

THAMSANQA JIYANE RESPONSE TO AMABHUNGANE ENQUIRY OF 24 MAY 2018

Item	QUESTION	FINAL ANSWER
1	<p><i>It is apparent that the original price of R38.6-billion included hedging and escalation costs. This assessment by Prof. Wainer is supported by the Market Demand Strategy document which put the estimate at R38.1-billion and which clearly included forex hedging and escalation costs.</i></p>	
1.1	<p>Surely these documents were available to the Cross Functional Evaluation Team (CFET), senior executives involved in negotiations and the board. Would Transnet like to offer any comment on how or why senior executives missed or intentionally ignored this information?</p>	<p>It is vital to note that there is segregation of duties within Transnet and its various divisions. As the then Chief Procurement Officer at Freight Rail, I was not involved in the development of the business case. My role was to oversee the tender / procurement process and evaluations.</p> <p>Any and all matters pertaining to the issue surrounding the forex hedging and the escalation costs are matters which are dealt with by the finance division within Transnet as well as Transnet's Treasury.</p> <p>It must be understood that the Market Demand Strategy ("MDS") consists of many facets and covers a range of aspects of Transnet's business, one aspect being the business case for the acquisition of the 1064 locomotives. The estimated value for the acquisition of the 1064 locomotives in terms of the business case was R38.1 billion. The complete MDS, as well as the</p>

Item	QUESTION	FINAL ANSWER
		<p>business case, document would neither be evaluated and/or adjudicated by the Cross Functional Evaluation Team (“CFET”) nor myself.</p> <p>I do not have the requisite knowledge of the assumptions that were utilised by the writers of the business case in its development.</p> <p>The process that unfolds is that the people responsible for the business case inform us as procurement that their business case has been approved and it is now for us as procurement to advertise the tender for the acquisition of the locomotives. The figure provided by those responsible for the business case is merely an estimate of the value of the acquisition of the locomotives. In this case, the R38.1 billion.</p> <p>The estimation provided by the business case is an estimation in the sense that the actual amount to acquire the locomotives would have come from the various bids from suppliers which would have been subject to certain conditions.</p> <p>If a bidder during the procurement process tenders for more than the value prescribed and/or estimated by those writing the business case, then a process is followed to increase the value. Accordingly, I did not ignore any information as suggested. I would have received the appropriate approval to advertise the</p>

Item	QUESTION	FINAL ANSWER
		<p>tender for the acquisition however I had no engagement regarding the pricing.</p> <p>If it was a necessity where prices after negotiations are higher than the estimate provided by the business case, then the appropriate processes would be followed, which processes I was not a part of nor was the CFET.</p>
2	<p><u>The split between four suppliers</u></p> <p><i>With regard to the decision to split the contract between four OEMs instead of two, it appears that the decision was motivated by then-CFET chair Thamsanqa Jiyane on the basis that the MDS volumes were at risk and using four suppliers would mean TFR would take possession of the locomotives sooner. While Transnet executives told the board that the cost of splitting added an additional R2.7-billion to the price, Prof. Wainer estimates that the decision to split the tender actually added an additional R5.124-billion to the cost of the deal.</i></p>	<p>The statement that it appears that the decision to split the tenders was motivated by me is incorrect. First and foremost, the RFP states “respondents are hereby advised that Transnet is not committed to any cause of action as a result of the issuance of this RFP and/or its receipt of a proposal in response to it. In particular, please note that Transnet reserves the right to; split the award of the contract between more than one supplier.”</p> <p>Additionally, in the RFP under the 7-year GFB locomotive delivery schedule, Transnet states that it “requires flexibility in exercising options for the acquisition of the locomotives ... Bidders are therefore required to provide break pricing for each of the stages indicated ...”. In effect, Transnet in this aspect of the RFP was requesting bidders to indicate how their prices would vary depending on the quantity of locomotives they were to deliver to TFR.</p> <p>It is common knowledge that TFR attempted to procure an additional 160 locomotives, which was not approved. As a result, there was a request by TFR that the delivery of the locomotives be accelerated.</p>



Item	QUESTION	FINAL ANSWER
		The bidders therefore responded in terms of the RFP requirement.
2.1	Does Transnet dispute Prof. Wainer's figure?	This relates to the business case development issue as explained above and I consequently can therefore not comment.
2.2	The decision to split the tender four ways appeared to work in certain suppliers' favour. For example, in the diesel tender, it was clear that GE offered the most competitive price. The decision to split the tender put CNR back in contention. Is Transnet concerned that the decision to split the tender four ways was in part motivated by the desire to ensure that certain bidders received a part of the tender?	<p>The allegation that the decision to split the tender appeared to work in certain suppliers' favour is denied.</p> <p>When the reports were presented to me at every stage of the process by the CFET I was presented with the bidders and their respective scoring by the team.</p> <p>Therefore, who I was instructed to recommend for purposes of finalising the tender was not a decision I could have made on my own to favour any particular bidder and/or ensure that any one particular bidder received a part of the tender. Further, it must be noted that there were various CFETs for every step of the evaluation. The CFET (Finance) would not have known the final outcome of the evaluations regarding the TCO to be accused of having manipulated the tender through exclusions of certain aspects of the tender. Their challenge with the evaluations regarding the TCO is well documented.</p> <p>I did not take part in any evaluations nor did I score any bidder. My role was to assist the evaluation team by providing them with guidance on the procurement process and consolidating the outcomes from the teams to be recommended for consideration.</p>



