

Prof M W Makgoba
Interim Chairperson of the Board
Eskom
Sunninghill
2157

Dear Prof Makgoba.

ALLEGATIONS OF ABUSE OF POWER BY THE GROUP CHIEF EXECUTIVE, MR ANDRE DE RUYTER.

I am very disappointed to request you to investigate the allegations of abuse of power and suspension of rules relating to recruitment, performance management, procurement and governance processes by the Group Chief Executive of Eskom, Mr. Andre de Ruyter.

I thought Andre will bring to Eskom a culture where corruption, nepotism and patronage are not tolerated, and where action is taken against those who abuse their power or steal public money as pointed out by the President in his 2020 state of the nation address. President Ramaphosa further emphasized the following:

- We will not let up in the fight against corruption and state capture.
- We need to work together to root out corruption and strengthen the rule of law.
- We should not solicit or pay bribes or engage in corrupt acts.
- We should upgrade our culture of reporting crime when we see it being committed.

Appointment of Werner Mouton as an expert to analyze fuel oil bid documents.

On 11 January 2020 I sent a report to Andre de Ruyter, Jan Oberholzer and Calib Cassim to submit inputs. Andre responded on 12 January 2020. He raised a number of questions and finally stated the following: *"I am concerned that this tender has taken so long to conclude, and that our commercial assessment that we presented to the board committee did not take key risks and commercial elements into account. We need to get the right expertise to assess these bids, otherwise we are going to overpay by a very significant margin".*

On 12 January 2020, I responded to Andre's email as follows: *"Thank you very much for your comments. Commercial and Technical teams will respond to all issues raised. On the issue of experts, I hope you will assist me to appoint them because I attempted to do that from February 2019 to date without success".* On 12 January 2020, Andre sent an email to me and Elsie stating the following: *"Werner used to do the pricing structures for fuel oil sales for Sasol and is very familiar with supply constraints, qualities, margins and profitability. He also has a good understanding of the industry and the various role players. His knowledge and analytical skill will be very useful in negotiating a better deal for us. I interviewed him today, and would like to appoint him on a short term contract of up to three months to assist in the assessment of the fuel oil tender. Elsie, please make the necessary arrangements, it is urgent that we get this expertise on board".*

There is no evidence that the Sunday interview was facilitated by Human Resources and whether such an interview ever took place. My email to Andre responding to experts matter was sent at 7h34 PM and he responded at 21h55 PM indicating that he has already conducted the interview.

The process to identify and engage an expert promoted a culture where corruption, nepotism and patronage are tolerated. Andre disregarded the fairness and transparency principles. As a result, Werner was appointed and given a monthly salary of R200, 000 as if he is the only expert in this country. Human Resources assisted Andre to appoint his preferred expert undermining the demands of equal treatment and transparency.

It is not clear if the Board gave Andre the authority to suspend rules relating to recruitment.

Werner commenced work on 20 January 2020

Documents for appointing Werner were processed by Dorcas Moloji from Human Resources. It is not clear if the Group Executive Human Resources was given the authority to suspend recruitment rules. HR rejected my directive that Werner should sit with the fuel oil team. He was given a special office close to Dorcas's Office.

Werner sent an email to Boiketlo on 28 January 2020 stating the following: *Please set up a meeting with the Sasol team: Objective: They need to take us through their current pricing formula for Catlight and HFO 150. They need to show us how they arrive at each portion of the price and what index it is linked to (if applicable) I want to focus on Catlight pricing specifically. We need to see if we can get a 15% price reduction for a start. Think an hour meeting will suffice. Only times I can't do is Monday's and Wednesdays from 12:45. Please just send me the current Catlight volume allocation to Sasol, Econ and FFS per station. If you want we can discuss first before you send the request. I'm now sitting third floor (close to Dorcas's office – HR).*

The commercial team was not happy with the approach adopted by Werner. The first issue was the scheduling of a meeting with Sasol before producing any analysis report. The second issue was that he is conflicted because he want to engage with his former colleagues. The third issue was that as a former employee of Sasol he should understand their current formula for Catlight, how they arrived at each portion of the price and what index it is linked to. The fourth issue was the view that he wanted the Sasol team to assist him to conduct the analysis. The fifth issue was his lack of understanding of Eskom's bid processes.

