

SUPPLEMENTARY AFFIDAVIT

I, the undersigned

PATRICE ROBERT TIBERI

Identity number [REDACTED]

hereby declare under oath as follows:

1.

I am an adult male residing at [REDACTED],

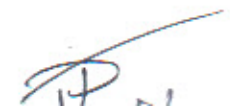
[REDACTED] GAUTENG

2.

The facts deposed to in this Supplementary Affidavit fall within my personal knowledge and are true and correct.

3.

I depose of this Affidavit in my own free will and was not coerced or influenced thereto by anyone



4.

On the 7TH February 2017 I depose of an Affidavit regarding irregularities that I came to know about during my employ at the Tubular Group of Companies. As previously stated in my Affidavit of the 7th instant, I was employed by Tubular Technical Construction (Pty) Ltd ("TTC") as an senior project estimator.

5.

In paragraphs 13 – 17 of my Affidavit of 7 February 2017, which I attach hereto again for ease of reference, I gave a summary of certain irregularities that had occurred during the execution of a tender that I worked on that later culminated in a contract between Eskom and one of the Tubular Group companies, known as Tubular Construction Projects (Pty) Ltd ("TCP")

6.

The purpose of this Affidavit is to elaborate and describe certain of the irregular actions which took place on this particular tender and contract and furthermore, for the sake of clarity, to name the persons who were involved in these irregularities.

7.

During 2006 an Eskom tender for the supply and installation of Air Cooled Condensers ("ACC") to units 1 to 6 at Eskoms "Alpha" project was issued by Eskom to the company DB Thermal (DBT). Project

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"Alpha" later became known as the Medupi Power Station. Tubular was approached by DB Thermal to tender for a subcontract for would form part of the works that they were asked to tender on.

8.

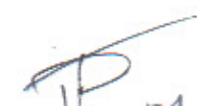
DB Thermal told Tubular that if they were not successful in respect of the submitted tender for project Alpha, that Eskom had guaranteed them that they would award DB Thermal a similar contract at their other power station project known as Project Bravo which was later to become known as Kusile Power Station and that Tubular's subcontract tender will then be transferred to the Kusile project.

9.

At the time whilst we were still pricing the subcontract for the Alpha Project that eventually did not materialized we had several meetings with DBT and several changes were made to our original subcontract tender. Then at some later stage DBT was bought out by SPX Technologies and we started negotiating with them instead.

10.

In 2009 the project as set out above in clause 7 was awarded to subcontracted SPX who in turn subcontracted TCP based on the subcontract tender that we had submitted to DB Thermal in July 2006. Soon thereafter TCP entered into and signed a subcontract



with SPX without reading the conditions properly. This mistake would prove to have a negative impact on TCP at a later stage.

11.

The flow diagram in respect of the principals who were finally involved in Kusile project at this time (2009) was as follows:



12.

Soon after entering into the subcontract with SPX the relationship between TCP and SPX started to deteriorate. There were many disagreements and arguing relating to the execution and measuring of the works as contained in the mentioned SPX /TCP subcontract. The disagreements referred to actually reached a point where there were lawyers became involved.

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13.

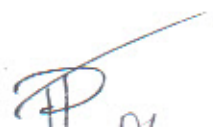
It was then determined that the main cause of the many disagreements between TCP and SPX was that the subcontract which TCP had signed with SPX did not allow TCP to do any re-measuring of the actual costs, which TCP took to be standard condition in all subcontracts. This resulted in TCP not getting paid enough to cover its costs relating to the execution of the subcontract. TCP then took the matter to arbitration.

14.

During this period Mr. Mike Lomas ("Lomas") who is involved in the Tubular Group companies (including TCP) and Mr. France Hlakudi (" Hlakudi") project manager of the Eskom Kusile Power Station became very close.

15.

Lomas and Hlakudi then managed to convince Eskom that the best way to solve the problem with the ACC contract was for Eskom to become directly involved with the relevant parties , to de-scope the magnitude of the works and thereby by-pass Alstrom and SPX contractors Altron and subcontractor SPX to an extent where Eskom would deal directly and enter into a new main contract with TCP to the exclusion of Alstrom and SPX .



16.

On 02 September 2015 a letter was sent by France Hlakudi which stated that a decision by its Executive Procurement Sub-Committee, Eskom Holdings SOC Limited ("Eskom") has resolved to engage in a negotiation process with Tubular Construction Projects (Pty) Limited ("TCP"), to become the sole negotiating party, for the Works (the "Negotiation Process"). This letter referred specifically to the "Erection and Installation of ACC Units 4-6" which was originally part of the main contract awarded to Alstom. I attach hereto a copy of the letter from France Hlakudi marked as **Annexure "X"**

17.

