



MEDIA RELEASE

FOR IMMEDIATE RELEASE

Thursday, July 9, 2015

Statement by:

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Appendices:

Letters marked "A" to "F"

WHAT THE MAYOR KNEW (and when he knew it)

(Words: 3924)

The mayor and the municipal manager of City of Tshwane ignored the opinions, advice and express written instructions of the then national Minister of Finance and head of the National Treasury, the Hon. Minister Pravin Gordhan, to not proceed with the contract for the roll-out of prepaid smart meters in the city by Peu Capital Partners (Pty) Ltd (herein further "Peu").

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They also failed to disclose this information to the council of the City of Tshwane.

In a letter by the minister to the mayor dated 13 September 2013¹, the minister raised his concern that the contract between the City of Tshwane and Peu:

“was entered into without complying with applicable legislation...”.

Amongst a host of other reasons listed by the minister he specifically pointed out to the mayor that Peu:

“should have been disqualified from providing the service as prescribed...;”.

The minister also raised the concern that:

“The contract does not offer value for money for the CoT...”

because

“...in National Treasury's assessment the price of 19.5 cent for every rand of electricity purchased is exorbitant. According to the National Treasury sources, this cost should be between five and seven cents.” [My emphasis]

At the time when the contract was submitted for approval to council the Democratic Alliance calculated that the actual cost of collection of electricity revenue otherwise known as “cost of metering and vending” on the manual postpaid system amounted to only 1,6 ¢ per R 1.00. The cost of metering and vending on the prepaid smart metering system reduces to less than 0,1 ¢ per R 1.00 of electricity revenue collected, which is the rationale of the prepaid smart metering system.

¹ See appendix marked “E”.

The difference between this amount and the 5 ¢ to 7 ¢ postulated by the National Treasury is sufficient to make up the capital costs of the roll-out of the prepaid smart meters with enough left to still provide a healthy profit to the contractor.

Further to this the minister pointed out that at the end of the contract the city would be required to buy back the infrastructure (that Peu values at R7 billion) and importantly that there is no benefit in the contract:

“... in that any increase in revenue collected would be absorbed by the increasing fee payable to Peu”.

At the time the Democratic Alliance argued that the obligation on the city to purchase the infrastructure from Peu effectively constituted a lock-in at the mercy of Peu to extend the contract in perpetuity as the city would not have the money available for that transaction.

As for the value for money argument raised by the minister, the Democratic Alliance has always contended that the claim of 30 ¢ was unfounded and that is was never supported by any feasibility study, as none was ever presented to council and that the claim was based on an incorrect assumption that the mere installation of prepaid smart metering would be a snake oil cure for all that ailed the finances of the city.

The claim of a 30 ¢ cost of collection of electricity revenue was based on a fallacy that revenue payment delinquency, debt impairment, debt write off and the extent of the debtors book were all direct contributors to the cost of collection of electricity revenue and would all be completely resolved as a direct result of the installation of prepaid smart metering throughout the city. There never was and is not such a direct causal link between these issues that are really dependent on management skills rather than technology.

The minister's observations and objections to the contract between the City of Tshwane and Peu cited above were all by and large in line with the objections that were raised by the Democratic Alliance in our opposition to this contract.

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A subsequent meeting between the minister and the mayor achieved nothing and is reputed to have ended after the mayor told Minister Gordhan to mind his own business.

This letter and other related correspondence are now in the possession of the Democratic Alliance. It is clear from this correspondence that the Minister of Finance and National Treasury took a strong stance advising the mayor and the municipal manager not to enter into or to proceed with the Peu contract. In fact after the contract was signed National Treasury instructed the city to terminate the agreement².

On 17 May 2013, some two weeks before the council meeting of the City of Tshwane during which the mayor used the ANC's majority to railroad the approval of the Peu contract through council, National Treasury wrote to the municipal manager³ pointing out that the city had not yet concluded its obligations vis-a-vis the National Treasury in terms of §33 of the Municipal Finance Management Act (the MFMA) and demanded of the city to provide it with the requisite information to enable the National Treasury to complete its assessment.

The letter ends with the words:

“... the lack of response by the City of Tshwane to date as well as the the seriousness of this project necessitates urgent action.”

The municipal manager apparently did reply to National Treasury on 23 May 2013, but neither he nor the mayor awaited a response from National Treasury to confirm that it was satisfied and that the contract could proceed in its opinion in the form in which it was presented.