I met with Werner, Thembokuhle Bengu and Ntombizodwa Mokoatle to discuss Werner's lack of understanding of the work that he was appointed to do. Werner requested that legal opinion be obtained on whether the bid can be cancelled or not. I rejected his request and directed him to do what he was employed to do. After our meeting, he sent an email to Andre misrepresenting facts about the meeting we had earlier. He requested Andre to seek legal opinion from Legal on his behalf about the cancellation of the fuel oil bid. Andre sent an email to Bartlett requesting legal opinion.

On 29 January 2020, Andre sent me an email stating the following: *Please revert to Econ, stating that the tender award has been delayed and that we are going to engage with bidders. Do you intend to issue a new tender, or to re-engage and push for lower prices?* I responded to Andre on 1 February 2020 stating the following: *The recommendations from the analysis being done by Werner will be referred to EXCO for a decision.* Andre wanted me to take a decision on behalf of Exco. Information about the governance process relating to the cancellation of bids was emailed to him on 27 January 2020. The last paragraph in the email read as follows: *The approval to cancel must be obtained from the relevant DAA. After approval has been obtained, the*

Procurement Practitioner informs all participating tenderers of the cancellation. It is not clear if the Board gave him authority to suspend procurement rules and governance processes.

Werner sent me an email on 30 January 2020 stating the following: *I requested the following from the team. The response is still outstanding. "With regards to the letters of award that was issued for Fuel Oil tender CORP4786. In terms of the procurement processes was specific board approval needed to send these letters? If so, do you have a copy of the board or other approval documents to send out the letters? Please give me copies of these award letters and the "approval" documents" Also: There was a McKinsey study done in it looks like 2014. If someone can please send me the full report. The report refer to studies done on the Fuel Oil Pricing. I responded to Werner's email on 30 January 2020 stating the following: I do not see the relevant of such letters in fulfilling your responsibilities. You were appointed as an expert to conduct an independent analysis of the fuel oil bid and produce a report which will inform management on how to take the process forward. Your analysis report will be shared with legal to advice on legal questions.* Werner responded on 30 January 2020 stating the following: *This is a request from your GCE. And it is relevant to the current tender process analysis and the possible recommendations. Please discuss with the GCE.* The fact that Andre had a close relationship with Werner prevented me from sanctioning him for poor performance. I do not see any reason why Werner should be paid R200, 000 at the end of the month because he did not even open any bid document submitted by bidders as par

On 4 February 2020, Andre sent an email to Bartlett and myself stating the following: *Please provide feedback on potential cancellation of tender.* Bartlett responded to Andre on 4 February 2020 stating the following: *Please be advised we have requested Werner to provide us with his analysis and findings report (which he had said it would be ready yesterday) to enable us to augment the grounds and basis for the tender cancellation. We should be able to send you a write up this evening still as soon as we receive Werner's report. After receiving response from Bartlett,* Andre sent another email to me stating the following: *What are your recommendations as CPO?* I responded to Andre on 4 February 2020 as follows: *I concur with Bartlett that we must use the recommendations of the analysis report to chart the way forward.* Andre was aware that an analysis report has not been received from his preferred expert, but he continued pressurising me and Bartlett to manufacture reasons to justify the cancellation of the fuel oil bid.

On 5 February 2020, Werner sent an email to Bartlett stating the following: *Report attached.* The report recommended the cancellation of the bid due to the following:

- The strategic objective of saving money by procuring from refiners were not achieved.
- The conclusion of the tender will lead to possible strategic partners such as BP and Engen being excluded for a period of 5 years.
- BP could provide Grade 3 product cheaper than any other supplier yet is currently excluded.
- Engen is not just excluded due to the noted transport constraints. The pricing they submitted for the tender was never clarified i.e. their prices could not be compared to the other suppliers.
- The conclusion of the financial evaluation team was that they could not reach a conclusion as they could not compare pricing. This is still the current status.
- We are purchasing and allocating volume to Econ Oil (a reseller) who historically over a 5 year period increased pricing substantially and benefitted.
- The various committees seem to only look at current pricing with a closed view to anything else. They need to consider the strategic aspects of purchasing as well.

