

STATEMENT BY BUTHELEZI SIBUSISO BLESSING**In my capacity as Head of the Department of Gauteng Public Transport, Roads and Works**

01. On 18 September 2008, in my capacity as the Head of Department (“HOD”) of the Gauteng Public Transport, Roads and Works (“the Department”), I addressed an e-mail (“the e-mail”) to the MEC of Public Transport Roads and Works, the honourable Mr. Ignatius Jacobs (“the MEC”). The email is attached hereto marked “**Annexure A**”.

E-mail dated 18 September 2008

02. The salient point of my e-mail was that I found it disconcerting that some of the MEC’s actions, which will be explained in full herein below, were undermining my efforts to instill high ethical standards in supply chain management practices.
03. The Department of Public Transport Roads & Works daily deals with contracts worth millions of Rands and in my capacity as Head of Department I have to take preventive measures against corruption. In terms of Section 38 i(c) ii of the Public Finance Management Act 1 of 1999 I have to take effective and appropriate steps to prevent inter alia unauthorised and irregular conduct.
04. Practice Note 6 of 2007/8 issued by National Treasury specifically compels me to approve all reasons and decisions for deviation from standard requirements in the procurement of any goods and services.
05. In the aforesaid e-mail, I make the point that I am extremely concerned that the MEC’s actions have undermined my efforts by calling senior managers of the Department into private meetings. During such meetings he instructs them to meet with potential contractors to discuss contracts without prior tenders being issued or advertised and to grant contracts without following due process.

06. The MEC responded to the e-mail on 19 September 2008, and communicated his disappointment in the manner in which I had raised my concerns. In this regard, the MEC was particularly unhappy that I had copied other senior officials within the Department. The MEC lodged a complaint with the then Premier. I have since apologised to the MEC for forwarding this e-mail to other senior officials within the Department.
07. The then Premier further instructed Mr Peter Harris to launch an investigation with regards to the MEC and other parties mentioned in the e-mail.
08. The MEC requested in his aforesaid letter dated 19 September 2008 that I provide him with “*substantial evidence in support of all the allegations you have raised in your letter...*” The MEC indicated that he required this information by not later than 12:00 noon, 22 September 2008. I attach herewith the correspondence from the MEC marked “**Annexure B**”.
09. In response to the MEC’s request in my correspondence of even date sent via e-mail, I responded by stating that I was going away on leave and would prioritize the matter upon my return to the workplace on Monday 29 September 2008.
10. I returned from leave on Saturday 27 September 2008 to attend a wedding.

MEC’s Campaign to distract from the real issues and to defame me

11. Upon my arrival at the wedding of the Director General Petje Mallele, I met several of my colleagues and ANC activists.
12. I learned from these colleagues and activists that rumours have been circulating that I had allegedly been suspended by the MEC. I was informed that the Chief Director: Communications: Mr. Lebelo Maloka and Mr. Mbali Seheri, the political

advisor to the MEC, have been spreading false rumours, purportedly on behalf of the MEC, about my so-called suspension. To say that I was surprised and angered by this blatant lie would be a gross understatement. I learned later that the MEC did in fact request my suspension which the Premier refused. If I was suspended it would make the investigation into the MEC's activities difficult as I would not be able to assist the investigator to compile evidence and it would be easier to strongarm other parties in my absence.

13. In subsequent meetings with various political leaders, I again learned of another malicious rumour directed at me by the MEC.
14. I learned that the MEC had alleged that I or a person purportedly acting on my instructions had threatened to kill him or his family if he did not lift my so-called suspension. I even received a letter from the MEC's attorneys requesting me to refrain from threatening the MEC.
15. The MEC's attorney threatened me with legal action if I did not retract the allegations made in the letter dated 18 September 2008 and made a formal apology to the media. The MEC attorney's letter is attached hereto as **Annexure X1**. I refused to comply as a retraction would inter alia cause the Premier's investigation to be stopped. The Premier asked Mr Harris to complete his investigation by 21 October 2008. It is interesting that Mr Jacob's attorney sent the letter on 3 October 2008 with the hope that I would buckle under pressure and do a retraction before the completion of the said investigation.
16. I responded to the letter from the MEC's attorneys by denying any involvement and any knowledge of any threat against the MEC. I place it on the record that I have never threatened the MEC nor am I involved in any threat against the MEC if indeed there was such a threat made against the MEC. I in fact consider this latest accusation vexatious and defamatory. I attach hereto the letter sent to my attorney in reply as **Annexure X2**.

