**

*“86(1) An accounting officer 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 officer willfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40.”*

**vi. Appointment of Consultants: Practice Note SCM 3 of 2003** **A8**

6.039 Treasury issued Practice Note SCM 3 of 2003 on the Appointment of Consultants on 5 December 2003. This Practice Note is applicable to (*inter alia*) CEOs and CFOs of constitutional institutions. The Practice Note is attached to this report in its entirety for completeness. The introductory paragraph of the Practice Note includes the following: **A8**

*“Consultants should be appointed by means of competitive bidding processes, whenever possible. All bids and contracts should be subject to the General Conditions of Contract (GCC) issued by the National Treasury.”* **A8|2**

6.040 Paragraph 1.3 of the Practice Note includes the following with regard to the term “consultant”: **A8|2**

- 1) Consulting firms;
- 2) Engineering firms;
- 3) Construction managers;

- 4) Management firms;
- 5) Procurement agents;
- 6) Inspection agents; and
- 7) Individuals.

6.041 Paragraph 4.1 of the SCM Practice Note sets out four major considerations which should guide the accounting officer's policy on the selection process followed to select consultants, i.e.:

A8|3

- 1) The need for high quality services;
- 2) The need for economy and efficiency;
- 3) The need to give qualified consultants an opportunity to compete in providing the services; and
- 4) The importance of transparency in the selection process.

6.042 The Practice Note makes the following provision with regards to conflicts of interest, which is of particular significance with regards to Abland's use of contractors or subcontractors to perform various services including the procurement of movable assets:

A8|4

**"5 Conflict of Interest**

*Consultants are requested to provide professional, objective and impartial advice and at all times hold the client's needs paramount, without any consideration for future work and strictly avoid conflicts with other assignments or their own corporate interests. Consultants should not be hired for any assignments that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the State. Without limitation on the generality of this rule, consultants should not be hired under the following circumstances:*

- *A firm, which has been engaged by the accounting officer/authority to provide goods or works for a project and any of its affiliates, should be disqualified from providing consulting services for the same project. Similarly, a firm hired to provide consulting services for the preparation or implementation of a project and any of its affiliates, should be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the firm's earlier consulting services as described below) for the same project, unless the various firms (consultants, contractors or suppliers) are performing the contractor's obligations under a turnkey or design-and-build contract."*

- 6.043 Paragraph 9 of the SCM Practice Note sets out the steps to follow when selecting consultants. Considerable detail is contained in Paragraph 9 of the Practice Note which will not be set out in detail in this report. It is apparent however that the process used by the Electoral Commission was based on a request for proposals which is described in Paragraph 9.3.2 of the Practice Note. Paragraph 9.3.2 states that this method should be followed when the selection is based on both the quality of the proposal and on the cost of the service through competition among firms. The Practice Note goes on to read:
- "This method will be applicable on more complex projects where consultants are requested and encouraged to propose their own methodology and to comment on the TOR in their proposals."*
- 6.044 Paragraph 9.4 of the Practice Note covers the receipt of proposals and amongst others requires the accounting officer to allow enough time for consultants to prepare their proposals, which normally should not be less than four weeks or more than three months.
- 6.045 Paragraph 9.5 of the Practice Note deals with the evaluation of the proposals. Proposals should be evaluated on the basis of functionality and price as well as the achievement of specified RDP goals. The evaluation process should take place in two phases – firstly the functionality and then the price. The Practice Note further provides that the ratio for the division between

functionality and price should be determined and approved by the accounting officer and made known up front in the bidding documents.

6.046	Paragraphs 9.5.1 and 9.5.2 refer to the preparation and use of score sheets, which amongst others contain the criteria and their respective weights or values that will be used during the evaluation. Each panel member of the evaluation committee is supposed to award his/her own values to each of the criteria. No changes, amendments, additions to, or omissions of, any criteria may be effected after the closing of the bid.	A8 10
6.047	Paragraphs 9.5.3 (calculation of percentage for functionality), 9.5.4 (calculation of percentage for price) and 9.5.5 (calculation of points for functionality and price) set out various formulae and methods for calculating the relevant points.	A8 11
6.048	The table set out on pages 13 to 16 of the Practice Note describes:  1) Evaluation of technical proposals (functionality);  2) Evaluation of the financial proposal;  3) Negotiations and awarding of the contract;  4) Contract award; and  5) The rejection of all proposals and re-invitation to submit proposals.	A8 13 - 16
6.049	Paragraph 13.4 of the Practice Note refers to “ <i>Percentage</i> ” contracts, which is of significance to the percentage based fees negotiated in respect of Wilde at Heart (Interior Decorators) and Space Jam (Space Planners) who are referred to later in this report. Paragraph 13.4 reads:  <i>“These contracts are commonly used for architectural services. They may also be used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or</i>	A8

*estimated staff-month costs for the services, or competitive bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision)."*

**vii. Code of Conduct for Supply Chain Management Practitioners:  
Practice Note Number 4 of 2003**

**A9**

6.050 The aforementioned Practice Note number 4 of 2003 was issued by National Treasury to amongst others all National and Provincial Departments, CFO's and CEO's of Constitutional Institutions on 5 December 2003. Further, it is applicable to all officials and other role players involved in supply chain management (**SCM**) (see Treasury Regulation 16A8.2). The entire document is relevant however, I wish to refer to the General Principles:

**A9/1-3**

- 1) The Government of South Africa commits itself to a policy of fair dealing and integrity in the conducting of its business. The position of a SCM practitioner is, therefore, a position of trust, implying a duty to act in the public interest. Practitioners should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or supplier/ contractor for themselves, their family or their friends.
- 2) Practitioners should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation and regulations including the Public Service Regulations issued by the Department of Public Service and Administration, National Treasury Regulations and Practice Notes and directives issued by accounting officers/ authorities. They should ensure that public resources are administered responsibly.
- 3) Practitioners should be fair and impartial in the performance of their functions. They should at no time afford any undue of preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority

invested in them.

- 4) SCM practitioners *“should declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest.”*
- 5) *“They should not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.”*
- 6) *“Practitioners are accountable for their decisions and actions to the public.”*
- 7) *“Practitioners should use public property scrupulously.”*
- 8) *“Only accounting officers/authorities or their delegates have the authority to commit the government to any transaction for the procurement of goods and/or services.”*
- 9) *“All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.”*
- 10) The following provisions of Paragraph 6 of the Code of Conduct regarding Bid Evaluation/Adjudication teams should be noted:
  - “6.1 *Bid evaluation/adjudication teams should regulate supply chain management on behalf of the institution in an honest, fair, impartial, transparent, cost-effective and accountable manner in accordance with the accounting officer’s/authority’s directives/delegated powers.”*
  - “6.3 *Bid evaluation/adjudication teams should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of supply chain management in order to perform effectively and efficiently.”*

*“6.5 No person should –*

*6.5.1 interfere with the supply chain management system on an institution;  
or*

*6.5.2 amend or tamper with any bid after its submission.”*

**viii. Treasury Circular of 27 October 2004: IMPLEMENTATION OF  
SUPPLY CHAIN MANAGEMENT** **A10**

6.051 On 27 October 2004 the National Treasury issued a circular which is applicable to (*inter alia*) constitutional institutions on the implementation of supply chain management. This Circular is attached hereto, however the following provisions of the Circular should be noted: **A10**

1) Paragraph 1.1 of the Circular makes reference to Sections 36 and 49 of the PFMA and reflects that the accountability for (*inter alia*) the management of an institution’s finances vests in the accounting officer. The Circular states that only the accounting officer may award bids where any finances are involved and, that this is for the procurement of goods and/or services by means of a competitive bidding process. Paragraph 1.1 of the Circular ends with the following: **A10**

*“The accounting officer/authority is empowered to delegate decision-making to subordinates who are officials, but accountability cannot be delegated.”*

2) Paragraph 4 of the Circular dated 27 October 2004 covers the appointment of Bid Committees and in Paragraph 4.1 thereof states that the accounting officer should appoint a bid specification committee (Paragraph 4.1(a)), bid evaluation committee (Paragraph 4.1(b)) and a bid adjudication committee (Paragraph 4.1(c)). For the purposes of this report it should be noted that EXCO of the Electoral Commission on the instruction of the CEO, took on the duties, functions and responsibilities of an evaluation committee (which are usually carried out by the Electoral Commission’s “Procurement Committee”). The contents of Paragraph **A10**

4.1(b) of the Circular relating to Bid Evaluation Committees are set out below:

*“This committee is responsible for the evaluation of bids received, which include verification of:*

- *the capability/ability of the bidder to execute the contract*
- *tax clearance certificate issued by the SARS*
- *national industrial participation programme requirements (only applicable for contracts in excess of R10 million).*

*Bids may only be evaluated in accordance with the criteria specified in the bid documentation. According to the prescripts of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 (PPPFA) bids must be evaluated in accordance with a preference point system. Any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a bid.*

*The evaluation committee should be cross-functional and should be composed of supply chain practitioners and officials from the user departments requiring the goods and/or services.*

*The evaluation committee should evaluate all the bids received and submit a report and recommendation(s) regarding the award of the bid(s) to the adjudication committee.”*

- 3) The second last sub-paragraph of Paragraph 4.1(c) of the Treasury Circular of 27 October 2004 should also be noted:

*“The bid specification, evaluation and adjudication processes must be within the ambit of section 217 of the Constitution as well as the prescripts contained in the PPPFA and the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 (BBBEE Act), and their associated regulations.”*

**A10**

**“8. Participation of advisors**

*8.1 The accounting officer/authority may procure the services of advisors to assist in the execution of the supply chain management function. These services should be obtained through a competitive bidding process. No advisor may, however, form part of the final decision-making process regarding the award of bids, as this will counter the principle of vesting accountability with the accounting officer/authority. The accounting officer/authority cannot delegate decision-making authority to a person other than an official.”*

**ix. Supply Chain Management: Circular of 10 May 2005**

**A11**

6.052 The Treasury issued a Circular to (*inter alia*) the CEOs and CFOs of constitutional institutions to address:

**A11**

The evaluation of bids;

The calculation of preference points; and

The timeous payment of accounts.

1) With regards to the evaluation of bids the Circular referred to several complaints received by the Treasury relating to the incorrect evaluation of bids. Paragraph 1 of the Circular (*inter alia*) reads:

**A11**

*“The Preferential Procurement Policy Framework Act, No. 5 of 2000, prescribes that the lowest acceptable bid must receive 80 or 90 points for price. A bid is regarded as acceptable if:*

*(a) It complies in all respects with the specification and conditions of the bid;*

*(b) The bidder completed and signed all the prescribed bid forms to enable the principal to evaluate the submitted bid;*

*(c) The bidder submitted the the required original tax clearance certificate and other clearance/registration forms as prescribed by various acts*

*and/or in the bid documentation; and*

*(d) The bidder has the necessary capacity and ability to execute the contract.*

*Bids may only be evaluated in accordance with the evaluation criteria stipulated in the bid documentation. When any bid is passed over or regarded as non-responsive, the reasons for passing over such bid must be defensible in any court of law. .... “*

**x. Procurement of Goods and Services by means other than through the invitation of competitive bids: National Treasury Practice Note 6 of 2007/2008**

**A12**

6.053 National Treasury Practice Note number 6 of 2007/2008 came into effect from 1 April 2007. The purpose of this practise note is to regulate the environment which accounting officers and accounting authorities may procure goods and services by means other than through the invitation of competitive bids and to introduce reporting measures related thereto.

**A12/3**

6.054 The Practice Note was issued specifically to regulate the procurement of goods/services other than through the invitation of competitive bids. Although Treasury Regulation 16A6.4 was intended solely for emergency or sole service provider situations, it was being used to circumvent the required competitive bidding process. In this regard, accounting officers were required to put in place control measures to deal with foreseeable cases of emergency which would include the arrangement of strategic or specific term contracts with suitable service providers with the aim of ensuring that the required goods or services were immediately available. It was emphasised that Treasury Instruction 16A6.4 was only to be used in specific cases where it was impractical to invite competitive bids.

**A12/2**

6.055	<p>As from 1 April 2007, accounting officers were required to report to the relevant Treasury and the Auditor General within ten (10) working days after the award all cases where goods and services above the value of R1 million (VAT included) were procured in terms of Treasury Regulation 16A6.4.</p>	<b>A12/3</b>
	<p><b>xi. Supply Chain Management: Threshold values for the procurement of goods and services by means of petty cash, verbal/ written price quotations and competitive bids: National Treasury Practice Note 8 of 2007/2008</b></p>	
6.056	<p>The aforementioned Practice Note number 8 of 2007/2008 was issued by National Treasury to (amongst others) all accounting officers on 29 November 2007. The document sets out the threshold values when procuring goods or services, hiring or letting anything, acquiring or granting any right or disposing of movable state property. I wish to refer to relevant sections in respect of the procurement of goods or services above the value of R500,000 (vat included):</p>	<b>A13/4</b>
	<ol style="list-style-type: none"><li>1) Accounting officers/ authorities should invite competitive bids for all procurement above R200,000.</li><li>2) Competitive bids should be advertised in at least the Government Tender Bulletin and in other appropriate media should an accounting officer/ authority deem it necessary to ensure greater exposure to potential bidders.</li><li>3) Should it be impractical to invite competitive bids for specific procurement e.g. in urgent or emergency cases or in cases of a sole supplier, the accounting officer/ authority may procure the required goods or services, in accordance with Treasury Regulation 16A 6.4 by other means, such as price quotations or negotiations. The reasons for deviating from inviting competitive bids should be recorded and approved by the accounting officer/ authority or his/ her delegate.</li><li>4) Accounting officers should apply the prescripts of the PPPFA and its associated Regulations for all procurement equal to or above R30,000</li></ol>	<b>A13/2</b>

(VAT included).

6.057 Paragraph 6.1 of the Practice Note also requires the accounting officer to be in possession of an original tax clearance certificate for all price quotations and competitive bids exceeding R30,000 (VAT included). Paragraph 6.2 of the Practice Note provides that it is not necessary to obtain a new tax clearance certificate each time a supplier submits a price quotation or bid, if the accounting officer is already in possession of the supplier's original valid tax clearance certificate. **A13**

**xii. Treasury Regulation 16A Supply Chain Management**

6.058 I wish to briefly refer to this document: **A14**

**"Institution"** is defined as a department, constitutional institution or public entity listed in Schedule 3A and 3C of the Act. **A14/1**

16A2 Application **A14/1**

"This framework applies to all:

- a) Departments;
- b) Constitutional institutions; and
- c) Public entities listed in Schedules 3A and 3C of the Act".

16A3.1 Supply chain management system **A14/1**

"The accounting officer or accounting authority of an institution to which these regulations apply must develop and implement an effective and efficient supply chain management system in his or her institution for:

- a) The acquisition of goods and services; and
- b) The disposal and letting of state assets, including the disposal of goods no longer required".

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“16A3.2 A supply chain management system referred to in paragraph 16A.3.1 must –

**A14|1**

- (a) be fair, equitable, transparent, competitive and cost effective;
- (b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (c) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (d) provide for at least the following: –
  - (i) demand management;
  - (ii) acquisition management;
  - (iii) logistics management;
  - (iv) disposal management;
  - (v) risk management; and
  - (vi) regular assessment of supply chain performance.

16A4 Establishment of supply chain management units

**A14/2**

“The accounting officer or accounting authority must establish a separate supply chain management unit within the office of that institution’s chief financial officer, to implement the institution’s supply chain management system”.

16A6 Procurement of goods and services

16A6.1 “Procurement of goods and services, either by way of quotations or through competitive bidding processes, must be within the threshold values as determined by the National Treasury.

**A14/3**

16A6.3 “The accounting officer or accounting authority must ensure that-

- (a) bid documentation and the general conditions of a contract are in accordance with –
  - (i) the instructions of the National Treasury; ...
- (b) bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine;
- (d) Awards are published in the Government Tender Bulletin and other media by means of which the bids were advertised”.
- (g) instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

16A8.2 “The National Treasury’s Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management.”

**A14|4**

16A8.3 “A supply chain management official or other role player –

**A14|4**

- (a) must recognise and disclose any conflict of interest that may arise;
- (b) must treat all suppliers and potential suppliers equitably;
- (c) may not use their position for private gain or to improperly benefit another person;
- (d) must ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or

hospitality or any other act;

- (e) must be scrupulous in their use of public property; and
- (f) must assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system.”

16A8.4 “If a supply chain management official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must –

**A14|4**

- (a) disclose that interest; and
- (b) withdraw from participating in any manner whatsoever in the process relating to that contract.”

16A9.1 “The accounting officer or accounting authority must –

**A14|4**

- a) take all reasonable steps to prevent abuse of the supply chain management system;
- b) investigate any allegations against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system, and when justified –
- c) take steps against such official or other role player and inform the relevant treasury of such steps; and
- d) report any conduct that may constitute an offence to the South African Police Service;
- e) check the National Treasury’s database prior to awarding any contract to ensure that no recommended bidder, nor any of its directors, are listed as companies or persons prohibited from doing business with the public sector;
- f) reject any bid from a supplier who fails to provide written proof from the

South African Revenue Service that that supplier either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations;

- g) reject a proposal for the award of a contract if the recommended bidder has committed a corrupt or fraudulent act in competing for the particular contract; or
- h) cancel a contract awarded to a supplier of goods or services –
- i) if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract; or
- j) if any official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of that contract that benefited that supplier.”

**xiii. Preferential Procurement Policy Framework Act, No. 5 of 2000 (PPPFA) and the Regulations of 2001**

6.059	Section 2(1)(b)(i) of the Preferential Procurement Policy Framework Act, No. 5 of 2000 ( <b>PPPFA</b> ) requires an “ <i>organ of state</i> ” (which includes a constitutional institution referred to in the PFMA) to follow a preference point system for contracts with a Rand value above a prescribed amount (R500,000.00 in 2009) where 10 points may be allocated for “ <i>specific goals</i> ” <sup>3</sup> as contemplated in Section 2(1)(d), provided that the lowest acceptable tender scores 90 points for price. An acceptable tender is defined as “ <i>any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document;</i> ” in Section 1(i) of the PPPFA.	<b>A15 5</b>
6.060	Section 2(1)(e) of the PPPFA provides that any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a tender.	<b>A15 3</b>
6.061	Section 2(1)(g) of the PPPFA states that any contract awarded on account of	<b>A15 3</b>

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<sup>3</sup> In terms of the Electoral Commission’s Procurement Policy the 10 points allocated on the 90/10 preference point system is only in respect of ownership by Previously Disadvantaged Individuals, thus the only “goal” to be considered is ownership.

false information furnished by the tenderer in order to secure preference in terms of the PPPFA, may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have.

6.062 The Regulations promulgated in terms of Section 5 of the PPPFA in 2001 (**PPPFA Regulations**) were applicable during 2009 when the processes subject to this forensic investigation took place.

A16

6.063 The following definitions in terms of the PPPFA Regulations are applicable:

A16|6

**“Agent”** means a person mandated by another person (“the principal”) to do business for and on behalf of, or to represent in a business transaction, the principal, and thereby acquire rights for the principal against an organ of state and incur obligations binding the principal in favour of an organ of state;

**“Comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration;

**“Consortium or Joint Venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

**“Contract”** means the agreement that results from the acceptance of a tender by an organ of state;

**“Firm price”** is the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which, in terms of a law or regulation is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

A16|3

**“Historically Disadvantaged Individual (HDI)”** means a South African citizen –

(1) who, due to the apartheid policy that had been in place, had no franchise

in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) (“the Interim Constitution”); and / or

(2) who is a female; and / or

(3) who has a disability:

Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI;

**“Management”** in relation to an enterprise or business, means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director;

**“Non-firm prices”** means all prices other than “firm” prices;

**“Person”** includes reference to a juristic person;

**“Rand value”** means the total estimated value of a contract in Rand denomination which is calculated at the time of tender invitations and includes all applicable taxes and excise duties;

**“Sub-Contracting”** means the primary contractor’s assigning or leasing or making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;

**“Tender”** means a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods;

**“Trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person;

**“Trustee”** means any person, including the founder of a trust, to whom

property is bequeathed in order for such property to be administered for the benefit of another person.

- |       |   |              |
|-------|---|--------------|
| 6.064 | In terms of PPPFA Regulation 4(1) the 90/10 preference point system must be used to calculate the points for price in respect of tenders/procurement exceeding R500,000.00 in value. The value of the lease and the subsequent additional procurement of immovable and movable assets exceeded R500,000.00 in value making the 90/10 preference point system applicable.  | <b>A16 5</b> |
| 6.065 | In terms of PPPFA Regulation 4(2) a maximum of 10 points may be awarded to a tenderer for being an HDI and / or subcontracting with an HDI and / or achieving any of the specified goals stipulated in regulation 17.<br><br>PPPFA Regulation 4(3) provides that the points scored by a tenderer in respect of the goals contemplated in sub-regulation (2) must be added to the points scored for price.<br><br>PPPFA Regulation 4(4) states that only the tender with the highest number of points scored may be selected.  | <b>A16 6</b> |
| 6.066 | PPPFA Regulation 7 reads: <i>“An organ of state must, in the tender documents, stipulate the preference point system which will be applied in the adjudication of tenders.”</i>   | <b>A16 7</b> |
| 6.067 | During March 2009 the PPPFA Regulations still allowed for the evaluation of tenders on functionality and price. This particularly significant as the evaluation conducted by Mr Langtry in particular and later more superficially by EXCO in May 2009, considered a number of factors in addition to the price (rental rates) in order to include or exclude proposals for further consideration. PPPFA Regulation 8 was subsequently repealed and amended in 2011 when the PPPFA Regulations were amended however it was still applicable at the time. The relevant provisions of PPPFA Regulation 8 are repeated below:<br><br><i>“8.(1) An organ of state must, in the tender documents, indicate if, in respect of a particular tender invitation, tenders will be evaluated on functionality and price.</i> | <b>A16</b>   |

(2).....

(3) *The total combined points allowed for functionality and price may, in respect of tenders with an estimated Rand value above R500 000, not exceed 90 points.*

(4) *When evaluating the tenders contemplated in this item, the points for functionality must be calculated for each individual tenderer.*

(5) *The conditions of tender may stipulate that a tenderer must score a specified minimum number of points for functionality to qualify for further adjudication.*

(6) *The points for price, in respect of a tender which has scored the specified number of points contemplated in sub-regulation (5) must, subject to the application of the evaluation system for functionality and price contemplated in this regulation, be established separately and be calculated in accordance with the provisions of regulations 3 and 4.*

(7) *Preferences for being an HDI and / or subcontracting with an HDI and / or achieving specified goals must be calculated separately and must be added to the points scored for functionality and price.*

(8) *Only the tender with the highest number of points scored may be selected.”*

6.068 PPPFA Regulation 9 reads: *“Despite regulations 3.(4), 4.(4), 5.(4), 6.(4) and 8.(8), a contract may, on reasonable and justifiable grounds, be awarded to a tender that did not score the highest number of points.”*

**A16**

6.069 PPPFA Regulation 11 covers the planning or demand phase of the procurement process and reads:

**A16**

***“Duty to plan for invitation of tenders***

*11. An organ of state must, prior to making an invitation for tenders-*

*(a) properly plan for, and, as far as possible, accurately estimate the costs*

*of, the provision of services or goods for which an invitation for tenders is to be made;*

*(b) determine the appropriate preference point system to be utilised in the evaluation of the tenders; and*

*(c) determine the deliverables or performance indicators in terms of which a person awarded a contract will be assessed.”*

6.070 PPPFA Regulation 12 makes provision for General Conditions of tenders. The following provisions of PPPFA Regulation 12 were noted:

**A16|10**

*“12(2) Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered for preference points.*

*12(3) An organ of state may, before a tender is adjudicated or at any time, require a tenderer to substantiate claims it has made with regard to preference.”*

6.071 PPPFA Regulation 13 reads:

**A16**

*“13.(1) Preference points stipulated in respect of a tender must include preference points for equity ownership by HDIs.*

*(2) The equity ownership contemplated in sub-regulation (1) must be equated to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company’s shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender.*

*(3) In the event that the percentage of ownership contemplated in subregulation (2) changes after the closing date of the tender, the tenderer must notify the relevant organ of state and such tenderer will not be eligible for any preference points.*

(4) Preference points may not be claimed in respect of individuals who are not actively involved in the management of an enterprise or business and who do not exercise control over an enterprise or business commensurate with their degree of ownership.

(5) Subject to sub-regulations (1), (2), (3) and (4), all claims made for equity ownership by an HDI must be considered according to the following criteria:

(a) Equity within private companies must be based on the percentage of equity ownership;

(b) Preference points may not be awarded to public companies and tertiary institutions;

(c) The following formula must be applied to calculate the number of points for equity ownership by an HDI:

$$NEP = NOP \times \frac{EP}{100}$$

100

Where

NEP = Points awarded for equity ownership by an HDI

NOP= The maximum number of points awarded for equity ownership by an HDI

EP = The percentage of equity ownership by an HDI within the enterprise or business, determined in accordance with sub-regulations (1), (2), (3) and (4).

(6) Equity claims for a Trust may only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the Trust.

(7) Documentation to substantiate the validity of the credentials of the trustees contemplated in sub-regulation (6) must be submitted to the

*relevant organ of state.*

*(8) A Consortium or Joint Venture may, based on the percentage of the contract value managed or executed by their HDI members, be entitled to equity ownership in respect of an HDI.*

*(9) The number of points scored for a Consortium or Joint Venture must be added to the number of points scored for achieving specified goals.*

*(10) The points contemplated in sub-regulation (9) must be added to the points scored for price, in order to establish the total number of points scored.*

*(11) Subject to regulations 9 and 10, the contract must be awarded to the tender which scores the highest points.*

*(12) A person awarded a contract as a result of preference for contracting with, or providing equity ownership to, an HDI, may not subcontract more than 25% of the value of the contract to a person who is not an HDI or does not qualify for such preference.”*

6.072 The PPPFA Regulations also make the following provision with regards to tax clearance certificates:

**A16|13**

**“Tax clearance certificate**

*16. No contract may be awarded to a person who has failed to submit an original Tax Clearance Certificate from the South African Revenue Service (“SARS”) certifying that the taxes of that person to be in order or that suitable arrangements have been made with SARS.”*

**xiv. Treasury Practice Note of 2007/2008 (effective 1 December 2007)**

**A17**

6.073 “6 TAX CLEARANCE CERTIFICATES FOR PRICE QUOTATIONS AND COMPETITIVE BIDS

**A17**

*6.1 The Accounting officer / authority must be in possession of an original*

*valid tax clearance certificate for all price quotations and competitive bids exceeding the value of R30 000 (VAT included).*

6.2 *If an accounting officer / authority is in possession of a supplier's original valid tax clearance certificate, it is not necessary to obtain a new tax clearance certificate each time a price quotation or bid is submitted from that specific supplier. This provision may be applied only if the closing date of the price quotation or bid falls within the expiry date of the tax clearance certificate that is in the accounting officer's / authority's possession. Whenever this ruling is applied, cross-reference must be made to the original tax certificate for audit purposes."*

**xv. Space Planning Norms and Standards for Office Accommodation Used by Organs of State Government Notice 1665 of 2005**

- |       |  |              |
|-------|--|--------------|
| 6.074 | The Space Planning Norms and Standards for Office Accommodation Used by Organs of State promulgated under Government Notice 1665 of 2005 ( <b>Norms and Standards</b> ) was referred to as forming the basis for the space planning or needs determination carried out by the Electoral Commission in 2009 prior to seeking new office accommodation. A copy of the Government Gazette is attached to this report. | <b>A18</b>   |
| 6.075 | A detailed independent analysis of the Electoral Commission's office space requirements has been conducted and referred to elsewhere in this report and it is not intended to conduct a detailed comparison to the Norms and Standards here. The following provisions of the Norms and Standards should be considered in the general context of this report however:   | <b>A18</b>   |
|       | 1) The definition of " <i>Senior Management</i> " in the Norms and Standards is " <i>Deputy Directors-General in national departments and equivalent positions in provincial departments;</i> "  | <b>A18</b>   |
|       | 2) Section 1 of the Norms and Standards reflects ( <i>inter alia</i> ) that the norms apply to all office space used by organs of state in South Africa.   | <b>A18/2</b> |
|       | 3) The principles set out in Section 3 of the Norms and Standards state the  | <b>A18/3</b> |

following under Standards of Fittings and Finishes:

*“Government office space must represent effective and efficient use of government resources. Standards must therefore be reasonable and supportive of productive work, but not ostentatious or wasteful. Finishes and fittings must not be luxurious and must be durable and easily maintainable (except for prestige properties and prestige areas of buildings, which may require fittings of a higher standard).”*

4) Section 4 of the Norms and Standards incorporates a table setting out the space planning norms for office buildings, generally provision is made for the following spatial requirements:

- i) Administration Staff – Workspace area between 6-8m<sup>2</sup>;
- ii) Technical and Management – Workspace area between 8-16m<sup>2</sup>;
- iii) Senior Management – Workspace area between 16-20m<sup>2</sup>; and
- iv) Executive Management – Workspace area between 20-25m<sup>2</sup>.

**xvi. IEC Procurement Policy and Procedures 15 July 2004**

		<b>A18/5</b>
		<b>A19</b>
6.076	The Electoral Commission’s Procurement Policy dated 15 July 2004 was approved by the Commission on 10 March 2005 with two amendments being made on page 11 paragraphs 4.2 (a) and (d).	<b>A19 12</b>
6.077	The introduction to this policy refers to the requirements of section 217 of the Constitution and 76 (4) (c) of the Public Finance Management Act ( <b>PFMA</b> ) which prescribes <i>“that the public sector procurement system must be fair, equitable, transparent, competitive and cost effective.”</i>	<b>A19 7</b>
6.078	It is recorded in paragraph 1.3 that <i>“Procurement is done in terms of the provisions of the Preferential Procurement Policy Framework Act (<b>PPPF</b>)”</i> .	<b>A19 7</b>
6.079	Paragraph 3.1 also states that <i>“the procurement of goods and services within the Electoral Commission is governed by the Constitution, the Public Finance Management Act, preferential procurement Policy Framework Act and its</i>	<b>A19 11</b>

*regulations as well as all other applicable laws of the Republic. Where any stipulation in this document is in conflict with the directives or stipulations of any other applicable control act, the directives or stipulations of that particular act shall apply.”*

- 6.080 Chapter 4 of this policy sets out the duties and responsibilities of the CEO, the Procurement Committee, the Evaluation Committee and the Procurement Department. These duties and responsibilities are set out below:

**A19|12**

**“4.2 The Chief Electoral Officer**

- (a) *The Chief Electoral Officer (CEO) procures goods and services for the Electoral Commission and arranges for the hiring of goods and services or the acquisition or granting of any right for or on behalf of the Electoral Commission, and disposes of moveable assets subject to compliance with the requirements of section 12(2)(c) of the Electoral Commission Act, section 38 (a)(iii) of the Public Finance Management Act, the Treasury Regulations and the Act. In respect of goods and services in excess of R2 million, the CEO does so after consultation with the Commission.”*
- (b) The power to enter into, amend or cancel contracts rests with the CEO.
- (c) The CEO may delegate certain functions.

**4.3 The Procurement Committee**

**4.3.1 Composition**

**A19|12**

- (a) *The CEO establishes the Procurement Committee by appointing five members who will serve on the committee on a permanent basis.*
- (b) *The CEO appoints a Chairperson.*
- (c) *A quorum shall be made up of 50% of members plus one.*

- (d) *In the absence of a Chairperson at a meeting, the Procurement Committee shall elect an Acting Chairperson from among the members present at the meeting.*
- (e) *The Chairperson of the Committee may co-opt a member of staff for a particular meeting.*

#### **4.3.2 Meeting Procedure**

- (a) *The Procurement Committee shall hold meetings once a week, unless otherwise agreed.*
- (b) *All procurement related meetings must be recorded and records should be kept for a period of at least five years.*
- (c) *A declaration of interest from the members of the Committee and the Procurement Department should be obtained at each meeting.*
- (e) *Decisions of the Procurement Committee shall be by consensus.*
- (f) *In the absence of consensus the matter will be decided by a vote. In the event of a tie the Chairperson shall have a casting vote and the report of the Committee shall accurately reflect the views of the members.*

#### **4.3.3 Introduction**

- (a) *The Procurement Committee makes recommendations to the CEO on the procurement of goods and services for or on behalf of the Electoral Commission.*
- (b) *The Procurement Committee makes recommendations on the hiring of goods and services for, or on behalf of the Electoral Commission.*
- (c) *The Procurement Committee makes recommendations to the CEO on the disposal of movable Electoral Commission property.*

A19|13

**4.4 Evaluation Committee**

*An Evaluation Committee shall be constituted upon the closure of each and every tender or for any quote or bid exceeding R100,000. In respect of quotations and bids less than R100,000 the Procurement Department evaluates a quote and makes recommendations to the User Department to deal with within their delegated authority.*

**4.4.1 Composition**

- (a) *The Evaluation Committee shall consist of:
  - (i) *A member of the Procurement Department;*
  - (ii) *A member of the Legal Services Department;*
  - (iii) *A maximum of two members of the User Department;*
  - (iv) *In the event of a tender exceeding ten million (R10,000,000) or on recommendation of the Procurement Committee, an external expert.**
- (b) *The member from the Procurement Department shall serve as a Convenor of the Evaluation Committee.*
- (c) *In the event of an external expert, the User Department together with the Procurement Department shall submit a recommendation to the Procurement Committee with regard to the appointment of such an expert.*
- (d) *A quorum shall be made up of at least one member from the departments mentioned above.*
- (e) *A member of the Procurement Committee may sit as a member of the Evaluation Committee.*

- (f) *The Composition of the Evaluation Committee shall be approved by the Chairperson of the Procurement Committee.*

**4.4.2 Meeting Procedure**

- (a) *The Convenor shall convene the Evaluation Committee upon the closure of a quote/tender/bid and submit a report to the Procurement Committee forwith.*
- (b) *The report shall contain the details of the meeting, members present, the evaluation procedure and the outcome including any such details as the Evaluation Committee may deem relevant.*
- (c) *A declaration of interest from the members of the Evaluation Committee shall be obtained at each meeting.*

**4.4.3 Functions of the Evaluation Committee**

A19|13

- (a) *Determination of Acceptable quotes/tenders/goods for Goods and Services:*
- (i) *At the stipulated closing time for the responses, the Procurement Department at Head Office, opens the tenders and compiles a register of quotes/tenders/bids received.*
- (ii) *The Evaluation Committee evaluates the quotes/tenders/bids according to the specifications and submits a report to the Procurement Committee.*
- (iii) *The Internal Audit department performs audit tests prior to final adjudication.*

- (iv) *The Procurement Committee makes recommendations to the CEO in respect of the awarding of quotes/tenders/bids taking into account the Act and the Electoral Commissions Procurement Policy. (refer to annexure B for the Provisions of the Act).*

**4.4 The Procurement Department**

**A19|14**

4.4.1 *The Procurement Department is responsible for the administration of all the Electoral Commission procurement processes.*

4.4.2 *The Procurement Department shall maintain and update a database of suppliers of the Electoral Commission.*

4.4.3 *The Procurement Department provides support functions to the Procurement Committee.*

4.4.4 *The Procurement Department must provide all the information which the Procurement Committee and/or the CEO require in connection with the execution of their powers and functions.*

4.4.5 *On receipt of the report from the Evaluation Committee, the Procurement Department shall apply the Act with regard to the allocation of points.*

4.4.6 *The Procurement Department shall perform the due diligence enquiries together with the internal Audit Unit prior to the awarding of a contract.*

6.081 Chapter 5 of the Policy provides for the determination of requirements including the following:

**A19|15**

*“5.2. Specifications shall be prepared by the User Department based on relevant characteristics and or performance requirements.”*

*“5.4. Procurement of goods and services must be properly planned and a requisition based on a reliable and market related estimate shall be*

*obtained.”*

6.082 The procurement of goods and services through tenders is dealt with in Chapter 7 of the Policy. Goods and services with a Rand value above R100,000 (excluding VAT) “*may be procured by means of tenders.*” The following provisions of Chapter 7 are reflected below:

**A19|21**

7.1.2 “*Unless otherwise determined by the CEO, the minimum period for the closing of tenders is 14 ordinary days.*”

7.3.1 “*The User Department drafts and submits specifications and tender documents to the Procurement Committee which makes recommendations to the CEO. On approval by the CEO the Procurement Department calls for tenders.*”

7.3.3 “*The Procurement Department’s standard forms must serve as the basis for all tender invitations (**Annexure D**). However, when the format of these forms is not suitable in a particular case, it may be amended by the CEO after considering the recommendation of the Procurement Committee.*”

7.3.5 “*Taxation*

*(a) Value Added Tax*

*Tenders are compared exclusive of VAT. In instances where all suppliers are registered for VAT, prices may be compared inclusive of VAT. ....*

*(b) Tax Clearance Certificate*

*(i) No contract shall be awarded to a supplier whose tax matters are not in order. This certificate should be an original issued by SARS.”*

7.3.6 “*Tender documents and evaluation criteria must be available when the tender invitations are advertised in the relevant*

*communication media.”*

7.4.4 “Only original tenders which are submitted in the prescribed manner and where all the essential forms are signed in ink before submission, may be accepted as valid tenders unless the tender invitation states otherwise.”