- Optimal price and volume mix was not achieved.

Werner's analysis did not take into account the implication of clause 13(3) of the Preferential Procurement Regulations 2017.

On 7 February 2020, Andre sent an email to Bartlett and myself stating the following: Who is handling this request? Will the request for information be superseded by the withdrawal of the tender? Instead of handing over the information, I propose that we engage with the FFS lawyers to inform them that we are going to retender. At this stage there was no decision to re-tender. Andre's proposal could not be entertained until final approval from a governance structure to cancel the bid was received. Information about the governance process was emailed to him on 27 January 2020. The last paragraph in the email read as follows: *The approval to cancel must be obtained from the relevant DAA. After approval has been obtained, the Procurement Practitioner informs all participating tenderers of the cancellation.* I doubt if the Board gave Andre the authority to suspend procurement rules and governance processes.

Analysis report – presentation to Exco.

On 7 February 2020, I sent an email to Andre stating the following: I want to know whether I should request Werner to make a presentation at Exco on Monday on the draft analysis he emailed to us on Wednesday? On 10 February 2020, Andre sent an email to me stating the following: I don't think this is necessary. Exco recommended the cancellation of the fuel oil bid on 10 February 2020. Key information which should have been made available to Exco members was withheld. Exco members were expected to rubber stamp a decision that was taken by few individuals. The minutes of the Exco meeting or the recording will reveal that there was no written submission that was considered, no presentation that was done and lastly no proper discussion on the validity of the reasons to cancel the tender.

My view is that there is no way that Eskom will fight corruption and state capture if Exco decisions are taken haphazardly. This will only promote a culture where corruption, nepotism and patronage are tolerated.

One of the reason why state capture flourished in Eskom was the way decisions were taken by Board and management. Decision making process in Eskom should be flagged as a high risk.

Undermining of governance processes.

The round robin document for the establishment of the divisional boards indicates that the composition of the divisional boards have been considered taking into account the skills mix and experience. It is not clear who recommended the composition of these boards because this matter was never discussed in any Exco meeting. The minutes of the Exco meetings or the recordings will reveal that there was no written submission that was considered, no presentation that was done and lastly no discussion with regards to skills mix. If the Board has already approved the composition of the divisional Boards, why is Exco expected to do ex post facto recommendation. One of the reason why state capture flourished in Eskom was because of top bottom decisions that were taken unsystematically.

Exco was informed on 27 January 2020 that there is a new procurement strategy that must be approved by the Board to enable Eskom to procure from the Original Equipment Manufacturer.

Exco members were expected to rubber stamp a decision that was taken by few individuals. The minutes of the Exco meeting or the recording will reveal that there was no written submission that was considered, no presentation that was done and lastly no proper discussion on what approval is required from the Board and other stakeholders.

My view is that there is no way that Eskom will fight corruption and state capture if Exco is undermined when certain critical decisions are taken. This will only promote a culture where corruption, nepotism and patronage are tolerated.

Meeting with Andre on Wednesday 12 February 2020

I met with Andre on Wednesday 12 February 2020 in his office from 9H00 to 9H45. The meeting was also attended by Elsie Pule who is the HR Group Executive. In summary, Andre indicated that I poorly performed in my position as Chief Procurement Officer. He further indicated that I should move from procurement to compliance. He indicated that I failed to perform in the following areas:

- Warehousing and spares management – CPO must accept accountability for the R19 billion to R22 billion worth of stock which is idle in various warehouses.
- Cataloguing backlog – CPO must accept accountability for 75% of the expenditure which is unstructured.
- Lack of responses from National Treasury - CPO must accept accountability for all letters not responded to by National Treasury.
- Fuel oil bid – CPO must accept accountability for bid not awarded to refineries as directed by the Board and poor responses on a document given to him.
- Savings project – CPO must accept accountability for achieving less than 10% of the target.
- SAP system – CPO must accept accountability for conducting the majority of procurement activities manually outside of the current SAP system.