17. Upon learning of this latest accusation, I raised the matter with the former Director General, Mr. Mogopodi Mokoena, who immediately dispatched the Head of Security, Mr. Collen de Vos¹ to investigate these allegations.
18. Upon the completion of this exercise, I was informed by the outgoing Director General, Mr. Mogopodi Mokoena², that Mr. de Vos' investigation had revealed that the security guard on duty on the night in question had neither reported nor noted any incident whatsoever, notwithstanding the MEC's allegations. The MEC however caused the City Press newspaper to publish an article *inter alia* on Sunday 12 October 2008, accusing me that I am committing acts as aforesaid, and that I threatened the MEC that should he publish the details of this incident that I would institute legal action. This creates the impression that I am guilty (when I am not) and that I am attempting to hide my guilt. If you refer to **Annexure X3** attached as aforesaid it is clear that such is not the case and that the MEC is using the media to defame me.
19. On 29 September 2008, in line with my commitment to the MEC and the Premier, I instructed MNS Attorneys through e-mail correspondence to gather evidence in the form of affidavits from various officials of the Department in an effort to substantiate the allegations contained in the e-mail.
20. It is critical to note at this point that I stated categorically in the e-mail that nobody should be compelled to depose to any statement as this was a completely voluntary process.
21. Subsequent to issuing these instructions to MNS, I learned with great disappointment that the MEC had made serious allegations against me in a

¹ Mr Collen de Vos can be contacted at 082 785 1950

² Mr Mogopodi Mokoena can be contacted at 082 600 8748

provincial ANC meeting in which, Mr. Paul Mashatile and Mr. David Makhura, the Chairperson and Secretary of the ANC in Gauteng respectively, were present.

22. I was informed that the MEC had alleged that I had intimidated Mr. Paul Maseko³ (“Mr. Maseko”), the Chief Executive Officer of Emoyeni Trading⁴ entity into making a statement in support of some of the allegations contained in the e-mail.
23. At this point I was pained that a senior official within the Department could stoop so low as to concoct such an amazing falsehood against me. It also just seemed to be an attempt by the MEC to muzzle Mr Maseko. My attorney advised the MEC in writing that should he persist in such behaviour that such would be construed as meddling with the Premier’s investigations. My attorney’s letter is attached hereto as aforesaid Annexure **X4**.
24. In an attempt to clarify with Mr. Maseko the reasons for his having made such patently malicious, false and in my view defamatory statements against me, I called him on his cellphone and requested him to give me an explanation.
25. In response, Mr. Maseko denied any knowledge of the statements allegedly imputed to him by the MEC as sated above.

³ Mr Maseko can be contacted at 083 679 8329

⁴ Emoyeni is an entity established and registered with the Provincial Treasury since 2005 under Treasury Regulations 19 as an administrative arm of the Department of Public Transport Roads and Works. The primary objective of Emoyeni is to provide an efficient, effective, economical “world class” conference centre, for the benefit of client Departments as well as to secure and optimally utilise State assets. The Head of Entity is accountable to the Head of Department.

26. At this point, Mr. Maseko requested me to put the allegation in writing so that he could respond to it in writing as well.
27. This was the reason I wrote an e-mail to Mr. Maseko on 01 October 2008 requesting him to desist from making these false and libelous statements. I attach hereto the said e-mail marked "**Annexure C**".
28. Mr. Maseko responded on even date and again denied that I had coerced him into making a deposition in relation to his meeting with the MEC. Mr. Maseko's e-mail is attached herewith marked "**Annexure D**".

Informal complaint by Maseko

29. The MEC requested Mr Maseko to allow investors from Kuwait to develop the Rissik Street Post Office and the Vaaldam. Again this instruction was without a tender being issued or following due procedure.

Standard Procedure for awarding tenders

30. The standard procedure for awarding tenders are as follows;
 - 30.1 A tender is advertised and in such tender the requirements are set out
 - 30.2 A Cross Functional Sourcing Team ("CSFT") is appointed to either make a recommendation as to whom the tender should be awarded to or to make a shortlist of possible candidates for a final adjudication by the Departmental Acquisition Council ("DAC"). It must be pointed out at this juncture that I created the DAC and that the DAC is subject to my authority.