7.5.1 “The evaluation of tenders is dealt with in terms of the Act. In addition, the evaluation of tenders shall be in accordance with the technical criteria set out in the tender specifications. This must be clearly stipulated in the tender invitation documents.”

7.6.9 “Due Diligence Audit

*The ability of suppliers to perform a contract successfully must be taken into account fully during the consideration of tenders. Due diligence audit shall be performed in accordance with guidelines as stipulated on **Annexure E.**”*

7.6.14 “Contracts shall not be ceded without the consent of the CEO.”

7.6.16 “Extra-contractual Purchases

*The Electoral Commission reserves the right to procure outside any term contract when circumstances necessitate that and if so approved by the CEO on recommendation of the Procurement Committee.”*

6.083 Paragraph 10.1.5 and 10.1.6 of Chapter 10 of the Policy make provision for declarations of interest and ethics and fair dealing. Paragraph 10.1.5 of the Policy provides as follows:

**A19|32**

*“10.1.5 Declaration of interest*

*a) The Supplier*

*A form for the declaration of a supplier’s position and interest in relation to the evaluating authority must be included with the*

*quote/tender/bid documents. A quote/tender/bid is excluded from further evaluation if a supplier fails to declare any interest or potential conflict of interest.*

b) *Electoral Commission Staff*

*(i) All employees have a duty to promote the reputation and business of the Electoral Commission and not to make any personal gain at the expense of or as a result of their employment by the Electoral Commission. Decisions and functions carried out in the course and scope of employment must be directed at what is in the best interests of the Electoral Commission. Personal interests must not conflict with those of the Electoral Commission.*

*(ii) Where a possible conflict of interest arises or where an employee has or obtains a financial or other interest in a company or firm with which the Electoral Commission enters into a business transaction, or where an interest is such that it may influence the outcome of any decision or benefit any person or company or firm, the interest must be disclosed in writing to the Electoral Commission as soon as it arises, and the employee must refrain from participating in any way in related business dealings. Written disclosure is effected by the employee making an appropriate entry in a register kept for this purpose in the office of the CEO.*

c) *Failure to disclose by a Supplier will lead to the cancellation of the contract. While failure to disclose by an Employee of the Electoral Commission may result in the Electoral Commission adoption (sic) such action and recourse from the employee which will include disciplinary action."*

6.084 Paragraph 10.1.6 of the Policy requires all parties to comply with the highest ethical standards to promote mutual trust and respect, and an environment where business can be conducted in a fair and reasonable manner and with integrity. Paragraph 10.1.6(b) of the Policy requires all officials/employees associated with procurement to:

- 1) Recognise and deal with conflicts of interest or the potential thereof;
- 2) Deal with suppliers even-handedly;
- 3) Provide all assistance in the elimination of fraud and corruption; and
- 4) Adhere to instructions issued by the CEO.

**A19|32**

**7.000 PROCUREMENT MENLYN CORPORATE PARK**

**Commission Minutes for October 2008**

D1a

7.001 The Minutes of the Commission meeting held during October 2008 reflect in item 9.2.3 under the heading “National Office Accommodation” that Mr du Plessis reported to the Commission that the rental for 260 Walker Street had increased by 42% in addition to a further 12% in the subsequent years.

D1a|8-9

7.002 Based on the report provided by Mr du Plessis it was decided that the Electoral Commission should negotiate a one year lease contract with the Landlord of 260 Walker Street, and also search for alternative accommodation thereafter.

**Commission Minutes for 3 November 2008**

D1

7.003 The Commission minutes for their meeting held on 3 November 2008 under item 11.3.1 indicate that Adv. Tlakula reported to the Commission that the Landlord of 260 Walker Street refused to enter into a one year lease with the Electoral Commission and insisted on a four year lease.

D1|8

7.004 These minutes also indicate that the Department of Housing was interested in leasing 260 Walker Street and, based thereon, a proposal was made that the Department of Public Works should take over the rental of the building on behalf of the Department of Housing so that the Electoral Commission could sublet from them until suitable accommodation could be secured.

D1|8

**Proposals from JHI Real Estate Limited**

B10

7.005 Two letters were provided during the course of our investigation both of which are from Avril Hannekom, Broker: Sales and Leasing of JHI Real Estate Limited (**JHI**) and are dated 27 November 2008. These letters are both addressed to Dr Jacob “Jake” Pretorius (**Dr Pretorius**), the Manager Support Services at the Electoral Commission, and indicate that a telephonic conversation took place between Dr Pretorius and representatives of JHI to provide proposals of various buildings for consideration by the Electoral

B10

**NATIONAL TREASURY**

**FORENSIC INVESTIGATION: ELECTORAL COMMISSION: RIVERSIDE OFFICE PARK**

**14 DECEMBER 2013**

Commission.

7.006 Although these letters both contain the same date, the one contains the names of four premises (refer to Figure 2 below) and the other contains the names of seven (refer to Figure 1 below) in addition to the name of the premises, physical address, size of the building, gross rental per square meter per month, the purchase price and price per parking bay per month. Extracts of these are illustrated below for ease of reference:

**B10|3**  
**B10|1**

**Figure 1**

We refer to our telephonic discussion and have pleasure in listing hereunder our proposal regarding the abovementioned.

PREMISES	PHYSICAL ADDRESS	SIZE	GROSS RENTAL PER SQM/MONTH (EXCL.VAT, RATES & MUNICIPAL)	PURCHASE PRICE (EXCL.VAT)	PARKING PER BAY/MONTH (EXCL.VAT)
MENLYN MAINE NEW DEVELOPMENT <i>(Available 2010)</i>	Aramist Street, Menlyn	140000m <sup>2</sup> (Offices sub-divisible)	± R160.00m <sup>2</sup>	N/A	5/100m <sup>2</sup> secure parking bays available
HATFIELD GREEN OFFICE DEVELOPMENT	Festival & Schoeman Street, Hatfield	± 9000m <sup>2</sup>	± R120.00m <sup>2</sup>	N/A	4/100m <sup>2</sup> secure parking bays available
RIVERSIDE OFFICE PARK DEVELOPMENT	Cnr. Heuwel & Lenchen Road, Centurion	23000m <sup>2</sup> (sub-divisible)	R135.00m <sup>2</sup>	To be Negotiated	5/100m <sup>2</sup> secure parking bays available
OUKRAAL OFFICE PARK DEVELOPMENT	Oukraal Boulevard, Hazeldene <i>Silver Lakes</i>	16000m <sup>2</sup> (sub-divisible)	±R120.00m <sup>2</sup>	±R14000.00m <sup>2</sup>	5/100m <sup>2</sup> secure parking bays available
LYNNWOOD/DAVENTRY OFFICE PARK DEVELOPMENT	Cnr. Lynnwood Road & Daventry Road, Lynnwood	Building 6 ±15000m <sup>2</sup> (sub-divisible)	±R145.00m <sup>2</sup>	N/A	5/100m <sup>2</sup> secure parking bays available
TREVENNA OFFICE PARK	Nelson Mandela Drive, Arcadia	60 000m <sup>2</sup> (sub-divisible)	± R130.00m <sup>2</sup>	N/A	4/100m <sup>2</sup> secure parking bays available
WALKER CREEK OFFICE PARK DEVELOPMENT	Koningin Wilhelmina Street, Brooklyn (Opposite US Aid Building)	± 9500m <sup>2</sup>	Price to be negotiated <i>± R130.00 m<sup>2</sup></i>	Negotiable	5/100m <sup>2</sup> secure parking bays available

Should you require any additional information, please do not hesitate to contact the writer.

*NO HOPS/P/ANE*

**B10|1**

Figure 2

B10|3

OFFICE ACCOMMODATION

We refer to our telephonic discussion and have pleasure in listing hereunder our proposal regarding the abovementioned.

PREMISES	PHYSICAL ADDRESS	SIZE	GROSS RENTAL PER SQM/MONTH (EXCL. VAT, RATES & MUNICIPAL)	PURCHASE PRICE (EXCL. VAT)	PARKING PER BAY/MONTH (EXCL. VAT)
MENLYN MAINE NEW DEVELOPMENT (Available 2010)	Aramist Street, Menlyn	± 8000m <sup>2</sup> – 9000m <sup>2</sup>	± R160.00m <sup>2</sup>	N/A	5/100m <sup>2</sup> secure parking bays available
HATFIELD GREEN OFFICE DEVELOPMENT	Festival & Schoeman Street, Hatfield	± 9000m <sup>2</sup>	± R120.00m <sup>2</sup>	N/A	4/100m <sup>2</sup> secure parking bays available
RIVERSIDE OFFICE PARK DEVELOPMENT	Cnr. Heuwel & Lenchen Road, Centurion	23000m <sup>2</sup> (sub-divisible)	R135.00m <sup>2</sup>	To be Negotiated	5/100m <sup>2</sup> secure parking bays available
OUKRAAL OFFICE PARK DEVELOPMENT	Oukraal Boulevard, Hazeldene	16000m <sup>2</sup> (sub-divisible)	±R120.00m <sup>2</sup>	±R14000.00m <sup>2</sup>	5/100m <sup>2</sup> secure parking bays available

Should you require any additional information, please do not hesitate to contact the writer.

Yours sincerely,

*Avril Hanekom*

7.007 In both instances, the names of the four premises detailed in Figure 2 are included in the names of the seven premises detailed in Figure 1 above. Included on these letters is Riverside Office Park to the extent of 23,000m<sup>2</sup> which was sub-divisible and Menlyn Maine (New Development) to the extent of 140,000m<sup>2</sup> (which is also sub-divisible). It ought to be mentioned at this point in our report that one of the aforementioned premises, namely Menlyn Maine, is not the same as Menlyn Corporate Park. In fact Menlyn Corporate Park is not reflected on either of the lists provided by JHI in their abovementioned letters (Refer to Figure 1 and Figure 2 above).

B10|3

B10|1

B10

**Commission Minutes for 1 December 2008**

**D2**

7.008 Item 12.3.1 of the Commission minutes reflect that office accommodation was once again discussed by the Commission in that Mr du Plessis reported to the Commission that various alternative options with respect to office accommodation have been investigated and these would be circulated to the Commissioners for input.

**D2|7**

7.009 No additional information is provided in these minutes that confirm that Mr du Plessis did in fact circulate the various alternatives at this meeting and therefore, it would be reasonable to conclude that they were not circulated at this meeting.

**Commission Minutes for 12 January 2009**

**D3**

7.010 Item 7.3.4 of the Commission minutes of their meeting held in 12 January 2009 indicate that Mr du Plessis distributed a list of alternatives for the Electoral Commission's Head Office.

**D3|7-8**

7.011 In these minutes it is recorded that the Commission "*agreed to the proposal for the national office to relocate to the site in Glenwood subject to Mr du Plessis should make arrangements for Commissioners to visit these sites as soon as possible.*"

**D3|8**

7.012 Mr du Plessis has confirmed that the aforementioned extract detailed in these minutes has been incorrectly recorded and that Glenwood should have been replaced with Menlyn Corporate Park, this is despite the fact that Menlyn Corporate was not included on the list of proposals provided by JHI. The corrections to the minutes were not made at the next meeting of the Commission.

**E8|7**

**Introduction to Menlyn Corporate Park**

7.013 In view that Menlyn Corporate Park is not listed as either one of the properties detailed in JHI's letter dated 27 November 2008 (refer to Figure 1 and Figure 2 above), we requested from Mr du Plessis further information as to how Menlyn Corporate Park was introduced to the Electoral Commission as this was unknown at this point of our investigation. **B10**

7.014 Subsequent to our enquiry with Mr du Plessis, he provided an email from Johann du Plessis, a Development Manager at Menlyn Corporate Park (Pty) Ltd, which email is dated 25 July 2008 at 12:56 PM addressed to Angela Silva (da Silva), the Electoral Commission Assistant Manager – Office Services which email contained the proposal for Menlyn Corporate Park. **B13**

7.015 In the aforementioned email from Johann du Plessis, the following is recorded: **B13**

*“The current planning for the development makes provision for A+ grade Corporate Office Blocks and is being marketed to the general corporate environment as such.*

*Menlyn Corporate Park is superior in its accessibility, locality, parking, visibility, architecture, Intelligent building infrastructure, the efficient use of floor space and floor plans and lastly the closeness to amenities.*

*State of the art security systems, superior parking with access from below ground level parking areas to work places with dedicated building specific elevators, with the aim to improve security.*

*The price per sqm is R106/sqm (Nett) and R15/sqm (operational costs).*

*The starting date for ground works is in the second halve (sic) of 2008 with a completion date scheduled for the beginning of 2010.*

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*We will appreciate your feedback on this matter as soon as possible, a meeting can be scheduled to present the plans for the development and to discuss all suggestions or reservations that may arise.*

*Please contact Mr. Johann du Plessis on 0846663736 or (012) 3473796/8 or if you would like to fax any communication you can at 0866934615 or (012) 3473788, a reply on this email will be preferred.*

*Regards”*

7.016 Included with Johann du Plessis’s email are various attachments that related to the location of Menlyn Corporate Park including basement plans, computer generated drawing of the building and development data.

**B13|3-7**

7.017 In view that the email was first addressed and sent to Ms Angela da Silva (Ms da Silva) we interviewed and obtained an affidavit from her with regards to her involvement in this matter. She has confirmed that the abovementioned email was received although she did not know how Johann du Plessis got her contact details or why the information had been sent to her in the first place.

**E5**

7.018 She alleged that sometime after receiving this email, she was discussing the accommodation of the Electoral Commission Head Office with Mr du Plessis who indicated to her, during their conversation, that the Electoral Commission would be looking for other accommodation. It was at this point that she informed him of the abovementioned email from Menlyn Corporate Park and he requested her to forward him the information that had been provided. Based on her discussion with Mr du Plessis she forwarded him a copy of this email on 23 October 2008 at 04:31PM.

**E5**

**E5|13**

7.019 In Ms Angela da Silva’s responding email to Mr du Plessis, she states the following:

*“Got it. It was in July 2008.”*

7.020 Based on the content of the email forwarded by Ms Angela da Silva and the letters from JHI, it would be reasonable to conclude that when the Commission was approached by Mr du Plessis on 12 January 2009, Menlyn Corporate Park was known to the parties from at least 7 October 2008.

**Advocate Tlakula's memorandum to Mr du Plessis dated 11 February 2009**

B11

7.021 On 11 February 2009, Adv. Tlakula issued a memo to Mr du Plessis titled "New Accommodation" in which she expressed her concerns about relocating to "Menlyn Corporate Park" in addition to some other discomforts that she had concerning the location of the building, whilst she also makes a decision on how the matter should be taken forward.

B11

7.022 We shall not attempt to explain the content of this letter but instead have repeated it below in its entirety in order to appreciate the concerns and instructions provided by Adv. Tlakula to Mr du Plessis concerning this matter:

B11

*"I have some discomfort in the fact that we have awarded the lease for our new offices to the Menlyn Corporate Park without a public process. Although this has been sanctioned by the Commission, there are too many views that have been expressed on the site and the proposed building. These views include accessibility of the site to public transport and that the proposed building might be too opulent<sup>1</sup>. These discomforts cannot be ignored.*

B11

*Since the matter of office relocation was dealt with by EXCO, I have decided that EXCO should embark on an open process and thereafter place all options before the Commission for a decision.*

---

<sup>1</sup> Defined in the South African Concise Oxford dictionary as "ostentatiously rich and luxurious."

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*I don't want personal preferences on the location of our new offices to influence the process.*

*Please, draft a request for proposals and submit it to me for sign-off. We will have to approach the Commission again after the outcome of the public process.*

*Can we please have a discussion on this matter?*

*Regards*

*Adv Pansy Tlakula*

*Chief Electoral Officer"*

**Memorandum from Mr du Plessis to Advocate Tlakula dated 13 February 2009**

**B12**

7.023 Subsequent to Mr du Plessis' receipt of the abovementioned memo from Adv. Tlakula, he performed some work on the request by Adv. Tlakula and subsequent thereto, prepared a memorandum to her, which memorandum is dated 13 February 2009, in which the following is documented:

**B12**

*"Our discussion and your questions around the draft advertisement for new accommodation refer.*

***Space Requirements***

*When we started investigating alternative accommodation we considered a 50% increase above our present position as an appropriate informed guess – something in the 9500m<sup>2</sup> – 10,000m<sup>2</sup> ranges.*

*We have since made an assessment and our requirements are estimated at a minimum to be 9000m<sup>2</sup>.*

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*I attach documentation if you would like to look at it. The standards in the gazette are a bit confusing and we thus obtained the second summary sheet from DPW which indicates current practice. The consequential calculation (min 9012m<sup>2</sup> & max 13145m<sup>2</sup>) is attached.*

*I think the minimum calculation is rather conservative as Commissioners were omitted from our schedule for calculation. It may also not take full account of all meeting space we require (to stop us from having to rent outside facilities from time to time). Our training space is another issue. The number of contractors is those we currently have but that figure will go up and down.*

*As indicated to you when we spoke I would not be comfortable if we go for maximum space allowance and then have visible empty space at times of lower activity. The consequential perceptions we can do without. It would be easier to accommodate periods of higher activity.*

*Once we have proposals on the table we would in any event have to do a new space planning exercises in the context of the chosen building and that will bring certainty. I hence suggest we require approx. 9000m<sup>2</sup> and stay away from “not less than” or “not more than” in the advertisement.*

#### **Awarding of contract**

*You also enquired about the provision in the advertisement that the Commission could award on any basis it regards appropriate. Suitability for me is big issue and I think we should avoid post event arguments as far as possible. Cost is fundamental but it should not negate suitability! That apart – and it would obviously depend on the proposals we receive - it may be important that we incorporate as much of our relocation and settlement activities in as few contracts as possible, if not in a single contract provided that it is sensible and economical. There is simply not time before we have to go to election mode for many concerns to compete for space and our time in a project as big as this.*

*Our move will have to be seamless for most activities but especially IT, Finance and general communications. Hence also my suggestion is that we contract an internal project manager in good time.*

*Would you please approve the draft advertisement as per its specifications / requirements.*

*N W du Plessis*

*D/CEO (C)”*

- 7.024 Contents of the above memo appears to have been approved by Adv. Tlakula as the word “Approved” is written on the bottom of the memo together with what appears to be the signature of Adv. Tlakula as well as the date “13/02/09.”

**Media Schedule dated 25 February 2009**

B1|1

- 7.025 On 25 February 2009, Dr Pretorius signed a media schedule for publications in newspapers which media schedule reflects that the campaign was for “Tender: Relocation Needs (Pretoria /Centurion) Ref: IEC/SS-003/2009” which schedule provided the costs to advertise in the Sowetan, Pretoria News, The Star, Beeld, and the Citizen.

B1|1

**Advertisements 27 February 2009 and 2 March 2009**

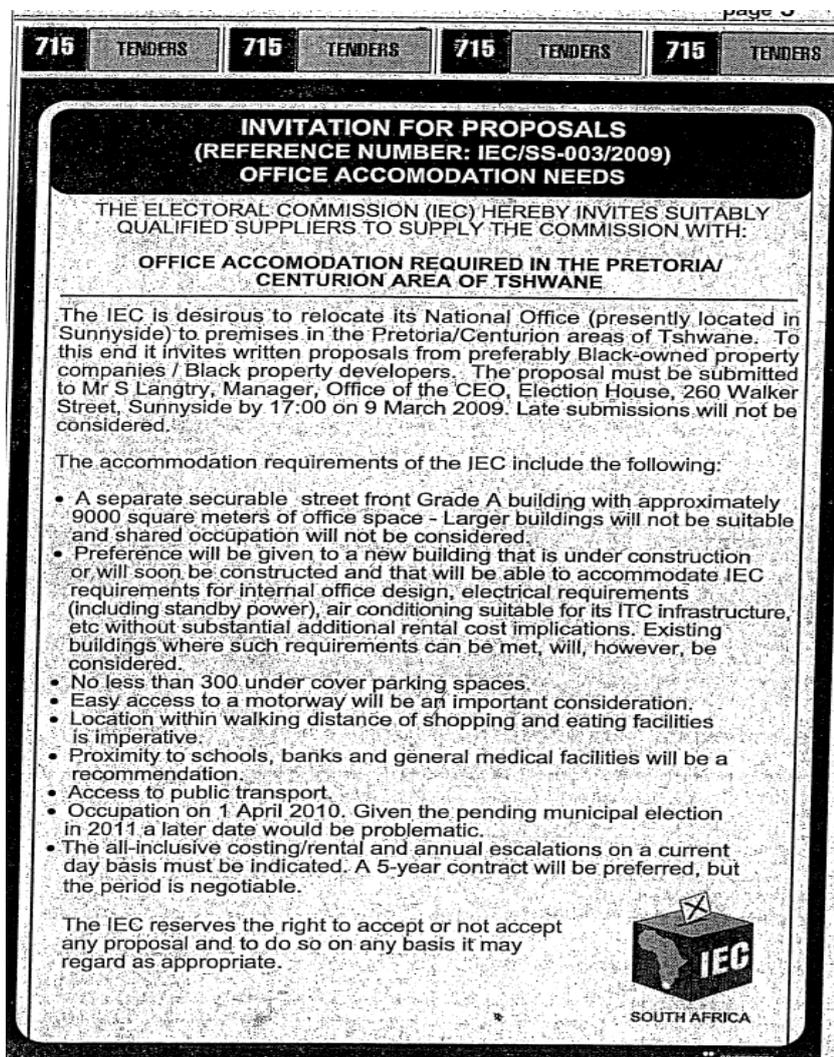
B1|2-8

- 7.026 Copies of the advertisements were provided by the Electoral Commission from which we have been able to determine the detailed content of the information included in the adverts. For ease of reference, we shall not repeat the detailed content of the information contained in these adverts, but instead have included the advert in Figure 3 below:

B1|2-8

Figure 3

B1|2-8



7.027 According to the first paragraph of this advert, the Electoral Commission has indicated that it *“is desirous to relocate its National Office (presently located in Sunnyside) to premises in the Pretoria/Centurion areas of Tshwane. To this end it invites written proposals from preferably black owned property companies / Black property developers. The proposal must be submitted to Mr S Langtry, Manager, Office of the CEO, Election House, 260 Walker Street, Sunnyside by 17:00 on 9 March 2009. Late submissions will not be considered.”*

B1|2

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7.028 Below the introductory section to this advert are nine requirements or specifications that proposals of bidders ought to comply with in order for their bids to be considered to be functional. We shall not repeat these requirements as they are illustrated in Figure 3 above, although it is important to emphasise that the occupation date is stipulated as 1 April 2010. Anything subsequent to this date would be problematic to the Electoral Commission given the fact that the pending municipal elections were being held in 2011. **B1|2**

7.029 From the copies of adverts provided, we have determined the following in relation to date that they were flighted in the newspapers:

No	Newspaper	Date Flighted	
(i)	Unknown ("Pretoria News") <sup>1</sup>	Unknown	<b>B1 2</b>
(ii)	Sowetan	27 February 2009	<b>B1 3</b>
(iii)	Pretoria News	27 February 2009	<b>B1 4</b>
(iv)	Pretoria News <sup>1</sup>	Unknown	<b>B1 5</b>
(v)	The Star	27 February 2009	<b>B1 6</b>
(vi)	The Beeld	2 March 2009	<b>B1 7</b>
(vii)	The Citizen	27 February 2009	<b>B1 8</b>

7.030 Based on the date that the adverts were flighted in the aforementioned media, bidders responding to the invitation would have had, at the most, 10 days<sup>2</sup> to prepare a proposal to respond to this request.

**Commission Minutes for 2 March 2009** **D4**

7.031 Item 10.3.1 of the Commission minutes for their meeting held on 2 March 2009 reflects that Adv. Tlakula had requested the Commissioners to rescind their decision to relocate to Menlyn Corporate Park due to the fact that the procurement process was not adequately followed. The minutes confirm too that the Commission approved this request by Adv. Tlakula. **D4|8**

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<sup>1</sup> The copy of the advert provided is similar to the advert that was flighted in The Pretoria News (**B1|4**). Hence, this advert appears to be a duplicate copy of the advert that featured in the Pretoria News.

<sup>2</sup> Bidders who were responding based on the advert that was flighted in the Beeld would have had only 7 days in which to put a proposal together.

7.032 It would appear that when the aforementioned decision was made by the Commissioners, the award to Menlyn Corporate had not been formerly concluded and therefore, there was no legal implications as a result of the Commissioners rescinding their earlier decision in this regard.

7.033 It has been noted that even though the earlier minutes of the Commission meeting indicate that the award should be made to Menlyn Corporate Park<sup>1</sup> subject to site visits, there are no minutes or notes of these site visits by the Commissioners and therefore, we cannot determine, based on the work currently performed, whether any concerns or decisions were made at these site visits by the Commissioners.

**D3|8**

**Summary**

7.034 Menlyn Corporate Park had initially been identified after they had submitted an email to Ms da Silva providing information about their proposed building even though this information was not requested by her. A few months subsequent to the receipt thereof, JHI were approached by representatives of the Electoral Commission and asked to provide proposals on potential properties for use as the Electoral Commission's Head Office, which information was submitted to the Commission for consideration.

7.035 The Commission resolved to award the contract to Menlyn Office Park, subject to visiting the sites, however Adv. Tlakula stopped this process before formal confirmation could be made as she had some discomfort with the procedures that were followed, in addition to the fact that she was concerned that Menlyn Corporate Park would be too opulent for the Electoral Commission.

7.036 Based on her concerns that were raised, she wanted the matter to be dealt with in an open process and all options be placed before the Commissioners for consideration.

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<sup>1</sup> The minute indicate that award to Glenwood but Mr du Plessis indicated that this was an error. Refer to paragraph 7.011 to 7.012

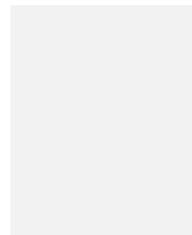
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7.037 Acting on the abovementioned concerns raised by Adv. Tlakula, the Commission rescinded its earlier decision to award to Menlyn Corporate Park and an invitation for proposals was flighted in five newspapers on 27 February 2009 and 2 March 2009.



**8.000     *PROCUREMENT ABLAND – RIVERSIDE OFFICE PARK***

**Proposals Received for IEC/SS-003/2009 on 9 March 2009**

- |       |  |                            |
|-------|--|----------------------------|
| 8.001 | Ten bidders responded to the advertisement that was flighted in the five newspapers as discussed above <sup>1</sup> . Each of these bidders allegedly placed their proposals in the tender box at the entrance to the Electoral Commission’s office at 260 Walker Street, Sunnyside despite the advertisement indicating that the proposals should be submitted to Mr Langtry. Although there is some uncertainty as to how the Abland proposal was placed in the tender box which will be dealt with later in this report.  | <b>B6</b>                  |
| 8.002 | It is unclear why the proposals were deposited in the tender box or how the bidders got to know that they had to deposit their proposal documents in the tender box since the advert indicated that they should be given to Mr Langtry. The response from Mr Langtry to this question is that security had received a standing instruction that when a person arrived with a proposal of any kind that they should deposit their proposal in the tender box and it is for this reason that he thought that the bids were placed in the tender box. He alleged that he did not provide this instruction to any of the ten bidders neither did he have any discussions concerning this specific matter. Mr Langtry also stated in response to a specific question in this regard that “to my recollection, I did not receive any bid document from Abland or any other bidder by email”. | <b>E7 7</b>                |
| 8.003 | Ms Rachel Malele and Mr Johannes Thipane, both employed within the Procurement Department of the Electoral Commission, confirmed in their affidavits that they were instructed to go and open the tender box to remove and index the proposals that had been placed in the tender box for tender number IEC/55-003/2009 on 9 March 2009 at 17:00.  | <b>E2 2</b><br><b>E1 2</b> |
| 8.004 | On the aforementioned date, before opening the tender box, they called 1026 (Telkom time service) to validate that 17:00 had passed and only then were the ten proposals removed from the tender box.  | <b>E2 2</b>                |

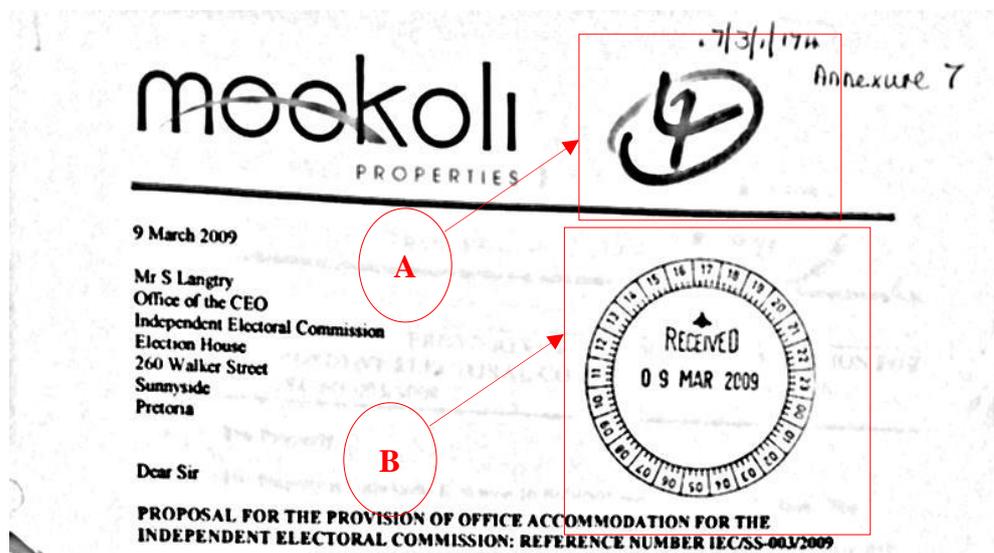
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<sup>1</sup> Refer to paragraphs 7.029 to 7.030.

**Receipt of Proposals**

- |       |   |   |
|-------|---|---|
| 8.005 | Once the ten proposals were removed from the tender box, Ms Rachel Malele recorded the names of the ten bidders on the Electoral Commissions standard "Receipt of Tender document" form which was signed by her and Mr Johannes Thipane. In addition to doing this, they also appended either number 1 to 10 (refer to reference "A" on Figure 4 below) on the cover of each proposal using a black marker pen in the order that they were recorded on the receipt of tender documents form.  | <b>E2 3</b>                             |
| 8.006 | <p>The names of these ten bidders, in sequential order in which they appear on the receipt of tender document, is detailed below:</p> <ol style="list-style-type: none"><li>1.) Khwela City;</li><li>2.) Blackstone Property Fund;</li><li>3.) Slipknot Investment 74 (Pty) Ltd;</li><li>4.) Mookoli Properties;</li><li>5.) RCP Brokers;</li><li>6.) One Vision Investment 179 (Pty) Ltd;</li><li>7.) Menlyn Corporate Park - Mvelaphanda Consortium;</li><li>8.) JIL JHI Properties;</li><li>9.) New Leaf Property Agency (Pty) Ltd; and</li><li>10.) Abland (Pty) Ltd (Property Development)</li></ol> | <b>B6</b>                               |
| 8.007 | Ms Rachel Malele and/or Mr Johannes Thipane also appended a Receipt stamp (refer to reference "B" on Figure 4 below) on each of these proposals which stamp is dated 9 March 2009. An example of this stamp that can be found on each of these documents is illustrated in Figure 4 below:  | <b>E1 2</b><br><b>E2 2</b><br><b>B7</b> |

Figure 4



B7

8.008 These ten proposals were then handed to Mr Langtry although there appears to be some uncertainty as to exactly when they were handed over. Ms Rachele Malele has indicated that they were handed over on the 9 March 2009 whilst Mr Johannes Thipane is unsure of exactly when they were handed to Mr Langtry. However, both of them confirm that Mr Langtry was not requested to sign or acknowledge receipt of these proposals when they were delivered to him, whilst Mr Langtry indicated that he in all probability would not have received them on 9 March 2009 after 17:00 as this was after normal working hours but on the following day.

E2|3

E1|3

E7|9

### Missing Receipt Stamp

8.009 Our initial examination of the ten proposal documents, to validate whether each of them contained a receipt stamp as shown in Figure 4 (reference “B”) above, revealed that all except Abland’s proposal contained this stamp.

B3

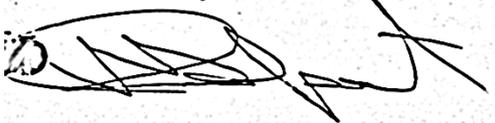
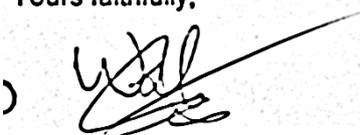
8.010 It was only a few days subsequent to our inquiries into the reasons why Abland’s proposal did not contain this receipt stamp that another one of their proposal’s subsequently came to light; which proposal contained this receipt stamp.

B2

8.011 However, when we compared this document to the other Abland proposals that were in the possession of the Electoral Commission, we noted that the signature of the Abland representative on the proposal containing the stamp was different to all the other signatures that were appended on the other proposals which did not contain the receipt stamp.

B2  
B2|16  
B3|11

8.012 The differences in these signatures are best illustrated below:

<b>Abland Proposal Containing Procurement Receipt Stamp</b> <b>B2 16</b>	<b>Abland Proposal without Procurement Receipt Stamp</b> <b>B3 11</b>
<p>Figure 5</p> <p>Yours faithfully,</p>  <p><u>WILLEM V.D. WESTHUIZEN</u></p>	<p>Figure 6</p> <p>Yours faithfully,</p>  <p><u>WILLEM V.D. WESTHUIZEN</u></p>

8.013 We also observed when we examined these documents that, the proposal from Abland which contained the receipt stamp, the signature of their representative (Mr Thinus Delport) (Figure 5 above) was not an original signature but appeared to be scanned or a copy which was pasted onto an electronic copy and then printed. However, all the other proposal documents for Abland, in the possession of the Electoral Commission, had the original signature of Abland's representative (Mr Willem van der Westhusizen) (Figure 6 above) appended thereon.

B2|2  
B3|11

**Allegation that Abland's Proposal was emailed to Electoral Commission**

8.014 The aforementioned observation raises further suspicions regarding Abland's proposal since we were informed by a National Treasury representative when we commenced with the investigation that there was an allegation that had been made that Abland's proposal was emailed to Mr Langtry and was not placed in the tender box by Abland.

8.015 Before we came to know about the abovementioned Abland's proposal containing the procurement receipt stamp thereon we were unable to corroborate this allegation. However, in view that the signature (Figure 5 above) was appended on the proposal electronically and then printed would indicate that this may have been done so that the document could be emailed or electronically delivered. Whether it was in fact electronically delivered to Mr Langtry cannot be proved at the time of issuing this report although, had it been electronically sent to him, we would not be able to state that this would have been irregular since the advertisement had indicated that bidders were required to submit their proposal to Mr Langtry. It is for this reason why there is a concern as to why bidders had in fact placed their proposals in the tender box in the first place.