Neither National Treasury's letter of 17 May, nor the city manager's response to that letter of 23 May was included in the report that served in Council on 30 May 2013 to approve the Peu contract.

² See appendix marked “D”, last paragraph.

³ See appendix marked “A”.

It cannot be gainsaid in the light of this letter that the municipal manager (and the mayor to whom he reports) must have known two weeks later when the report recommending the Peu contract was tabled in Council, that the required process in terms of §33 of the MFMA vis-a-vis National Treasury was not completed and the representations contained in the report tabled in Council were incomplete and misleading given the fact of this preceding correspondence that the municipal manager was under a legal obligation to disclose to council , as were the arguments raised by the mayor during the council meeting to the effect that this process was complete. The failure to reveal all relevant correspondence and to deal with the material contents thereof in the report that was tabled in council and in the arguments raised in support thereof by especially the mayor, who was in a position to and should have known better, served to mislead councillors and played a decisive role in the council decision to approve entering into the contract with Peu.

The National Treasury completed its assessment of the contract only on 7 June 2013 (a week after the council resolution to enter into the contract was taken) when the Chief Procurement Officer, Mr Kenneth Brown wrote⁴ to the municipal manager informing him that:

“National Treasury remains of the view that the revenue collection services is a municipal service in terms of all existing legislative frameworks contrary to the view of the City of Tshwane and the legal opinions solicited in this regard.”

The importance of the assessment by the National Treasury that electricity revenue collection is a municipal service, is that a contract in the nature of that concluded with Peu Capital Partners could not be entered into, but would have had to be in the form of a public-private partnership contract that required an entirely different procurement process and is subject to strict conditions. This process was not followed in the run-up to the conclusion of this contract and was not part of the contents of the contract.

National Treasury further informed the municipal manager that:

⁴ See appendix marked “B”.

“Further, we want to point out that the appointment of PEU Capital Partners (Proprietary) Limited as a preferred bidder to undertake the revenue collection services constitutes a conflict of interest in terms of the supply chain management prescripts. A firm which has been engaged to provide consulting services for the preparation or implementation of a project and any of its affiliates is prohibited from subsequently providing goods or works or services related to the initial assignments for the same project.”.

The consequence of this opinion is simply that no contract at all could have been entered into with Peu, an opinion that is shared by the Democratic Alliance.

The mayor's obdurate insistence that the legislation is inappropriate because it does not cover the specifics of the contract with Peu is incomprehensible. The legislation is based on sound procurement principles and clearly forbids this practice for reasons that are underscored by the consequences of the city's financial disaster as a result of this Peu contract.

It is not the law that must change to suit the convenience of the mayor, but the mayor who must change his conduct to act lawfully.

This letter ends with the instruction to the municipal manager:

“To this end, the City of Tshwane is advised to put this project on hold and seek the necessary guidance on how to proceed with this project from the National Treasury.”

Following this letter, on 18 June 2013, a meeting was held between National Treasury's chief procurement officer and the city's municipal manager as a result of which more documentation was made available by the municipal manager to the National Treasury on the basis of which it was requested to reconsider its opinion⁵.

⁵ See appendix marked “C”.

After their review, National Treasury again communicated to the municipal manager on 29 August 2013⁶ that the documentation submitted did not support the contention that the contract with Peu was duly entered into and legal. National Treasury also reiterated its opinion that due supply chain management processes were not complied with.

Importantly however at this point National Treasury had also done a financial analysis of the contract. Their conclusions are the same as what the Democratic Alliance had argued against the contract, to wit, that the costs of the contract was beyond the pale and that all contractual risks had been shifted by Peu onto the city, especially the risk of a perpetual lock-in. In this letter National Treasury wrote that:

“From the financial analysis, it appears that the procurement model adopted by the CoT is not the most cost-effective model. The costs over the lifespan of this project are exorbitant and the risks associated with this project are biased against the CoT.”

National Treasury then advised (or rather courteously instructed) the municipal manager to:

*“In light of the above, it is recommended that **the CoT should terminate the contract with PEU**, undertake a proper feasibility study and follow a procurement process that is in line with the legislation and prescripts.”*
[My emphasis]

This advice was simply ignored by the municipal manager and the mayor.