Biased assessment of my performance

It is important for the Chairperson to note that there are rules governing performance management in Eskom. I do not know who gave Andre the authority to suspend these rules.

It is not clear which documents were made available to Andre by Human Resources to enable him to do an objective and unbiased assessment of my performance.

My view is that the so called assessment was done because the Chief Procurement Officer is refusing to suspend procurement rules and governance processes unlike Human Resources which agreed to the suspension of recruitment and performance management rules.

If Andre was doing an objective assessment of each executive manager, he should have already fired Jan Oberholzer (Chief Operating Officer) for failing to deliver the promised megawatts. Jan Oberholzer's non-performance is not hidden, it is seen and experienced by the whole country.

Appointed as Chief Procurement Officer in January 2019

During the discussion with Andre, I reminded him that I was appointed as Chief Procurement Officer from January 2019. I further reminded him that I was denied the opportunity to recruit critical resources to address the red flags that were identified in the procurement and contract management environment.

Former Group Chief Executive Phakamani approved the new organogram in July 2019 which was meant to address weaknesses in procurement and supply chain management. Human Resources Division silently shelved the approved structure and never implemented it.

The non-implementation of the approved structure was brought to the attention of the Acting Group Chief Executive, Mr. Jabu Mabuza. Up to date there are no resources that were made available to the Chief Procurement Officer to deal with the after effects of the state capture including the resources to assist with the audit process.

Jan Oberholzer gossiping about my move from procurement to compliance

I informed Andre during the discussion that it cannot be a co - incident that Jan Oberholzer told a colleague of mine in early January 2020 that I will be removed from procurement to compliance. Jan Oberholzer would not have gossiped about my removal from procurement if discussions were not held about my removal.

I am told that the plan behind my removal is to ensure that a white male is appointed as Chief Procurement Officer. Plans were also at an advanced stage to appoint a white male as the head of forensic. Both names will be given to the investigators during the investigation. HR should provide information on the progress around the appointment of a head of forensic audit

Threatened me with weekly performance assessments

Andre threatened me that my performance will be assessed on a weekly basis if I do not agree to move from procurement to compliance.

This was the second threat he made within a short space of time. Andre made the first threat in a meeting that I attended with him and Bartlett in his office. After insulting me and my team for giving him poorly written responses and lack of analytical skills, he indicated that he will fire the whole procurement team and bring consultants to manage procurement. I told him that state capture in Eskom was also enabled by the consultants. He further indicated that he would bring international consultants. It appears he is not aware of the damage that was done by international consultants in SARS.

On 13 February 2020, I received an email from Andre stating the following: *“Thank you for your mail below. I regard this level of preparation for an important meeting with National Treasury to be inadequate and insufficient. This note does not meet expectations, and was of no assistance in the meeting.”*

The above email is an undisputed evidence that Andre is determined to continue to victimise me for refusing to suspend procurement rules and governance processes. He did not discuss with me or disclose the agenda of the meeting with National Treasury. I fail to understand why should

I be accused for inadequate and insufficient preparation if the agenda of the meeting was not discussed with me or disclosed to me.

Calib Cassim (Chief Financial Officer) visited my office on 11 February 2020 to talk about the National Treasury meeting. Ntombizodwa Mokoatle was in my office during this discussion. Calib Cassim told us that he does not know what will be discussed in the National Treasury meeting.

During the meeting at National Treasury, Andre made a presentation on the plan to use original equipment manufacturers to maintain the power stations. This procurement strategy was never submitted to Exco nor discussed. It is not clear how do I prepare myself adequately and sufficiently when I do not know the subject matter of the meeting.

This is a good example of an abuse of power to force me to move from Procurement to Compliance.

Some of the examples of the abuse of single source procurements.