B2

B2|16

8.016 Furthermore, Mr Langtry disputes that Abland's proposal had been delivered to him by email and states in his affidavit dated 29 November 2013 that *"to my recollection, I did not receive any bid document from Abland or any other bidder by email."* Abland representatives, when asked on 21 November 2013, which include Mr Delport, indicated that they would need to go and investigate to determine if they emailed their bid. In their response dated 5 December 2013 they stated:

E7|7

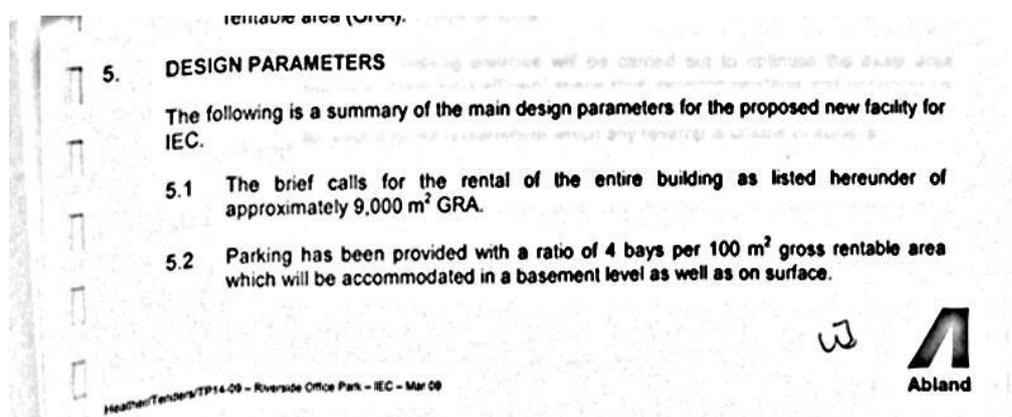
H2|3

*"We believe that what most probably happened was that the document signed by Mr Delport was emailed to the IEC's Mr Langtry on the afternoon of the proposal submission and he recalls that he was concerned at the time that the Development Manager responsible, Mr van der Westhuizen, might be delayed as a result of the heavy traffic between Bryanston and Arcadia, and he believes that he emailed a proposal document to Mr Langtry which he signed after Mr van der Westhuizen had left Johannesburg office of Abland to deliver the proposal to the IEC in Arcadia. It is also noted that the proposal call advert did not stipulate that submissions could not be emailed."*

**Other Anomalies Noted on Abland's Proposal**

- 8.017 We have also observed from the examination of Abland's proposal that the numbering of their paragraphs from page three to four do not follow in consecutive order. For example, page three ends with paragraph 5.2 (refer to Figure 7 below) whilst page four (Figure 8 below) commences with paragraph 6.2. This observation suggests that paragraph 6 and 6.1 have disappeared from the original document / proposal that was prepared by Abland.
- 8.018 Extracts from page three and four of Ablands proposal is illustrated in Figure 7 and Figure 8 below:

**Figure 7**



**B2|9-10**

**B3|4-5**

**B2|9**

**B3|4**

Figure 8

B2|10

B3|5

Page 4

DESCRIPTION	GROSS RENTABLE AREA
Ground Floor	2,250 m <sup>2</sup>
1 <sup>st</sup> Floor	2,250 m <sup>2</sup>
2 <sup>nd</sup> Floor	2,250 m <sup>2</sup>
3 <sup>rd</sup> Floor	2,250 m <sup>2</sup>
<b>Total Office Area</b>	<b>9,000 m<sup>2</sup></b>
Basement Storage	On Request
Basement Parking	149 bays
Covered Parking	151 bays
Open Parking	60 bays
<b>Total Parking</b>	<b>360 / bays</b>
<b>Parking Ratio</b>	<b>4 bays / 100m<sup>2</sup></b>

NOTES:

- a) More parking is available on request.
- b) On completion of the development, the project architect will certify the areas according to the current SAPOA method of measurement and the rental price will be adjusted accordingly.

6.2 Building Specification (Refer to Annexure D for a copy of the specifications)

6.2.1 The building will be constructed according to commercial office A grade specification and finishes.

8.019 Abland have indicated that there is nothing untoward about the omission of paragraphs 6 and 6.1 from their proposal as the design parameters depicted in paragraph 5.1 and 5.2 in their proposal are included in the table on page 4 (Figure 8) of their proposal. As a result, according to the Abland representations it was merely a typographical error that occurred when the proposal was prepared as there was a huge amount of pressure to have it completed within the timeframes whilst they had their own internal challenges in delivering the proposal before the deadline.

8.020 It should also be mentioned that, during our interview with representatives of Abland, Mr Thinus Delpont indicated that Abland had not seen the advertisement that had appeared in the five newspapers as discussed in preceding paragraphs of our report. In fact, he was alerted to it by one of their partners who they were involved with in the Westend Office Park project which premises were also included in one of the proposals received from Khwela City.

**B1**

**B4**

**Evaluation of Ten Bid Documents**

**B8 - B9**

8.021 Once Mr Langtry received the ten proposals from the bidders who responded to the advertisement, he examined their proposals and prepared a schedule containing information from each bid document which information was recorded in the column with the following headings:

**B9**

**E7|11**

- 1.) Location: Pretoria / Centurion;
- 2.) Approx. 9000 square meters;
- 3.) New building;
- 4.) No less than 300 under cover parking spaces;
- 5.) Easy access to a motorway;
- 6.) Proximity to shopping and eating facilities;
- 7.) Proximity to schools, banks and general medial facilities;
- 8.) Access to public transport;
- 9.) Occupation date on 1 April 2010; and
- 10.) Price.

8.022 We shall not discuss the detailed content of information contained on this schedule in this particular section of our report as we have dealt with it in subsequent paragraphs of this report<sup>1</sup>.

**Email Mr Langtry to Mr du Plessis dated 13 May 2009**

**B8**

8.023 On 13 May 2009 at 02:43PM, Mr Langtry sent an email to Mr du Plessis<sup>2</sup> titled "National Office Accomodation" with an attachement titled "Office Accomodation Needs Evaulation.doc" being the evaluation schedule that was briefly mentioned above.

**B8**

8.024 We shall not attempt to summarise the content of Mr Langtry's aforementioned email to Mr du Plessis but, instread, have recorded the detailed content below in order to appreciate the purpose and objective of this email:

*"Dear Norman*

**B8**

*I have arranged with Procurment for you to receive the hard copies of all the submissions together with the attached summary of the evaulations of the subsmissions. The ones highlighted in green meet our requirements in terms of the advert; the ones marked in pink meet some of our requirements but lack sufficient detail to answer all; and the rest do not comply.*

*The CEO was of the view that we should invite the three who meet our requirements to make a presentation.*

*Regards,*

*Stephen"*

---

<sup>1</sup> Refer to paragraph 10.000 to 10.064.

<sup>2</sup> He also copied the email to Susan Fourie and Marius Steyn (The Procurement Manager at the Electoral Commission).

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8.025 Mr Langtry stated the following with regards to the process followed after he had completed the evaluation schedule. *“Once I had completed the schedule, I informed Adv Tlakula that I had completed the abovementioned exercise who in turn instructed me to put the matter on the agenda for the subsequent Exco meeting so that the matter could be finalised. Adv Tlakula and I did not discuss my findings from the examinations of all the proposals neither did she or anyone else for that matter, attempt to coerse or influence me into manipulating the numbers and information on my evaluation schedule to favour a particular bidder, especially Abland.”*

8.026 Based on the content of Mr Langtrys email above, it would be reasonable to conclude that any bidder who did not meet any of the requirements were not highlighted by Mr Langtry on his evaluation schedule. We can conclude, based on the content of this email and the examination of Mr Langtry’s evaluation schedule, that the following is a summary of his assessment (Figure 9 below) as to which bidders met all, met some or did not meet any of the requirements of the Electoral Commission:

**B9**

**Figure 9**

No	Name of Bidder	Location	Met Requirements or Not	
1	Khwela City	Centurion	Did not Meet IEC requirements	✘
2	Blackstone Property Fund	Centurion	Met some of IEC requirements	⚠
3	Slipknot Investmnets 74(Pty) Ltd	Centurion	Did not meet IEC requirements	✘
		Midrand	Did not meet IEC requirements	✘
4	Mookoli Properties	Centurion	Met some of IEC requirements	⚠
5	Tony Moore Acrhitects	Pretoria CBD	Did not meet IEC requirements.	✘
5	RCP Brokers	Centurion – Earls Court	Met some of IEC requirements	⚠
		Centurion – Eco Glades	Met some of IEC requirements	⚠
		Centurion – Eco Point	Met some of IEC requirements	⚠
		Centurion – Eco Court	Did not meet IEC requirements	✘
6	One Vision Investments 179 (Pty) Ltd	Centurion	Did not meet IEC requirements	✘
7	Menlyn Corporate Park / Mvelaphanda Consortium JV	Menlyn Pretoria	Met IEC requirements	✔
8	JHI Properties	Ashlea Gardens, Pretoria	Met some of IEC requirements	⚠
9	New Leaf Property Agency	Pretoria CBD	Met IEC requirements	✔
10	Abland (Pty) Ltd	Centurion	Met IEC requirements	✔

**Key**

- ✘ Did not Meet IEC requirements
- ⚠ Met some of IEC requirements
- ✔ Met IEC requirements

**EXCO Minutes for 15 May 2009**

D5

8.027 Item 5.7 of the EXCO minutes for their meeting held on 15 May 2009 reflect that the abovementioned evaluation summary report was presented to the members of this Committee and it was noted. The minutes reflect that Adv. Tlakula wanted presentations from the three shortlisted bidders however the Committee resolved that the shortlisted candidates should be extended to a fourth candidate.

D5|2

8.028 Due to the importance of what is recorded in these minutes regarding the extent or the lack thereof of any evaluation of the bids done by the members of EXCO the exact details of the minutes is set out below:

“5.7 National Office accommodation

D5|2

*The evaluation summary report was noted. The CEO had asked for arrangements to be made for presentations from the three short-listed submissions.*

*It was agreed that the short list would be expanded. The following submissions would be considered in the next stage through presentations:*

- *Mookoli Properties (Centurion)*
- *Menlyn Corporate Park/Mvelphanda Consortium JV (Menlyn)*
- *New Leaf Property Agency (Pretoria)*
- *Abland (Centurion)*

*The presentations would be organised on the return of the CEO”.*

8.029 Based on the content of these minutes, we can conclude that the members of EXCO, who attended the meeting, resolved that the four candidates be requested to make presentations to them on their proposal. These four shortlisted candidates being the following:

D5|1

D5|2

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- 1.) Mookoli Properties (Centurion);
- 2.) Menlyn Corporate Park / Mvelaphanda JV (Menlyn);
- 3.) New Leaf Property Agency (Pretoria); and
- 4.) Abland (Centurion).

8.030 Adv. Tlakula was not in attendance at this meeting as the minutes reflect that she had provided her apologies and since she was not present, the meeting was Chaired by Mr du Plessis. Also in attendance at this meeting were the following:

**D5|1**

- 1.) Mosotho Moepya - DCEO (E)
- 2.) Tshidi Tabane-Masutha - DCEO(O)
- 3.) Zolisa Mafuya – CFO
- 4.) Libisi Maphanga – CIO
- 5.) Stephen Langtry - M:Office of the CEO [Secreteriat]

8.031 The minutes do not indicate that the committee members evaluated or discussed the content of the proposals that were received from each of the ten bidders who responded to the invitation of the Electoral Commission. In fact, it is recorded in the minutes that “the evaluation summary report is noted”. This could indicate that the entire evaluation and short listing process was done by Mr Langtry and not by EXCO.

**D5|2**

8.032 Mr Libisi Maphanga (**Mr Maphanga**), the Electoral Commissions Chief Information Officer, confirmed in our interview that he could not recall the Committee examining all the proposals received for this matter. He stated that they merely relied on the evaluation summary schedule that was prepared by Mr Langtry and, based on the recommendations made, the members accepted most of these.

**E9|10**

8.033 Mr Maphanga stated that it was an usual procedure for the evaluation to go through a two step procedure. First is primary approach, which involves admin related issues, and then a secondary approach, which involves technical related issues. Once a specific matter has gone through this two step approach, a recommendation is made to EXCO in a report who would then examine the report. If there is nothing questionable EXCO would accept the recommendations. However, should there be something that may require further intervention or probing, then the members of this committee would query this with the evaluation committee or whoever presented the report to the committee.

**E10|4**

8.034 Mr Maphanga went on further to say that EXCO does not usually go through bid submission documents, when an evaluation report is presented to the Committee, it is generally accepted that the information presented has been correctly recorded and that there are no errors with the information.

**E10|4**

8.035 Mr Maphanga in his affidavit dated 9 December 2013 states as follows regarding the extent of evaluation done by EXCO on the bids and the summary presented by Mr Langtry:

*“When EXCO did the assessment where 2 additional companies were added, we worked mainly off, and relied on, the report or spreadsheet that was presented to us. EXCO did not go through the actual proposal documents of the various companies to check if the spreadsheet was correct. EXCO relied on the verbal explanations given or the information in the spreadsheet to assess the companies to further verify the details for the final recommendation. EXCO doesn’t usually go through all the bid submission documents and analyse all of them, we rely on the assessment reports and only call for original documentation if there is something that is not clear and needs to be verified. EXCO’s role in this process (as with all big procurement items) is to consider the assessment of the bids from the adjudication committees and advise the CEO. Usually there are primary and secondary evaluations conducted on bids or tenders which result in recommendations made to EXCO. EXCO looks at the recommendations, if it complies with the requirements and, if there is nothing questionable, EXCO will approve the recommendations. On average we never look at all at the submissions at EXCO level.”*

E10|4

8.036 Mr Du Plessis in his affidavit dated 9 December 2013 states as follows regarding the extent of evaluation done by EXCO on the bids and the summary presented by Mr Langtry:

*“The scheduled of options presented by Stephan Langtry did serve as a guide for the EXCO meeting but was by no means the only basis on which the options were evaluated. Bid documentation was available and was frequently referred to/consulted by individual members of the Committee. I cannot recall who looked at which bids but the primary aim was to select options that had the size of the building we needed and offered an occupation date of no later than 1 April 2010. Apart from the three options identified by Stephan Langtre no other option that provided all the information required to be submitted by the bid invitation met our requirements. We included Mookoli to expand the*

E8|22

*number of options since they came closest to meeting the requirements.”*

8.037 This is a contradiction to what Mr Du Plessis said regarding this matter when he was interviewed on 5 November 2013, an extract of the relevant section of the transcript is set out below:

**E8|119-124**

*MR WHITE: Right, let's go back to my question.*

*My question is, was Exco in terms of the CEO's instruction, performing the functions that were normally performed by bid evaluation ...*

*MR DU PLESSIS: By bid evaluation, yes.*

*MR WHITE: So their job was to evaluate the bids and make a recommendation on one, two shortlist, whatever?*

*MR DU PLESSIS: Yes.*

*MR WHITE: So that was Exco's function?*

*MR DU PLESSIS: That's correct.*

*MR WHITE: Okay on the 15<sup>th</sup> of May 2009, have you got the minutes? This ended up with Exco.*

*MR DU PLESSIS: That's correct.*

*MR WHITE: Can you explain to us what happened in that meeting and the process that was followed?*

*MR DU PLESSIS: I presided with that meeting. The CEO was not in the country at the time. Stephen identified three buildings that he, in his view complied with the requirements. We went through the whole list and had four companies identified as potentially meeting the requirements. And we listed four companies for presentations. Not only the three that he regarded as complying with requirements.*

*MR HUCKER: So you went through a list, was there ...*

*MR DU PLESSIS: The whole ten, ten that was submitted. We had all of them attached.*

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MR WHITE: *So what did you actually do? Did Stephen present that A3 spreadsheet?*

MR DU PLESSIS: *That's correct.*

MR WHITE: *And he said, I've identified three that I think meet the requirements ...*

MR DU PLESSIS: *The requirements.*

MR WHITE: *... but here's the whole list?*

MR DU PLESSIS: *Yes.*

MR WHITE: *What did the committee actually do? What did Exco actually then do? Very important for me, I don't want to sound like I'm being pedantic, but I'm trying to understand exactly what you then did? Considering that you the evaluation committee, so what exactly did Exco then do?*

MR DU PLESSIS: *On the basis of this, although these were available, but I'm not saying we (inaudible).*

MR WHITE: *Okay, question. I need to be very specific here ...*

MR DU PLESSIS: *Yes, and I'll be specific in my answer. We went through this list and verified whether or not they met our requirements. And in our view his three were identified, he identified correctly, when we identified the fourth company, which was McAuley (Mookoli), which in our view, collective view, also met the requirements or potentially met the requirements and that should make a presentation.*

MR WHITE: *Okay, to come back to that. How did you decide whether they met the requirements? What was the deciding fact?*

MR DU PLESSIS: *Well the first criteria is size. If a building was too small, less than nine then it fell off. If it was substantially more than nine then it fell off.*

MR WHITE: *Okay.*

MR DU PLESSIS: *Because that meant ...*

MR WHITE: *No, I understand fully, ja.*

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MR DU PLESSIS: *That's where we started.*

MR WHITE: *Okay. Did you have to meet the criteria of every one of those columns?*

MR DU PLESSIS: *Not necessarily. But if you, obviously if you didn't provide the information one could not decide.*

MR WHITE: *Okay.*

MR DU PLESSIS: *Because you can't decide on the basis of what is not there.*

MR WHITE: *How did people at the committee decide whether that spreadsheet was correct or wrong?*

MR DU PLESSIS: *No, I don't think we questioned it, but we had these, the tenders were available where we wanted to look. I can't recall to what extent we actually looked or didn't look at or verified any particular detail.*

MR WHITE: *With respect, it's exceptionally important to, whether you verify the information on that spreadsheet to these documents or not.*

MR DU PLESSIS: *I cannot recall. If I cannot recall then the answer to that would probably imply to not to any great extent. Because if I actually paged, I assume I accepted, I would have recalled, I can't recall that I actually went through every single one of them page by page by page. That I don't think I did.*

MR WHITE: *Okay, is that not the job of an evaluation committee?*

MR DU PLESSIS: *That is what we ...*

MR WHITE: *To read the bid documents? Is that not the evaluation committee's responsibility? Let's take it outside of this. You've got an evaluation committee looking at the purchase of, say counting votes or procurement of ballot papers, supply of ballot papers. Do you not require that evaluation committee to read the full document that is presented, to see what they're offering, what the conditions are, whether they're going to etcetera etcetera around it? Would you not expect that the evaluation committee reads every bid cover to cover that is presented? Let's not talk about (inaudible), let's go back to our normal evaluation committee.*

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MR DU PLESSIS: Yes, you would.

MR WHITE: They would read that? They wouldn't rely on one person in the supply chain to have done a summary and then they only look at the summary? That wouldn't be a normal process?

MR DU PLESSIS: The evaluation committee would have to look at it more carefully. I accept that.

MR WHITE: Okay, so, cause that's my understanding, and I've investigated procurement in public sector since ninety-seven. In fifteen years that's the normal evaluation process. You would read it cover to cover. Some of these evaluations must take two days, cause that's how long it takes. And that's why normally you would ask for a number of copies equal to the number of people on the evaluation committee, so they can all look at the same document at the same time. This process, it wasn't like that so they couldn't. So effectively Exco, acting as evaluation committee relied upon what Stephen put before them?

MR DU PLESSIS: I think generally that statement would be true.

MR WHITE: If there's mistakes in that spreadsheet you then won't know?

MR DU PLESSIS: On that basis, no.

MR WHITE: I can tell you now, there's mistakes in that spreadsheet, cause we've done the exercise. We've been through all these documents. There's errors in it. A lot of the information where he says it's not clear, it's in here. It's in. It's easy to find, it's not difficult to find. So that spreadsheet is wrong. There's one error on that spreadsheet that somebody picked up and subsequently fixed. If you look at Avland at the bottom. It's got R171 a square metre. When was that error pointed out to Exco?

MR DU PLESSIS: I honestly don't know.

MR WHITE: Was that picked it up during your meeting?

MR DU PLESSIS: Whether that was part of the, whether it was picked up in the meeting or before the meeting I honestly don't know.

MR WHITE: *But the document that appears to have been tabled at the meeting is that document, which has got the wrong price in it?*

MR DU PLESSIS: *I really, I really can't recall. I'd be lying to you if I give you an answer to that.*

8.038 Mr Moepya in his affidavit dated 9 December 2013 states as follows regarding the extent of evaluation done by EXCO on the bids and the summary presented by Mr Langtry:

*"I recall that various proposal documents were available at the EXCO meeting of 15 May 2009. I personally would not be able to comment on the details of the proposal documents as they were at the meeting of 15 May 2009, save to indicate that to the extent that I needed to refer to the documents, I could do so.*

*At the EXCO meeting of 15 May 2009 I recall that Mr Langtry explained the considerations taken into account, as per the request for proposal issued for this purpose. EXCO deliberated on the responses and information provided by Mr Langtry. I did not request a separate set of duplicated proposal documents before or at the meeting. I cannot comment on whether or not there may have been more than one copy of any specific proposal available at the EXCO meeting of 15 May 2009. I deemed that there was sufficient information available to me to make recommendations, as was eventually the case.*

*I used the spreadsheet provided by Mr Langtry for purposes of making my recommendations. I did so after clarifying issues that may have not been clear to me at the time".*

E9|9

8.039	<p>Based on the information contained in the minutes and the responses received from Mr du Plessis, Mr Maphanga and Mr Moepya who were EXCO members at the time and at the meeting on 15 May 2009, it is reasonable to conclude at this point that the evaluation of the ten proposals that were received in relation to the specific invitation was done by Mr Langtry only. This is despite the fact that Adv. Tlakula wanted the first process, where the award was going to be made to Menlyn Corporate Park, stopped as she had some discomfort in the procedures that were followed.</p> <p><b>EXCO Minutes for 19 June 2009</b></p>	D5 2
8.040	<p>Item 5.7 of the EXCO minutes for their meeting held on 19 June 2009 indicates that EXCO considered all the shortlisted proposals and resolved to exclude Mookoli Properties and New Leaf Agency and, with respect to the remaining two bidders, namely Abland and Menlyn Corporate Park, it was resolved that:</p> <ol style="list-style-type: none"><li>1.) <i>“Site visits had to be organised;</i></li><li>2.) <i>The submissions had to be subjected to scoring in terms of the PPPFA; and</i></li><li>3.) <i>The Commission should be asked to consider the proposals at their next meeting.”</i></li></ol>	D6 D6 2-3
8.041	<p>The minutes are not clear who attended this meeting, apart from the Electoral Commission’s representatives. The names of the representatives of the shortlisted candidates are not disclosed in these minutes and at first glance one would not be able to validate from these minutes that these entities did in fact give presentations to EXCO.</p>	D6 1-3

8.042 However, it would be reasonable to conclude that presentations were in fact given at some point during this EXCO meeting since the following is recorded in these minutes:

*“With respect to Mookoli Properties, it was noted that the rental on occupation would be R120 per square meter. Occupation would be in October 2010.”*

*With respect to Menlyn Corporate Park, it was noted that the current rental would be R110 per square meter and that escalation would be 10% per annum. Occupation would be with effect from 1 April 2010 since construction had already started. They would provide additional information on their BEE partner.*

*With respect to New Leaf Property Agency, it was noted that the current rental would be R170 per square meter and that escalation would be 10% per annum. Occupation would be with effect from June 2010.*

*With respect to Abland, it was noted that the current rental would be R102 per square meter and that escalation would be 9% per annum. Occupation would be with effect from 1 August 2010<sup>1</sup>.*

*After considering the proposals, EXCO agreed to eliminate the submissions of Mookoli Properties and New Leaf Agency.”*

**D6|3**

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<sup>1</sup> Occupation date has changed from 1 April 2010 to 1 August 2010.

8.043 The minutes also reflect that the following representatives of the Electoral Commission were present at this meeting:

**D6|1**

- 1.) Adv. Tlakula - CEO [Chairperson]
- 2.) Mr du Plessis - DCEO ( C )
- 3.) Mr Mosotho Moepya - DCEO (E)
- 4.) Mr Tshidi Tabane-Masutha - DCEO(O)
- 5.) Mr Zolisa Mafuya - CFO
- 6.) Mr Libisi Maphanga - CIO
- 7.) Mr Langtry – Manager in the Office of the CEO [Secreteriat].

8.044 We have also determined from an email that was copied to us that the presentations were made to EXCO on 19 June 2009, since the invitation to one of the shortlisted candidates, as illustrated in Figure 10, below reflects that this shortlisted candidate was invited to give presentations to EXCO on 19 June 2009 at 11:30 to 12:00 at Election House at 260 Walker Street, Sunnyside.

**Figure 10**

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**From:** Kobokana, Nobathembu  
**Sent:** 02 June 2009 11:29 AM  
**To:** 'johan@neteffect.co.za'  
**Cc:** Langtry, Stephen  
**Subject:** FW: Re-Presentation

Dear Sir

This serves to invite you to do a presentation on the relocation proposal to the IEC EXCO on Friday the 19<sup>th</sup> of June 2009 at our offices at **11h30 to 12h00** the CEO's Boardroom at 5<sup>th</sup> Floor. The full address for our offices is :

[Election House](#)  
[260 Walker Street](#)  
[Sunnyside](#)

[Tel: 012 428 5516](#)

Kindly confirm your availability as soon as possible.

Regards,

[Tembu Kobokana](#)  
[PA: Office of the Chief Electoral Commission](#)

**Commission Minutes for 6 July 2009**

D7

- 8.045 The minutes of the Commission meeting held on 6 July 2009 indicates in item 9.1 "Report of the CEO" that the matter relating to office accommodation was dealt with in the report of Adv. Tlakula to the Commission. These minutes reflect the following under the heading Renting Office accommodation:

D7|7

*"The CEO reported that the process for renting of new office accommodation was redone as the previous one did not adequately follow the required procedures. Two buildings were identified as suitable, one in Menlyn Park and the other in Centurion.*

*Commissioners had an on-site visit to the two places. **Noted***

*After discussion, **agreed** that the building in Centurion is preferred.*

*The CEO was requested to investigate the possibility of moving into this building earlier than August 2010, as this date is too close to the elections in 2011."*

**Report of the Chief Electoral Officer for the Commission Meeting of 6 July 2009**

D8

- 8.046 The report of Adv. Tlakula has also been examined and we have been able to determine that the matter relating to the National Office Accommodation is dealt with from pages 10 to 11 of her report.

D8|10-11

- 8.047 The content of this report, as it relates to National Office Accommodation, is repeated directly from the report of Adv. Tlakula for ease of reference:

D8|10-11

*"In March, an advertisement was placed in various newspapers, inviting proposals to respond the Commission's national office accommodation needs. Ten proposals were received. These proposals were evaluated against the Commission's requirements as stipulated in the advertisement.*

## NATIONAL TREASURY

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*On 15 May 2009, EXCO considered the proposals and shortlisted four proposals, which met the minimum requirements, for further consideration. The four respective developers were invited to make presentations to EXCO on 19 June 2009. The developers in question are:*

- Mookoli Properties (Centurion)*
- Menlyn Corporate Park / Mvelaphanda Consortium JV (Menlyn)*
- New Leaf Property Agency (Pretoria);*
- Abland (Centurion)*

*After the presentations, two proposals were eliminated. Documentation on the two remaining proposals have been made available to the Commission. In addition, site visits were organised for those two on 30 June. A summary of the two proposals follow below.*

<b>Requirements</b>	<b>Menlyn Corporate Park /- Mvelaphanda Consortium JV</b>	<b>Abland (Pty) Ltd</b>
Location: Pretoria / Centurion	Menlyn, Pretoria	Centurion
Size: Grade A building, approx. 9 000 square meters	9 059 sqm	9 000 sqm
New building: Preference	Yes	Yes
Parking: No less than 300 under cover parking spaces	300 basement parking; 20 open parking	149 basement parking; 151 covered parking; 150 open parking
Access: easy access to a motorway and public transport	Easy access and close proximity to the N1; on taxi and bus routes	910 m from N1; 3.4 km from N1, 1.3 km from Gautrain Station
Proximity to shopping and eating facilities	Close to Menlyn Shopping Centre and adjacent to Menlyn Retail Park.	Centurion Mall within 440 m

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Proximity to schools, banks and general medical facilities	Several schools, banks and medical facilities close by	7 high schools and several other schools within 3 km; Unitas Hospital is located within 4.5 km
Occupation: 1 April 2010	<u>1 April 2010</u>	<u>1 August 2010</u> (based on information provided at presentation to EXCO)
Price	R110.30 per sqm for office area; R522 for basement parking; R350 for open parking  (Total = R1 162 807.70 per month)	R102 per sqm for office areas; R450 for basement parking; R250 for open parking; R350 for covered parking  (Total: R1 075 400.00 per month)

*Based on the 90/10 point scoring, the two proposals rank as follows:*

- 1.) *Abland (Pty) Ltd – 92.500*
- 2.) *Menlyn Corporate Park – 86.018”*

8.048 It is apparent from the information contained in the aforementioned table of the report of Adv. Tlakula that EXCO and the Commission considered it acceptable for Abland to amend their occupation date from 1 April 2010 to 1 August 2010. Although we have not discussed the evaluation schedule report prepared by Mr Langtry, it appears that one of the candidates, namely Khwela City, was disqualified since their occupation date was only 1 June 2010 which did not meet the Electoral Commission’s requirements of 1 April 2010, and yet they were considered in the evaluation as failing to meet the Electoral Commission’s requirements.

**9.000 LEASE AGREEMENTS AND ADDENDUM AGREEMENTS**

9.001 In view that Real FMG has examined the proposal, lease and the various addenda that was entered into between the Electoral Commission and Abland, we will not explain these various documents but rather summarise the content or in some instances, repeat the content thereof verbatim as it appears in their report, as it concerns the lease and Abland's proposal. However, before doing so, we would recommend that their report be read in its entirety in order to appreciate the content of their findings and conclusions.

9.002 Paragraph 7 of Real FMG's report reflects that lease between the Electoral Commission and Abland comprised of four main documents namely the following:

- 1.) The original Lease Agreement entered into in August 2009;
- 2.) The first Addendum to the lease dated April 2010;
- 3.) The second Addendum to the lease dated April 2011;
- 4.) The third Addendum which is actually stated as "Second Addendum" to the lease dated March 2012.

**Lease Agreement: Abland & the Electoral Commission - 21 August 2009**

9.003 The first document is the original Lease Agreement that was entered into between the Electoral Commission and the following parties dated August 2009:

- 1.) Abland (Pty) Ltd;
- 2.) East and West Investments (Pty) Ltd;
- 3.) Copper Circle Central Investments 147CC; and
- 4.) South Central Investments 147CC.

F1|11

C1

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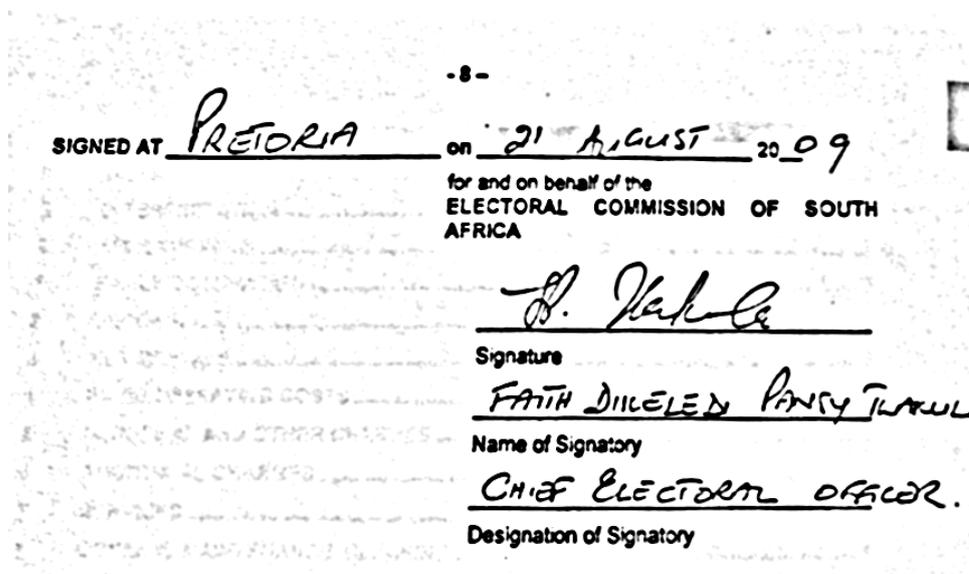
9.004 Real FMG performed an analysis of the various lease conditions and main schedules of the main lease with the addenda and amendments made in those addenda and are dealt separately in paragraph 8 of their report. These are also discussed hereunder in subsequent paragraphs of our report.

F1|13-16

9.005 We have also determined from our examination of this Lease Agreement that, according to the date on the Lease Agreement, Adv. Tlakula signed the Agreement on behalf of the Electoral Commission on 21 August 2009, this was prior to the Electoral Commission receiving all their original Tax Clearance Certificates. A copy of her signature, as it appears on this Agreement is illustrated in Figure 11 below.

C1|8

Figure 11



**Comments on the Lease Agreement - Real FMG**

9.006 Paragraph 8 of the Real FMG report deals with their various comments based on the analysis of the lease agreement. For ease of reference, we have repeated these comments verbatim below without attempting to summarise the pertinent issues that arise from their findings.

F1|13-16

**Comments on Summary Schedule**

Clause 1.4	The leased premises as described now measure 9435.5m <sup>2</sup> . The original proposal called for 9000m <sup>2</sup> . The strategic space planning report dated 24 <sup>th</sup> of July 2009 and prepared by Spacejam Pty Ltd, indicated that the space requirement of the IEC was some 8150.48m <sup>2</sup> . Our comments above with regard to the space requirements refer.	F1 13
Clause 1.5	The lease period is shown as 10 years. The original proposal was for a five-year lease as per the IEC's original advert. This is not an unusual change, but we believe that the effect of such a change should have the impact or a reducing effect on some of the other commercial terms of the lease. Typically this would be reflected in a reduced rental, or a reduced escalation rate, or an adjustment to the tenant allowances for specification of the building. None of these have occurred. The rationale for the lease extension is unknown to us.	F1 13
Clause 1.6	The beneficial occupation date is given as 30 July 2010.	F1 13
Clause 1.7	The commencement date of the lease is given as 1 September 2010, subject to clause 2.1.7 of annex E (Note: Annex E deals with the construction of the leased premises.) This is inconsistent with the proposal date of April 2010 as contained in the Abland Proposal. Given the size and nature of the premises this is not an unusual change, our only comment being that the original proposal was too optimistic.	F1 13
Clause 1.8	A deposit guarantee equivalent to 3 months rental is requested. This is well within the normal commercial norms. Further details of the calculation of the final amount of the deposit, including explanation of the term "months rental" is given in clause 2 of the general conditions of lease.	F1 13

Clause 1.9 This rental table was the focus of some investigations previously. An explanation has been provided as to the variance between the original rental amounts quoted in the proposal and those appearing in the table. This variance is accounted for by the escalation in rentals from those provided on the April 2009 proposal date and the eventual commencement of September 2010, being one year and five months. These amounts have been calculated in accordance with the terms of the original proposal. Our only comment in this regard is that the terms of the original advertisement gave rise to some ambiguity as to how the rental should have been presented. The original advert says, “the all-inclusive costing/rental and annual escalations on a current day basis must be indicated”. Typically any development proposal would require that the final or construction period escalated rental should be presented. In other words, the rental that is expected to be the final rental as at date of completion of the project is what is typically quoted. Having said that it is entirely reasonable for the IEC to have requested this and for the respondents to have quoted as such. We merely note the terminology used was somewhat ambiguous in the original advert. Importantly though, we have no evidence of the arrangement whereby the escalations are agreed to be escalated and at what rate.

F1|13

Clause 1.11 This clause deals with the definition of operating costs. The definition of operating costs is consistent with what we would have expected for a park of this nature. However the exclusion of certain items in the lease definition and the adjustment of the rate to R14.40/m<sup>2</sup> in the Addendum has raised some questions. Given those exclusions the amended rate appears to be in excess of market rates. See our comments on operating costs above.

F1|14

9.007 Other than what is described above, Real FMG did not identify any additional unusual aspects to the summary schedule of the original lease.

**Comments on General Conditions of Lease**

9.008 Paragraph 8.2 of Real FMG's report deals with their specific comments with regard to the "General Conditions of Lease" and once again, we have repeated their comments verbatim without attempting to summarise their findings and observations in this regard.