Thereafter, given the city's complete lack of cooperation with National Treasury, Minister Gordhan intervened and personally addressed the letter to the mayor referred to above⁷.

⁶ See appendix marked “D”.

⁷ See appendix marked “E”.

A meeting was subsequently held between Minister Gordhan and the mayor but needless to say his personal intervention to appeal to the mayor also fell on deaf ears and failed to bring about an end to the contract with Peu.

The council of the City of Tshwane was left in the dark about all of this.

The Democratic Alliance contends that there was an obligation on the municipal manager and the mayor to reveal the attached correspondence to the council of the City of Tshwane when:

- ▶ the original approval was sought from the council in terms of §33 of the MFMA; and/or
- ▶ at any point thereafter by the municipal manager and/or the mayor as part of any of the regular contract management reports that the municipal manager was obliged in terms of the MFMA to submit to the mayoral committee and to council.

However at no stage during the execution of the contract was any such report on the progress with the implementation of the Peu contract submitted for cognisance to the council of the city⁸. It may very well have been submitted to the mayoral committee, and the Democratic Alliance has all the reason to believe that such reports were from time to time tabled in the mayoral committee, but the mayor consistently and unlawfully failed to submit any such reports also to the municipal council.⁹

We have no doubt that had the National Treasury's letter of 17 May 2013 been included in the report that served before Council on the 30 May 2013, councillors would have known that the matter was not yet ripe for a resolution in terms of §33 to approve the signing of the

⁸ See the report tabled in Council on 30 May 2013 that is included on the accompanying CD.

⁹ See the MFMA §116(2) for the accounting officer's contract management duties, but in particular §116(2)(d) which reads: "*regularly report to the Council of the municipality or the board of directors of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.*"

contract with Peu and the fateful decision taken on that day to approve this contract would not have been taken. However despite the fact that the compiler of the report knew better, the report submitted on 30 May 2013 deliberately paints an entirely different picture from what is apparent from the attached correspondence.

Both the mayor and the municipal manager must have known both before and after the resolution of council at the 30 May 2013 meeting, that the municipal manager had not yet complied with all his obligations in terms of §33(1) of the MFMA and that the proposed contract did not have National Treasury's backing. Despite this knowledge they failed to inform the council of all the relevant facts when it was their duty in law to so have informed the council.

During the mayor's Budget Speech in 2014 he made the following statement¹⁰:

“It is a pleasure to report that we have successfully rolled out smart meters to 332 large power users and the benefits from this rollout are starting to yield positive results in our revenue for the 2013/14 financial year. The City's electricity revenue for the 2013/14 has exceeded our budgeted revenue forecasts by R50 million per month. The City will continue with the completion of large power users and begin the process of installing smart meters for residential users.”

This statement was not true, there never was a basis of fact upon which the mayor could have founded that claim in his budget speech.

The city's electricity revenue did not exceed budgeted revenue forecasts and most definitely at no stage exceeded it by R 50 million per month! If the statement was true after only 332 prepaid smart meters were installed, the Peu contract would have been a spectacular success and not the failure that it turned out to be. In his position as mayor, he should have known that the statement was not true.

¹⁰ See the copy of the mayor's 2014/15 budget speech that is included on the accompanying CD.

It is submitted that this statement was made to lull councillors into a false sense of complacency and comfort regarding the status of the Peu smart meters contract at a point when it should have become apparent that the project was in deep trouble. In any event the statement was designed to prolong the execution of the contract and concomitant payments to Peu and in fact served to lead to that consequence to the great financial detriment of the city.

Not only was the city's council left deliberately in the dark, but by statements such as this it was actively being misled.

In all of this, the then Minister of Finance, Minister Pravin Gordhan is not without blame.

As a member of parliament and minister in the cabinet, the Hon. Minister Gordhan swore an oath to protect and uphold the constitution of South Africa.

In his personal appeal to the mayor, the minister's lists of concerns about non-compliance issues is topped by the concern of constitutional non-compliance in that:

“...the contract:

1.1. was concluded without following a fair, equitable, transparent, competitive and cost effective procurement process as prescribed by section 217 of the Constitution;”

He knew that the Constitution was being breached and the laws of the country was being broken, yet he and others in responsible positions in his office kept quiet and limited their response only to private correspondence with the municipal manager and the mayor. At no stage did he take reasonable steps to ensure that the council of the City of Tshwane, the public and the media were properly informed and aware of the constitutional transgressions and the illegalities concerned.