Item	QUESTION	FINAL ANSWER
		The final consolidation which would have determined the scoring of the bidders included the price which includes the TCO, supplier development, BBBEE, etc.
3	<p>Mr. Jiyane's 23 December 2013 memo</p> <p><i>As part of the same memo, Mr. Jiyane requested that shortlisted bidders be asked for a BAFO price. However, while all four bidders in the diesel tender were asked for a BAFO price, only two bidders in the electric tender was asked to provide a BAFO price. Again, this curious distinction appears to have worked in certain suppliers' favour. For example: In the diesel tender CNR was fourth out of four suppliers, but during the BAFO was able to offer a much more competitive price, with the end result that CNR was selected as the second supplier. In the electric tender, the decision to only ask the two top-scoring suppliers (Bombardier and CSR) for a BAFO price effectively cut Mitsui out of contention despite, as we understand it, Mitsui's</i></p>	

Item	QUESTION	FINAL ANSWER
	<i>locomotive being within 5% of the cheapest bidder.</i>	
3.1	Has Transnet established why Mr. Jiyane recommended different strategies for the two tenders with regard to the BAFO price request?	<p>There are documents in Transnet which are clear on who instructed the different strategies for the acquisition of the locomotives. These instructions came from executives in writing especially where decisions were required. With regards to the diesel locomotives, I challenged the strategy due to the significant margins which arose therein. It must be noted that I left TFR in March 2014 and therefore I am not in a position to respond substantively. Further, I have requested through my lawyers to both Transnet and the City Press (who wrote an article on 13 May 2014 in which I was referred to) that they make the report available to me together with the documents to enable me to address the allegations substantively.</p>
3.2	Considering that our previous investigations have uncovered evidence that both CSR and CNR engaged with companies controlled by Salim Essa and the Gupta family in order to gain an advantage in the tender process, is Transnet concerned that Mr. Jiyane's recommendation (and the subsequent approval by then-GCE Brian Molefe) was unduly influenced or taken with the goal of advantaging certain suppliers?	<p>Again, I submit that the CFET evaluated the bidders. I explicitly stated that I would not issue a request for BAFO without express authority from the body with delegated authority over and above the instruction from the executives. The senior executives therefore provided the authority I requested before proceeding.</p> <p>Similarly, as stated above, the notion of splitting the tenders was provided for in the RFP and was not a strategy orchestrated to unduly influence the process or any particular bidders. Please refer to the quotes from the RFP previously provided. In any event, the instruction to split the tenders was not my decision</p>

Item	QUESTION	FINAL ANSWER
		although I was instructed thereon, which I had nonetheless recommended.
4	<p><i>In addition to this, Mr. Jiyane recommended in the same memo that scheduled and unscheduled maintenance be excluded from the adjudication of the Total Cost of Ownership (TCO) score. Mr. Jiyane justified this recommendation on the basis that the information provided by the bidders was not standardised, making a comparison difficult. This decision appears to give a significant advantage to CSR's bid, while also placing Transnet at significant financial risk for the following reasons: Documents we have seen indicate that Transnet set a benchmark figure of R89-million per electric locomotive for the TCO over the locomotive's lifetime (including the base cost of the locomotive, energy costs, scheduled and unscheduled maintenance.) These documents indicate that CSR's bid – with a TCO of R110-million per locomotive – vastly exceeded what Transnet</i></p>	

Item	QUESTION	FINAL ANSWER
	<p><i>considered acceptable. A closer analysis of this figure indicates that CSR's locomotives have much more expensive scheduled maintenance costs (R55-million v a benchmark of R25-million) and will ultimately be much more expensive for Transnet in the long run.</i></p>	
4.1	<p>Is there any reason to believe that it would not be accurate to compare CSR's TCO figure to Transnet's benchmark TCO figure?</p>	<p>I cannot comment.</p>
4.2	<p>Is Transnet concerned that Mr. Jiyane and the CFET's recommendation sought to provide CSR with an undue advantage?</p>	<p>I deny outright the allegation that I in any way was biased, subjective or provided any influence to provide any bidder with an undue advantage.</p> <p>I did not at any given point evaluate the various bids nor took part in the actual scoring of the bids. The people who picked up the challenge were only evaluating a component of the process and therefore would not have known whether an advantage existed or not. Even clarifications were conducted in this regard to see if it would be possible to gather further information that would allow them to evaluate comprehensively and reduce the risk that came with many assumptions from the various TCO models.</p>
	<p>In general, there is ample evidence that senior executives</p>	<p>In the event that there was manipulation, as alleged, regarding the 1064 acquisition, I firmly record that such</p>

Item	QUESTION	FINAL ANSWER
5	in Transnet, aided and abetted by the Transnet board, manipulated the outcome of the tender in order to ensure that certain suppliers were included in the 2016 contract and received inflated fees from the deal. Would Transnet like to offer any comment on this?	manipulation occurred without my knowledge and/or involvement and/or assistance.
6	Considering all of the points listed above and the very substantial role that Mr. Jiyane appears to have played in manipulating the outcome of the bid evaluation exercise, why has Mr. Jiyane not been suspended?	As demonstrated above, all the points in the enquiry are factually incorrect. Therefore, I note that I have not been suspended because I had no part to play in any manipulation of any outcome during the bid evaluation exercise. Should Amabhungane insinuate otherwise, I then invite you to provide supporting documentation and information apart from the rejected Werksmans' Report to confirm or support that I was involved in any form of manipulation.

The diagram hereunder from the RFP must be read in conjunction with paragraph 2.2 above.