*Clause 1 This clause deals with early occupation for the purposes of fitting out, otherwise referred to as the tenant's beneficial occupation. This clause refers to the "tenant beneficial occupation date," but no date or definition as to what constitutes the beneficial occupation was provided. The clause refers to annex E, but no definition of beneficial occupation is referred to provide in that annex either. We raise this for completeness sake only as the turnkey nature of the development and the treatment of tenant items by the contract made this definition moot.*

*Clause 2 This clause deals with the provisions relating to the deposit. The provisions of this clause are within the normal commercial parameters.*

*Clause 3 This clause refers to specifically to the definition of net rentals as contained in clause 1.9 of the summary schedule and the provisions hereof are well within normal commercial parameters. It must be noted that clause 3.1 specifically reports that the net rental is will be based on the final measurement of the leased premises as determined by the landlord architect in accordance with the South African Property Owners Association methods. This clause gives rise to area adjustment in terms of the second and third addendum to the lease. This is entirely normal. However, we refer to the comments made in the attached report with*

F1|14

F1|14

F1|14

F1|14

	<i>regard to the applicability of this clause as compared to the original proposal.</i>	
Clause 4	<i>Our previous comments made elsewhere with regard to the definition of “fixed operating costs” refers. There is a difference between the actual operating costs originally proposed in Abland’s proposal and “fixed operating costs” as is currently being charged.</i>	F1 14
Clause 5	<i>These provisions, related to municipal and other charges, are entirely within the normal commercial norms.</i>	F1 14
Clause 6	<i>There are a number of sub clauses that are of concern. These clauses are 6.1 (security) and 6.3 (lifts, air conditioning equipment, and mechanism installations). These items had originally been included in the operating costs definitions in the proposal and excluded in the lease. Our previous comments on operating costs refer.</i>	F1 15
Clause 8	<i>This clause deals with general maintenance cleaning and housekeeping. Clause 8.1 specifically excludes the roof, the outside walls, the water pipes, lifts, air conditioning units equipment and mechanical installations from the tenant obligations to maintain the leased premises. This is consistent with the original proposal terms, but is inconsistent with the other terms of the lease, specifically those relating to clause 4 – fixed operating costs – and clause 1.11 in the summary schedule. Again, our previous comments on the operating costs refer. In short there are some fundamental inconsistencies between the original proposal, the lease document and even in the various parts of the lease document with regard to how operating costs would be charged, for what they would be charged and where the responsibilities for these items lie.</i>	F1 15

Clause 9, 10, 11, 12, 14, 15, 19, 20 and 21.	<i>These provisions are within the normal market parameters.</i>	<b>F1 15</b>
Clause 13	<i>These provisions are within the normal market parameters. We do however note the provisions of clause 13.3 as being contrary to the landlord's obligations to maintain and repair common areas of the property.</i>	<b>F1 15</b>
Clause 16	<i>This clause allows the tenant to fix or paint signs, etc. on to any portion of the leased premises, but it may only do so with the landlord's prior written consent. This does not cater for all the signage outside the property facing the Oval Road. The tenant's right to that signage is not contained in the lease.</i>	<b>F1 15</b>
Clause 17	<i>The provisions of this clause within normal market parameters. I've (sic) only comment is that the public liability insurance of not less than R5,000,000 is perhaps slightly low, but not unduly so.</i>	<b>F1 15</b>
Clause 18	<i>The damage to or destruction of the leased premises provisions are within the normal commercial parameters. However, with hindsight, it may have been prudent for the IEC to retain the right to terminate the lease agreement in the event of damage or destruction and for the landlords to insure themselves against the loss of income as a result. We state this purely because of the IEC's role and its need to operate even while leased premises are rebuilt or repaired.</i>	<b>F1 15</b>
Clause 23	<i>This is a recordal of the commercial arrangement. The terms of which are within the normal market parameters.</i>	<b>F1 16</b>

*Clauses 24, 25, 26, 27 and 28*      *The provisions of these clauses are boilerplate and within the normal commercial market parameters.*

F1|16

**Addendum to Lease Agreement – 12 April 2010**

F1|11

9.009      The second Addendum to the Lease Agreement is the Addendum dated 12 April 2010. The purpose of this Addendum is to record the change in parties from Abland and others to the “Riverside Office Park Trust”.

F1|11

9.010      In addition, the parties agreed to delete the original “Annex D” of the Lease Agreement and to replace that with “Annex D1,” and also to include the Electoral Commission’s option to renew as per “Annex F.”

F1|11

**Second Addendum to Lease Agreement – 6 April 2011**

9.011      The second addendum to the Lease Agreement is merely marked “Addendum to Lease Agreement” and is not marked as “Second Addendum to Agreement.” According to Real FMG this has no bearing on the applicability or legality of the agreement.

F1|12

9.012      Real FMG’s comments as it relates to this Addendum is detailed below:

F1|12

1.)      *“The second addendum to the lease catered for adjustment of the areas of the leased premises after the premises had been measured. In this regard clause 1.4 of the summary schedule of the lease was amended.*

2.)      *In addition clause 1.8 of the summary schedule dealing with the deposit or guarantee was also amended.”*

3.)      *Clause 1.9 of the summary schedule was amended to adjust for the new areas as well as a new net rental per square meter and per parking bays as per the terms of the original lease. There were no supporting documents given as to how the new net rental was calculated.*

F1|12

4.)      *Clause 1.12 of the summary schedule was amended dealing with fixed operating costs.*

5.) *Clause 2.5 of annex D1 (fitting out of the lease premises) was amended by the adjustment of the specified amount pertaining to the additional tenant specific items. This amount was adjusted from the original R20,000,000 to the new amount determined from the tenant items schedule of R22,603,374.”*

6.) *Clause 29 of the general conditions of lease was modified to reflect the management of the premises. The parties had agreed that certain internal maintenance items would be carried out by the landlord and that the landlord would be entitled to recover such costs from the tenant. Our comment (Real FMG) with regard to this change is that it is of general benefit to both the landlord and tenant to ensure that certain components of the premises are correctly maintained and repaired during the course of the lease. The landlord enjoys certain purchasing power, which will allow it to secure such maintenance contracts, and beneficial rates and the tenant should enjoy the benefit of those better rates. In that regard there is nothing unusual in the arrangement except that the items in question are the subject of some queries related to how the operating costs were originally calculated.*

F1|12

**Third Addendum to Lease Agreement – 29 March 2012**

F1|12

9.013 The last addendum is in effect the third addendum to the lease and is indicated as “Second Addendum.” Real FMG believe this is merely an oversight.

F1|12

9.014 “The purpose of the third addendum was to provide an amendment to clause 1.8 of the summary schedule in order to reflect a revised cash deposit of R4,788,911.46. This change is primarily a further adjustment of the second addendum provisions whereby either a deposit or a guarantee could be furnished and in this regard records the tenant preference that the deposit shall be held in cash. No supporting documentation was provided to Real FMG as to why this change was necessary but this change falls well within

F1|12

the normal practise. The deposit amount calculation requires scrutiny and in this regard, Real FMG refers to the report prepared by Asman Phillips McClure and Partners.

### Initial Proposal by Abland

- 9.015 Real FMG have also commented on their examination and review of the initial proposal document that was submitted to the Electoral Commission in response to the invitation for proposals in paragraph 3 of their report.
- 9.016 In the aforementioned regard, we shall not discuss the detailed content thereof but shall merely point out the comments made by Real FMG in this regard which we consider relevant to our investigation and the findings that emanated therefrom.

F1|3

### 3. COMMENTS ON ABLAND'S INITIAL PROPOSAL

*A detailed schedule of changes traced from the original IEC Advert through proposal stage to Lease and Addendum stage has been attached hereto as Annexure A:*

*Our comments on the initial proposal itself are as follows:*

*3.1 Size and parking: The original development proposal was for 9000 m<sup>2</sup> of gross rentable area.*

*3.2 Initial Rental: The initial rental as proposed was R102/m<sup>2</sup> for the 9000 m<sup>2</sup> of office area and R45/m<sup>2</sup> for 125 m<sup>2</sup> of storage. 149 basement parking bays at R450/bay, 151 covered parking bays at R350/bay and 150 open parking bays at R250/bay were proposed. All amounts exclude VAT. The storage area was noted as being "on request". It is important to note that the proposal clearly stated that net monthly rentals are based on 1 April 2009 rates, as this was Abland's interpretation of the proposal advert, which called for an "all-inclusive costing rental and annual escalations on current day basis".*

3.3 *Lease Period: 5 Years*

3.4 *Escalation: the proposed escalation rate is 9% and operating costs would be escalated at 10% per annum compounded annually. Rates and taxes will be based on actual charges levied by the Local Authority.*

3.5 *Operating Costs: IEC would be liable for all "actual property expenses directly attributable to their occupation of the leased premises". The wording of this proposal clause is important. In normal commercial terms the expression "actual property expenses" has certain implications with regard to the practicalities of how those costs will be calculated and recovered from the tenant. This point is raised, as there is some uncertainty arising from the proposal as to whether the operational costs would be calculated at a rate and escalated annually, or whether they would be recovered on an actual expense basis as described above. The lease eventually provided for a fixed operating cost that would escalate annually. This is discussed further in the comments section related to the lease.*

3.6 *Timing: Proposed Occupation date was 1 April 2010, subject to IEC adhering to certain dates. We do not believe that the dates were realistically achievable given the decision-making and planning process that still had to occur. Given a development of this size we would have expected a construction period of 12-14 months, preceded by a decision-making and planning period of 3-4 months. The Final September 2010 is consistent with this timing and would have been a more appropriate timing target for the IEC.*

3.7 *Specification: A few key issues stand out from our analysis. The A/C was originally included in the specification, to the point of it being mentioned separately, yet included as a tenant item later. We have dealt with this in detail on the comments section related to the lease.*

*In terms of an expected transaction of this nature, we have the following comments on the initial proposal:*

- i. Market rentals and operating costs as proposed are within normal parameters.*

- i. *No mention was made of the 2% management fee in the original turnkey proposal, and no mention was made of what was meant by “turnkey” in terms of how the project would be managed and run.*
- ii. *A/C was listed as “to be provided” at a specification commensurate with a building of this size, but at a specification lower than expected for an A-grade building, and then was made a fit-out item later. See Asman Philips McClure & Partners Report for additional detail.*
- iii. *Timing as proposed was, at the time when it was proposed, almost impossible to adhere to given the nature and number of decisions that would still have to have been made at the time.*

9.017 Real FMG have also discussed the “Operating Costs” in paragraph 6.1.2 of their report which we have repeated below:

#### 6.1.2 *Operating Costs*

*Our caveat to the comments below is that, by their nature, operating costs are difficult to quantify for a particular building without having sight of the landlord’s accounts. Every landlord and every building has characteristics that influence those costs, including building age, design, management fees, location, whether it is single or multi tenanted, etc. It is possible, however, to compare the operating costs to norms if one understands the “basket” of costs that are included.*

*In that regard:*

*In Para 8 of the original proposal the proposal states that “The IEC will be liable for all actual property expenses directly attributable to their occupation of the leased premises as quoted above” The underlining is ours, as this wording creates a direct link between the definition below and the costs contained in the table in Para 7.1 of the proposal. In that table, “Operational Costs” are indicated at R 13/m<sup>2</sup>. Air conditioning maintenance is included as an additional item at R 1/m<sup>2</sup>.*

*Para 8.1 of the Proposal further states that “these operating costs would*

F1|7

*included for, but not be limited to:*

- *Building insurance premiums*
- *Garden maintenance*
- *Cleaning of, areas*
- *Management fees*
- *Cleaning consumables for common areas*
- *Meter reading piece building security*
- *Repairs and maintenance of lifts*
- *Repairs and maintenance of access control in the basement*
- *Repairs and maintenance of plumbing*
- *Repairs and maintenance for electrical systems*
- *Repairs and maintenance of security systems in common areas*
- *And repairs and maintenance of air conditioning.”*

*Given the above, the estimated operating costs of R13/m<sup>2</sup> (or R14/m<sup>2</sup> including a/c repairs) as stated in the proposal, are entirely within commercial norms in operation at the time. However, in perusing the operating costs definitions contained in the initial Lease Agreement, a certain number of the above items have been excluded from the operating costs. Further, perusal of the invoices provided to us indicates a number of maintenance line items charged separately in addition to the operating costs. In terms of the original proposal, those additional items had been indicated as being included in operating costs. The rate being charged for operating costs was amended to R14.90/m<sup>2</sup> in the original lease and then through the First Addendum to R14.40/m<sup>2</sup>.*

*In other words, a rate per m<sup>2</sup> of operating costs substantially the same as the original proposal is being charged; yet the number of items included in the operating costs has been substantially reduced. Those items, including plumbing, electrical, lifts and air conditioning maintenance, are now being invoiced over and above the operating costs.*

*We believe that the entire arrangement with regard to operating costs should have been revisited when preparing the First Addendum for the following reasons:*

*The items originally included as an "operating costs" in the proposal differ from those contained in the lease, without a commensurate adjustment in the operating cost per square metre rate adjustment.*

*The definition of "actual operating costs" as contained in the proposal has become a "fixed operating cost" and is being escalated at the fixed operating costs escalation rate in the lease.*

*Related to this, we understand that agreement was reached between Abland and the IEC with regard to the management of certain maintenance contracts and building management contracts. The new Clause 29 in the Second Addendum gave effect to this. This kind of arrangement is entirely normal and entirely acceptable, however the rates charged for the original operating costs are, in our opinion, too high for the services provided given the arrangements recorded on the new Clause 29.*

*Comparing the costs to similar buildings in the Centurion area for 2009 as per data obtained from the Investment Property Database, clearly shows that the current charges are out of range of market norms. With due regard to the nature and size of the premises and the basket of services provided, we would have expected the range to have been between R 6 and R10/m<sup>2</sup>, not higher.*

*In terms of the escalation applicable to the fixed operating costs, the escalation as proposed and contained in the lease is in line with market parameters at the time. In 2009 landlords had experienced a recent and*

*severe increase in costs (21% year on year) and the outlook for further increases of that order of magnitude was uncertain, but regarded as likely. Concerns that recent above CPI increase on items such as Security had become a structural element of the market were rife. In that regard, the landlord had assumed the risk of those costs being in excess of the 10% escalation and in all other circumstances this would have been considered as equitable. By excluding the items listed above, thereby transferring that risk back to the Tenant without commensurate reduction in the overall rate, this was no longer the case. “*



**10.000 PWC ANALYSIS OF MR LANGTRY'S EVALUATION SCHEDULE / PROPOSALS**

**Procedures performed**

10.001 The information supplied by each of the bidders in their proposals was examined by us to determine what information they had provided in relation to the specifications as identified in the advertisement. This information was subsequently compared with the information detailed in the schedule prepared by Mr Langtry and our findings in relation to these procedures are discussed below.

**B9**

**Results of Procedures Performed**

10.002 We determined from the aforementioned procedures that there were a number of instances where the information recorded by Mr Langtry in his evaluation spreadsheet is incorrectly stated, and based thereon, we believe that a bidder who ought to have been considered, and probably awarded the contract, was in fact Khwela City who were not even considered as meeting some of the Electoral Commission's requirements<sup>1</sup> and as a result were not shortlisted and invited to do presentations to EXCO on 19 June 2009.

**Details of Procedures Performed**

10.003 Our basis for arriving at the aforementioned conclusion is dealt with hereunder in more detail where each of the proposals that were received have been discussed in the order in which they appear on Mr Langtry's evaluation schedule.

**B9**

***i.) Khwela City***

10.004 The first bidder who appears in Mr Langtry's evaluation schedule is Khwela City. We have determined that Mr Langtry has made three material errors on his document when recording the information provided in their proposal. These material errors are listed in the table below:

**B9**

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<sup>1</sup> Refer to Figure 9 on page 89 of our report.

Information from Mr Langtry's Evaluation Schedule		PwC Observations
Specification / Column Name	Actual Record of Information provided by Mr Langtry in the Evaluation Spreadsheet	True Information provided in Proposal
Approx. 9000 square meters	27,000 square meters made of various different buildings	9,000m <sup>2</sup> available for IEC
Occupation on 1 April 2010	1 June 2010	Estimated Occupation date 1 June 2010
Price	R116.28 per square meter	R102m <sup>2</sup> without generator or R105m <sup>2</sup> with generator

B4|16

B4|24

B4|22

10.005 The most important of these three errors is the fact that Khwela City had indicated in their proposal that the size of their entire office park is 27,000m<sup>2</sup> but they had set aside 9,000m<sup>2</sup> for the Electoral Commission premises.

B4|22

10.006 The extent of the building proposed by Khwela City, for the use of the Electoral Commission, is referred to in a number of instances in their proposal, although Mr Langtry chose to only consider what they had recorded in paragraph 2 on page 9 of their proposal under the heading "Features" namely the following:

B4|9

**"2 Features**

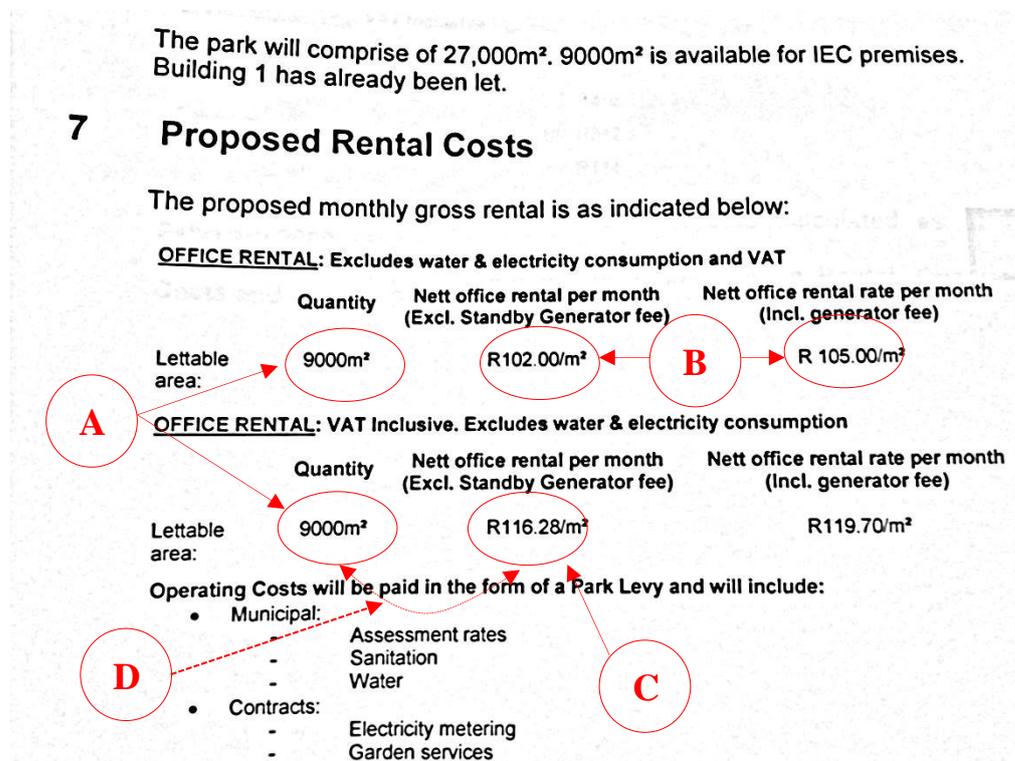
**27 000m<sup>2</sup> of Offices**

*Made up of various different buildings with their own separate entrances to each, after which you have entered the main gate-house entrance."*

B4|9

- 10.007 Paragraph 4 on page 16 of this proposal under the heading **“Proposed Design”**, Khwela City have indicated that *“the IEC request is for 9000m<sup>2</sup> which can be developed to the IEC’s specific requirements. (See proposed position of building for the IEC on Site Plan below).”* **B4|16**
- 10.008 The Site Plan is included in paragraph 4.1, just below the aforementioned heading, and it is evident from this site plan that there are at least four buildings that were to be developed on this site, one of which was earmarked for the Electoral Commission. **B4|16**
- 10.009 On page 21 of this proposal, Khwela City make further mention of the extent of the proposed building as being 9,000m<sup>2</sup> in paragraph 6 **“Area Schedule”**, and paragraph 7 **“Proposed Rental Costs.”** **B4|22**
- 10.010 In the area schedule, it is clearly reflected that the office park will comprise of 27,000m<sup>2</sup> although 9,000m<sup>2</sup> was available for the Electoral Commission purposes. The exact content of the information contained in paragraph 6 is detailed below: **B4|22**
- “6 Area Schedule**  
*The park will comprise of 27,000m<sup>2</sup>. 9,000m<sup>2</sup> is available for IEC premises. Building 1 has already been let.”*
- 10.011 Khwela City has included in paragraph 7 of their proposal the various rental costs that would be applicable to the lease to the Electoral Commission which is illustrated in Figure 12 below. They have also included in this paragraph the extent of the lettable area of the building proposed by them for the Electoral Commission being 9,000m<sup>2</sup> - Refer to “A” in Figure 12 below. **B4|22**

Figure 12



B4|22

10.012 Mr Langtry has also indicated on the evaluation spreadsheet that the price for Khwela City's proposed building is R116.28m<sup>2</sup>, but this rate is inclusive of VAT (We have determined that all the rates for other bidders he used in his schedule are exclusive of VAT). This figure appears to have been obtained from paragraph 7 of their proposal document which is reflected as "C" in Figure 12 above, which figure is almost next to the extent of the building as illustrated in "D" in Figure 12 above. Hence, we do not know how he could have got the extent of the proposed building wrong when he took down the price per square meter i.e. R116.28 (Refer to "D" in Figure 12 above) when the extent of the building i.e. the lettable area, is together with the price that was used by Mr Langtry in his evaluation spreadsheet.

B9

B4|22

10.013 The rate per square meter ought to have recorded as R102m<sup>2</sup> without a generator, i.e. the same rate proposed by Abland, or R105m<sup>2</sup> with a generator instead of R116.28m<sup>2</sup>. This is illustrated in "B" in Figure 12 above.

B4|22

- 10.014 Paragraph 8 "*Time Frames*" also gives an indication of the expected timeframes where Khwela City has indicated that the estimated occupation date was 1 June 2010. Although this information has been recorded correctly on Mr Langtry's evaluation schedule, it appears that, in respect of RCP Brokers, he has indicated that their occupation date is "*not clear from the proposal*", but in spite of the uncertainty of the occupation date, three of this entity's proposed buildings were deemed to meet some but not all the Electoral Commission's requirements. **B4|24**
- 10.015 We therefore, cannot determine on what basis Mr Langtry considered Khwela City's proposal as not meeting the Electoral requirements. In our interview, he first indicated that it was because of the extent of the building in that anything greater than 9,000m<sup>2</sup> was not considered. However, when the abovementioned observations regarding the actual extent of the building was shown to him he indicated that it was because of the occupation date only being 1 June 2010. **F7|148-150**
- 10.016 However, Mr Langtry deposed in an affidavit that the reason why he did not recognise Khwela City as being one of the bidders who were compliant with the Electoral Commission is mainly because their occupation date was after 1 April 2010, which was specified in the advertisement as being a requirement. This reason, in our view, does not support the logic as to why he could have considered RCP Brokers proposals as being partly compliant when he has recorded their occupation date for all four of their proposed buildings as "*not clear from proposal.*" **E7|24**
- 10.017 During our interview with Mr du Plessis, we also pointed out our observations regarding the information disclosed with regard to Khwela City in order to determine his response to these observations. He indicated that Khwela City was not considered since the extent of their proposed building exceeded the 9,000m<sup>2</sup> required by the Electoral Commission as he considered the extent of their building to be 27,000m<sup>2</sup> based on the information disclosed in **E8|125-131**

Mr Langtry's evaluation schedule. When we pointed out the correct extent as disclosed in Figure 12 above, he then indicated that the reasons could be attributed to the fact that Khwela City's proposed occupation date was 1 June 2010.

B9

- 10.018 Based on the aforementioned discussions with both Mr Langtry and Mr du Plessis, we cannot find any evidence why Khwela City's proposal did not meet the requirements of the Electoral Commission and therefore disqualified whilst both Mr Langtry and Mr du Plessis appear uncertain of these reasons, neither is this information documented anywhere in the emails, evaluation schedule or minutes of meetings that took place in this regard.

**ii.) Blackstone Property Fund**

- 10.019 The second bidder appearing on Mr Langtry's evaluation schedule is Blackstone Property Fund. All information disclosed on Mr Langtry's evaluation schedule reconciles to this bidders proposal although he has indicated that this bidders proposal meets some but not all the requirements of the Electoral Commission.

B9

- 10.020 However, in respect of "proximity to shopping and eating facilities, proximity to schools, banks and general medical facilities and Access to Public Transport" he has indicated "***not clear from proposal***" for each of these specific requirements.

- 10.021 In spite of Mr Langtry not being able to determine the aforementioned three requirements from Blackstone Property Fund's proposal, he nevertheless considered their proposal to meet some but not all of the requirements of the Electoral Commission.

B8-B9

**iii.) Slipknot 74 (Pty) Ltd**

10.022 The third bidder appearing on Mr Langtry's evaluation schedule is Slipknot 74 (Pty) Ltd who, according to the schedule proposed two buildings, one at Centurion and the other at Midrand. However, we have determined that the building domiciled at Centurion was in fact not proposed since Slipknot 74 (Pty) Ltd have acknowledged in their proposal that this building was only 5,136m<sup>2</sup> in extent and therefore, did not meet the Electoral requirements.

**B9**

10.023 Their second building is located in the Midrand area which building already had tenants but the landlord was willing to relocate them.

10.024 None of these buildings were considered as meeting the Electoral Commission's requirements in Mr Langtry's evaluation schedule and all information recorded in the evaluation schedule is correct.

**B9**

**iv.) Mookoli Properties**

10.025 The fourth bidder appearing on Mr Langtry's evaluation schedule is Mookoli Properties who was the bidder who was added to the initial three shortlisted candidates by EXCO at their meeting held in 15 May 2009 and who provided a presentation on their proposal to EXCO at their meeting held on 19 June 2009.

**B9**

10.026 The schedule indicates that this bidder's proposal also met some but not all the Electoral Commission's requirements yet in two instances for the requirements to "*Schools, banks and general medical facilities*" and "*Access to public transport*" Mr Langtry has indicted on his evaluation schedule that this information was "***not clear from proposal.***"

**B9**

10.027 In spite of Mookoli Properties proposal not clearly identifying two of the aforementioned requirements, they were considered to have met some but not all of the Electoral Commission's requirements and in spite thereof, progressed to the presentation stage of this matter.

**B8-B9**

v.) RCP Brokers

- |        |   |  |
|--------|---|--|
| 10.028 | The evaluation schedule prepared by Mr Langtry includes two names of bidders appearing as bidder number five namely Tony Moore Architects and RCP Brokers.  | B9   |
| 10.029 | During our examination of RCP Brokers proposal, and all the proposals that were made available to us for the purposes of this investigation, we could not find any evidence of a proposal provided by Tony Moore Architects and thus, will not comment further on this specific bidder's alleged proposal and the evaluation performed by Mr Langtry. |  |
| 10.030 | RCP Brokers proposal included proposals for four buildings namely:<br><br>1.) Centurion – Earls Court;<br><br>2.) Centurion – Eco Glades;<br><br>3.) Centurion – Eco Point; and<br><br>4.) Centurion – Eco Court.   | B5<br><br>B5 1<br><br>B5 2<br><br>B5 3<br><br>B5 4 |
| 10.031 | We shall not discuss every requirement in relation to each of these buildings that were proposed by RCP Brokers other than the “Occupation on 1 April 2010” since Mr Langtry has indicated, on the evaluation schedule, that the date of occupation for each of these four buildings is <b><i>“not clear from the proposal.”</i></b>                  |  |
| 10.032 | We have determined from the examination of their proposal that the occupation dates are clearly identifiable from the information provided by RCP Brokers which is as follows:  | B5   |

**NATIONAL TREASURY**

**FORENSIC INVESTIGATION: ELECTORAL COMMISSION: RIVERSIDE OFFICE PARK**

**14 DECEMBER 2013**

A	B	C
<b>Proposed Building - RCP Brokers</b>	<b>Information Recorded on Mr Langtry's Evaluation Schedule</b>	<b>Correct Information obtained from RCP Brokers Proposal</b>
Centurion – Earls Court	Not Clear from proposal	Construction time ±12 – 16 months
Centurion – Eco Glades	Not Clear from proposal	June 2009 – January 2010
Centurion – Eco Point	Not Clear from proposal	Immediately
Centurion – Eco Court	Not Clear from proposal	1 September 2009

**B5|1**

**B5|2**

**B5|3**

**B5|4**

10.033 Based on the aforementioned information contained in column “C” above, we cannot determine how or why Mr Langtry would have indicated in his evaluation schedule why the occupation date is ***“not clear from the proposal”*** when the information is clearly available and obvious.

10.034 In spite of the aforementioned lack of information, Mr Langtry was of the view that three of the four buildings proposed by RCP Brokers met some but not all the Electoral Commission’s requirements (Earls Court, Eco Glades, and Eco Point).

**B8-B9**

10.035 In most of the instances, RCP Brokers did not specifically state their proposed buildings close proximity to schools, medical facilities and shopping facilities although a plan was provided showing the location of these specific buildings where specific requirements could have been identified.

10.036 Hence, their occupation date according to Mr Langtry is “not clear from proposal” and three of their four buildings proposed were not disqualified whereas Khwela City, whose proposed occupation date was after 1 April 2010, was disqualified from competing furthermore in this process.

- 10.037 Three of the four buildings have also been identified as meeting some but not all the Electoral Commission's requirements even though some of the aforementioned information is not clear from their proposal. We refer in this instance to Eco Glades and Eco Point who, according to Mr Langtry's interpretation, failed to clearly provide the following information: No Less than 300 under cover parking spaces<sup>1</sup>; Easy Access to a motorway<sup>1</sup>; Proximity to shopping and eating facilities; and Access to public transport.”
- vi.) One Vision Investments 179 (Pty) Ltd**
- 10.038 The sixth bidder appearing on Mr Langtry's evaluation schedule is One Vision Investments 179 (Pty) Ltd who, according to Mr Langtry's interpretation of the specific requirements, did not meet the Electoral Commission's requirements.
- 10.039 One of the requirements that was omitted from their proposal was the price and based thereon, it would have been reasonable for them to have been disqualified on this basis.
- vii.) Menlyn Corporate Park / Mvelaphanda Consortium JV**
- 10.040 Menlyn Corporate Park is the seventh bidder appearing on Mr Langtry's Evaluation schedule who met all the requirements. We shall not discuss this bid any further.
- viii.) JHI Properties**
- 10.041 The eighth bidder appearing on Mr Langtry's evaluation spreadsheet is JHI Properties, who, according to his interpretation of the requirements, only meet some of the Electoral Commission's requirements.
- 10.042 According to the information captured on Mr Langtry's evaluation schedule, the only information that has been omitted from the requirements is “Close proximity to schools, banks and general medical facilities” and he has indicated that this information is **“not clear from proposal.”** Refer to the table below where this is illustrated clearer.
- B8-B9**
- B9**
- B9**
- B9**
- B9**
- B9**

---

<sup>1</sup> Eco Glades did have this information. It only applies to Eco Point.

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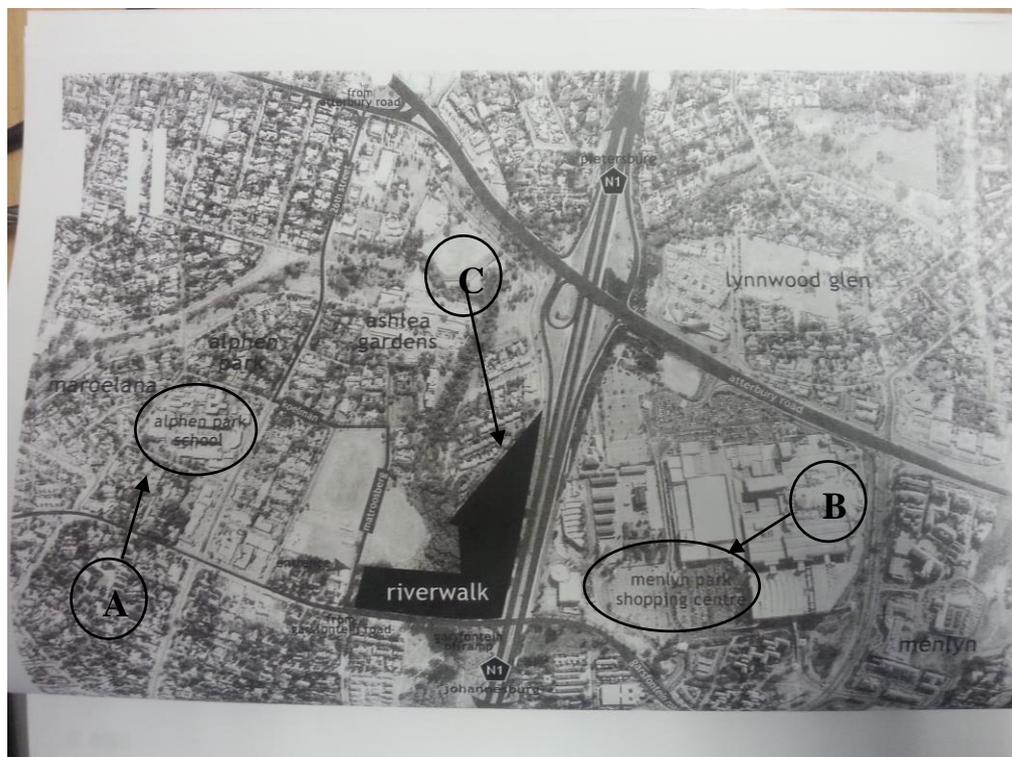
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<b>Mr Langtry's Evaluation Schedule</b>		<b>Remarks PwC</b>	<b>B9</b>
<b>Location: Pretoria / Centurion</b>	Ashlea Gardens, Pretoria		
<b>Approx. 9 000 square meters</b>	10 934 sqm		
<b>New building</b>	Yes		
<b>No less than 300 under cover parking spaces</b>	466		
<b>Easy access to a motorway</b>	Easy access to N1		
<b>Proximity to shopping and eating facilities</b>	Close to Menlyn Shopping Centre		
<b>Proximity to schools, banks and general medical facilities</b>	Not clear from proposal	Alphen Park School three blocks away according to the map provided by this bidder	
<b>Access to public transport</b>	Close to transport routes		
<b>Occupation on 1 April 2010</b>	End 2009 -beginning 2010		
<b>Price</b>	R140 per sqm		

10.043 JHI Properties included with their proposal a map of the area (Refer to Figure 13 below) from which we have been able to determine that Alphen Park School (Refer to "B" in Figure 13 below) is three to four blocks from the proposed site of the building (Riverwalk) proposed by JHI Properties (Refer to "C" in Figure 13 below), whilst Menlyn Park Shopping Centre (Refer to "B" in Figure 13 below) is directly opposite the proposed site. Hence, we believe that the information relating to proximity to schools and banks is clear from the map provided in JHI's proposal. The only matter that would not be available would have been medical facilities which we would think could easily have been determined by Mr Langtry when he prepared the evaluation schedule had he made some general inquiries provided that this was critical for their proposal to progress to the next stage of the procurement process.

10.044 A copy of the map reflecting the location of the proposed building is illustrated in Figure 13 below:

Figure 13



**Index to Figure 13**

A – Alphen Park School

B – Menlyn Shopping Centre.

C – Riverwalk Office Park – proposed by JHI Properties

**ix.) New Leaf Property Agency**

10.045 The ninth bidder appearing on Mr Langtry’s evaluation schedule, who met all the requirements of the Electoral Commission, is New Leaf Property Agency.

**B9**

10.046 We are able to confirm that the information captured by Mr Langtry on his evaluation spreadsheet, as it relates to this bidder, is correct and therefore, we shall not discuss anything concerning their bid document any further.

**x.) Abland (Pty) Ltd**

10.047 The tenth and last bidder appearing on Mr Langtry’s evaluation schedule, who met all the requirements of the Electoral Commission is Abland.

**B9**

10.048 We are able to confirm that the information captured by Mr Langtry on his evaluation schedule, as it relates to this bidder, is correct other than the price which is recorded as R171m<sup>2</sup> instead of R102m<sup>2</sup>. This price was subsequently changed to R102m<sup>2</sup> allegedly after the evaluation report was presented to EXCO at their meeting on 15 May 2009. This is not documented in the minutes of this meeting although Mr Langtry indicated that committee members had identified that he had incorrectly calculated Abland's price and therefore, it was changed at this meeting.

B9|2

B9a|2

10.049 We can also confirm that the correct price of Abland's proposal is R102m<sup>2</sup> and not R171m<sup>2</sup> as recorded on Mr Langtry's evaluation schedule and therefore, do not consider the price change to be unusual or irregular.

#### Summary of findings

10.050 The evaluation schedule prepared by Mr Langtry consists of ten requirements however the weight that he has assigned to each of these requirements during his evaluation of the proposals is unknown.