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By his silence on the issue and his failure to take any proactive steps as he swore an oath to do, to actively uphold and protect the constitution, or to take any reasonable steps as is required of a good citizen to report the breaking of the laws of the country, he allowed and enabled the constitution to be breached and our laws to be broken.

This silence by the minister when he should have acted or at the very least should have spoken up is unconscionable.

His failure is a major contributory factor to the damage is now being suffered by the City of Tshwane and its ratepayers.

All these failures extend also to the proceedings that is currently ongoing before the High Court for the review of the procurement process and the Peu contract.

The City of Tshwane, the Mayor, the Municipal Manager and the Minister of Finance in their official capacities were cited as parties to the currently pending review application in the High Court. All parties have the obligation to ensure that documentation in their possession that constitutes the record of the matter were revealed to the applicants and the court. The correspondence that is appended to this media release is part of that record to be reviewed and should have been submitted to the High Court by the Minister of Finance and/or the municipal manager of the City of Tshwane and/or the mayor of the City of Tshwane.

They have all failed to place these documents attached to this media statement which are relevant to the deliberations before the High Court, before the court.

The municipal manager as the deponent to the application opposing the urgent application in the High Court withheld this correspondence from the court under circumstances where it was his duty to have placed this correspondence before the judge that heard the urgent application. We have no doubt that had the judge known of this correspondence, that he would have been likely to grant the urgent application in which event the harm being suffered by the City of Tshwane today would have been averted at an early opportunity.

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To this day, this correspondence has still not been revealed as part of the record to the High Court as it properly should be done. In this the municipal manager and the mayor are unlawfully withholding documents that are part of the record to be reviewed from the High Court.

Finally, it is necessary to refer to §61 of the MFMA that deals with the fiduciary responsibilities of accounting officers. In terms hereof the municipal manager who is the accounting officer of a municipality must-

- “(a) act with fidelity, honesty, integrity and in the best interest of the municipality in managing its financial affairs;*
- (b) disclose to the municipal council and the mayor all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor; and*
- (c) seek, within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interests of the municipality.”*

A similar duty rests on the mayor and in this regard reference may be had to §173(5)(f) of the MFMA that deals with the providing of false or misleading information for the purposes of any document which must in terms of requirement of the act be submitted to the council or made public.

It is the opinion of the Democratic Alliance that in the light of the evidence of the appendices attached hereto the conduct of the City of Tshwane's municipal manager and mayor falls far short of the standards required of them. It is as a result of their failure to faithfully and properly perform their duties in particularly their duties to inform and disclose relevant facts to council and to the public that the city is now suffering the greatest financial disaster in the history of any city in this country.

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We have previously assessed this financial scandal as equal to eight Nkandlas. Since then we have learnt that in addition to the R 830 million admitted to by the mayor in his press release of 12 May 2015, the city had also lost the R 400 million invested in the Automated Meter Reading infrastructure (AMR for short), the city's own smart metering system that had been rolled out in the year immediately prior to the conclusion of the Peu contract.

On 15 May 2015 National Treasury again wrote¹¹ to the municipal manager advising to:

“... halt the payment of any settlement amount agreed with the service provider pending the National Treasury's detailed review of the entire procurement process, implementation and the ultimate cancellation of the project.”

Notwithstanding this letter from National Treasury another estimated R 170 million has been paid out to Peu since the mayor's announcement on 12 May 2015 that he had “cancelled” the agreement with Peu. Except for the fact that once again the municipal manager and the mayor simply ignores National Treasury, these continued daily payments poses the question what exactly the mayor meant when he claimed the contract was “cancelled”.

Apparently the mayor's public claim that he had terminated the contract with Peu with immediate effect on 12 May 2015 was not true as on 24 June 2015 he issued another media release, this time claiming that the contract would be terminated on 30 June 2015, from which date a lesser commission would be paid to Peu of 9,5 ¢. However even after 30 June 2015 payments continued at a rate of 19,5 ¢.

In the result the total losses of the city on account of the Peu contract today stands at about R 1.4 billion. This is an amount equal to a full ten on the Nkandla Corruption Scale.

We again call on the Mayor and the Municipal Manager to resign.

¹¹ See appendix marked “F”.

The Democratic Alliance will now on the evidence before us initiate steps in terms of §173 of the MFMA against both the Municipal Manager and the Mayor.