Jan Oberholzer supported that a R40 million contract should be modified by R49 million in May 2019. I rejected the modification stating that submitting a modification of R49 million to National Treasury to modify a R40 million contract will compromise the integrity of the Board and management when this modification is discussed at SCOPA. See Annexure MST1.

Some officials from SIU and Eskom wanted me to support the appointment of Bowmans or Ryno Pepler using single source procurement in November 2019. I did not support the single source procurement and stated the following: See Annexure MST2

- Ryno Pepler or Pepler Forensic Services is not registered as a supplier in CSD.
- Ryno Pepler or Pepler Forensic Services by not registering on CSD means not interested in rendering services to organs of state
- It is not clear how Bowmans appointed a sub-contractor who is not registered in the CSD. (contravention of government prescripts)
- Bowmans did not disclose to Eskom that it appointed Ryno Pepler as a sub-contractor.
- Bowmans did not investigate package 28 and did not submit any report for such a package.
- SIU does not have any valid grounds to recommend the appointment of Ryno Pepler or Pepler Forensic Services.
- Eskom does not have valid grounds to appoint Ryno Pepler or Pepler Forensic Services using single source

The historical modifications of PB Africa (Parsons Brinckerhoff) and Black and Veatch contracts leaves much to be desired. These contracts were initiated at R100 million each in 2005/2006. Their values have increased to approximately R20 billion. The assessment of these modifications revealed manipulation of internal processes. The Chief Procurement Officer recommended that these modifications and others must be subjected to forensic investigations. See Annexure MST3.

Different views on treatment of suspicious transactions

IDS Africa was declared the preferred bidder after submitting a bid in the amount of R82 million at Medupi Power Station. During negotiations the supplier claimed to have omitted zeros from the pricing schedule. Eskom officials agreed to amend the rates from R1 900 to R19 000 and R850 to R8 500. The total price changed from R82 million to R92 million. Jan Oberholzer and Wikus van Rensburg were happy that the matter should be closed because it was a bona fide error. The exchange of emails on this matter are indicated below:

Andre sent an email to Jan and Wikus on 19 January 2020 stating the following: *Thanks for the update. So we are comfortable that this was a bona fide error with no untoward activity on either vendor or Eskom side? This is my conclusion, and unless there is evidence to the contrary, I am comfortable to let the matter be concluded thus.* Jan Oberholzer sent an email to Andre on 19 January 2020 stating the following: *Yip, Wikus and myself had a few comprehensive discussions and I am comfortable that it was a bona fide error.* I sent an email to Jan and Andre on 19 January 2020 stating the following: *I disagree with Jan and Wikus view. Many suppliers are disqualified daily for bona fide errors. Proper evaluation of bids should pick bona fide errors and not the negotiation process. These type of engagements should not be regarded as a challenge to one's leadership but necessary to strengthen the rule of law.*

Media statement to clarify the mail and guardian article on IDS.

Andre wanted communication to release the media statement to clarify the allegations of fraud and conflict of interest before the Board meeting which was scheduled for 29 January 2020. I did not support the release of the media statement before a resolution is taken by Board whether the boiler maintenance tender should be awarded or cancelled.

The email that was sent to Andre by Raeesah on 29 January 2020 stated the following: *Kindly find the attached proposed statement as discussed, for your perusal and edit. Solly has reviewed and suggest that we include the outcome from Board. See Annexure MST 5.*

These type of engagements should not be regarded as a challenge to one's leadership but necessary to strengthen the rule of law.

Conclusion

President Ramaphosa invited all of us to upgrade our culture of reporting crime when we see it being committed

I request the Chairperson to investigate the allegations of abuse of power, suspension of rules relating to recruitment, performance management, procurement and governance processes as outlined above.

Regards


SOLLY TSHITANGANO

CHIEF PROCUREMENT OFFICER

16 February 2020

CC: Minister Gordhan – Department of Public Enterprises (busi.sokhulu@dpe.gov.za)

CC: President Ramaphosa – President of South Africa (Khusela@presidency.gov.za)