This was Lomas and Hlakudi's plan to by-pass Alston and SPX from the works and subsequently for Eskom to deal directly with TCP regarding the Erection and Installation of ACC Units 4-6 . Pursuant thereto, there were settlement agreements entered into between Eskom with Alstom and SPX to re-inburse them for any lost profits There were also a settlement agreements signed on 26 November 2015 between DB Thermal and TCP regarding their original subcontract. In this settlement agreement TCP was represented by Lomas.

18.

Immediately after the letter (Annexure X) was received from Hlakudi, I was instructed by Lomas to start to prepare the pricing of



a new direct tender whereby TCP would be taking over as the main contractor for the Erection and Installation of Units 4-6 of the ACC Works. Upon completion, my pricing report indicated that the new TCP's tender price for these works amounted to R 1,533,944,581.67 base dated August 2015.

19.

Pursuant to submitting my pricing report, I was informed by Lomas that Hlakudi could not accept a tender or sign a contract for more than R715,000,000.00 as any tender amount exceeding this figure would have to be approved by the Eskom Board of Directors.

20.

I was told by Lomas that the only way around this situation was to adjust the tender price according to the original base rate of July 2006. Hlakudi would then motivate to Eskom that this was the only way to compare the new prices to the original contract TCP had with SPX.

21.

By using the July 2006 base date the price then decreased to R 785,059,180.04 which was however found to be still too high and still reaching beyond Hlakudi's discretion level. Hlakudi informed Lomas that the final tender price would have to come down under his R715,000,000.00 discretion level .



22.

I eventually brought the tender price down to R708,971,582.16. Subsequent after submitting the tender with the base rate of July 2006 part of the revised price to Eskom , we were called to a final meeting at Mega Watt Park where the full Eskom and TCP team were present to finalize the new main contract for the works at Kusile.

23.

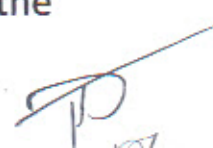
In the said meeting we discussed all the technical-, quality-, ASGISA-, and commercial issues. It was then when Gabriela Palaci from Eskom legal made a comment that if we took the price of R708,971,582.16 and apply the CPI of 1.9538703 Aug 2015, this would put the contact value at R1,385,238,517.92 and this would then still have to go to the Eskom Board for approval.

24.

When she made this comment there was an instant silence and the meeting was adjourned shortly thereafter.

25.

A day or two later I was informed by Lomas that he had a further meeting with Hlakudi where they had decided that we will use the rate for the base date of July 2006 and make it Aug 2015 with the



contact value of R708,971,582.16. This was done. A letter to this effect signed by the CEO of TCP Mr Antonio Trindaded was send to Eskom on 10 November 2015 and we were soon thereafter awarded the new direct contact. The said letter whereby we tendered the price of R 708,971,582-16 and waived certain other conditions are attached hereto as **Annexure "Y"**

26.

Lomas and Hlakudi arrangement (scheme) to get the contact awarded to TCP at this price (R 708,971,572-16) was thus successful.. At this figure Hlkudi could and did himself signed the new contract. The Eskom Board of Directors nor its legal division was required to be involved. We all knew that with the price of R 708,971,582-16 at a base date of Aug 2015 that TCP would not be able to complete the works but that they were heading for serious losses. Lomas, Trindade and Hlakudi had agreed to make up the difference between the original priced tender amount of R 1,533,944,581.67 as the new main contract for R 708,971,572-16 as illustrated below.

27.

The plan (scam) was that TCP would create (false) claims / variation orders to generate 'new' income up to the "correct" value of R 1,533,944,581-67. Hlakudi undertook to approve all these (bogus) claims. This included an acceleration claim that I believe they are still busy with that could take the final CTC price to even more that R 1 ,6 Billion.



28.

This arrangement designed by Lomas and Hlakudi with the knowledge and approval by at least two of the the TCP directors (Tony Trindade and Pieter Vorster) was and still is illegal and would eventually result in a possible R 700 Million to R 1 Billion fraud on Eskom.

29.

I believe this scam is the reason why the Hlakudis (Hlakudi and his wife) have been and still are getting paid (bribes) for their share in the scam designed by Hlakudi and Lomas to defraud Eskom with the blessing, approval and participation of Trindade and Vorster. I have described these irregularities in more detail in the Affidavit deposed by me on the 7th February 2017.

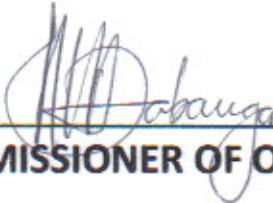
30.