10.051 There is no evidence in the minutes of the meetings with EXCO or any other written document which would substantiate the weight that was applied to these requirements by the Electoral Commission so that any decision that it may have made during this process could be defended in subsequent litigation disputes that could arise by anyone of the unsuccessful bidders.

10.052 We have also determined from our examination of the ten proposals that, in a number of instances, a specific proposal may have been considered as "*not meeting*" the requirements of the Electoral Commission, despite the fact that they had provided all the information whilst in other instances, a proposal was considered as "*meeting some but not all*" the requirements of the Electoral Commission even though the evaluation schedule reflects that some of these requirements are "*not clear from the proposals.*"

10.053 For example, Khwela City provided all the information required for the ten requirements but were deemed to have not met the Electoral Commissions requirements and therefore were disqualified. Similarly, JHI Properties also provided all the information in the requirements but were also deemed to have not met the Electoral Commissions requirements and they too were disqualified. However, RCP Brokers have also provided all the information although Mr Langtry has indicated on the evaluation schedule that the information for a number of their requirements is “*not clear from proposal*” and as a result, they were deemed to have met some, but not all the requirements of the Electoral Commission. One of these requirements is the occupation date and for each of the properties proposed by RCP Brokers, Mr Langtry has indicated that the occupation date is “*not clear from proposal*” and despite the uncertainty of the occupation date, he has not disqualified them.

**Mr Langtry assertions regarding the Evaluation Schedule**

10.054 Mr Langtry has attested in an affidavit that, subsequent to the receipt of all the proposals, he went through each of the ten proposals and recorded the information in accordance with the specifications that appeared in the advertisement in the evaluation schedule.

10.055 He indicated that he evaluated the proposals in good faith which resulted in him identifying three bidders who, in his opinion, met all the requirements from the advertisement whilst he disputed that he was coerced or unduly influenced by anyone from the Electoral Commission into manipulating the evaluation schedule to the benefit of Abland.

10.056 He conceded that there were errors on his evaluation schedule and that none of these errors were intentionally done whilst he was of the view that none of them affected the outcome in a material way.

E7|11-12

E7|32

E7|32

10.057 Furthermore, he confirmed that the evaluation schedule was prepared based on his own interpretation of the criteria set in the advertisement and that no-one from EXCO or Support Services provided him with any guidance on how he should proceed in analysing each proposal. He used his own initiative to identify the criteria as set out in the advertisement.

E7|33

**Exclusion of Khwela City**

10.058 Mr Langtry attested in his affidavit that he excluded Khwela City from meeting the Electoral Commissions requirements because he based his assessment on the occupation date at the time and the date stated in the *invitation for proposals* that was advertised, and therefore, maintained that they were correctly (“excluded”) disqualified.

E7|28

10.059 We deem it necessary to repeat the detailed content of the requirements stated in the advertisement with regards to the description provided for the occupation date to comment on Mr Langtry’s aforementioned statement.

10.060 The advertisement<sup>1</sup> states that “*Occupation on 1 April 2010. Given the pending municipal election in 2011 **a later date would be problematic.**” (***Bold and underline is our emphasis.***) This statement does not indicate that a bidder who provides an occupation date after 1 April 2010 would be disqualified. It merely indicates that it would be problematic to the Electoral Commission and, based on the fact that Abland subsequently changed the occupation date from 1 April 2010 (as recorded in their proposal) to 1 August 2010 (as per the EXCO Minutes of their meeting on 19 June 2009) and because the Electoral Commission only took occupation on 1 September 2010, a date subsequent to 1 April 2010 could not have been a material consideration to disqualify a bidder<sup>2</sup>.*

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<sup>1</sup> Refer to Figure 3 on page 36.

<sup>2</sup> Refer to the report prepared by Real FMG where they have referred to the turn around time to have the building completed by 1 April 2010.

10.061 Hence, based on the fact the Mr Langtry prepared the evaluation schedule, he decided on the disqualifying elements of the invitation for proposals based on his interpretation of the requirements set out in the advertisement and, in the process, prejudiced bidders as well as the Electoral Commission by disqualifying Khwela City.

10.062 Mr Langtry also indicates in his affidavit that *“the fact that the awarding of the tender was delayed did not advantage Abland. There is nothing to suggest that Khwela City would have met their 1 June 2010 deadline since they also had to construct a new building, presumably on the signing of a contract. Just as Abland moved their completion date out by four months due to delays in finalising the procurement process; Khwela City **might** have had to do the same.”*(Bold and underline is our emphasis)

10.063 Mr Langtry has now made serious assumptions that Khwela City **“might”** have had to move their occupation date due to delays. There is no indication that this issue was ever discussed with Khwela City. However we refer to paragraph 3.6 of the report prepared by Real FMG where they have indicated that they are of the view that the occupation date of 1 April 2010 was not realistically achievable given the decision-making and planning process that still had to occur.

10.064 If the aforementioned occupation date was not realistically achievable at the time that the invitation was flighted in the media, then the question arises whether Abland misrepresented that they would have been able to meet this occupation date in their proposal when then knew it was not realistically achievable, or whether Khwela City had provided a more realistically achievable date taking into account the negotiations that had to take place before construction could commence and because thereof, Mr Langtry chose to disqualify them.

E7|31

F1|4

10.065 Mr Langtry has also stated in his affidavit that Abland was not advantaged in the process. Had Mr Langtry performed a proper analysis of the Abland bid document he would have noted the manner in which the Building Occupation date of 1 April 2010 was qualified in section 9 of their bid titled “programme” which is set out below:

**“PROGRAMME**

*It is anticipated that the following programme dates would be applicable:*

*IEC to Sign Heads of Agreement : 31 March 2009*

*IEC to Sign Lease Agreement : 17 April 2009*

*Commence Siteworks : 01 May 2009*

*Building Occupation : 1 April 2010”*

10.066 Based on the aforementioned programme dates set out in the Abland bid it is clear that when Mr Langtry provided his evaluation summary to EXCO on 15 July 2009 that Abland, based on their own document, could not meet a Building Occupation date of 1 April 2010 and on this basis if Kwela City were to be disqualified using Mr Langtry’s logic then Abland should have also been disqualified at this stage.

10.067 Had the members of EXCO performed a detailed evaluation of the bid documents themselves rather than relying on what Mr Langtry put before them, it is reasonable to assume at least one of them would have identified this issue.

**B2|3**

**D5**

**11.000 SCORING IN TERMS OF PPPFA**

11.001 Once the evaluation had been completed, in addition to the presentations by the four shortlisted bidders, Ms Lindiwe Dlamini (**Ms Dlamini**), a Senior Administration Officer employed in the Procurement Department of the Electoral Commission was mandated to score the two shortlisted bidders in terms of the PPPFA.

11.002 Ms Dlamini also provided an affidavit, supported by various documents, regarding her involvement with this matter, more specifically the scoring of the two shortlisted bidders. It should be noted that she was not actively involved in this process prior to the scoring and therefore, had nothing to do with the advertisement, receipt of proposals and/or evaluation thereof.

11.003 Ms Dlamini was unable to provide an exact date when she became involved although she annexed to her affidavit an email between Mr Marius Steyn (**Mr Steyn**), the Procurement Manager at the Electoral Commission, that was addressed to both Mr Vincent Qwabe and herself on 25 June 2009 at 05:37PM.

11.004 In this email, Mr Steyn writes to Mr Qwabe requesting to know where the PPPFA scoring was as it was due by the close of business on 25 June 2009 as it was required for EXCO the following morning, 26 June 2009.

11.005 She recollected that when she had to execute her duties in terms of the scoring she had constraints with completing this task as the Electoral Commission had not used the standard pricing schedules that are normally used in request for proposals (**RFP**), including the declaration forms for PDI's (previous disadvantage individuals).

11.006 She also found it difficult to compare prices between the two shortlisted bidders as it was not as simple as comparing "apples with apples" and as a result, consulted with both Mr Steyn and Mr Qwabe on how to address this constraint both of whom provided her advice and performed quality assurance on her work.

E4

E4|1-2

E4|2

E4|12

E4|12

E4|2-3

E4|3

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11.007 Ms Dlamini alleged that she tried to extract common variables between the two proposals to determine the prices and affect the PPPFA scoring however there were no standard pricing values to compare and she felt that the evaluation could not be performed effectively.

E4|3

11.008 The results of the work performed in this regard resulted in her generating a schedule (refer to Figure 14 on page 139) that contained the names of the two shortlisted bidders together with information relating to the description, gross rentable area; unit cost per square meter; total per month and total over 3 years.

E4|3

E4|13

Figure 14

COMPANY NAME	DESCRIPTION	GROSS RENTABLE AREA	UNIT COST PER SQUARE METRE	TOTAL PER MONTH	TOTAL OVER 3 YEARS
ABLAND (PTY) LTD	Office Areas	9000	R 102 00	R 918 000 00	
	Basement Parking	149	R 450 00	R 67 050 00	
	Open Parking	150	R 250 00	R 37 500 00	
	Covered Parking	151	R 350 00	R 52 850 00	
				<b>R 1,075,400.00</b>	<b>R 38,714,400.00</b>
MENLYN CORPORATE PARK MVELAPHANDA CONSORTIUM JOINT VENTURE	Office Areas	9059	R 110 30	R 999,207.70	
	Basement Parking	300	R 522 00	R 156,600 00	
	Open Parking	20	R 350 00	R 7,000 00	
				<b>R 1,162,807.70</b>	<b>R 41,861,077.20</b>

E4|13

**PROBLEMS:** Pricing is not comparable due to differences in gross rental area, number of parking bays etc.  
 Contract period is not comparable as follows:  
 According to Abland Pty Ltd, the lease will endure for an initial period of 5 years from commencement date but the period is negotiable.  
 According to Menlyn Corporate Park Mvelaphanda Consortium Joint Venture, the lease period is 9 years and 11 months.

11.009 It is evident from the examination of this schedule that the constraints encountered by Ms Dlamini in the performance of the scoring are also identified on this schedule under the heading "Problems" where she has recorded them as follows:

E4|13

*"Pricing is not comparable due to the differences in gross rental area, number of parking bays etc.*

E4|13

*Contract period is not comparable as follows:*

*According to Abland Pty Ltd, the lease will endure for an initial period of 5 years from commencement date but the period is negotiable.*

*According to Menlyn Corporate Park Mvelaphanda Consortium Joint Venture, the lease period is 9 years and 11 months."*

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- 11.010 To summarise, Ms Dlamini’s calculated monthly costs for Abland and Menlyn Corporate Park are R1,075,400 and R1,162,807 respectively or total costs for 5 years being R38,714,400 and R41,861,077.20 respectively although the extent of the buildings as well as number of parkings varies between each of these two shortlisted bidders and hence, a comparison between “apples with apples” could not be adequately performed in this instance.
- 11.011 We deem it necessary to mention that the aforementioned scoring for Abland was done on the basis of them providing gross lettable area of office space at 9000m<sup>2</sup> although the final Lease Addendum reflects that the lettable area is in fact 9489.50m<sup>2</sup>. This means that the lettable area has increased to the extent of 489.50m<sup>2</sup> from the date that their proposal was submitted to the date that the lease agreement was entered into.
- 11.012 The effect of the increase in the extent of the building proposed by Abland had the following effect (refer to column “G” in Figure 15 below) on the price scoring for both of these two shortlisted bidders:

**E4|13**

**E4|13**

**C3|3**

**Figure 15**

A	B	C	D	E	F	G
Company Name	Description	Gross Rentable Area (GRA)	Unit Cost per square meter	Total Cost per month	Total over 3 years	Total Cost per Month GRA 9489.50/m <sup>2</sup>
ABLAND (PTY) LTD	Office Areas	9000	R 102.00	R 918,000.00		R 967,929.00
	Basement Parking	149	R 450.00	R 67,050.00		R 67,050.00
	Open Parking	150	R 250.00	R 37,500.00		R 37,500.00
	Covered Parking	151	R 350.00	R 52,850.00		R 52,850.00
					<b>R 1,075,400.00</b>	<b>R 38,714,400.00</b>
MENLYN CORPORATE PARK MVELAPHANDA CONSORTIUM JOINT VENTURE	Office Areas	9059	R 110.30	R 999,207.70		
	Basement Parking	300	R 522.00	R 156,600.00		
	Open Parking	20	R 350.00	R 7,000.00		
				<b>R 1,162,807.70</b>	<b>R 41,861,077.20</b>	<b>R 1,162,807.70</b>

- 11.013 This means that Ablands price for the purposes of scoring increased from R1,075,400 to R1,125,328 although the increase in the Gross Rentable Area (GRA) would not have resulted in Menlyn having the lowest price as they would have been R37,478.70 more expensive than Abland, after adjusting the GRA.

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11.014 Ms Dlamini also experienced problems with calculating the PDI ownership scores of these shortlisted two bidders since the information disclosed in their proposal was insufficient to determine their PDI status. Consequently, she approached Mr Qwabe and Mr Steyn for assistance in this regard and subsequent thereto, these problems were escalated to Mr Langtry in an email by Mr Steyn, which email Ms Dlamini was copied on.

E4|4

E4|14

11.015 For ease of reference, we have inserted a copy of this email instead of repeating the content of this email, which is illustrated in Figure 16 below.

Figure 16

**Dlamini, Lindiwe**

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**From:** Steyn, Marius  
**Sent:** 25 June 2009 06:22 PM  
**To:** Langtry, Stephen  
**Cc:** Qwabe, Vincent; Dlamini, Lindiwe  
**Subject:** PPPFA Scoring - Relocation

Hi Stephen

We have reviewed the two shortlisted submissions with a view to do the required PPPFA scoring and I need to advise at this stage that we were not able to conclude the exercise to day due to a number of constraints. Some I may highlight to give you greater insight:

E4|14

- The pricing provided is not immediately comparable since there are a number of variables that have to be taken into account.  
I assume one will have to work on the assumption that whatever office and parking space is offered as part of the 'package' is what we will have to use for total monthly cost purposes.
- Some costs have either not been clearly defined or have not been costed and we would require clarification on that, e.g. the operational costs charged by Menlyn Office Park which has no figure or estimated figure.
- Neither submission includes the actual ownership breakdown – without which it is impossible to do the scoring anyway.
- We are liaising with the service providers and have given them the EDA forms to complete.
- So far one response from Menlyn Office Park gives us greater insight as to who the 'consortium' is but the actual preference point claims based on individual ownership is still to be obtained. There are also a number of trusts included in the various entities that form the consortium and that in itself requires clarification and assessment. They also seem to indicate that one entity is intended for the consortium but not quite include as yet and may even require the IEC's 'approval'?

I will keep you posted on progress made tomorrow.

Regards

~ Marius

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11.016 It is evident from the content of this email that Mr Steyn has reported to Mr Langtry that there were a number of constraints that were identified when attempting to calculate the PPPFA scoring for the two shortlisted bidders which constraints are detailed in the five bullets that are included in Figure 16 above whilst each of these shortlisted bidders had been requested to complete Enterprise Development Affidavit (**EDA**) forms.

E4|14

11.017 We shall not discuss the responses for both bidders in our report, but we deem it necessary to mention that Abland responded to the request for EDA information in an email addressed to Ms Dlamini on 26 June 2009 at 03:04PM which content thereof is illustrated in Figure 17 below:

E4|15-34

Figure 17

Dlamini, Lindiwe

**From:** Thinus Delpont <thinusd@abland.co.za>  
**Sent:** 26 June 2009 03:04 PM  
**To:** Dlamini, Lindiwe; Qwabe, Vincent  
**Subject:** IEC TENDER : RIVERSIDE OFFICE PARK  
**Attachments:** TA: Clearance Certificates IEC.tif; Abland IEC.tif; Copper Circle IEC.tif; East and West IEC.tif; Manaka Investments IEC.tif; South Central IEC.tif

Dear Lindiwe

Hereunder please find **the COMPLETED IEC ENTERPRISE DECLARATION FORMS AND TAX CLEARANCE CERTIFICATES** for the groups in our consortium as listed hereunder.

- i. Manaka Property Investments (Pty)Ltd
- ii. Abland Pty Ltd
- iii. Copper Circle Investments CC and South Central Investments 147 CC
- iv. East and West Investments Pty Ltd

*We will forward another email to you with more company profiles and statutory information*

Yours Faithfully

Thinus Delpont

Abland Pty Ltd

(27) (11) 510 9999

(27) 82 8211312

[www.abland.co.za](http://www.abland.co.za)

<<TA: Clearance Certificates IEC.tif>> <<Abland IEC.tif>> <<Copper Circle IEC.tif>> <<East and West IEC.tif>> <<Manaka Investments IEC.tif>> <<South Central IEC.tif>>

E4|15

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11.018	Abland have attached to their abovementioned email completed EDA forms and tax clearances for their consortium, which consortium now comprised of the following four entities:	<b>E4 15</b>
	1.) Manaka Property Investments (Pty) Ltd;	<b>E4 17</b>
	2.) Abland;	<b>E4 18</b>
	3.) Copper Circle Investments CC and South Central Investments 147CC; and	<b>E4 19</b>
	4.) East and West Investments (Pty) Ltd <sup>1</sup> .	<b>E4 16</b>
11.019	Tax clearance certificates have been provided for all four of the aforementioned entities with the exception of the third one, namely Copper Circle Investments CC and South Central Investments 147CC. In respect of the latter entity, a VAT103 form, notice of registration of value added tax, has been included instead of a tax clearance certificate.	<b>E4 16-18</b> <b>E4 19</b>
11.020	We are able to confirm that the remaining three entities tax clearance certificates were valid as at the closing date of the request for proposals i.e. 9 March 2009 however, when they were emailed to Ms Dlamini on 26 June 2009, before the Commission resolved to award the work to Abland at their meeting held in 6 July 2009, Abland's Tax Clearance Certificate had already expired as it was only valid until 8 April 2009.	<b>E4 16-18</b>
11.021	The information recorded on Abland and its related entities EDA forms is not complete as, in some instances the information required by the Electoral Commission in terms of this EDA form has been omitted by some of these entities.	<b>E4 20-34</b>

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<sup>1</sup> 1945/018444/07.

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11.022 We have identified information we believe is relevant to this investigation as it relates to ownership and the PDI scoring and have recorded it in the table below for ease of reference. In instances where we have not provided any information in the columns in the table below, this would indicate that the information was not provided by Abland or their related entity for whom the information relates.

**E4|20-34**

Name	Company Classification	Social Responsibility Structure	ID No.	Date of Ownership	% Ownership
Abland	White owned	Ops Trust			100%
Copper Circle Investments 55CC	White owned	G M Lourens		100% (sic) <sup>1</sup>	100%
East and West Investments (Pty) Ltd <sup>2</sup>	White Owned	JZ Moolman	5201205002081		
		FS Moolman	5502155008089		
Manaka Property Investments (Pty) Ltd <sup>3</sup>	Joint (Black and white owned) "75% Black owned"	JZ Moolman	5201205002081	2007	25%
		CC Mathale	6101235718087	2007	10%
		TJ Mathebula	6806265896088	2007	15%
		TA Mufamadi	5903115702086	2007	50%
South Central Investments 147CC	White owned				

<sup>1</sup> A date of ownership has not been provided on the EDA form but instead a percentage as detailed in this column of the table.

<sup>2</sup> There is an endorsement on this entity's EDA that states: "Please note that East & West Investments (Pty) Ltd is the main investment company within the Moolman Group. This company do not employ any staff as all the staff is employed by the Moolman group."

<sup>3</sup> There is an endorsement on this entity's EDA form that states: "Please note that Manaka is an investment company and therefore has limited staff employed."

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11.023 South Central Investments 147CC did not provide any information on the EDA form that was emailed to Ms Dlamini, whilst it further states that only 75% of Manaka Investments is Black owned and all the remaining companies are white owned. This is despite the advertisement calling for “preferably Black-owned property developers<sup>1</sup>.”

E4|20-34

E4|29-31

11.024 On 26 June 2009 at 01:54PM Abland sent an additional email to Ms Dlamini, where they, *inter alia*, provided information relating to the ownership of Abland and its related entities in the consortium. A summary of this information is illustrated in Figure 18 below.

E4|35

11.025 **Figure 18**

E4|35

**Dlamini, Lindiwe**

**From:** Thinus Delpont <thinusd@abland.co.za>  
**Sent:** 26 June 2009 01:54 PM  
**To:** Dlamini, Lindiwe; Qwabe, Vincent  
**Subject:** IEC TENDER : RIVERSIDE OFFICE PARK

Dear Lindiwe

Hereunder please find information pertaining to our consortium with respect to the above office park and the IEC tender.

**1. OWNERSHIP:**

Our shareholding on the IEC building is structured as follows. (Agreement has been reached on this):

- i. Manaka Property Investments (Pty)Ltd - 25% (This is 100% Black owned) 
  - ii. Abland Pty Ltd – 25% ownership (BEE Level 8 contributor(Most Bee transactions through JV companies))
  - iii. Lourens Group (Copper Circle Investments CC and South Central Investments 147 CC) – 25% (BEE rating pending but internal audit reveals Level 5 or 6 contributor (can be confirmed as condition to the lease))
  - iv. Moolman Group (East and West Investments Pty Ltd) – 25% (BEE rating pending but internal audit reveals Level 8 contributor. (Most Bee transactions through JV companies))
- b. We also confirm that BEE will be required when appointing contractors and sub-contractors through the project from the various contractors. This could be a condition of the lease.

<sup>1</sup> Refer to Figure 3on page 37 for a copy of this advert.

11.026 We shall not discuss or repeat the detailed content of the representations made in the aforementioned email by Abland except the fact that they have represented to the Electoral Commission that Manaka Property Investments (Pty) Ltd has a 25% share in their consortium and they are “100% black owned”. This is clearly not true since the EDA form that was completed in respect of Manaka Property Investments (Pty) Ltd, which was emailed to Ms Dlamini and discussed in paragraph 11.022 above, indicates that Mr JZ Moolman owns 25% of this entity (refer to “C” in Figure 19 below). An extract of the information contained in paragraph 5 and 6 of the EDA form of Manaka Investments (Pty) Ltd, is illustrated in Figure 19 below for ease of reference.

E4|35

E4|29-31

E4|30

Figure 19

**5. COMPANY CLASSIFICATION/OWNERSHIP (Tick only one box)**

Black Owned	
White Owned	
Joint (Black and White Owned)	<input checked="" type="checkbox"/>
Other (specify)	

**6. SOCIAL RESPONSIBILITY STRUCTURE - Complete the following ownership structure:**

Name	Identity Number	Citizenship	Status (YES/NO)		Disability	Date of Ownership	% Owned	Voting %
			FDI <sup>1</sup>	Women				
				White	Black			
JZ MOOLMAN	520120 5002081	SOUTH AFRICAN				2001	25%	
CC MATHALE	610123 518087	SOUTH AFRICAN	Y			2001	10%	
TJ MATHEBULA	680626 5896088	SOUTH AFRICAN	Y			2001	15%	
TA MUFAMADI	590811 5702086	SOUTH AFRICAN	Y			2001	50%	

Note: Where owners are themselves a company or partnership, please identify and stipulate clearly (submit all relevant company registration and/or shareholding certificates and/or documents along with this enterprise declaration affidavit).

<sup>1</sup> FDI - Previously Disadvantaged Individual

Please note: etc

11.027 Furthermore, if one compares Manaka Property Investments (Pty) Ltd own interpretation of their company's BEE classification, they have indicated that they are 75% black owned (refer to "A" in Figure 19 above) , in addition to the fact that they are "Joint (Black and White Owned)" (refer to "B" in Figure 19 above).

E4|30

11.028 When Abland representatives, and in particular Mr Thinus Delpont, were asked to explain why they stated that Manaka Property Investments (Pty) Ltd is "100% Black Owned" they had difficulty in justifying why Mr Delpont had stated this and referred to a Construction Industry Charter. In their written response dated 5 December 2013 they explained it as follows:

H2|3

*"At the time of submission of the proposal document the Construction Charter stated that 51% black ownership could be deemed as black owned".*

11.029 What Abland however neglected to say is that for the purposes of PPPFA scoring nowhere does it say that this can then be considered to be 100% black owned.

11.030 During an interview with Abland representatives on 21 November 2013 they were asked how Manaka became involved with Abland and the Riverside Office Park and what the financial arrangements are between them and whether Manaka had paid for their share in the development.

11.031 In Abland's written response dated 5 December 2013 they stated as follows:

H2|3

- i. The owners of Riverside Office Park were looking for a black partner for the development at the time of the IEC proposal in 2009. This was because various deals were in the market eg. Competition Commission, Sanral and Trans Caledon Tunnel Authority etc. Annexure D shows an extract of a schedule issued to the owners of the Riverside Office Park in April 2009.*

- ii. *It was agreed to reduce the percentage black ownership from 25% to 20%, as the initial structure was to transfer only the portion of the property on which the offices housing the IEC Building would be located, but it was then realised that the administrative process of the subdivision of the property and renegotiating of the financing would delay the program and would make it difficult to achieve the target date for completion of the building, and it was agreed with the black partner that 20% in the Riverside Office Park would represented (sic) much more value than 20% in the IEC Building.*
- iii. *You would appreciate that Abland is not at liberty to share the substance of the Manaka agreement with PwC without the approval of Manaka, who advised that due to the confidentiality of the document, the document may be viewed at the office of the Riverside Park Trust that would also allow a discussion of the document.*
- iv. *In relation to the change of the Manaka share of the IEC building from 25% to 20% this was as a result of the decision to include Manaka as the Black Owned shareholder of the entire park instead of in the IEC building only. This resulted in a higher value of ownership for Manaka and illustrated the existing owners commitment to transformation and Black Ownership.*

H2|4

11.032 At the time of issuing this report we have not had sight of the agreement between Manaka and Abland referred to above but confirm that when interviewed the Abland representatives stated that Manaka had not purchased their share in the Riverside Office Park Trust for cash but that Abland and the other entities involved had stood surety for funds borrowed from financial institutions to do the development and that in time when these loans were repaid or reduced from future profits then Manaka would receive monetary benefits.

- 11.033 A recent company report extracted from KreditInform, a search engine which has access to CIPC records indicates that “JZ Moolman” is still a director of Manaka Property Investments (Pty) Ltd although his shareholding cannot be determined from the aforementioned KreditInform report. **L1|2**
- 11.034 Ms Dlamini had similar difficulties with Menlyn Corporate Park’s shareholding and has attested in her affidavit that “*at the end of this process Mvelaphanda Holdings (Pty) Ltd still did not disclose who the trustees and beneficiaries of the trusts or shareholders of the company were.*” In support of this statement, Ms Dlamini has annexed to her affidavit is a letter, dated 30 June 2009, from Mvelaphanda Holdings (Pty) Ltd addressed to the Electoral Commission in which they have indicated the following: **E4|5**
- “Dear Lindiwe,*
- I kindly refer you to the above matter pertaining to Ummango Investment Holdings (Pty) Ltd (“Ummango”) and the Ummango Consortium joint venture with Menlyn Corporate Park (Pty) Ltd.*
- We hereby confirm that we are not able to disclose the information relating to the trustees and beneficiaries of the current trusts/shareholders of Mvelaphanda Holdings (Pty) Ltd. However, should the Electoral Commission view this decision as being “non-compliant”, we hereby agree to relinquish our stake within the Ummango Consortium to Ummango Investment Holdings (Pty) Ltd.*
- I trust you will find the above in order.*
- Kind Regards*
- Mark Willcox*
- Chief Executive Officer.”* **E4|74**

11.035 After considering all the information provided by the two shortlisted bidders, Ms Dlamini updated the scores and emailed it to Mr Qwabe, in addition to copying Mr Steyn on this email. The scoring that was performed by Ms Dlamini was captured on an appropriate schedule which was also annexed to her affidavit which scoring is reflected in Figure 20 below.

E4|96

Figure 20 Annexure LLD14.3 to Ms Dlamini's Affidavit

E4|96

RELOCATION TENDER:IEC/SS-003/2009  
Scoring is based on 90/10 point scoring principle

Ref #	Tenderer	Price	PDI points	Price Points	PDI Points	Total points
10	Abland (Pty) Ltd	R 38,714,400.00	25 000	90 000	2 500	92 500
7	Menlyn Corporate Park Mvelaphanda Consortium Joint Venture	R 41,861,077.20	33 333	82 685	3 333	86 018

11.036 After Ms Dlamini emailed her scores, as detailed in Figure 20 above, to Mr Steyn he replied to her on the same date at 03:19PM and indicated that he was not in agreement with the scores that she had allocated to these bidders, specifically with regard to PDI ownership. The content of Mr Steyn's concerns as disclosed in his email is set out below for ease of reference:

E4|97

*"Dear Lindie*

*I wanted to send this response to Stephen but I cannot since I do not agree on the basis of the rationale you used to come to a 33.33% black ownership for the consortium as a whole. My recollection wants me to believe that Feenstrat (who is also Menlyn Corporate Park) has a 74% ownership of the consortium and the rest shares the remaining 26%. If this is the case, there is no way in this world that a 26% proportional share could escalate into a 33.33% black ownership overall - especially if we have not even confirmed the detail. E.g. such as trusts within the pack."*

E4|97

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11.037 Ms Dlamini has indicated that subsequent to Mr Steyn's concerns, both he and Mr Qwabe performed a quality review on the PPPFA scoring and made adjustments to her scores as follows:

**E4|6**

<b>Name</b>	<b>Price</b>	<b>PDI Points</b>	<b>Price Points</b>	<b>PDI Points</b>	<b>Total Points</b>
Abland (Before)	R38,714,400	25.00	90.000	2.500	92.500
Abland ( <b>After</b> )	R38,714,400	18.750	90.000	1.875	91.875
Menlyn (Before)	R41,861,077.20	33.333	82.685	3.333	86.018
Menlyn ( <b>After</b> )	R41,861,077.20	6.500	82.685	0.650	83.335

11.038 The changes made reduced Abland's points from 92.50 to 91.875 and Menlyn Corporate Park from 86.018 to 83.335 and hence, did not have any impact on Ms Dlamini's initial ranking. After these changes were made, Ms Dlamini was copied on an email from Mr Langtry on 6 July 2009 at 03:56PM and, based on the content of this email, she then became aware that the Commission approved the appointment of Abland at their meeting held in 6 July 2009.

**E4|6**

**Minutes of the Procurement Committee held on 7 July 2009**

11.039 Ms Dlamini also annexed to her affidavit the minutes of the Procurement meeting held on 7 July 2009 where the aforementioned decision made by the Commission was noted in item 5.3 of these minutes.

**E4|100-103**

11.040 Detailed below is an extract of the decision made regarding the appointment of Abland as contained in these minutes.

**“5.3 Commission Decisions**

*The Procurement Committee noted that the Commission had on 6 July 2009 approved the appointment of Abland (Pty) Ltd (bidder #10) to provide the Electoral Commission with accommodation for the national office in terms of the proposal submitted in response to tender # IEC/SS-03/2009.*

*Attached to the Commission resolution were two schedules pertaining to scoring of the tender in terms of the provisions of the PPPFA. The 90/10 point scoring was applied in view of the cost being above R500,000.00.*

*One schedule was prepared at a time when there was no clarity on the ownership of the bidders.*

*The other schedule is a revised one done after obtaining the relevant documentation required to enable scoring in terms of the provisions of the PPPFA and is therefore, more accurate. Both scoring schedules have no bearing on the actual outcome based on the scoring and the result is basically the same.*

*The none disclosures of shareholders information on the part of Mvelaphanda (Pty) Ltd was noted as a concern in spite of the fact that Mvelaphanda (Pty) Ltd is not the approved bidder as this may have a bearing on the declaration of interest in the Electoral Commission (Refer letter from Mvelaphanda (Pty) Ltd dated 30 June 2009.)*

*It was noted further that Tax Clearance Certificates were still outstanding on the part of the approved bidder Abland Consortium (bidder #10). It was noted that Procurement and Asset Management was still following up on the outstanding documentation in the interim.*

*The fulfilment of due diligence audit requirements of the Electoral Commission and the drawing of a contract will follow.*

*Having noted the relevant matters, the Procurement Committee resolved that this matter be submitted to EXCO for noting.”*

**Abland’s Original Tax Clearance Certificate**

**E4|102**

11.041 The aforementioned minutes indicate that the Tax Clearance Certificates of Abland were still outstanding as at the date of this meeting (i.e. on 7 July 2009) although it would appear from correspondence between Abland and Ms Dlamini that they did email her most of the Tax Clearance Certificates although the certificates for Copper Circle Investments CC and South Central Investments 147CC were not provided. This is already discussed in paragraph 11.019 and we shall not repeat it whilst Ms Dlamini corroborates this in her affidavit on page 20.

11.042 Ms Dlamini also deals with the abovementioned Tax Clearance Certificates of Abland in paragraphs 20 to 27 of her affidavit which should be read in its entirety in order to appreciate the evidence provided by her in addition to the supporting documentation that she annexed to her affidavit in support of her written evidence.

**E4|8-9**

11.043 One of these documents that are annexed to her affidavit is an email between her and Mr Thinus Delport, that was sent to him on 29 June 2009 at 10:01 AM where she has responded to his earlier email. Ms Dlamini’s response to Mr Delport in this email is as follows:

**E4|104-105**

*“Noted, thank-you (sic) Mr Delport, there are Tax Clearance Certificates outstanding for Copper et al. and the one for Abland (Pty) Ltd has expired.”*

11.044 Mr Delport has responded to Ms Dlamini’s aforementioned email on the same day at 11:00AM by indicating that he would respond to her shortly but only responded on 16 July 2009 at 05:09PM by indicating the following.

**E4|104**

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*“Lindiwe,*

*We had to order the one for Abland again from SARS. We will deliver the original tax clearance certificate to your office asap.*

*Regards*

*Thinus Delport”*

- 11.045 This means that when the Commission resolved to make the award to Abland on 6 July 2009, the Electoral Commission was not in the possession of an original and valid Tax Clearance Certificate for Abland. This entity’s Tax Clearance Certificate, in addition to East & West Investments (Pty) Ltd and Manaka Property Investments (Pty) Ltd, was only received by Ms Dlamini on 28 July 2009 and upon receipt thereof, she sent a confirmatory acknowledgement of receipt email to Mr Delport on the same date at 05:32PM which she annexed to her affidavit in support of her written evidence. **E4|112**
- 11.046 Ms Dlamini’s aforementioned email to Mr Delport also required him to confirm whether the Tax Certificates of the three entities mentioned in her email constituted all members of the Consortium. However, Mr Delport response was on 30 July 2009 at 04:45PM indicated that the Tax Clearance Certificates of Copper Circle and South Central Investments were still outstanding and that he *“hope to have same very soon.”* **E4|112**
- 11.047 In spite of the queries raised by Ms Dlamini regarding Abland’s Tax Clearance Certificate, and the fact that the Commission resolved on 6 July 2009 to award the work to Abland, Ms Dlamini still did not have all their Consortium members original Tax Clearance Certificates as at 12 August 2009. This observation is based on the content of an email that was forwarded to Ms Dlamini by Mr Delport on the aforementioned date at 08:26PM even though she has attested in her affidavit that she received all the valid original Tax Clearance Certificates for Abland at the end of July 2009. **E4|115**

- 11.048 Mr Delport forwarded an email that he received from Ellis Lourens on 12 August 2009 at 03:45 in which Ellis Lourens has indicated the following:

*“Hello Thinus*

*I would like to confirm we have received the Tax Clearance Certificate for Copper Circle Investments 55CC and are awaiting such for South Central Investments 147CC within the next 2 days. According to SARS they are behind on processing this document but we have to wait until SARS produce the certificate.”*

- 11.049 Based on the date and content of the aforementioned email, it is reasonable to conclude that Ms Dlamini had not been provided with the compliance documentation that had been requested from Abland as early as 29 June 2009.

**Emailed Original Tax Clearance Certificates by Ms Lindiwe Dlamini**

- 11.050 In view that Ms Dlamini had not annexed copies of the original Tax Clearance Certificates for the Abland Consortium to her affidavit, we requested her to scan these documents and email them to us, which request was complied with on 6 December 2013 at 05:09PM.
- 11.051 From our examination of the Abland Consortium’s Tax Clearance Certificates we have been able to determine the following information with regards to their date of issue and period of validity:

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<b>Name</b>	<b>Approved Date</b>	<b>Expiry Date</b>	
Abland	22-07-2009	22-07-2010	<b>B14 3</b>
East & West Investments	29-01-2009	29-01-2010	<b>B14 4</b>
Manaka Property Investments	07-01-2009	07-01-2010	<b>B14 5</b>
South Central Investments 147CC	14-09-2009	14-09-2010	<b>B14 6</b>
Copper Circle Investments 55CC	21-07-2009	21-07-2010	<b>B14 7</b>

11.052 It is apparent from the information detailed in the aforementioned table that Abland, South Central investments 147CC and Copper Circle Investments 55CC, would only have been in a position to provide the Electoral Commission with original Tax Clearance Certificates subsequent to their approved date which would have been subsequent to 22 July 2009, 14 September 2009 and 21 July 2009 respectively.