We also call on the then Minister of Finance, Minister Pravin Gordhan to account for his failure to act in terms of his oath of office to uphold the Constitution and his failure to act in the best interest of the citizens of the Republic of South Africa and in particular the ratepayers of the City of Tshwane. We contend that it was within the powers of his office to have taken reasonable steps, including but not limited to simply publicising the views of National Treasury on the issue in an open and transparent manner which by itself would have prevented the city from entering into this disastrous contract with Peu.

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national treasury

Department:
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REPUBLIC OF SOUTH AFRICA

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Ref: TSH/13

The City Manager
Mr J Ngobeni
City of Tshwane Metropolitan Municipality
P O BOX 6338
PRETORIA
0001

Fax No: (012) 358 8111

Dear Mr J Ngobeni

RE: SECURITY OF REVENUE PROJECT

Our meeting held on 16 January 2013 and your subsequent correspondence to Mr Kenneth Brown, the former Deputy Director General – Intergovernmental Relations dated 12 April 2013 with regard to the above matter refers.

We attach a copy of that correspondence as "Annexure A". This was the first response sent to us following our 16 January 2013 meeting on the installation of the prepaid meters project, subsequent to which we submitted detailed comments to your office regarding the many concerns and potential illegalities we discovered in the Draft Service Agreement provided to us by your office. A copy of these comments is attached hereto as "Annexure B".

Your 12 April 2013 communication appeared to be a formal letter expressing your appreciation to National Treasury for its "insightful contribution" to the smart meter project, however; the City did not respond to our many comments made and the suggested actions to be taken that are described in Annexure B. As previously noted, to date we have received nothing from your office in this regard.

Further; we noted the article published in the *Pretoria Newspaper* dated 13 May 2013, a notice appeared sponsored by an organisation referred to in the article as the Tshwane Utility Management Services (TUMS), tendering for the "supply, installation and maintenance of prepaid smart meter assets". Nowhere on this notice is the City of Tshwane mentioned, other than in the title of the organisation. A copy of that advertisement is attached hereto as "Annexure C".

You are hereby requested to provide evidence of the City of Tshwane's compliance with the Municipal Systems Act No.32 of 2000 and the Municipal Finance Management Act No.56 of 2003 in undertaking this project.

In view of the Budget Benchmark engagement scheduled to take place on 20 May 2013 we request the City to provide the following documents and to make such available to National Treasury in time for our review prior to the meeting.

This request is in line with the provisions of the Municipal Finance Management Act No.56 of 2003 (MFMA) section 5(2)(c) and section 74(1)

Section 5(2)(c) outlines that the National Treasury may monitor and access compliance by municipalities and municipal entities with-

- (i) the MFMA; and
- (ii) any applicable standards of generally recognised accounting practice and uniform expenditure and revenue classification

Section 74(1) indicates that the accounting officer of a municipality must submit to the National Treasury, the provincial treasury, the department for local government in the province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required.

The following documents are therefore requested:

- a) A statement as how the project was procured by the City.
- b) A copy of any feasibility study or business case assessing the appropriateness of proceeding with the project undertaken in terms of Municipal Systems Act section 78 or Municipal Finance Management Act section 120 together with an identification of the person or persons that prepared such feasibility study or business case.
- c) The report that served before Council in terms of Section 33(b)(iii) and (iv) of the MFMA, incorporating the comment of the National Treasury.
- d) Any legal opinion in the hands of your office or any other City official regarding the legality of proceeding with the project as it has been undertaken to date, including, but not limited to:
 - I. A legal opinion that all monies collected by the private party in implementing the project may be deposited in the private party's bank account instead of the City's primary bank account;
 - II. A legal opinion as to whether such process (i.e., where the funds paid to the private party service provider are deposited in the private party's bank account) violates any terms and conditions of any outstanding indebtedness of the City to its current lenders including the DBSA and relevant Commercial Banks. Details of any process followed to mitigate the possible impact on the current lenders to the City of Tshwane;
 - III. A legal opinion that the provision of the services contemplated in the Service Level Agreement do not constitute the provision of a municipal service as defined by the Municipal Systems Act;
 - IV. A legal opinion as to the propriety of the City agreeing to a service contract where the terms provide that the said contract may be extended by the private party at its sole discretion;
 - V. A legal opinion as to whether the proposed term of the services agreement, as extended, is in violation of section 33 of the Municipal Finance Management Act in the absence of the processes described therein having been taken prior to any extension thereof;