As stated in my Affidavit of 7th of February 2017 that I attached hereto as **Annexure "Z"** I am prepared to give evidence before any Court or Forum under Oath to confirm that all that I have said in my Affidavit of 7th February 2017 as well as this Supplementary Affidavit as being true and correct.


PATRICE ROBERT TIBERI

I CERTIFY THAT THE DEPONENT ACKNOWLEDGED AND STATED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION, THAT HE HAS NO OBJECTION TO TAKING THIS PRESCRIBED OATH AND CONSIDERS IT TO BE BINDING ON HIS CONSCIENCE. I FURTHER DECLARE THAT THE REQUIREMENTS AS SET OUT IN GOVERNMENT NOTICE 1648, HAVE BEEN COMPLIED WITH.

THUS SIGNED AND SWORN TO BEFORE ME AT EDENVALE ON THIS 16th DAY OF FEBRUARY 2017.

 71493749
CS
COMMISSIONER OF OATHS

Name: Mabunga Delight

Address: 104 1st Ave

Designation: CI

Tel: 011 5538600

E-mail: n/a





Mr Tony Trindade
Tubular Construction Projects (PTY) Ltd
Johannesburg Office
[REDACTED]
South Africa

Date: 02 September 2015

Enquiries: France Hlakudi
Tel :+27 11 260 5627
Cell :+[REDACTED]

No. of Pages: [02]

Dear Mr Trindade,

ESKOM HOLDINGS SOC LIMITED: AIR COOLED CONDENSER (ACC) ERECTION FOR UNIT 4 TO UNIT 6 KUSILE POWER STATION ("the Works")

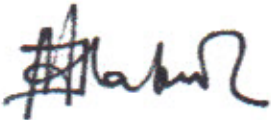
1. INTRODUCTION

- 1.1 Following a decision by its Executive Procurement Sub-Committee, Eskom Holdings SOC Limited ("Eskom") has resolved to engage in a negotiation process with Tubular Construction Projects (Pty) Limited ("TCP"), as the sole negotiating party, for the Works (the "Negotiation Process").
- 1.2 You are accordingly invited to participate in the Negotiation Process.
- 1.3 Eskom reserves the right, at any point during the Negotiating Process, to immediately terminate the Negotiation Process and to thereafter conduct one or more procurement process/es which may, or may not, involve TCP. Eskom may take the aforementioned course of action if, amongst other things, the price and other terms offered by TCP are not considered by Eskom, in its sole discretion, to be fair, competitive or cost effective; or if the terms would result in an unacceptable exposure of risk to Eskom.
- 1.4 The exact details of the Negotiation Process are set out further in the document attached hereto and headed ("Negotiation Process Information").

D.L.

1.5 We request that you confirm your willingness to participate in this Negotiation Process and further that you provide Eskom with the names, designations and responsibilities of each of the members in your negotiation team, authorised by TCP to participate and make decisions in the Negotiation Process, by 16 September 2015.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'France Hlakudi', with a stylized flourish at the end.

France Hlakudi

Lead Negotiator (P11A ACC Erection package)

Group Capital Division

Eskom Holdings SOC Limited

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Tubular Construction Projects (PTY) LTD

Tubular Construction Projects (Pty) Ltd

2008

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Bedfordview
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Tel: +27 (0)11 553 2000
Fax: +27 (0)11 450 2160
Email: th@tubular.co.za

Ref: TCP15/037_007_ts

Eskom Holdings SOC Limited
Kusile Power Station Project
Megawatt Park
Maxwell Drive
Sunninghill
Sandton

10th November 2015

Attention: Althea Bauer

**Kusile Power Station: Air Cooled Condenser – Erection of Unit 4, Unit 5 and Unit 6
PS(K)2015/AB/01 – Clarification No. 7**

We refer to your email dated the 9th November 2015 and confirm that the deviation in respect of the base date as submitted in the tender of 18 September 2015 and final offer of the 12th October 2015 is hereby withdrawn.

For the avoidance of doubt Tubular Construction Projects (Pty) Ltd best and final offer is ZAR 708,971,582.16 (excluding V.A.T.) with a contract price adjustment base date of August 2015.

We refer to recent negotiations in respect of the "de-scoping" of Units 4,5 & 6 and hereby confirm that Tubular Construction Projects request in accordance with clause 14.2 for a 10% (ten percent) Advance Payment is hereby withdrawn. The qualification No 1 for a 10% Advance Payment in section 2.2.13 of the tender is hereby withdrawn and is therefore of no force and effect.

We trust the above meets with your approval.

Yours faithfully,

For and on behalf of
TUBULAR CONSTRUCTION PROJECTS (PTY) LTD


A. J. D. C. TRINDADE
MANAGING DIRECTOR

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