11.053 Based on these dates, it would be reasonable to therefore conclude that Ms Dlamini could only have received all these original Tax Clearance Certificates subsequent to 14 September 2009, being the date that South Central Investments 147CC original Tax Clearance Certificate was issued.

11.054 This means that when Adv. Tlakula entered into a Lease Agreement with Abland and its Consortium on 21 August 2009, the Electoral Commission did not have all the Consortiums original Tax Clearance Certificates in their possession.

**Affidavit Procurement Manager – Mr Steyn**

11.055 Mr Steyn was also interviewed regarding his involvement in the Abland matter and has corroborated the affidavit of Ms Dlamini as discussed in preceding paragraphs of our report as it concerns the constraints identified with the scoring of the proposals for each of the two shortlisted bidders.

**E3**

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- 11.056 We shall therefore not discuss the detailed content of his affidavit as it would be merely repeating the information that Ms Dlamini has already provided.
- 11.057 We deem it necessary to report on the normal process as it relates to the scoring of bidders and the compliance requirements as it relates to Tax Clearance Certificates as provided in Mr Steyn's affidavit in order to appreciate the procedures that were followed by the Electoral Commission in this matter.
- 11.058 Mr Steyn has attested that the normal tender process would be to disqualify a bidder who failed to provide an original Tax Clearance Certificate with their proposal provided that the advertisement, or tender documents, required the interested bidders to provide this information with their proposals at the time of submission to the Electoral Commission. However, if an original Tax Clearance Certificate was not required in the advertisement, then the bidder must provide a tax clearance certificate before the tender can be awarded to them. **E3|7**
- 11.059 Mr Steyn has attested that *"according to the IEC's Procurement Policy at the time, failure to provide a tax clearance certificate with the bid in a normal tender process "shall" result in disqualification of the bid."* However, he also indicated that this was not a normal tender process and therefore, the documents and procedures, such as checklist reflected as Annexure A to the Procurement Policy on page 69, was not used. **E3|7**  
**E3|47**
- 11.060 At all times he kept Mr Langtry abreast of all the issues or constraints that the Procurement Department had with the scoring of the shortlisted bidders, some of which were done by email. For example, his email to Mr Langtry dated 26 June 2009 he stated the following: **E3|8**  
**E3|50**

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*"Hi Stephen*

E3|50

*In follow-up to my email of last night, this is where we currently are with the matter.*

*Some information still has to be received as far as ownership around the Menlyn Corporate Park consortium is concerned before we can base the scoring on actual figures.*

*As far as the monthly cost is concerned that we have used in the formula, it is difficult to deal with comparative costing for all the monthly costs as one party may have given costs whilst the other is vague or not stipulated and the bill of quantities is also not the same. I accept that if the floor size differs in square meters one will have to pay for the whole space as quoted since that is what we would effectively be renting. However, as far as the rest is concerned it is based on variables.*

*The only way we would be able to effectively do a comparative scoring is for us to prepare a standard costing schedule which both parties must complete based on a standard bill of quantities. If you agree then I would suggest you assist us with that in terms of what it is that we would ultimately be looking at.*

*Otherwise, the outcome would be more or less as what is projected in the attached scoresheet.*

*Please advise in respect of above."*

- 11.061 It appears that Mr Langtry responded to Mr Steyn's aforementioned email on 29 June 2009 which email reads as follows:

*"Hi Marius,*

*Do you have any news on this?*

*My proposal regarding the total monthly cost to use for scoring purposes is that we use the pricing, with qualification, as per the schedule prepared by Procurement. We just need to clarify PDI ownership issues. If I (sic) about an alternative approach I will let you know."*

E3|49

E3|49

- 11.062 We shall not repeat the scoring that was eventually allocated to each of the shortlisted bidders as this has already been discussed in paragraphs 11.037 of our report.

- 11.063 However, it is important to mention that Mr Steyn has confirmed that it is not unusual for the scoring to take place after the bidders had been shortlisted provided that all bids received have been appropriately assessed for functionality. Hence, the fact that all the remaining eight bidders had been excluded after the evaluation process performed by Mr Langtry would not in Mr Steyn's view have been considered inappropriate as the scoring is only performed on bidders who met the functional requirements.

E3|6-7

#### **PwC's Analysis of Scoring**

- 11.064 In our view, the issue for consideration is whether the functionality assessment on the eight proposals that were disqualified was performed in terms of section 217 of the Constitution of South Africa, namely that it was done *"in accordance with a system which is fair, equitable, transparent, competitive and cost effective"* or that it was in terms of the PFMA which requires that *"an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective"*.

11.065 If the aforementioned process during which some of the bidders were disqualified was not fair, equitable, transparent, competitive or cost effective then the question to be considered is whether the scoring should have been performed on some of these bidders proposals as well and the effect that this scoring would have had on the ranking of Abland's proposal.

11.066 As we have already mentioned earlier in this report, we are of the opinion that Khwela City ought to have progressed to the presentation stage, but they were disqualified since their occupation date was after the date proposed in the advert that was flighted in the five newspapers. It would appear that they were disqualified by Mr Langtry on the basis of their occupation date although there is nothing documented in the Electoral Commission's records explaining the reasons for their disqualification, neither are Mr Langtry or Mr du Plessis convincing or consistent in the reasons for their disqualification.

***Figure 21 – Paragraph 7.1 Abland's Proposal Current Day Net Monthly Rentals***

B2|11

11.067 Using Ablands "Standard Terms and Conditions of Lease" as detailed on page 5 of their proposal and their rates disclosed in paragraph 7.1 thereof (refer to Figure 21 below), we compared their prices to that of Khwela City to determine whether Khwela City's bid was competitive and cost effective in comparison to Abland's; in addition to determining how Khwela City would have faired against Khwela City in the overall scoring in terms of the PPPFA.

B2|11

11.068 Detailed below, in Figure 21, is an extract of paragraph "7.1 Current Day Net Monthly Rentals (based on 01 April 2009)" that appears on Abland's proposal that was issued to the Electoral Commission where they have detailed the costs of various line items commencing with: Office Areas; Storage; Basement Parking; Covered Parking and Opening Parking. They have also included various additional costs which can be best explained by examining the content of the information disclosed in Figure 21 below:

B2|11

Figure 21 – Paragraph 7.1 Abland’s Proposal Current Day Net Monthly Rentals

7. STANDARD TERMS AND CONDITIONS OF LEASE

7.1 Current Day Net Monthly Rentals (based on 01 April 2009).

DESCRIPTION	GROSS RENTABLE AREA	COST PER M <sup>2</sup> /BAY	TOTAL COST ON 01 APR 09
Office Areas	9 000	R 102	R 918,000
Storage	125	R 45	On request
Basement Parking	149	R 450	R 67 050
Covered Parking	151	R 350	R 52 850
Open Parking	150	R 250	R 37 500
<b>SUB TOTAL (Excluding VAT)</b>			<b>R1,075,400</b>
Operational Costs		R 13	R 117,000
Rates & Taxes (actual charge)		R 12	R 108,000
<b>SUB TOTAL (Excluding VAT)</b>			<b>R 225,000</b>
Air-conditioning maintenance		R 1	R 9,000
<b>SUB TOTAL (Excluding VAT)</b>			<b>R 9,000</b>
Water consumption (estimate)		R 1.11	R9,900
Electrical Consumption (estimate)		R 4	R 36,000
<b>SUB TOTAL (Excluding VAT)</b>			<b>R 45, 990</b>
<b>TOTAL GROSS MONTHLY RENTAL (Excluding VAT)</b>			<b>R1,355,390</b>
<b>VAT @ 14%</b>			<b>R189,74.60</b>
<b>TOTAL MONTHLY RENTAL</b>			<b>R1,545,144.60</b>

NOTE: Storage will be available on request.

Test 1

Test 2

B2|11

Test 3

**Procedures Performed Between Khwela City and Abland**

11.069 We performed three tests on the information provided by Khwela City and that which was disclosed by Abland, as shown in Figure 21 above, in order to determine whether Abland was the most cost effective bidder and whether they would have scored the most points in terms of the PPPFA.

11.070 The description of these three tests are described below:

Test 1 This test consisted of using the rate per square meter for the Office area and PDI points, which was calculated to be 5.3 points for Khwela City as they have disclosed in their proposal that they are the black empowerment company of the Mid City group and are 53% black owned.

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Test 2 The second test consisted of determining a price based on the items covered in Figure 21 that related to Office Area; Storage; Basement Parking; Covered Parking; and Open Parking, together with the PDI points.

Test 3 The third test consisted of determining the price based on all the criteria set out in Figure 21 above, together with the PDI points.

11.071 Before continuing with our discussion into the assessment of this matter, we would like to state that we have not verified the information provided by Abland or Khwela City for that matter and for the purposes of our report, and the findings detailed below, we have accepted the information provided by these two entities at face value unless otherwise stated. Hence, where Khwela City has for example indicated that their percentage of black ownership is 53% we have accepted this representation without interrogating and investigating whether this statement is in fact true. The same would apply to Abland.

11.072 We have taken the information illustrated in Figure 21 above and cross referenced these line items to that identified on Khwela City's proposal and our findings from this exercise is illustrated in Figure 22 below.

**Figure 22**

DESCRIPTION	ABLAND			Khwela City		
	GRQSS RENTABLE, AREA	Cost	TOTAL COST ON 01 APR 09	Gross Rentable Area	Cost per m2 / Parking Bay	Total Cost 01 Apr 09
Office Areas	9 000	R 101	R 918,000	9000	R 105	R 945,000
Storage	125	R 45	On request	0		
Basement Parking	149	R 450	R 67,050	102	R 400	R 40,800
Covered Parking	151	R 350	R 52,850	198	R 300	R 59,400
Open Parking	150	R 250	R 37,500	150	R 100	R 15,000
<b>SUB TOTAL (Excluding VAT)</b>			<b>R 1,075,400</b>			<b>R 1,060,200</b>
Operational Costs		R 13	R 117,000		R 12.16	R 109,440
Rates & Taxes (actual charge)		R 12	R 108,000		-	-
<b>SUB TOTAL (Excluding VAT)</b>			<b>R 225,000</b>			<b>R 109,440</b>
Air-conditioning maintenance		R 1	R 9,000		-	-
<b>SUB TOTAL (Excluding VAT)</b>			<b>R 9,000</b>			<b>R -</b>
Water consumption (estimate)		R 1.11	R 9,900		R 1.11	R 9,900
Electrical Consumption (estimate)		R 4	R 36,000		R 4	R 36,000
<b>SUB TOTAL (Excluding VAT)</b>			<b>R 45,990</b>			<b>R 45,990</b>
<b>TOTAL GROSS MONTHLY RENTAL (Excluding VAT)</b>			<b>R 1,355,390</b>			<b>R 1,215,540</b>
VAT 14%			R189,74.60			R 170,175.60
<b>TOTAL MONTHLY RENTAL</b>			<b>R 1,545,144.60</b>			<b>R 1,385,715.60</b>

- 11.073 The two amounts for water and electrical consumption referenced as “A” in Figure 22 above for Khwela City were assumed to be the costs of these utilities based on the Abland’s proposal as shown in Figure 21 above, since Khwela City did not provide for these costs in their proposal document.
- 11.074 Our findings from the aforementioned comparisons and tests are detailed hereunder:

<b>Test No</b>	<b>Company</b>	<b>Price</b>	<b>Price Points</b>	<b>PDI Points</b>	<b>Total Points</b>
1	Abland	R102 / m <sup>2</sup>	90	1.875	91.87
1	Khwela City	R105 / m <sup>2</sup>	87.35	5.3	92.65
2	Abland	R1,075,400	88.71	1.875	90.59
2	Khwela City	R1,060,200	90	5.3	95.30
3	Abland	R1,545,144.60	79.65	1.875	82.24
3	Khwela City	R1,385,715.60	90	5.3	95.30

- 11.075 In each of the tests performed above, Khwela City would have scored the highest points and therefore, had they competed against Abland and not been disqualified before the scoring could be done then the Electoral Commission would have scored them the highest in terms of PPPFA, which Act states in section 2 (1) (f) that a contract must be awarded to a bidder who scores the highest points, unless objective criteria justify the award to another bidder.

**12.000 MOVEABLE & IMMOVABLE PROPERTY – “TURNKEY” SOLUTION**

**The Proposal**

12.001 The acquisition of immovable and movable items in relation to the turnkey solutions is primarily dealt with in the Addendum Agreement that was entered into between the Electoral Commission and Abland in April 2010; although the first mention of a turnkey solution is in paragraph 10 of Abland’s proposal to the Electoral Commission.

**C2  
B2|13  
B2|8**

12.002 Paragraph 10 relates to Tenant Specific Items and an extract of the contents of this paragraph that concerns the turnkey solution is detailed below:

**B2|13  
B3|8**

**“10. Tenant Specific Items**

*10.1 Items normally handled directly by the occupant of the building such as telephone system and IT installation, etc. are referred to as tenant specific items.*

*10.2 Abland, as part of the turnkey development process, would undertake the procurement and installations of these items on behalf of the IEC.*

*10.3 Based on the information obtained from the IEC, Abland would prepare a schedule of such items with indicative budget figures for consideration.*

*10.4 The items selected from this schedule would be tendered to the open market to ensure that the optimum cost is obtained from the IEC’s benefit.”*

12.003 It would therefore appear from the proposal that Abland had indicated that, as part of the turnkey process, they would subject all the indicative budget figures to an open market tender to ensure that optimum cost is obtained to the benefit of the Electoral Commission.

**B2|13  
B3|8**

**Addendum Agreement Annex D1 – Fitting Out Of The Leased Premises**

- |        |  |                  |
|--------|--|------------------|
| 12.004 | The first Addendum agreement that was entered into by the Electoral Commission with Abland, dated April 2010, appears to have been signed by Adv. Tlakula on 12 April 2010.  | C2 4             |
| 12.005 | Paragraph 3.1 indicates that it was agreed between the parties to the Lease Agreement that Annexure D to the Lease Agreement would be deleted and replaced with Annexure D1.   | C2 3<br>C2 58-61 |
| 12.006 | It is also recorded under the heading “General” in Annexure D1 the following:<br><br><i>“The Leased Premises will be fitted-out by the Landlord in accordance with the specification contained in <b>Annexure A</b>, the Landlord’s Fit Out Budget and the Tenant’s Fit Out Budgets as hereinafter provided for. The Landlord will appoint all contractors, consultants, and suppliers to be used in such fit out and such further consultants as may be necessary or appropriate and agreed upon by the Tenant to advise on, and finalise the additional Tenant Specific Items, including but not limited to the interior design of the Leased Premises. All costs of further consultants appointed to advise on the Tenant’s Fit Out Budgets will be borne by the Tenant.”</i> | C2 59            |
| 12.007 | Paragraph 3 of Annexure D1 deals more with Tenant Fit Out Budgets and includes immovable and moveable items. We deem it important to discuss the content of paragraph 3 of the Tenant’s Fit Out Budgets in its entirety in order to ensure that the reader of our report fully understands and appreciates the terms of this Addendum Agreement.   | C2 60            |

**Paragraph 3 Tenant's Fit Out Budgets**

12.008 Paragraph 3 of the Tenant Fit Out Budgets read as follows:

C2|60

*3.1 The Landlord will prepare two budgets, one being in respect of the moveable items and one being in respect of the immovable items, which will comprise of such additional Tenant specific items required by the Tenant which are not included in the Landlord's Fit Out Budget and the costs exceeding the Landlord's Fit Out Budget.*

*3.2 The Landlord will submit the proposed budgets to the Tenant for approval. Upon approval of such budgets, the budgets will be initiated by the Landlord and the Tenant and will be deemed to be incorporated in to this lease ("**the Tenant's Fit Out Budgets**")*

*3.3 The Landlord will, in conjunction with the Tenant and the consultants, review and consider the Tenant's Fit Out Budgets, if necessary. The Tenant will make the final decision on the additional Tenant Specific items, the Tenant's Fit Out Budget and the cost involved.*

*3.4 The Tenant will be liable for the cost of the additional Tenant Specific items included in the Tenant's Fit Out Budgets as more fully provided for in clause 3.5 and 3.6 below.*

**3.5 Immoveable Items**

C2|60

*The additional Tenant specific items which classify as immovable will be rentalised over the period of the Lease Agreement, provided that the cost incurred with regard to such items will not exceed the amount of R20 000 000.00 (excluding value-added tax) The Parties agree that the monthly rental will be adjusted by the amount of the cost incurred with regard to such immovable items multiplied by 0.135 and divided by 12. The Parties agree that a final adjustment account will be done prior to the commencement date of the lease and the Tenant will pay monthly rental only in respect of the actual amount rentalised in respect of immoveable items. It is recorded that the Monthly Rental payable in terms of the lease will be adjusted to provide for rentalisation of the actual cost incurred in respect of the immovable items.*

**3.6 Moveable Items**

C2|61

*3.6.1 The additional Tenant Specific Items which classify as moveable items will be paid for by the Tenant in cash. Prior to the placement of an order for moveable items, the Tenant will approve such order in writing and will pay a cash deposit of 50% of the cost of such moveable items within 7 (seven) days of receipt of a tax invoice from the Landlord. The balance will be paid after delivery and installation of such items to the reasonable satisfaction of the Tenant and within 30 (thirty) days of receipt of a tax invoice. The amounts so invoiced by the Landlord will be paid by the Tenant without deduction or set-off to the Landlord's nominated bank account or as the Landlord's written payment instructions may direct and the Tenant accepts.*

*3.6.2 It is specifically recorded that ownership of all moveable items and such other additional Tenant specific items as agreed upon in writing between the Landlord and the Tenants, will vest in the Tenant.*

3.6.3 *With regards to the moveable items contemplated in clause 3, the Tenant hereby indemnifies the Landlord and holds the Landlord harmless from any and all claims, liability, damage, loss, harm, penalty, expense, charge and cost (including legal costs on an attorney and own client scale) of any nature whatsoever which the Landlord may sustain howsoever arising as a result or attributable to or from or in connection with a failure of the Tenant to comply with its payment obligations in terms of clause 3.6.1*

3.6.4 *The Landlord will be entitled to charge a co-ordination fee of 2% (two percent) of the cost of the moveable items plus value-added tax.*

3.6.5 *The Landlord will cede all its rights against the contractors, consultants and the suppliers in respect of defects in the moveable items and all applicable guarantees and warranty undertakings in respect of defects to the Tenant.*

12.009 This addendum was signed by Adv. Tlakula on 12 April 2010 and it appears from the content of the terms detailed in paragraph 3 of the Addendum that it provided for two things namely: a budget of R20 million (excluding VAT) to spend on the tenant fit out in respect of immovable items; and the purchase of "additional Tenant Specific items" which have been classified as moveable items.

C2|4

C2|60

C2|61

12.010 In the first instance, a budget of R20 million had been provided for immovable items whilst in the second instance, there is no mention of a budget amount, or any of the procedures that should be followed in procuring these items despite Abland making reference to these procedures in paragraph 10.3 and 10.4 of their proposal to the Electoral Commission under the heading Tenant Specific Items.

C2|60

C2|61

B2|13

B3|8

12.011	The procedures identified in paragraph 10 of Abland's proposal have not been included in Annexure D1 to the Addendum Agreement. In fact, none of the terms detailed in paragraph ten (10) of Abland's proposal have been included in the Annexure D1. It would appear that Abland have instead included terms that are more prevalent to protecting their own interest in this regard as opposed to including the interests of the Electoral Commission, specifically that which is detailed in paragraph 10.3 to 10.4 in their proposal document.	B2 13 B3 8 C2 58-61 B2 13 B3 8
12.012	In addition, the addenda in paragraph 3.6 does not provide a costing or authorised budget to be expensed in terms of procurement of movable items whereas there is a budget of R20 million (excluding VAT) for immovable items as detailed in paragraph 3.5 of the agreement.	C2 61 C2 60
12.013	It would therefore be reasonable to conclude that Abland, and/or the Electoral Commission, did not know what the budget was in respect of the moveable items when this addendum was entered into on 12 April 2010, since a budget amount is excluded for movable items.	
	<b>Budget Schedules – Immoveable Items</b>	J1
12.014	Abland provided us with copies of budgets in respect of both moveable and immovable items that relate to turnkey items that were procured based on Annexure D1 to the abovementioned Addendum Agreement.	J1 C2 58-61
12.015	The first of these budgets to be discussed in our report is the immovable budget which Abland have provided seven copies which appear to have been prepared at various times during the course of this project. Some of these budgets do not have an authorised signature of a representative of the Electoral Commission, although, in most instances, the schedules appear to have been authorised by Mr du Plessis whilst the last budget is co-signed by Mr du Plessis and Adv. Tlakula on 7 August 2011.	J1 J1 1

**NATIONAL TREASURY**

**FORENSIC INVESTIGATION: ELECTORAL COMMISSION: RIVERSIDE OFFICE PARK**

**14 DECEMBER 2013**

12.016 A detailed summary of these budget schedules are detailed below:

Immovable Budget Date	Budget Amount (incl. VAT) (R)	Budget Amount (excl. VAT) (R)	Authorised by	Co-Authorised By	Date Authorised	Notes
05-Oct-09	1,178,566.20	1,033,830.00	Mr du Plessis	None	05/10/2009	
10-Apr-10	18,841,916.49	16,527,996.92	None	None	None	
04-May-10	19,901,220.48	17,457,210.95	None	None	None	
06-May-10	19,901,220.48	17,457,210.95	Mr du Plessis	None	17/05/2010	
07-Dec-10	24,746,807.36	21,707,725.75	Mr du Plessis	None	07/12/2010	(02)
01-Mar-11	25,767,848.34	22,603,373.99	None	None	None	(01)
02-Mar-11	25,767,646.34	22,603,373.99	Adv. Tlakula	Mr du Plessis	07/08/2011	

J1|7  
J1|6  
J1|5  
J1|4  
J1|3  
J1|2  
J1|1

**Notes**

(01) At the top of the page of this budget sheet is a handwritten endorsement that reads "TABLED TO NDP 1-03-11."

(02) At the top of the page of this budget sheet is a handwritten endorsement that reads "ISSUED TO NDP 7-12-10."

12.017 The aforementioned budget contains 42 item numbers which includes columns with the following headings:

J1

- 1.) Item No.;
- 2.) Status;
- 3.) Description of Tenant Allowance;
- 4.) Total Allowance;
- 5.) Total Final Installation;
- 6.) Total Extra Over;
- 7.) Total Immovable Item; and
- 8.) Tenant Signature Approvals.

12.018	The column labelled “Tenant Signature Approvals” does not contain any signatures of representatives thereon and are blank in all seven instances. However, in most cases Mr du Plessis has authorised the budget at the bottom of the page in the place provided as already discussed above.	J1
12.019	The total value of the tenant final installations on the last issued budget schedule containing the signature of Adv. Tlakula is R33,978,498.99 less the total allowance allowed by Abland for this installation being R11,375,125 means that the balance R22,603,373.99 (excluding VAT) was rentalised over the period of the lease. This will be discussed in more detail further in our report.	J1 1
12.020	This also means that the amount reflected in the paragraph 3.5 in Annexure D1 to the Addendum Agreement, namely R20 million (excluding VAT) was exceeded by R2,603,373.99 (excluding VAT).	C2 60
12.021	In this regard, the second Addendum to the lease reflects in <i>“clause 3.5 that clause 3.5 of Annexure D1 to the Lease Agreement referring to “Fitting out of the Lease Premises” is hereby amended by deleting only the specified amount of R20 000 000.00 pertaining to “additional Tenant Specific items which classify as immovables” to be rentalised over the period of the Lease Agreement and substituting the aforesaid amount with the amount of R22,603,374.00”</i>	C3 4
<b>Cost of Rentalisation to Electoral Commission</b>		
12.022	Paragraph 6.1.3. of Real FMG’s report “Transaction Structuring – Rentalisation of Tenant Specific Items” deals with the cost of the rentalisation of the amount of R22,603,674 over the term of the lease.	F1 9-10

- 12.023 For ease of reference, we shall repeat the contents of Real FMG's report in this regard below:

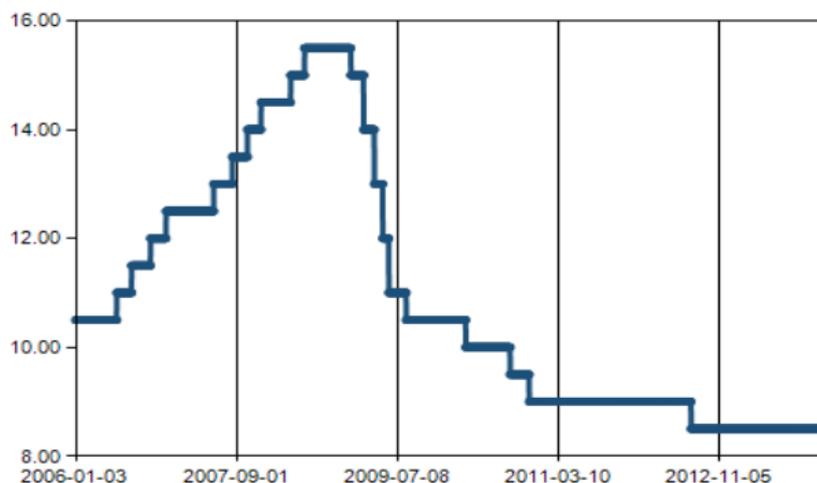
F1|9-10

*With regard to the Rentalisation of the R22,603,574 of Tenant Specific Items at 13.5%, we have carried out financial analysis in terms of the rentalisation. Our conclusion is that the total nominal rentalised costs of the tenant items, (Capital Cost of R22,603,674, rentalised at 13.5%, escalating at 9% for 10 years) would amount to **R46,360,552.64**.*

*Had this amount been financed through alternative means, the effective interest rate for the advancement of these funds was 16.544%. This is in excess of what we would have expected.*

*To place this rate in context, the timing of the transaction seems to have been important. The prime-lending rate at the time conclusion of the transaction in April 2009 was 13%. By date of signature of the lease in August 2009, the prime rate was 10.5% and by completion and lease commencement in September 2010, this was 10%. This compares to the current 8.5% a very different interest rate environment was therefore prevalent at the time, one characterised by a fluctuating rate that peaked as recently as December 2008 at 15.5%, yet was falling rapidly at the time of the transaction. There was no certainty as to how far and how quickly that fall would occur. The eventual trajectory of the prime lending rate can be seen (sic) in the graph below, but that trajectory was unknown as at April 2009.*

Figure 1: Prime lending rate data (Source: SA Reserve Bank)



*The effective interest rate calculated above therefore has to be compared to ruling rates at the time of conclusion of the transaction, as well as taking into account the risk level associated with the advancement of those funds. In terms of the above, the risk loading applied to the prime rate was effectively 3.544% to reach that effective rate of 16.544%.*

*Given the above interest rate environment and the risk represented by both tenant and the nature of the items that were being financed, we believe that the rate as applied was above the range of acceptability, depending on the quality of tenant, a Landlord would typically charge between prime and prime plus 2%. A landlord could argue that it is not a bank and should not be asked to take funding risk without reward. Our point is that the IEC accepted funding which was overpriced by at least 1% - 1.5%.*

*Out (sic) final comment on the rentalisation of the Tenant Specific items was identified in the report by Asman, Phillips, McClure and Partners. If the conversion of certain areas of the premises had resulted in those areas being included in the overall rentable area of the premises, then the costs of such conversion should have been borne by the Landlord, or vice versa, if the costs of conversion were carried by the IEC, they should have been excluded by the rentable areas for the purpose of calculating rental.*

*The fit our budget was not mentioned in the original 2009 Abland proposal.*

*Annexure D to the Agreement of lease provided for a budget of R1,245/m<sup>2</sup>. The comments by Asman, Philips & McClure regarding the inclusion of air-conditioning in that budget must be noted. Annexure D1 amended this budget to R1,325/m<sup>2</sup>. This budget was calculated on the usable area of the premises. This is unusual; as it is typically calculated on the rentable are of, in this case, offices.*

*In a transaction of this nature and for this duration (10 years) our opinion is that a fit out budget of at least R800 – R1000/m<sup>2</sup>, excl VAT, should have been provided, excluding the air-conditioning. Removing the a/c from the provided budget results in the budget of R795/m<sup>2</sup>. This is on the lower side of market norms. Applying this rate only to the usable area reduced the landlord's overall obligations to a level even further below market.*

**Reply by Aland dated 6 November 2013**

- 12.024 Subsequent to requesting various documents from Abland they prepared a letter to the current CFO of the Electoral Commission re: Riverside Office Park – IEC Moveable and Immovable Procurement dated 6 November 2013 where they have explained their procedures followed with regard to the procurement of movable and immovable items.

H1

H1

- 12.025 Detailed below is an extract of the content of Abland's response to the initial questions asked relating to Immovable items:

**"2. Immovable Items**

H1|2

*The list of immovable items were included in the Immovable Budget spreadsheet. Immovable items are generally intrinsic to the design and construction of the building.*

*As part of the Lease Agreement, allowances were afforded to the IEC for fitting out the premises, inter alia, floor finishes, wall finishes, ceilings and partitions, electrical and mechanical installations. The IEC's requirements were formulated and offset against such allowances.*

*The IEC furthermore had specific requirements, not allowed for initially, which included storerooms, plant rooms, ablutions etc. The costs associated to these items were extrapolated from rates received by the Main Contractor. Items would furthermore include a number of trades or elements e.g. brickwork, plaster, paint, electrical installations amongst others.*

*The costs of these items were compiled on the immovable Budget schedule and presented to the IEC for approval.*

*The Immovable budget schedule was duly signed off by the IEC's representatives. As per the stipulations of the Lease Agreement, the quantum of the immovable items was rentalized.*

*In summary due care and consideration was given to comply to the procuring procedures stipulated by the IEC. We acquired the necessary consents, approvals of both cost and technical or performance parameters."*

**Reply by Abland dated 5 December 2013**

12.026 Abland have indicated in paragraph 10 of their letter dated 5 December 2013 under the heading "IEC Procurement Process" that they have annexed an explanation document from their project manager, Mr Hannes Kleynhans (**Mr Kleynhans**), who has on broad terms explained the processes, which was followed and which explanation is annexed as **Annexure F**.

12.027 Abland have furthermore indicated that: "*we believe it is important to note that the Riverside Office Park Trust and Abland dealt with the procurement process according to the Lease with the IEC as this was ultimately the agreement that stipulated the required processes. Refer to **Annexure F**.*"

**Annexure F**

12.028 Immoveable items is dealt with in paragraph 2 of Annexure F to Abland's response which response is as follows:

**"2. Immovable Items**

*Immovable items constitute the items listed under the Annexure B attached hereto.*

**2.1 Appointment of Professionals**

*The procurement of Immovable Items was the responsibility of the Consultants appointed by the Developer, with the exclusion of the Interior Design items which was the responsibility of the Interior Designer.*

H2|1-5

H2|4

H2|99

H2|4

H2|99

## 2.2 Approval & procurement of Immovable Items

*The Developer afforded the IEC with fit out allowances. The allowances could be divided into Base Building provisions and Tenant Specific provisions. The IEC's requirements were extracted through a series of Tenant meeting (sic) held. The layouts determined by the Space Planner formed the basis from which detailed designs were done by the Consultants, including Electrical & Mechanical requirements.*

*The designs were furthermore adjusted to meet the IEC's exact requirements with the specifications increased accordingly.*

*Following receipt of the approval of the Immovable Budget schedule, the implementation of the items proceeded. The majority of the work was undertaken by the Main Contractor appointed and subcontractors appointed by the Main Contractor.*

*At the completion of the development, the IEC's representatives signed off the immovable budget schedule. The Lease Agreement provided for the items on the Immovable Budget schedule to be rentalized.*

### **Assessment of Costs Report – Asman Phillips McClure and Partners**

- 12.029 Asman Phillips McClure and Partners, a firm a Quantity Surveyors issued their report titled "Assessment of Costs New IEC Office Premises" dated 7 December 2013.
- 12.030 Paragraph 1.5 of this report deals with "*Tenants Allowance*" and paragraph 1.6 deals with "*Reporting on expenditure by tenant.*" The content of these two paragraphs, in addition to the summary thereof, are repeated below instead of attempting to summarise or explain the work done Asman Phillips McClure and Partners in this regard.

F2

F2

F2|3

F2|3-4

**Paragraph 1.5 – Tenants Allowance**

F2|3

**“1.5 Tenant’s Allowance**

1.5.1 *Abland’s proposal document does not contain a specific reference to a “tenant’s allowance.” Such an allowance is customarily offered by developers to tenants. Certain “tenant type items” such as carpets, partitioning, etc were allowed, but no specific amount of money was identified. However in April 2010 in an addendum to the lease an allowance of R1325 per m2 of usable area for “fit our items” is identified.*

1.5.2 *This amount is important for two reasons:*

- .1 The initial proposal undertook to provide “A” grade air-conditioners, it would therefore seem that installation was included in the initial rental proposed, and*
- .2 The April 2010 addendum transferred the responsibility for the cost of the air-conditioning installation from the developer to the tenant. Whilst the developer allowed an amount as a contribution to the final cost of the air-conditioning installation this is the opposite of the relationship we are accustomed to seeing. In our experience, it is more usual for the developer to meet the cost of the basic air-conditioning installation with the cost of fine tuning the installation to suit their layout and requirements being met by the tenant.*

**1.6 Reporting on Expenditure**

F2|3-4

1.6.1 *Only five “Immovable Budget Spreadsheets” were provided to us for comment. These are dated.*

- .1 02 Oct 2009,*
- .2 10 April 2010,*
- .3 6 May 2010,*

*.4 7 December 2010 and*

*.5 2 March 2011. With the exception of the 10 April 2010 spreadsheet, all of the others were signed indicating acceptance of the costs.*

*1.6.2 In our opinion, there should have been more frequent reporting and forecasting of the cost implications or requests by the tenant. To provide summaries of cost at 6,7 and 3 monthly intervals is, in our opinion, insufficient to allow the tenant to make considered judgements on the consequences of their requests to vary the project.*

*1.6.3 It may be that more regular reports were tabled to the tenant. However we have not seen any evidence of them.*

**1.7 In summary**

*.1 In a summary, the building is larger than initially required, has a specification which has changed; possibly to the benefit of the developer, contains installations funded by the tenant which more normally would be funded by the developer and the project incurred costs that may have not have been presented in time to allow the tenant to optimally seek alternatives.*

*.2 It happens that the tenant may not have received the best value for the expense which they incurred.”*

12.031 Asman Phillips McClure and Partners have also discussed the Tenant’s Allowance in paragraph 8 of their report in greater detail. The extracts of their report is recorded below:

F2|4

F2|9

**8 TENANT'S ALLOWANCE**

**F2|9**

- 8.1 *The tenant's allowance; as noted, is based upon the usable area of the building. This is in our experience unusual. It is more common to have an allowance per m<sup>2</sup> of rentable area rather than usable area. By calculating the allowance in this manner the developer reduced his expenditure by R1,198,462.50 (9489.5m<sup>2</sup> – 8485m<sup>2</sup>) x R1325)*
- 8.2 *Certain items of the specifications e.g. floor tiles are the subject of PC allowances. Those amounts are specifically noted as being exclusive of "any escalation" – see annexure D to original offer. Those amounts should therefore have attracted escalation and should have been finally adjusted in the final cost of the building with the tenant being allowed the benefit. We have seen no evidence that this occurred.*
- 8.3 *The amount allowed for the air-conditioning installation as part of the tenant allowance is low. The method of air-conditioning the building using console units to general areas and split units to deep space areas is feasible and economic, but it does not really meet the perception of an "A" grade building. Whilst the developer specified what his proposed method of air-conditioning the building was in his original proposal, that aspect of the proposal was more suited to a lower grade development. In our experience, "A" grade accommodation is more normally served with central plant air-conditioning.*
- 8.4 *It is of interest to note that while it should have been possible to air-condition the building; using the method first proposed for the amount of funds allowed by the developer, the tenant has eventually been involved in a level of expenditure sufficient to provide central plant air-conditioning.*

- 12.032 In addition to the above, paragraph 9 "Reporting on Expenditure by Tenant" in the above report reflects the following:

**F2|9**

**“9 REPORTING ON EXPENDITURE BY TENANT**

F2|9

9.1 *We have contrasted each of the “immovable budget reports” with the subsequent reports. See appendix 2 of this report.*

9.2 *Although the reports are infrequent and at irregular intervals they clearly show a constant trend of increased expenditure.*

9.3 *The increases in total expenditure: report to report are*

*02 Oct 2009 – 10 April 2010 : R15,494,166.92*

*10 April 2010 – 6 May 2010: R929,214.03*

*6 May 2010 – 7 December 2010: R4,250,514.80*

*7 December 2010 – 2 March 2011: R895,648.24*

9.4 *Appendix 2 contains our comments on the various items, however certain items require to be highlighted here.*

**.1 Space Planning**

F2|10

*This item is valued at R270,000 was shown in the report dated 02 October 2009 and was accepted by the tenant as a tenant extra. It was never shown again. How this expenditure was catered for is unknown.*

**.2 Lifts**

F2|10

*The initial proposal only supplied one lift to service the building (See appendix D at B1.4). This appeared to be an under-provision. A later specification dated 14 August 2009 increased the number of lifts to be provided to 2 (see specification attached to lease September 2010 at B1.4). The report of 02 October 2009 highlighted that two additional lifts would be installed; one at the developer's expense and the other at the tenant's cost. The additional tenant expense was shown on all reports until 7 December 2010 and subsequently deleted. Whilst, in our opinion, the provision of lifts should be a developer expense, that a cost of R763,830 could be accepted and then become no longer valid is perplexing.*

**.3 Air-conditioning**

F2|10

*We have commented at length on the cost of the air-conditioning elsewhere in this report. Suffice to say that, in our opinion, this should largely have been a developer's expense.*

**.4 Server Room**

F2|10

*The costs associated with this item appear extremely high. Particularly the cost of "piping from the roof slab to the computer room."*

**.5 Double Glazing to second floor**

F2|10

*We can see no reason why this should be a tenant cost. The report is insufficiently detailed to identify where this glazing was used, but, it is the developer's responsibility to ensure that the envelope of the building meets with the requirements of the design, not the tenant's.*

**.6 Training Room**

F2|10

*This amount appears to be excessive.*

**.7 Basement Turnstiles**

F2|10

*The amount levied for this appears excessive.*

**9.6 Timing of expense**

F2|11

*It is puzzling that in the period 7 December 2010 to 2 March 2011 an additional R895,648.24 of tenant expenditure was incurred. This is particularly so since, in the same period, the value of the “tenant lift” – R763,830 – was omitted from the schedule. In effect, the tenant spent a further R1,659,478.24 in the period commencing three months after the occupation date and ending seven months after they had taken possession of the building.*

- 12.033 The conclusions reached by Asman Phillips McClure and Partners in their report, which conclusions are set out in paragraph 10 thereof, is that it appears possible the Electoral Commission “*did not receive the best possible value for the expenditure incurred. From the information provided it is impossible to say where the responsibility for that shortfall in value should lie.*”

**Budget Moveable Items**

J2

- 12.034 The budget for moveable items that was provided to us does not contain a signed signature with the authorised representative from the Electoral Commission approving the expenditure occurred.