- VI. A legal opinion as to the appropriateness of any "deemed approval" by the City in terms of the various provisions so stating in the Service Level Agreement;
- VII. A legal opinion as to whether the City can warrant that the provisions of the Service Level Agreement do not come within the ambit of Chapter 11 of the Municipal Finance Management Act;
- VIII. A legal opinion as to the appropriateness of the City agreeing that the private party may pledge the assets procured for the project for any debt incurred by the private party;
- IX. A legal opinion as to the legality of the City agreeing that all project asset replacement is for the City's account, yet title thereto will vest in the private party;
- X. A legal opinion that any variation to the Service Level Agreement be undertaken via mediation rather than via the processes set forth in the MFMA and the Municipal Public Private Partnership regulations; and
- XI. A legal opinion that suggests the publication of the tender for the supply, installation and maintenance of prepaid smart meter assets (Annexure C) was properly issued by a subsidiary of Peu Capital Partners (Pty) Ltd and the City's purported "advisor" to the project.

Your urgent response in this regard will be highly appreciated and National Treasury wish to apologise for the short notice, however the lack of response by the City of Tshwane to date as well as the the seriousness of this project necessitates urgent action.

Yours faithfully



MALIJENG NGQALENI

ACTING DEPUTY DIRECTOR-GENERAL: INTERGOVERNMENTAL RELATIONS

DATE: 17/05/2013



national treasury

Department:
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REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001

Enquiries: Mr. Kenneth Brown Ref 43/1/2/5. Tel. (012) 315-5342 Fax: (012) 326 5445
E mail: kenneth.brown@treasury.gov.za

Mr J Ngobeni
The City Manager
City of Tshwane Metropolitan Municipality
P.O. Box 6338
PRETORIA
0001

Dear Mr Ngobeni

SECURITY OF REVENUE PROJECT

Your letter to Ms Malijeng Ngqaleni dated 23 May 2013 regarding the above refers.

We have noted the contents of your response and the legal opinions attached as Annexures A, B and C thereof. After assessment of aforementioned documentation, the National Treasury remains of the view that the revenue collection services is a municipal service in terms of all existing legislative frameworks contrary to the view of the City of Tshwane and the legal opinions solicited in this regard.

Further, we want to point out that the appointment of PEU Capital Partners Proprietary Limited as a preferred bidder to undertake the revenue collection services constitutes a conflict of interest in terms of the supply chain management prescripts. A firm which has been engaged to provide consulting services for the preparation or implementation of a project and any of its affiliates is prohibited from subsequently providing goods or works or services related to the initial assignments for the same project.

To this end, the City of Tshwane is advised to put this project on hold and seek the necessary guidance on how to proceed with this project from the National Treasury.

Kind regards

KENNETH BROWN
CHIEF PROCUREMENT OFFICER
DATE: 7/6/2013



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21 August 2013

Mr Kenneth Brown
 Deputy Director-General
 Intergovernmental Relations
 National Treasury
 Private Bag X115
 Church Square
 PRETORIA
 0001

CITY OF TSHWANE'S SECURITY OF REVENUE PROJECT

Dear Mr Brown,

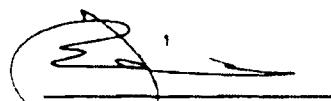
Following on from our meeting held to discuss your letter dated 7 June 2013, soon thereafter, the City of Tshwane provided certain documentation to officials within National Treasury (Nozipho Molikoe). The process has been re-iterative, and a number of additional documents were requested in order for National Treasury to understand the procurement process followed.

Our Ms Vere (Executive Director: Specialised Commercial Legal Services) has also met with certain officials from National Treasury (Steve Roelofse and Waseela Ebrahim) to explain the procurement process, and the project in general, so that National Treasury would have the proper context in interpreting the documents provided. Certain further documents were requested. The process of collating such documents has taken some time.

However, I am happy to advise that all documents have been provided to satisfy the requirements of National Treasury. Please see attached the list of documents that were collected and signed for by National Treasury, on a CD.

We trust that you find the above in order and hope to hear from your offices soon.