J2

**Request for Quotations**

- 12.035 Based on the representations made in paragraph 10 of Abland’s proposal document with regard to the Tenant Specific Items, specifically paragraph 10.4 thereof, we requested from both the Electoral Commission and Abland, copies of all their quotations that had been obtained prior to purchasing the moveable items so that we could determine whether they had obtained an optimum cost when they tendered the items to the open market.
- 12.036 Neither the Electoral Commission or Abland, were able to provide us with the quotations in this regard and it has subsequently been determined from

various interviews and representations made, that Abland did not, in most instances, tender the moveable items detailed in the budget to the open market to ensure that an optimum price was obtained.

**Reply by Abland – Moveable Items – 6 November 2013**

H1

12.037 In Abland's response to PwC concerning the procedures followed with regard to moveable items in their letter dated 6 November 2013 re: Riverside Office Park – IEC Moveable and Immoveable Procurement, they have indicated the following

H1

***"1. Moveable Items:***

H1|1

*The list of moveable items includes furniture, fittings and equipment procured on behalf of the Independent Electoral Commission (IEC).*

*The Procurement Channels include:*

- Items procured directly from suppliers;*
- Items procured through preferred vendors i.e. the Interior Designer;*
- Items procured through the Main Contractor appointed.*

*All suppliers and preferred vendors were tabled to the IEC and vetted for approval. The majority of the furniture, fittings and equipment related to specialized installations, being unique in technical specifications, performance and or aesthetics. A number of items included Interior Design elements and office furniture were custom manufactured to comply with the needs and requirements expressed by the IEC.*

*Throughout the project, Tenant Coordination meetings were held with the IEC in order to extract their specific needs. The IEC's requirements were summarized in the Moveable Budget spreadsheet. The Moveable Budget schedule was approved by the IEC's representative, confirming acceptance of the technical data, performance and aesthetics.*

*The IEC's procurement prescriptions included that orders be generated for each of the items included on the Moveable Budget schedule, with fees, where applicable, separate. The items included were invoiced to the IEC and paid accordingly. Following receipt of the items, the IEC's representatives generated an Asset Register, bar coded the items and confirmed receipt thereof."*

**Reply Abland Moveable Items – 5 December 2013**

H2

***Annexure F***

12.038 As indicated in preceding paragraphs of our report, Abland responded to our request in their letter dated 5 December 2013, which deals with, inter alia, the procurement of moveable items which is discussed in more detail in the report from Mr Kleynhans.

12.039 The content of this response, as it relates to movable items, is set out below:

***1. Moveable Items***

*Movable items constitute the items listed under Annexure A attached hereto.*

H2|98

### 1.1 Appointment of Consultants

*The procurement of moveable items required the appointment of certain Specialist Consultants. The Developer presented to the Independent Electrical Commission's (IEC) representative a list of Consultants that they had a longstanding working relationship with for approval. The Consultants were suitably qualified, experienced, and regarded as experts in their field.*

*A proposal was tabled to the IEC including the Consultants the Developer has had a longstanding working relationship with. The Consultants earmarked were able to deliver knowing the complexity of the project, as well as the short timeframe in which to deliver the final product.*

*The Consultants submitted a proposal to the IEC, detailing their scope of work as well as the fee structure applicable for conducting their services. The fee relating to the Consultant's services were comparable to industry standards, and were in line with fees charged for similar projects undertaken by the Developer. In this regard the IEC's representatives gave their written approval.*

*The Developer appointed the core professional team for designing, detailing and monitoring the construction of the IEC building . The professional team included:*

- *Architect*
- *Structural Engineer*
- *Mechanical Engineer*
- *Quantity Surveyor*

*The Consultants listed were involved to lesser or greater degree in formulating the details pertaining to some of the moveable items.*

**1.2 Approval of Moveable Items**

H2|98

*The formulating of the design and the detailing of the moveable items were facilitated through a series of Tenant meeting held with the IEC, as well as presentations to the IEC's representatives to ensure compliance with the design and performance parameters identified by the IEC and Consultants.*

*On agreement by all parties that the design complies with the requirements identified, budgets were prepared and presented to the IEC. The details will then require some adjustments, where after the budgets were represented and signed off by the IEC.*

**1.3 Procurement of Moveable Items**

H2|98

*Following approval of the Budgets, orders for 50% of the value of the items were prepared, submitted to and signed off by the IEC.*

*Payment of the deposits was executed. Following completion of the items and capturing on the IEC's asset register, the balance of the value of the items was presented to the IEC in the form of an order. The balance was then paid to Riverside Office Park Trust.*

*Where Consultants were involved, the invoicing of the agreed fees followed the same process as spelled out above."*

**Supplier Invoices**

- 12.040 Various requests have been made to both the Electoral Commission and Abland for them to provide us with the quotations and invoices in respect of the payments made to the suppliers and/or manufactures who provided the moveable items that were procured to the extent of R59,918,380.40 (incl. VAT); however, these invoices have not been provided.

J2

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- 12.041 Upon request for this information, Abland provided copies of the moveable budget together with their invoices and the orders that were signed by the Electoral Commission in support of these purchases. For most of these purchases, there are no supplier invoices, although we can confirm that there are some quotations and/or invoices for some of the items listed on the budget schedule, although these are limited to a few.
- 12.042 As a result, we cannot validate whether amounts invoiced to the Electoral Commission are market related or cost effective neither are we able to validate whether the amounts invoiced, including the commissions that were charged by Abland and/or the Interior Designers are correct.
- 12.043 When we spoke to Ms Karen Lotter of Wild at Heart, we were informed that she had all the invoices and guarantees for some of the moveable items that were procured through her and agreed to make these available. However, despite her searching her archived records was only able to provide the following:
- i. A summary of all work done with a copy of each order that was placed; and
  - ii. A copy of each invoice submitted and a summary of payments;
- 12.044 In Ms Lotter's email to us she had indicated that all transactions that were done were between Wild at Heart and Abland and that at no stage did she ever invoice or quote the Electoral Commission directly.
- Specific Moveable Items Procured**
- Planters***
- 12.045 Item number 6 on the moveable budget relates to "Interior Design Elements – Moveable Items" which budget was R19,918,877.03 (excl. VAT). We can also conclude that, according to the schedule, the budget was not exceeded neither were there any savings realised on this budget item.

**J5**

**J5|1  
J5|8-89**

**J5|1**

**J6**

**J2**

12.046 One of the items that were procured, and which was expensed to this budget, is item number 5.1 “Planters (General)” that appears on Order 001 dated 26 February 2010 which was for 399 (three hundred and ninety nine) planters at an aggregate cost of R957,600 (excl. VAT) or R2,400 each (excl. VAT).

**J6|1**

12.047 An example of this planter is illustrated in the photo graph below, whilst additional examples thereof can be seen in the photo album that we have created and which appear in photos 31; 47; 56; 60; 61; 62; 74; 78; 82; 84; 109; 110; 111; 112; 113; 117; 118; 120; 121; 124; 125; 126; 138; 141; 142; 172; 173; 175; 176; and 177.

**K1**

**Photo 31**



**Photo 175**



12.048 Effectively, the Electoral Commission spent just under R1 million for pot plant containers which are placed all over the building. During our interview with representatives of the Electoral Commission, we were told that the Commissioners had indicated that they wanted a green building hence, the reason why so many of these pot plant containers were purchased. However, this was not documented in any of the Commission minutes to approve this expenditure and the amount spent on this one item above appears unreasonable.

**J6**

***Gym Equipment***

12.049 The budget schedule also indicates that there was a budget for gym equipment in the amount of R482,942 which is recorded under item number 27. We can also confirm that the whole amount budgeted for gym equipment was spent.

12.050 We can also confirm that we have verified that the office of the Electoral Commission does have a gym. Photographs of the gym equipment are reflected below, as well as in our photo album.

J2

J2

K1

**Photo 86**



**Photo 87**



**Photo 88**



**Photo 89**



Photo 90



Photo 91

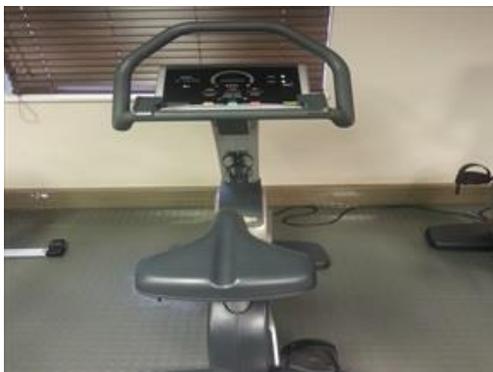


Photo 92



Photo 93



Photo 94



Photo 95



Photo 96

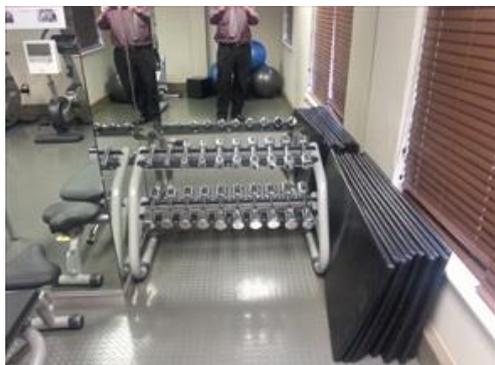


Photo 97



Photo 98



12.051 In addition to the gym equipment, the Electoral Commission also spent a further R69,073.69 on audio equipment for the gym which was also provided for as budget item number 16 on the budget schedule.

J2

12.052 Photo 98 above, also shows a flat screen television in the gym, which was not included in the budgeted amount for gym equipment in item number 27 whilst the cost to build the Gym is also included in the rentalised immovable items. According to Appendix 2 of the report of Asman, Phillips, McClure and Partners, the total amount spent on the gym amounted to R199,333.20.

F2|17

F2|19

F2|21

***Gym Membership***

12.053 We have also determined that for the month of November 2013 that the gym had in aggregate 72 members; 55 are permanent employees and 17 are contractors, who pay R130 per month for their membership fees, which equates to R9,360 per month.

12.054 Although the Electoral Commission is recovering some of the costs associated with the gym, the low membership and monthly membership fees, means that it will take years to recover all the costs spent on setting up the gym, never mind the monthly rental for the floor space.

**CEO's Office**

12.055 It is reflected in the report of REAL FMG that Government Gazetted size of the office of a CEO should not have been greater than 25m<sup>2</sup>. In the space needs analysis that was performed the Electoral Commission allocated 40m<sup>2</sup> to the office of the CEO which means that the size of the CEO's office was overstated by 15m<sup>2</sup>.

12.056 In order to appreciate the overstated size of the CEO's office, we took photographs thereof in order to appreciate the amount of space that is available and for the reader of our report to get a perspective of the overstated size.

12.057 Some of these photos are reflected below, whilst additional photos of the CEO's office can be examined in our photo album and which are labelled photos 1 to 30, inclusive of board room and waiting area.

**F1|5**

**K1**

Photo 1



Photo 2



Photo 3



Photo 9



12.058 One of the reasons given by Adv. Tlakula, the CEO at the time, for cancelling the award to Menlyn Corporate Park was because “the proposed building might be too opulent”. However, the final cost of furnishing the CEO’s office, boardroom, waiting area and PA’s office was R898,794, the details of which are set out in the table below:

**B11**

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Area	Item	Qty	Unit Cost	Sub-Total	Annexure Ref No
CEO Boardroom	Twenty Seater Boardroom Table	1	48,610.00	48,610.00	J5 9
CEO Boardroom	Planters	4	2,400.00	9,600.00	J5 9
CEO Boardroom	Twenty Seater Boardroom Table	1	10,869.00	10,869.00	J5 11
CEO Boardroom	Timber Panelling	1	73,750.00	73,750.00	J5 13 (1)
Pansy Office	Diamond Padded 5 Star Base Chair	1	4,850.00	4,850.00	J5 20
Pansy Boardroom	Diamond Padded 5 Star Base Chair	22	4,850.00	106,700.00	J5 20
CEO Cloak Room	Wardrobe	1	22,800.00	21,500.00	J5 23 (2)
CEO Cloak Room	Georgian Chair	1	4,500.00	4,500.00	J5 23
CEO Office Pansy Tlakula	Desk	1	27,800.00	27,800.00	J5 26
CEO Office Pansy Tlakula	Side Extension	1	10,600.00	10,600.00	J5 26
CEO Office Pansy Tlakula	Back Extension	1	17,500.00	17,500.00	J5 26
CEO Office Pansy Tlakula	Georgian Diamond Padded 4 legged	2	3,400.00	6,800.00	J5 26
CEO Office Pansy Tlakula	Meeting Table	1	15,850.00	15,850.00	J5 26
CEO Office Pansy Tlakula	Georgian Diamond Padded 4 legged	6	3,400.00	20,400.00	J5 26
CEO Office Pansy Tlakula	Two Seater Sofa	1	19,500.00	19,500.00	J5 26
CEO Office Pansy Tlakula	Armchair	2	7,460.00	14,920.00	J5 26
CEO Office Pansy Tlakula	Server Unit	1	26,500.00	26,500.00	J5 26
CEO Office Pansy Tlakula	TV Display	1	48,000.00	48,000.00	J5 26
CEO Office Pansy Tlakula	Ottoman	1	4,950.00	4,950.00	J5 26
CEO Office Pansy Tlakula	Side Tables	2	2,450.00	4,900.00	J5 26
CEO Office Pansy Tlakula	Coffee Table	4	3,150.00	12,600.00	J5 26
CEO Office Pansy Tlakula	Coat Rack	1	2,400.00	2,400.00	J5 26
Pansy Boardroom	TV Display	1	69,850.00	69,850.00	J5 26
Pansy Boardroom	Server Unit	1	32,800.00	32,800.00	J5 26
Pansy Boardroom	Armchair	2	7,460.00	14,920.00	J5 26
Pansy Boardroom	Side Tables	1	2,450.00	2,450.00	J5 26
Pansy Boardroom	Coat Rack	2	2,400.00	4,800.00	J5 26
CEO Waiting Area	Two Seater Sofa	1	19,500.00	19,500.00	J5 26
CEO Waiting Area	Armchair	2	7,460.00	14,920.00	J5 26
CEO Waiting Area	Side Tables	4	2,450.00	9,800.00	J5 26
CEO Waiting Area	Coffee Table	4	3,150.00	12,600.00	J5 26
CEO Waiting Area	Refreshment Station	1	35,100.00	35,100.00	J5 26
Pansy Office	Palmets	1	28,050.00	28,050.00	J5 30
Pansy Office	Desk Lamp	1	1,350.00	1,350.00	J5 30
Pansy Office	Office Softs	1	1,450.00	1,450.00	J5 30
Pansy Office	Walnut Bin	1	895.00	895.00	J5 33
				<b>761,584.00</b>	
CEO PA Office	Desk with Extension	1	24,500.00	24,500.00	J5 26
CEO PA Office	Side Extension	1	7,500.00	7,500.00	J5 26
CEO PA Office	Back Extension	1	13,200.00	13,200.00	J5 26
CEO PA Office	Diamond Padded	1	4,850.00	4,850.00	J5 26
CEO PA Office	Georgian Plain Back 4 legged	4	3,400.00	13,600.00	J5 26
CEO PA Office	Coat Rack	1	2,400.00	2,400.00	J5 26
CEO PA Office	Two Seater Sofa	1	17,620.00	17,620.00	J5 26
CEO PA Office	Side Tables	2	2,450.00	4,900.00	J5 26
CEO PA Office	Built in Storage Cupboard	1	46,850.00	46,850.00	J5 26
Pansy PA	Walnut Bin	1	895.00	895.00	J5 33
Pansy PA	Walnut Bin	1	895.00	895.00	J5 33
				<b>137,210.00</b>	
				<b>898,794.00</b>	
<b>Notes</b>					
(1) - R295,000/4 = R73,750.00					
(2) Incorrect cross cast					

**Budget Allocation for Office Assets: Riverside Office Park**

J4

12.059 Ms Ester De Wet (Ms De Wet) the budget manager was requested to explain the budgeting process at the Electoral Commission and what funds were budgeted for furnishing the new national office and if changes were made to the budgeted amount who authorised these changes. Her explanation was as follows:

*“The budget of the Electoral Commission is allocated over a total of 245 active projects that are routinely monitored and reprioritised where necessary to fund revised or additional priorities. These projects are all managed within the Electoral Commission’s financial system, SAP. Project codes used in SAP are designed to clearly distinguish between the projects on departmental (Senior Manager) levels. For instances all projects which resort under the Senior Manager: Human Resources, Training and Support Services will start with “HTS” and all projects which resorts under the CFO will start with “FIN”. Approvals to expend against projects are strictly managed according to the delegations of authority. Workflow in SAP is set up accordingly.*

J4|1

*Prudent fiscal management is achieved by a process of stringent budget controls, including the need for all budget change requests to be scrutinised and approved by at least a Deputy CEO if funds are moved between projects, before they are processed.*

*During the move to Riverside Office Park the following projects resorting under the Senior Manager: Human Resources, Training and Support Services were utilised:*

*HTS/0073 – Office relocation (This project caters for all general office relocations. Initially an amount of R59,565,936 was allocated to the project for expenses relating to Riverside Office Park.)*

J4|1

*HTS/0208 – General Office Assets (This project traditionally catered for general office assets procured on national level and initially R37,571,000 was transferred from HTS/0073 to HTS/208 to cater for the procurement of assets for Riverside Office Park.)*

*HTS/0211 – Assets for Riverside Office Park (A decision was taken that the procurement of all assets for River Side Office Park should be confined to one project to ensure proper controls. In this regard project HTS/0211 was created.)*

*HTS/0204 – Capital: Fleet & Transport (This project caters for the procurement of the Electoral Commission's fleet. A saving under this project amounting to R329,000 was transferred to HTS/0211.)*

*HTS/0056 – Repairs and Maintenance Buildings (This project caters for general repairs and maintenance items required on national level such as licence fees, subscriptions, domestic requirements, cleaners, etc.)*

*HTS/0072 – Building Rentals (This project caters for the building rental, rates and taxes as well as building maintenance contracts pertaining to Riverside Office Park.)*

*HTS/0077 – Funding of Expansion Staff (This project caters for the funding of expansion staff during periods of high activity. Savings amounting to R10,320,372 were transferred to HTS/0211.)*

*All movements between projects were approved as per the relevant delegations of authority. In view of the fact that all projects pertaining to Riverside Office Park resorts ultimately under the DCEO: Corporate Services, all budget change requests (BCR) were authorised by him.”*

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12.060 In addition to the above overview of how the budget was allocated and the subsequent increases thereto Ms De Wet also provided a detailed summary, with supporting documents, of the various changes to the budget for the furnishing of the new offices at Riverside Office Park Centurion. The detailed documents provided by Ms De Wet have been attached as an annexure to this report.

**J4|2-5**

12.061 The changes to the budget, based on the documents provided by Ms De Wet, can be briefly summarised as follows:

<b>Date</b>	<b>PROJECT NUMBER</b>	<b>DETAILS</b>	<b>AMOUNT (R)</b>
4/3/2010	HTS/0208	R37,571,000 was reallocated from HTS/0073 (Relocation of Offices), which was created from the prior year rollover of R200 million to HTS/0208 (General Office Assets).	37,571,000.00
7/5/2010	HTS/0211	New project created on SAP solely to be used for the purchase of office assets for Riverside Office Park, this Project was HTS/0211.	-
11/5/2010	HTS/0211	Budget Change Request (BCR) to transfer R8,493,353 from HTS/0208 to HTS/0211.	8,493,353.40
26/5/2010	HTS/0211	BCR to transfer R8,053,43.91 from HTS/0208 to HTS/0211.	8,053,493.91
8/6/2010	HTS/0211	BCR to transfer R4,528,389.22 from HTS/0208 to HTS/0211.	4,528,389.22
16/7/2011	HTS/0211	EXCO approved the budget quarterly review to transfer R10,371,024.00 from HR savings to HTS/0211. Total budget at this stage was R31,446,260.53 for this project.	10,371,024.00
4/8/2010	HTS/0211	BCR to transfer R6,458,449.72 from HTS/0208 to HTS/0211.	6,458,449.72

**J4|2-5**

**NATIONAL TREASURY**

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<b>Date</b>	<b>PROJECT NUMBER</b>	<b>DETAILS</b>	<b>AMOUNT (R)</b>
17/8/2010	HTS/0211	BCR to transfer R4,471,431.07 from HTS/0208 to HTS/0211.	4,471,431.07
2/12/2010	HTS/0211	BCR to transfer R950,206.06 from HTS/0211 to HTS/0208.	(950,206.06)
8/12/2010	HTS/0211	BCR to transfer R17,000.00 from HTS/0211 to HTS/0208.	(17,000.00)
13/12/2010	HTS/0211	BCR to transfer R300,000.00 from HTS/0211 to HTS/0056 (Repairs and Maintenance Buildings).	(300,000.00)
20/1/2011	HTS/0211	BCR to transfer R10,320,351.79 from HTS/0077 (Funding of Expansion Staff) and R1,679,648.21 from HTS/0056 (Repairs and Maintenance Buildings) to HTS/0211.	12,000,000.00
25/3/2011	HTS/0211	BCR to transfer from HTS/0211 to: HTS/0056 – R54,397.64 HTS/0208 – R21,663.10.	(76,060.74)
25/3/2011	HTS/0211	BCR to transfer R1000.00 from HTS/0211 to HTS/0056.	(1,000.00)
28/3/2011	HTS/0211	BCR to transfer R329,000.00 from HTS/0204 (Fleet and Transport) to HTS/0211.	329,000.00
31/3/2011	HTS/0211	Total Budget allocated on SAP.	53,360,874.18
31/3/2011	HTS/0211	Appliances for Riverside Office Park purchased under HTS/0208 which were transferred to HTS/0211.	2,094,769.50

**J4|2-5**

**NATIONAL TREASURY**

**FORENSIC INVESTIGATION: ELECTORAL COMMISSION: RIVERSIDE OFFICE PARK**

**14 DECEMBER 2013**

Date	PROJECT NUMBER	DETAILS	AMOUNT (R)	J4 2-5
28/2/2011	HTS/0211	Journal processed for expense incurred under cost element 604040 (Contracted In (in projects HTS/0056 and HTS/0073)) relating to Riverside Office Park fees amounting to R1,187,885.24 that were capitalised. Budget provision existed for the expenses in the aforementioned project.	1,187,885.24	
31/3/2011	HTS/0211	Journal processed for expense incurred under cost element 604040 (Contracted in projects HTS/0056) relating to Riverside Office Park fees amounting to R2,952 005.75 that were capitalised. Budget provision existed for the expenses in the aforementioned project.	2,952,005.75	
<b>Total Budget for 2010/11 financial year</b>			<b>59,595,534.67</b>	

12.062 It is clearly evident from the above that the cost of furnishing and fitting out the new premises were unknown and no realistic budget for what was ultimately spent was approved before the process commenced. Instead the budget was merely increased by reallocating funds from other areas as and when more money was needed because the requirements of the Electoral Commission kept increasing. These changes to the budget were approved by the DCEO Mr Du Plessis.

**13.000 SPACE PLANNING**

**Affidavit Dr Pretorius**

- 13.001 Dr Pretorius, the Electoral Commission's Manager in Support Services, is generally responsible for conducting space planning needs analysis when they need to obtain new offices. He was interviewed and subsequently provided us with an affidavit relating to his duties and involvement with procuring Riverside Office Park from Abland.
- 13.002 For the purposes of this section of our report, we shall not discuss Dr Pretorius affidavit in its entirety as we shall only deal with Space Planning as discussed by in his affidavit in this section of the report.
- 13.003 Dr Pretorius attested in his affidavit that, when considering the space planning needs of the Electoral Commission, he would establish the number of people involved , number of storerooms or storage areas that are required and the different levels of people working in the office in question.
- 13.004 Once the aforementioned had been established, he would use the gazetted "*SPACE PLANNING NORMS AND STANDARDS FOR OFFICE ACCOMMODATION USED BY ORGANS OF STATE*" as a guideline wherever possible during his space planning exercise. This information is then put in writing and subsequent thereto he would be responsible for advertising the needs of the Electoral Commission by compiling inputs for adverts for either property developers or property agents to submit proposals. However, Dr Pretorius is not responsible for placing the adverts in the media as this is a Procurement function.
- 13.005 He confirmed that during 2009 he was consulted by Mr du Plessis to conduct a space determination needs analysis to determine the requirements for the Electoral Commission's accommodation requirements.
- 13.006 He also confirms that he used the following to determine the space determination needs of the Electoral Commission:

E6

E6|1

E6|9-17

E6|4

E6|1-2

- 1.) The organigram of the Electoral Commission for 2009 although he provided a copy of the April 2010 organigram, which is basically the same as the 2009 one;
- 2.) The operation requirements of the Electoral Commission;
- 3.) The requirements for storage facilities;
- 4.) Safes or strong rooms;
- 5.) The Space Planning Norms and Standards for Office Accommodation used by Organs of State.

**E6|22-57**

**E6|9-17**

13.007 He confirms that the total number of staff reflected in his document titled "Maximum Requirement Scenario" included a number of contractors (mainly specialists in the ICT areas) and temporary staff that are usually appointed during elections and registration processes. This document was submitted to Mr du Plessis under a memorandum on 3 February 2009.

**E6|4-5**  
**E6|59-60**

13.008 The aforementioned document, "Maximum Requirement Scenario" reflects that Dr Pretorius split the requirements into two groups; Maximum requirements Scenario and Minimum Requirement Scenario which is further broken down into the following:

Details	Maximum Requirement Scenario	Minimum Requirement Scenario
Workspace	4780	3724
Support Space <sup>1</sup>	3107	2048.2
Core Space <sup>2</sup>	4063	2420.6
Structure Space <sup>3</sup>	1195	819.28
<b>Total Estimated Office Space</b>	<b>13145</b>	<b>9012.08</b>

**Real FMG’s Space Planning Analysis**

F1|5

13.009 Real FMG specifically considered the space planning analysis and dealt with it in paragraph 5 of their report and their findings as it relates to these space planning needs are repeated below:

F1|5

“ i.) *The first aspect of the transaction that come to our attention as being potentially outside of the normal market parameters was the size of the premises in relation to the number of staff that occupy those premises on a permanent (FTE) basis or on a temporary basis. (FTE = Full Time Equivalent, a method of classifying temporary of mobile employees in terms of their occupation of offices over time).*

<sup>1</sup> Indicates that the norm is between 55 and 65% of workspace.

<sup>2</sup> Indicates that the norm is between 65 and 85% of workspace.

<sup>3</sup> Indicates that the norm is approximately 10% of workspace, support space and core space combined.

ii.) *Typically we would expect the ration of space to full time employees to be in the region of 24m<sup>2</sup>/per person for an office with a significant head office component, moving down to R15m<sup>2</sup>/per person for an administratively or technically orientated organisation. Having perused the IEC's initial space needs analysis prepared by Dr Jack Pretorius and having further analysed the July 2009 SpaceJam Space Needs Report, we have serious reservations regarding both reports.*

F1|5

iii.) *We have worked extensively with the Department of Public Works Space Norms as published in the Government Gazette on 5 September 2005. It is apparent to us that these norms were quoted in support of the space needs analysis but were then not applied, or applied incorrectly, to the initial IEC space needs report prepared on 03 March 2009. By way of example, "Senior Management" as defined by the Gazette standards, are "DG's Political Officer bearers, CEO's in National Departments and equivalentents in Provincial Government." By definition, the CEO, or even the DCEO's should have been allocated a maximum workspace of 25m<sup>2</sup>. The schedule prepared by the IEC lists the CEO's workspace at 40m<sup>2</sup> and the DCEO's at 32m<sup>2</sup>. The IEC DM's are allocated the same size workspace as the norms specify should be allocated to a CEO. This pattern continues throughout the space needs report, with each reporting level being allocated workspaces well in excess of the gazetted norms. This is contrary to any other applications of these norms to which we have been privy, on all previous occasions they have been seen as an upper limit, not a base.*

F1|5

- iv.) *We also find inconsistencies in the calculations related to the actual number of staff to be housed, as well as no treatment of temporary employees or contractors by way of their reduction to a “Full TimeEquivalent”, or FTE. FTE’s are a (gazetted) means of measuring space utilisation by employees who are not fully office-bound during the working day. These standards are necessarily crude, as they literally apply a “one size fits all” approach, they are nonetheless a useful heuristic. However in the exercise under review, having referenced the Space Norms in the space schedules, there is only nominal use of them in allocation of workspaces.* **F1|5-6**
- v.) *In addition, the workspace standards as calculated are then used a base for the calculation of the Support, Core Spaces and Structure Spaces, this is done by applying a percentage ratio. Using an inflated base workspace requirement leads to a compounded overstatement of the overall space needs in relation to the number of staff housed in the premises, temporary or otherwise.* **F1|6**
- vi.) *The Spacejam report of 24 July 2009 concludes that the IEC’s total space need is 8 150m<sup>2</sup>. We are of the opinion that this report, by using the same workspace allocation, perpetuates the overstatement of the IEC’s needs, but is a more accurate assessment of space needs. Notwithstanding that this report was prepared when the transaction was a fait accompli, we see no record of any kind of space rationalisation attempt and cannot reconcile how this calculated need was further extended to the new premises size of 9 489.40m<sup>2</sup>. There is no evidence that the professionals engaged for the task made any effort to educate their client or to challenge the IEC to see what its needs, rather than its wants, actually were.* **F1|6**

vii.) *The net effect is, in our opinion, somewhere in the region of a 50% overstatement of the IEC's actual workspace needs in Dr Pretorius' schedules. Using a commercial norm of 24/m<sup>2</sup> per person for 215 staff and, adjusting for the IEC's specific needs to house the Electoral Commission, as contained in the SpaceJam report, the total space required for the IEC should have been in the region of 6 500m<sup>2</sup>*

F1|6

viii.) *Assuming the same rental rates and operating cost rates, the net effect of this overstatement in required area has resulted in a variance in total nominal rentals between a 6 500m<sup>2</sup> building and a 9 500m<sup>2</sup> building, for the 10 year term of the transaction, of some R 110 million.*

F1|6

ix.) *The caveat to this analysis is that space needs, by definition, are subjective & flexible to the extent that the functions of the people in the organisation should dictate the size and nature of the workspaces required. The extent to which the IEC decided that the allocation of larger than normal workspaces was necessitated by their functional needs will make any debate on the appropriateness of the space allocation a subjective one. We can merely comment that the final space allocation and quantum significantly exceeds market norms."*

F1|6

13.010 Real FMG has also concluded in paragraph 10 their report that "Space Planning and the interrogation of both their space needs and the space provided were insufficient. Based on market norms a smaller building should have sufficed."

F1|17

**Conclusion by Real FMG**

F1|17

- 13.011 Owing to the significance of the final conclusions reached by Real FMG we deem it necessary to repeat these below for ease of reference:

*From a real estate perspective, there were a number of areas in the conclusion and execution of the lease and the overall project where the IEC should have exercised more diligence in assessing what was being presented to them, or being implemented for them. Whilst these have been listed above, a brief summary of those key issues or areas of concern has been set out below:*

F1|17

- 1.) *Space Planning and the interrogation of both their space needs and the space provided was insufficient. Based on market norms a smaller building should have sufficed.*
- 2.) *Initial assessment of the actual or expected running costs of the premises was poor and the impact of the reallocation of maintenance responsibilities that occurred both during the execution of the project and the translation of the proposal terms into lease terms does not seem to have been interrogated fully.*
- 3.) *Interrogation of the original specification by the IEC in order to satisfy themselves that the specification as proposed was in accordance with their requirements was insufficient. This has resulted in additional expenditure to bring the building up to that specification.*
- 4.) *Commercial terms for both the initial development and subsequent rentalisation of the "Tenant Specific Items" are inconsistent with the expected market parameters for a lease of this length and a building of this specification.*

*The effects of the above on the overall real estate transaction are cumulative. Too much space at too high a supplementary specification, the cost of which was rentalised at too high a rate and compounded by high operating costs, means that the cost of the overall transaction lies well outside what would be expected to be a normal commercial transaction for the period, the area and an organisation of the IEC's size.*

**F1|17-18**

*Assuming that the IEC space allocations, at least, are correct, the effect of the rentalisation of the tenant items and the high operating costs on total nominal rental obligations has meant that the IEC has incurred obligations of at least R 20.8 million above expected market norms over the 10 year term of the lease.”*

**F1|18**

**E. SUMMARY OF FINDINGS**

14.000 In October 2008, based on a report to the Commissioners by Mr Du Plessis, a decision was made that the Electoral Commission should negotiate a short term extension for their current premises, being 260 Walker Street and at the same time should search for alternative accommodation.

14.001 Possible alternative accommodation options were identified through JHI Real Estate and an unsolicited bid that was received. Based on a presentation by Mr Du Plessis to the Commissioners on 12 January 2009, the Commission *“agreed to the proposal for the national office to relocate to the site in Glenwood subject to Mr Du Plessis should make arrangements for Commissioners to visit these sites as soon as possible.”*

14.002 Mr Du Plessis has stated that the minutes of the Commission are incorrect and the reference to Glenwood should in fact be “Menlyn Corporate Park.”

14.003 Subsequent to some of the Commissioners visiting the Menlyn Corporate Park, Adv. Tlakula, in a memo dated 11 February 2009 to Mr Du Plessis, stated amongst other things the following:

*“I have some discomfort in the fact that we have awarded the lease for our new offices to the Menlyn Corporate Park without a public process. Although this has been sanctioned by the Commission, there are too many views that have been expressed on the site to public transport and that the proposed building might be too opulent. These discomforts cannot be ignored.*

*Since the matter of office relocation was dealt with by EXCO, I have decided that EXCO should embark on an open process and thereafter place all options before the Commission for a decision”.*

14.004 Mr Du Plessis then prepared a memo dated 13 February 2013 to Adv Tlakula setting out the space requirements and the process for the awarding of the contract. This memo amongst other things state the following:

*“You also enquired about the provision in the advertisement that the*

*Commission could award on any basis it regards appropriate. Suitability for me is big issue and I think we should avoid post event arguments as far as possible. Cost is fundamental but it should not negate suitability! That apart – and it would obviously depend on the proposals we receive -it may be important that we incorporate as much of our relocation and settlement activities in as few contracts as possible, if not in a single contract provided that it is sensible and economical. There is simply not time before we have to go to election mode for many concerns to compete for space and our time in a project as big as this.*

*Would you please approve the draft advertisement as per its specifications/requirements”.*

- 14.005 The contents of the above memo dated 13 February 2009 appear to have been approved by Adv. Tlakula as the word “Approved” is written at the bottom of the memo together with what appears to be her signature and the date “13/2/09.”
- 14.006 The Commission minutes for the meeting held on 2 March 2009 reflects that Adv. Tlakula had requested the Commissioners to rescind their decision to relocate to Menlyn Corporate Park due to the fact that the procurement process was not adequately followed. The minutes confirm too that the Commission approved this request by Adv. Tlakula.
- 14.007 As a result of adverts for Office Accommodation being placed in various newspapers, ten bids were received on 9 March 2009.
- 14.008 Adv. Tlakula had made a decision that these bids would be evaluated by EXCO and would not go through the normal Bid Evaluation process in terms of the Electoral Commission Procurement Policy and Procedures, and that once EXCO had done the evaluation it would be sent to the Commissioners for a final decision.
- 14.009 It is however clear from employees of the Electoral Commission that have been interviewed and the documents available that EXCO did not do a detailed evaluation as would be expected of a Bid Evaluation Committee. In

fact their evaluation was based on a summary spreadsheet that had been prepared by Mr Langtry the CEO's Office Manager.

- 14.010 The summary spreadsheet that was prepared by Mr Langtry was referred to in an email to Mr Du Plessis on 13 May 2009, (some 2 months after the bids were received) and this email stated as follows:

*"I have arranged with Procurement for you to receive the hard copies of all the submissions together with the attached summary of the evaluations of the submissions. The ones highlighted in green meet our requirements in terms of the advert; the ones in pink meet some of our requirements but lack sufficient details to answer all; and the rest do not comply.*

*The CEO was of the view that we should invite the three who meet our requirements to make a presentation".*

- 14.011 The information supplied by each of the bidders in their proposals was examined by us to determine what information they had provided in relation to the specifications as identified in the advertisement. This information was subsequently compared with the information detailed in the schedule prepared by Mr Langtry.

- 14.012 We determined from the aforementioned analysis that there were a number of instances where the information recorded by Mr Langtry in his evaluation spreadsheet is incorrectly stated, and based thereon, we believe that a bidder who ought to have been considered , and probably awarded the contract, was in fact Khwela City who were not even considered as meeting some of the Electoral Commission's requirements and, as a result, were not shortlisted and invited to do presentations to EXCO on 19 June 2009.

- 14.013 The EXCO minutes for 15 May 2009, which meeting was chaired by Mr Du Plessis in the absence of the CEO, Adv. Tlakula, states under the heading National Office Accommodation:

*"The evaluation summary report was noted. The CEO had asked for arrangements to be made for presentations from the three short-listed*

*submissions.*

*It was agreed that the short list would be expanded. The following submissions would be considered in the next stage through presentations:*

- *Mookoli Properties (Centurion)*
- *Menlyn Corporate Park/Mvelphanda Consortium JV (Menlyn)*
- *New Leaf Property Agency (Pretoria)*
- *Abland (Centurion)*

*The presentations would be organised on the return of the CEO”.*

14.014 The current members of EXCO who were present at the abovementioned meeting on 15 May 2009 were asked to what extent the actual bid documents were referred to and read by them as they were doing the entire evaluation process. They responded as set out below:

14.015 Mr Maphanga states as follows:

*“When EXCO did the assessment where 2 additional companies were added, we worked mainly off, and relied on, the report or spreadsheet presented to us. EXCO did not go through the actual proposal documents of the various companies to check if the spreadsheet was correct. EXCO relied on the verbal explanations given or the information in the spreadsheet to assess the companies to further verify the details for the final recommendation. EXCO doesn’t usually go through all the bid submission.”*

14.016 Mr Du Plessis stated as follows when he was interviewed on 5 November 2013:

*“I presided with that meeting. The CEO was not in the country at the time. Stephen (Mr Langtry) identified three buildings that he, in his view complied with the requirements. We went through the whole list and had four companies identified as potentially meeting the requirements. And we listed four companies for presentations. Not only the three that he regarded as*

*complying with requirements.*

*No, I don't think we questioned it (the spreadsheet), but we had these, the tenders were available where we wanted to look. I can't recall to what extent we actually looked or didn't look at or verified any particular detail.*

*I cannot recall. If I cannot recall then the answer to that would probably imply to not to any great extent. Because if I actually paged, I assume I accepted, I would have recalled, I can't recall that I actually went through every single one of them page by page by page. That I don't think I did."*

- 14.017 When it was put to Mr Du Plessis that effectively EXCO, acting as evaluation committee relied upon what Mr Langtry put before them, he responded:

*"I think generally that statement would be true".*

- 14.018 It was also put to Mr Du Plessis that on that basis if there were mistakes in the spreadsheet EXCO would not know and he responded:

*"On that basis no".*

- 14.019 Mr Du Plessis however changed his explanation when asked to confirm it in an affidavit on 9 December 2013 and with regards to this issue now states as follows:

*"The scheduled of options presented by Stephan Langtry did serve as a guide for the EXCO meeting but was by no means the only basis on which the options were evaluated. Bid documentation was available and was frequently referred to/consulted by individual members of the Committee. I cannot recall who looked at which bids but the primary aim was to select options that had the size of the building we needed and offered an occupation date of no later than 1 April 2010".*

- 14.020 Mr Moepya stated as follows with regards to this issue:

*"I recall that various proposal documents were available at the EXCO meeting of 15 May 2009. I personally would not be able to comment on the details of*

*the proposal documents as they were at the meeting of 15 May 2009, save to indicate that to the extent that I needed to refer to the documents, I could do so.*

*At the EXCO meeting of 15 May 2009 I recall that Mr Langtry explained the considerations taken into account, as per the request for proposal issued for this purpose. EXCO deliberated on the responses and information provided by Mr Langtry. I did not request a separate set of duplicated proposal documents before or at the meeting. I cannot comment on whether or not there may have been more than one copy of any specific proposal available at the EXCO meeting of 15 May 2009. I deemed that there was sufficient information available to me to make recommendations, as was eventually the case.*

*I used the spreadsheet provided by Mr Langtry for purposes of making my recommendations. I did so after clarifying issues that may have not been clear to me at the time”.*

- 14.021 Based on the information contained in the minutes and the responses received from Mr du Plessis, Mr Maphanga and Mr Moepya who were EXCO members at the time and at the meeting on 15 May 2009, it is reasonable to conclude at this point that the evaluation of the ten proposals that were received in relation to the specific invitation was done by Mr Langtry only. This is despite the fact that Adv. Tlakula wanted the first process, where the award was going to be made to Menlyn Corporate Park, stopped as she had some discomfort in the procedures that were followed.
- 14.022 EXCO in a meeting on 19 June 2009, chaired by Adv. Tlakula, shortlisted, after presentation by four bidders, Abland and Menlyn Corporate Park, this was despite the fact that Abland had now changed the date by which occupation would be given to 1 August 2010 from the required 1 April 2010. Menlyn Corporate Park were still able to keep to 1 April 2010, which was one of the key criteria of the initial assessment as “given the pending municipal election in 2011 a later date would be problematic”. EXCO effectively changed the evaluation criteria for the benefit of Abland part way through the

process without offering the same benefit to other bidders that had been disqualified earlier in the process.

14.023 The minutes of the Commissioners meeting on 6 July 2009 record that:

*"The CEO reported that the process for renting of new office accommodation was redone as the previous one did not adequately follow the required procedures. Two buildings were identified as suitable, one in Menlyn Park and the other in Centurion. Commissioners had an on-site visit to the two places (30 June 2010). **Noted***

*After discussion, **agreed** that the building in Centurion is preferred.*

*The CEO was requested to investigate the possibility of moving into this building earlier than August 2010, as this date is too close to the elections in 2011."*

14.024 The information supplied by each of the 10 bidders in their proposals was examined by us to determine what information they had provided in relation to the specifications as identified in the advertisement. This information was subsequently compared with the information detailed in the schedule prepared by Mr Langtry and in this regard we identified a number of errors on Mr Langtry's schedule which EXCO had relied upon and not been checked by EXCO when they performed the function of the evaluation committee.

14.025 The entity that was most severely prejudiced by their errors is Khwela City whose bid met all the criteria with the exception that the occupation date which was 1 June 2010 (this would have been earlier than the amended date of 1 August 2010). The errors relating to Khwela City were with regards to the size of the building and the price.

14.026 There were also errors made on Mr Langtry's spreadsheet for other bidders:

- i. The evaluation schedule prepared by Mr Langtry consists of ten requirements however the weight that he has assigned to each of these requirements during his evaluation of the proposals is unknown.

- ii. There is no evidence in the minutes of the meetings with EXCO or any other written document which would substantiate the weight that was applied to these requirements by the Electoral Commission so that any decision that it may have made during this process could be defended in subsequent litigation disputes that could arise by anyone of the unsuccessful bidders.
- iii. We have also determined from our examination of the ten proposals that, in a number of instances, a specific proposal may have been considered as *“not meeting”* the requirements of the Electoral Commission, despite the fact that they had provided all the information whilst in other instances, a proposal was considered as *“meeting some but not all”* the requirements of the Electoral Commission even though the evaluation schedule reflects that some of these requirements are ***“not clear from the proposals.”***
- iv. Mr Langtry has attested in an affidavit that, subsequent to the receipt of all the proposals, he went through each of the ten proposals and recorded the information in accordance with the specifications that appeared in the advertisement in the evaluation schedule.
- v. He indicated that he evaluated the proposals in good faith which resulted in him identifying three bidders who, in his opinion, met all the requirements from the advertisement whilst he disputed that he was coerced or unduly influenced by anyone from the Electoral Commission into manipulating the evaluation schedule to the benefit of Abland.
- vi. He conceded that there were errors on his evaluation schedule and that none of these errors were intentionally done whilst he was of the view that none of them affected the outcome in a material way.
- vii. Furthermore, he confirmed that the evaluation schedule was prepared based on his own interpretation of the criteria set in the advertisement and that no-one from EXCO or Support Services provided him with any guidance on how he should proceed in analysing each proposal. He used

his own initiative to identify the criteria as set out in the advertisement.

- 14.027 The scoring in terms of PPPFA could not be done based on the information originally requested in terms of the advertisement and as a result further information was requested and scoring done. This was however, only done after the Commission had already approved the Abland bid as the preferred bid on 6 July 2009.
- 14.028 The ownership information that was submitted by Abland and their consortium members reflects that Manaka is 75% black owned, although Abland in an email on 26 June 2009 states that it is "100% black owned."
- 14.029 During an interview with Abland representatives on 21 November 2013 they were asked how Manaka became involved with Abland and the Riverside Office Park and what the financial arrangements are between them and whether Manaka had paid for their share in the development.
- 14.030 In Abland's written response dated 5 December 2013 they stated as follows:
- i. The owners of Riverside Office Park were looking for a black partner for the development at the time of the IEC proposal in 2009. This was because various deals were in the market eg. Competition Commission, Sanral and Trans Caledon Tunnel Authority etc. Annexure D shows an extract of a schedule issued to the owners of the Riverside Office Park in April 2009.*
  - ii. It was agreed to reduce the percentage black ownership from 25% to 20%, as the initial structure was to transfer only the portion of the property on which the offices housing the IEC Building would be located, but it was then realised that the administrative process of the subdivision of the property and renegotiating of the financing would delay the program and would make it difficult to achieve the target date for completion of the building, and it was agreed with the black partner that 20% in the Riverside Office Park would represented much more value than 20% in the IEC Buidling.*

- iii. You would appreciate that Abland is not at liberty to share the substance of the Manaka agreement with PwC without the approval of Manaka, who advised that due to the confidentiality of the document, the document may be viewed at the office of the Riverside Park Trust that would also allow a discussion of the document.*
- iv. In relation to the change of the Manaka share of the IEC building from 25% to 20% this was as a result of the decision to include Manaka as the Black Owned shareholder of the entire park instead of in the IEC building only. This resulted in a higher value of ownership for Manaka and illustrated the existing owners commitment to transformation and Black Ownership.*

- 14.031 At the time of issuing this report we have not had sight of the agreement between Manaka and Abland referred to above but confirm that when interviewed the Abland representatives stated that Manaka had not purchased their share in the Riverside Office Park Trust for cash but that Abland and the other entities involved had stood surety for funds borrowed from financial institutions to do the development and that in time when these loans were repaid or reduced from future profits then Manaka would receive monetary benefits.
- 14.032 Had Khwela City not been disqualified, as a result of errors by Mr Langtry that were not identified by EXCO, and had they also been given the benefit of the amended occupation date, they would have scored higher points than Abland in terms of the PPPFA and they would have been cheaper.
- 14.033 The lease agreement was signed on 21 August 2009 by Adv. Tlakula even although the Tax Clearance certificate for the members of the Abland Consortium are, in two of the five instances, dated after this:

**NATIONAL TREASURY**

**FORENSIC INVESTIGATION: ELECTORAL COMMISSION: RIVERSIDE OFFICE PARK**

**14 DECEMBER 2013**

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<b>Name</b>	<b>Approved Date</b>
Abland	22-07-2009
East & West Investments	29-01-2009
Manaka Property Investments	07-01-2009
South Central Investments 147CC	14-09-2009
Copper Circle Investments 55CC	21-07-2009

14.034 Real FMG reviewed the lease agreement and addendum that were entered into with Abland and had, amongst others, the following observations:

Clause 1.5 The lease period is shown as 10 years. The original proposal was for a five-year lease as per the IEC's original advert. This is not an unusual change, but we believe that the effect of such a change should have the impact or a reducing effect on some of the other commercial terms of the lease. Typically this would be reflected in a reduced rental, or a reduced escalation rate, or an adjustment to the tenant allowances for specification of the building. None of these have occurred. The rationale for the lease extension is unknown to us.

Clause 1.11 This clause deals with the definition of operating costs. The definition of operating costs is consistent with what we would have expected for a park of this nature. However the exclusion of certain items in the lease definition and the adjustment of the rate to R14.40/m<sup>2</sup> in the Addendum has raised some questions. Given those exclusions the amended rate appears to be in excess of market rates

Clause 6 *There are a number of sub clauses that are of concern. These clauses are 6.1 (security) and 6.3 (lifts, air conditioning equipment, and mechanism installations). These items had originally been included in the operating costs definitions in the proposal and excluded in the lease.*

14.035 Real FMG make the following observation with regards to Abland's original proposal:

- i. Market rentals and operating costs as proposed are within normal parameters.*
- ii. No mention was made of the 2% management fee in the original turnkey proposal, and no mention was made of what was meant by "turnkey" in terms of how the project would be managed and run.*
- iii. A/C was listed as "to be provided" at a specification commensurate with a building of this size, but at a specification lower than expected for an A-grade building, and then was made a fit-out item later. See*

*Asman Philps McClure & Partners Report for additional detail.*

- iv. *Timing as proposed was, at the time when it was proposed, almost impossible to adhere to given the nature and number of decisions that would still have to have been made at the time.*

14.036 Real FMG make the following observation with regards to Operating Costs:

*“Comparing the costs to similar buildings in the Centurion area for 2009 as per data obtained from the Investment Property Database, clearly shows that the current charges are out of range of market norms. With due regard to the nature and size of the premises and the basket of services provided, we would have expected the range to have been between R 6 and R10/m<sup>2</sup>, not higher.*

*In terms of the escalation applicable to the fixed operating costs, the escalation as proposed and contained in the lease is in line with market parameters at the time. In 2009 landlords had experienced a recent and severe increase in costs (21% year on year) and the outlook for further increases of that order of magnitude was uncertain, but regarded as likely. Concerns that recent above CPI increase on items such as Security had become a structural element of the market were rife. In that regard, the landlord had assumed the risk of those costs being in excess of the 10% escalation and in all other circumstances this would have been considered as equitable. By excluding the items listed above, thereby transferring that risk back to the Tenant without commensurate reduction in the overall rate, this was no longer the case. “*

14.037 Real FMG have concluded that while the Department of Public Works Space Norms were initially quoted they were then not applied or incorrectly applied. Spacejam who also performed a space need assessment for the Electoral Commission concludes that the total requirement is 8,150m<sup>2</sup> which is significantly less than the 9,489m<sup>2</sup> that was ultimately leased from Abland. Real FMG state as follows:

- i. *The Spacejam report of 24 July 2009 concludes that the IEC’s total space need is 8 150m<sup>2</sup>. We are of the opinion that this report, by using*

*the same workspace allocation, perpetuates the overstatement of the IEC's needs, but is a more accurate assessment of space needs. Notwithstanding that this report was prepared when the transaction was a fait accompli, we see no record of any kind of space rationalisation attempt and cannot reconcile how this calculated need was further extended to the new premises size of 9 489.40m<sup>2</sup>. There is no evidence that the professionals engaged for the task made any effort to educate their client or to challenge the IEC to see what its needs, rather than its wants, actually were.*

- ii. *The net effect is, in our opinion, somewhere in the region of a 50% overstatement of the IEC's actual workspace needs in Dr Pretorius' schedules. Using a commercial norm of 24/m<sup>2</sup> per person for 215 staff and, adjusting for the IEC's specific needs to house the Electoral Commission, as contained in the SpaceJam report, the total space required for the IEC should have been in the region of 6 500m<sup>2</sup>*
- iii. *Assuming the same rental rates and operating cost rates, the net effect of this overstatement in required area has resulted in a variance in total nominal rentals between a 6 500m<sup>2</sup> building and a 9 500m<sup>2</sup> building, for the 10 year term of the transaction, of some R 110 million.*

14.038 Real FMG conclude in their report as follows and owing to the significance of the final conclusion it has been repeated here in full:

*From a real estate perspective, there were a number of areas in the conclusion and execution of the lease and the overall project where the IEC should have exercised more diligence in assessing what was being presented to them, or being implemented for them. Whilst these have been listed above, a brief summary of those key issues or areas of concern has been set out below:*

- 1.) *Space Planning and the interrogation of both their space needs and the space provided was insufficient. Based on market norms a smaller building should have sufficed.*

- 2.) *Initial assessment of the actual or expected running costs of the premises was poor and the impact of the reallocation of maintenance responsibilities that occurred both during the execution of the project and the translation of the proposal terms into lease terms does not seem to have been interrogated fully.*
- 3.) *Interrogation of the original specification by the IEC in order to satisfy themselves that the specification as proposed was in accordance with their requirements was insufficient. This has resulted in additional expenditure to bring the building up to that specification.*
- 4.) *Commercial terms for both the initial development and subsequent rentalisation of the "Tenant Specific Items" are inconsistent with the expected market parameters for a lease of this length and a building of this specification.*

*The effects of the above on the overall real estate transaction are cumulative. Too much space at too high a supplementary specification, the cost of which was rentalised at too high a rate and compounded by high operating costs, means that the cost of the overall transaction lies well outside what would be expected to be a normal commercial transaction for the period, the area and an organisation of the IEC's size.*

*Assuming that the IEC space allocations, at least, are correct, the effect of the rentalisation of the tenant items and the high operating costs on total nominal rental obligations has meant that the IEC has incurred obligations of at least R 20.8 million above expected market norms over the 10 year term of the lease."*

- 14.039 The acquisition of immovable and movable items in relation to the turnkey solutions is primarily dealt with in the Addendum Agreement that was entered into between the Electoral Commission and Abland in April 2010; although the first mention of a turnkey solution is in paragraph 10 of Abland's proposal to the Electoral Commission.

14.040 Paragraph 10 relates to Tenant Specific Items and an extract of the contents of this paragraph that concerns the turnkey solution is detailed below:

***“10. Tenant Specific Items***

*10.1 Items normally handled directly by the occupant of the building such as telephone system and IT installation, etc. are referred to as tenant specific items.*

*10.2 Abland, as part of the turnkey development process, would undertake the procurement and installations of these items on behalf of the IEC.*

*10.3 Based on the information obtained from the IEC, Abland would prepare a schedule of such items with indicative budget figures for consideration.*

*10.4 The items selected from this schedule would be tendered to the open market to ensure that the optimum cost is obtained from the IEC's benefit.”*

14.041 It would therefore appear from the proposal that Abland had indicated that as part of the turnkey process they would subject all the indicative budget figures to an open market tender to ensure that optimum cost is obtained to the benefit of the Electoral Commission.

14.042 However the lease that was subsequently entered into with Abland does not refer to the requirement for items to be tendered to the open market. In this regard paragraph 3 of the Tenant Fit Out Budgets read as follows:

*“3.1 The Landlord will prepare two budgets, one being in respect of the moveable items and one being in respect of the immovable items, which will comprise of such additional Tenant specific items required by the Tenant which are not included in the Landlord's Fit Out Budget and the costs exceeding the Landlord's Fit Out Budget.*

3.2 *The Landlord will submit the proposed budgets to the Tenant for approval. Upon approval of such budgets, the budgets will be initiated by the Landlord and the Tenant and will be deemed to be incorporated in to this lease (“the Tenant’s Fit Out Budgets”)*

3.3 *The Landlord will, in conjunction with the Tenant and the consultants, review and consider the Tenant’s Fit Out Budgets, if necessary. The Tenant will make the final decision on the additional Tenant Specific items, the Tenant’s Fit Out Budget and the cost involved.*

3.4 *The Tenant will be liable for the cost of the additional Tenant Specific items included in the Tenant’s Fit Out Budgets as more fully provided for in clause 3.5 and 3.6 below.*

14.043 The procedures identified in paragraph 10 of Abland’s proposal have not been included in Annexure D1 to the Addendum Agreement. In fact none of the terms detailed in paragraph ten (10) of Abland’s proposal have been included in Annexure D1. It would appear that Abland have instead included terms that are more prevalent to protecting their own interest in this regard as opposed to including the interests of the Electoral Commission, specifically that which is detailed in paragraph 10.3 to 10.4 in their proposal document.

14.044 In addition, the addenda in paragraph 3.6 does not provide a costing or authorised budget to be expensed in terms of procurement of movable items whereas there is a budget of R20 million (excluding VAT) for immovable items as detailed in paragraph 3.5 of the agreement.

14.045 It would therefore be reasonable to conclude that Abland, and/or the Electoral Commission, did not know what the budget was in respect of the moveable items when this addendum was entered into on 12 April 2010, since a budget amount is excluded for movable items.

14.046 The final costs for changes to the specifications of the building, at the request of the Electoral Commission, was R22,603,374. This amount was then rentalised over the 10 year lease at significant future costs to the Electoral

Commission. The Real FMG report concludes as follows on the aspect:

*“With regard to the Rentalisation of the R22,603,574 of Tenant Specific Items at 13.5%, we have carried out financial analysis in terms of the rentalisation. Our conclusion is that the total nominal rentalised costs of the tenant items, (Capital Cost of R22,603,674, rentalised at 13.5%, escalating at 9% for 10 years) would amount to **R46,360,552.64.**”*

14.047 Real FMG go on to conclude that the rate of 13.5% that was used by Abland to calculate the rentalisation was 1% - 1.5% above what would be expected for this type of development.

14.048 Asman Phillips McClure and Partners, Quantity Surveyors also reviewed the Tenants allowance and reported as follows:

*The tenant’s allowance; as noted, is based upon the usable area of the building. This is in our experience unusual. It is more common to have an allowance per m<sup>2</sup> of rentable area rather than usable area. By calculating the allowance in this manner the developer reduced his expenditure by R1,198,462.50 (9489.5m<sup>2</sup> – 8485m<sup>2</sup>) x R1325)*

*Certain items of the specifications e.g. floor tiles are the subject of PC allowances. Those amounts are specifically noted as being exclusive of “any escalation” – see annexure D to original offer. Those amounts should therefore have attracted escalation and should have been finally adjusted in the final cost of the building with the tenant being allowed the benefit. We have seen no evidence that this occurred.*

*The amount allowed for the air-conditioning installation as part of the tenant allowance is low. The method of air-conditioning the building using console units to general areas and split units to deep space areas is feasible and economic, but it does not really meet the perception of an “A” grade building. Whilst the developer specified what his proposed method of air-conditioning the building was in his original proposal, that aspect of the proposal was more suited to a lower grade development. In our experience, “A” grade*

*accommodation is more normally served with central plant air-conditioning.*

*It is of interest to note that while it should have been possible to air-condition the building; using the method first proposed for the amount of funds allowed by the developer, the tenant has eventually been involved in a level of expenditure sufficient to provide central plant air-conditioning.*

- 14.049 Based on the representations made in paragraph 10 of Abland's proposal document with regard to the Tenant Specific Items, specifically paragraph 10.4 thereof, we requested from both the Electoral Commission and Abland, copies of all their quotations that had been obtained prior to purchasing the moveable items so that we could determine whether they had obtained an optimum cost when they tendered the items to the open market.
- 14.050 Neither the Electoral Commission or Abland, were able to provide us with the quotations in this regard and it has subsequently been determined from various interviews and representations made, that Abland did not, in most instances, tender the moveable items detailed in the budget to the open market to ensure that an optimum price was obtained.
- 14.051 In Abland's response to PwC concerning the procedures followed with regard to moveable items in their letter dated 6 November 2013 re: Riverside Office Park – IEC Moveable and Immoveable Procurement, they have indicated the following

***"1. Moveable Items:***

*The list of moveable items includes furniture, fittings and equipment procured on behalf of the Independent Electoral Commission (IEC).*

*The Procurement Channels include:*

- Items procured directly from suppliers;*
- Items procured through preferred vendors i.e. the Interior Designer;*

- *Items procured through the Main Contractor appointed.*

*All suppliers and preferred vendors were tabled to the IEC and vetted for approval. The majority of the furniture, fittings and equipment related to specialized installations, being unique in technical specifications, performance and or aesthetics. A number of items included Interior Design elements and office furniture were custom manufactured to comply with the needs and requirements expressed by the IEC.*

*Throughout the project, Tenant Coordination meetings were held with the IEC in order to extract their specific needs. The IEC's requirements were summarized in the Moveable Budget spreadsheet. The Moveable Budget schedule was approved by the IEC's representative, confirming acceptance of the technical data, performance and aesthetics.*

*The IEC's procurement prescriptions included that orders be generated for each of the items included on the Moveable Budget schedule, with fees, where applicable, separate. The items included were invoiced to the IEC and paid accordingly. Following receipt of the items, the IEC's representatives generated an Asset Register, bar coded the items and confirmed receipt thereof."*

- 14.052 Various requests have been made to both the Electoral Commission and Abland for them to provide us with the quotations and invoices in respect of the payments made to the suppliers and/or manufactures who provided the moveable items that were procured to the extent of R59,918,380.40 (incl. VAT); however, these invoices have not been provided.
- 14.053 Upon request for this information, Abland provided copies of the moveable budget together with their invoices and the orders that were signed by the Electoral Commission in support of these purchases. For most of these purchases, there are no supplier invoices, although we can confirm that there are some quotations and/or invoices for some of the items listed on the

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budget schedule, although these are limited to a few.

14.054 As a result, we cannot validate whether amounts invoiced to the Electoral Commission are market related or cost effective neither are we able to validate whether the amounts invoiced, including the commissions that were charged by Abland and/or the Interior Designers are correct.

14.055 When we spoke to Ms Karen Lotter of Wild at Heart, we were informed that she had all the invoices and guarantees for some of the moveable items that were procured through her and agreed to make these available. However, despite her searching her archived records was only able to provide the following:

- i. A summary of all work done with a copy of each order that was placed; and
- ii. A copy of each invoice submitted and a summary of payments;

14.056 In Ms Lotter's email to us she had indicated that all transactions that were done were between Wild at Heart and Abland and that at no stage did she ever invoice or quote the Electoral Commission directly.

14.057 The items that make up the R59,918,380 of immovable were reviewed to see whether they are what one would normally expect for furnishing the premises of an Organ of State. In this regard a number of items have been identified, some of which are listed below, where it appears that little or no regard was given as to whether these items were really required:

- Brushed steel plant pots R957,000  
(399 @ R2,400 each)
- Gym equipment R482,942
- Gym audio equipment R 69,073
- CEO's office furnishing R898,794  
(Office, boardroom, waiting area and PA's office)

14.058 It is apparent from a review of the Electoral Commission budget on their SAP accounting system for this expenditure that the budget was initially created from rollover funds from the prior year and that the budget steadily increased over time as the requirements of Electoral Commission increased with additional funds being reallocated from other budget items.

14.059 Adv. Tlakula was requested to provide assistance during this investigation but declined to do so responding to our request via her attorney on 11 November 2013 as follows:

*“As you will be aware from the email transmitted to you by Adv. Tlakula on 5 November 2013, Adv. Tlakula has instituted a review application in terms of which she seeks to review and set aside the findings made and the remedial action recommended by the Public Protector in the subject report. That application remains pending before the High Court.*

*Accordingly, until the review is finally determined, Adv. Tlakula will not participate in any investigation related to the impugned report.”*

**Conclusion by Real FMG**

14.060 Owing to the significance of the final conclusions reached by Real FMG we deem it necessary to repeat these below for ease of reference:

*From a real estate perspective, there were a number of areas in the conclusion and execution of the lease and the overall project where the IEC should have exercised more diligence in assessing what was being presented to them, or being implemented for them. Whilst these have been listed above, a brief summary of those key issues or areas of concern has been set out below:*

- 1.) *Space Planning and the interrogation of both their space needs and the space provided was insufficient. Based on market norms a smaller building should have sufficed.*

- 2.) *Initial assessment of the actual or expected running costs of the premises was poor and the impact of the reallocation of maintenance responsibilities that occurred both during the execution of the project and the translation of the proposal terms into lease terms does not seem to have been interrogated fully.*
- 3.) *Interrogation of the original specification by the IEC in order to satisfy themselves that the specification as proposed was in accordance with their requirements was insufficient. This has resulted in additional expenditure to bring the building up to that specification.*
- 4.) *Commercial terms for both the initial development and subsequent rentalisation of the "Tenant Specific Items" are inconsistent with the expected market parameters for a lease of this length and a building of this specification.*

*The effects of the above on the overall real estate transaction are cumulative. Too much space at too high a supplementary specification, the cost of which was rentalised at too high a rate and compounded by high operating costs, means that the cost of the overall transaction lies well outside what would be expected to be a normal commercial transaction for the period, the area and an organisation of the IEC's size.*

*Assuming that the IEC space allocations, at least, are correct, the effect of the rentalisation of the tenant items and the high operating costs on total nominal rental obligations has meant that the IEC has incurred obligations of at least R 20.8 million above expected market norms over the 10 year term of the lease."*

### **Summary**

- 14.061 It is evident that Adv. Tlakula gave an instruction that the procurement process to be followed for the procurement of new head office premises was not in terms of the Electoral Commission policy or procedure. Adv. Tlakula did

not give guidance or formally inform the various persons, including EXCO, what was expected of them in the evaluation process. The process that was then followed was also not in terms of the requirements of the PFMA and Treasury Regulations. There were numerous errors made in the process that has resulted in Abland being favoured at the expense of other bidders and in Abland being favoured at the expense of the Electoral Commission.

- 14.062 The expenditure on immovable items appears to have been made with little or no regard to what the actual cost was and at no stage is there evidence that Mr Du Plessis or Adv. Tlakula, who approved this expenditure, ensured that items were procured at market related prices. It also appears that they had little concern for what things cost and merely bought what they wanted.
- 14.063 The evaluation schedule prepared by Mr Langtry, and submitted to EXCO on 15 May 2009, contained incorrect information that was relied upon by EXCO resulting in a bidder who ought to have been considered, and probably awarded the contract being excluded from the shortlist.
- 14.064 The procurement process followed was not fair, equitable, transparent, competitive, or cost effective and some of the expenditure could have been avoided had reasonable care been taken.
- 14.065 The procurement process followed was flawed in that, amongst others, the following occurred:
- i. The advertisement setting out the building and lease requirements was inadequate
  - ii. There was no tender briefing and no detailed tender specification document issued
  - iii. The normal bid evaluation process was not followed and the bid evaluation was done by EXCO
  - iv. The summary of the 10 bids prepared by and presented to EXCO by the Manager in the Office of the CEO for evaluation contained

numerous errors

- v. EXCO members relied on the summary, referred to above, to perform the evaluation and prepare a shortlist of bidders on 15 May 2009, and did not refer to the actual bid documents
- vi. During an EXCO meeting on 19 June 2009, when the shortlisted bidders made presentations, the bid evaluation criteria were changed, to the benefit of Abland, without the non shortlisted bidders being afforded the same opportunity
- vii. The lease agreement was signed on 21 August 2009, by the CEO, even although the tax clearance certificates for two of the five members of the Abland consortium are dated after this.
- viii. The acquisition of moveable items, for R59 918 380, via Abland as part of a turnkey solution, were not tendered to the open market even though this is what Abland originally proposed.
- ix. The budget for moveable items continually increased as the Electoral Commission management changed their requirements for fitting and furnishing the building.

14.066 The rental being charged by Abland is not a fair market rental for the following reasons:

- i. Too much space is being leased, 9 489m<sup>2</sup>, when the total space required should be in the region of 6 500m<sup>2</sup>. The nominal cost of the rentals, for this excess space for 10 years is approximately R110 million.
- ii. Assuming the Electoral Commission space allocations of 9 489m<sup>2</sup> were correct, the effect of rentalising tenant items at too high a rate and the high operating costs has meant that the Electoral Commission will pay at least R20.8m above expected market norms over the 10 year term of the lease.

14.067 The Abland proposal dated 9 March 2009 states that 25% of the building will be black owned (Manaka Property Investments) and does not set out who owns the balance of the building which is therefore assumed to be Abland. The first lease agreement signed by the Electoral Commission on 21 August 2009 for the Riverside Office Park premises had the following entities recorded as the Landlord:

- i. East and West Investments (Pty) Ltd
- ii. Abland (Pty) Ltd
- iii. Copper Circle Investments 55 CC
- iv. South Central Investments 147 CC

14.068 The subsequent addendums to the lease agreement recorded the landlord as The Riverside Office Park Trust. When Abland representatives were requested to provide details, including copies of documents, setting out Manaka Property Investments involvement and shareholding in the Riverside Office Park property they replied as follows:

*“You would appreciate that Abland is not at liberty to share the substance of the Manaka agreement with PwC without the approval of Manaka, who advised that due to the confidentiality of the document, the document may be viewed at the offices of the Riverside Park Trust that would also allow a discussion of the document.”*

14.069 At the date of issuing this report we have not been provided by Abland with the Riverside Office Park Trust document referred to above.

14.070 It is not possible to determine if value for money was received when purchasing moveable items for R59 918 380 as most of these items were purchased without going out on tender or obtaining quotations. Abland have stated that there was no requirement to go out to the market to get competitive quotations as long as the purchases were within budget and were approved by the Electoral Commission. To date we have not been provided with copies of the original supplier invoices by the Electoral Commission as

they do not have them and despite these being requested from Abland and one of the interior designers who sourced some of the suppliers they have also not provided these. We have therefore been unable to go back to the original suppliers to verify if the prices were market related or whether these suppliers were tax compliant.

- 14.071 Adv Tlakula, as the Chief Electoral Officer and Accounting Officer, Mr Du Plessis as the Deputy Chief Electoral Officer Corporate Services and Mr Langtry as the Manager in the Office of the CEO should each be held responsible for the roles they played that resulted in a procurement process being followed that was not fair, equitable, transparent, competitive or cost effective.