Regards



Jason Ngobeni
 CITY MANAGER



national treasury

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Mr J Ngobeni
The City Manager
City of Tshwane Metropolitan Municipality
P O Box 6338
PRETORIA
0001

Dear Mr Ngobeni

SECURITY OF REVENUE PROJECT

The National Treasury's letter dated 7 June 2013 and the subsequent meeting held on 18 June 2013 refer.

The National Treasury has assessed the procurement process followed in the appointment of PEU for the security of revenue project, value for money and the appropriate procurement model that the City of Tshwane (CoT) could have considered for this project.

Based on this assessment, the National Treasury is of the view that due supply chain management process was not complied with. Further, it has been noted that the CoT incorrectly applied the Construction Industry Development Board's (CIDB) procurement prescripts in a non-construction related bid instead of the prescribed MFMA supply chain management procedures.

From the financial analysis, it appears that the procurement model adopted by the CoT is not the most cost-effective model. The costs over the lifespan of this project are exorbitant and the risks associated with this project are biased against the CoT. This is evident from the terms and conditions of the Master Services Agreement.

We reiterate the National Treasury's view that the CoT must follow the supply chain management prescripts.

In light of the above, it is recommended that the CoT should terminate the contract with PEU, undertake a proper feasibility study and follow a procurement process that is in line with the legislation and prescripts.

Kind regards,

KENNETH BROWN
CHIEF PROCUREMENT OFFICER
DATE: 29/8/2013.



MINISTER: FINANCE
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Ref: M3/4/2/7 (2562/13)

Clr K Ramokgopa
Executive Mayor
City of Tshwane Metropolitan Municipality
P O Box 6338
PRETORIA
0001

Dear Cllr Ramokgopa

CITY OF TSHWANE SMART METER PROJECT

I refer to the meeting of 09 September 2013 held at my office.

I am advised that during June 2013 a Master Services Agreement was entered into between PEU Capital Partners (Pty) Ltd ("PEU") and the City of Tshwane ("CoT") ("the contract") for among others the supply, installation, commissioning, maintenance and repair of smart electricity pre-paid meters. Please note that the National Treasury has the following concerns regarding the contract:

1. The contract was entered into without complying with applicable legislation in that the contract:
 - 1.1. was concluded without following a fair, equitable, transparent, competitive and cost effective procurement process as prescribed by section 217 of the Constitution;
 - 1.2. does not comply with section 33 of the Municipal Finance Management Act in that the views of the National Treasury were not solicited prior to its conclusion as required by the aforementioned section;
 - 1.3. was concluded pursuant to a receipt of an unsolicited bid without following the process prescribed for unsolicited bids set out in Regulation 37 of the Municipal Finance Management Regulations;
 - 1.4. has been concluded with a party that should have been disqualified from providing the service as prescribed by clause 5.4.1 of the Supply Chain Management: A Guide for Accounting Officers of Municipalities and Municipal Entities;
 - 1.5. falls within the ambit of Public - Private Partnerships as defined in the Municipal Public - Private Partnerships Regulations ("Regulations") but was not concluded in accordance with the regulatory framework set out in the aforementioned Regulations.

2. The contract does not offer value for money for the CoT in that *inter alia*:
 - 2.1. The CoT would be required to buy back the infrastructure when the contract comes to an end;
 - 2.2. In National Treasury's assessment the price of 19.5 cents for every rand of electricity purchased is exorbitant. According to the National Treasury sources, this cost should be between five and seven cents.
 - 2.3. There is no benefit to the CoT in that any increase in revenue collected would be absorbed by the increasing fee payable to the PEU.

I will arrange for you to meet the relevant National Treasury officials and either myself or the Deputy Minister to give the City an opportunity to present your views on the issue outlined above.

My Chief of Staff, Mr Dondo Mogajane will contact your office to arrange a follow up meeting.

Kind regards



PRAVIN GORDHAN
MINISTER OF FINANCE
Date: 13-9-2013



national treasury

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Ref: 14/2/3/2

Mr J Ngobeni
The Municipal Manager
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Dear Mr Ngobeni

CANCELLATION OF SECURITY OF REVENUE – SMART METER PROJECT

With regard to the above, National Treasury advises you to halt the payment of any settlement amount agreed with the service provider pending the National Treasury's detailed review of the entire procurement process, implementation and the ultimate cancellation of the project.

Yours faithfully,

SCHALK HUMAN
ACTING CHIEF PROCUREMENT OFFICER
DATE: 15/05/2015