- 30.3 A CFST is made up of people with the relevant qualifications and expertise to assess tenders received such as engineers, accountants, attorneys and the like.
- 30.4 There are different types of DAC's that have been created in the Department as follows:
- 30.4.1 DAC that deals with contracts below R1 million;
 - 30.3.2 a more senior DAC that deals with contracts of up to R3 million and below;
 - 30.3.3 a Trading Entities Acquisition Council (TEAC) also with delegation to handle contracts to the value of up to R3 million;
 - 30.3.4 the Principal DAC which has to approve contracts above R3 million.
- 30.6 The Principal DAC is made up of Chief Directors and Deputy Directors and was at the time chaired by John Van Rooyen. (John Van Rooyen is a close friend of the MEC and is the Chief Director responsible for Governance and also runs the office of the MEC).
- 30.7 The DAC has to consider and approve the recommendation of the CFST or adjudicate by choosing a candidate from the shortlist provided by the CFST.
- 30.8 Should the DAC believe that the criteria provided in the advertised tender should be altered they may change it but then the tender must be re-advertised and the process must start afresh.

- 30.9 If there are practical and pressing reasons why the tender should not be re-advertised only the Head of Department can authorise⁵ such.
31. If the DAC meddles or encroaches in the function of the CFST it is very concerning as it can facilitate corruption. More especially as contractors can approach the DAC and bribe them to get a tender. Or even more concerningly the DAC can advise the contractor that it will not accept his tender unless if the contractors make it beneficial for the DAC members.
32. The following officials of the Department voluntarily made statements in the form of affidavits on their meetings with the MEC:
- 32.1 Ms. Phindile Mbanjwa⁶ (Ms Mbanjwa); and
- 32.2 Mr. Sam Jafta⁷ (“Mr Jafta”).
33. The affidavits substantiate the allegations contained in the e-mail dated 18 September 2008 on the MEC’s interference with procurement processes.
34. The affidavits are attached herewith marked “**Annexure E**”.

Complaint by Mr M. Molefi against John van Rooyen

35. I also obtained an affidavit from Mr. Mollo Molefi⁸ in which he confirms one of the allegations contained in the e-mail, namely, that Mr. John van Rooyen had requested him to make available DAC submissions to him as the Chairperson of

⁵ This will constitute a deviation from standard procedure in which case the Treasury Practice Note 6 of 2007/08 comes into effect whereby I as the Accounting Officer has to approve both the reasons and the decision itself to deviate by effecting changes

⁶ Ms Phindi Mbanjwa Mbada can be contacted at 083 635 0684

⁷ Mr Sam Jafta can be contacted at 083 415 1467

⁸ Mr Molefi Mollo can be contacted at 083 703 1041

DAC prior to tabling at DAC meetings. Mr. Mollo's affidavit is attached hereto marked "**Annexure F**". Mr. Molefi states in his affidavit that he refused to cooperate with Mr. van Rooyen in this regard as he considered the request irregular⁹.

Irregularity with tender: KRK Consortium

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A. Functions of the CFSC (Cross Functional Sourcing Teams)

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

1. Determine whether or not tenders offers are complete
2. Determine whether or not tenders offers are responsive
3. Evaluate tender submissions (including scoring, and ranking tenders)
4. Perform a risk analysis and
5. Prepare a tender evaluation report

B. Functions of the DAC (Departmental Adjudication Council) also known as the Bid Adjudication Committee

A bid adjudication committee's duties include:

1. considering the report and recommendations of the Cross Functional Sourcing Team ; and either depending on its delegations, make a final award or
2. a recommendation to the accounting officer to make the final award; or
3. make another recommendation to the accounting officer how to proceed with the relevant procurement.

C. Functions of the Contract Administration Department

1. Compile contract document.

D. Functions of the Project managers

Administering contracts and confirm compliance with requirements.

36. I further wish to deal with another allegation contained in the e-mail, namely the irregular manner in which Tender no GCT 1502/07/2007 for the construction of Road K71 between P158/2 and Roads K103 was adjudicated.
37. It has come to my attention that on 10 October 2007, the principal DAC was presented with a recommendation by the CFST that KRK Consortium (KRK) should be awarded the tender. The same document further disqualified Patula Construction (Patula) as Patula did not comply with the requirements.
38. However, the DAC minutes indicate that DAC did not proceed to appoint the recommended Tenderer but instead changed the evaluation criteria during the meeting.
39. On 12 October 2007, the DAC reconvened to look at the matter again. As a result of this changed evaluation criteria, Patula proceeded from being non-compliant to being the winner of the Tender.
40. This is highly irregular and unlawful and a full investigation should be undertaken in this regard. It is not proper that a company that is disqualified in relation to the existing tender criteria suddenly becomes qualified and in fact receives the tender. If the DAC believed that the criteria should have been changed, the criteria would have to be re-advertised and the process would have to start afresh.
41. The Principal DAC's function is to consider whether there was a proper evaluation of the Tender by the CFST and if satisfied that this is indeed the case, proceed with the adjudication thereof, as set out in paragraph 30 above.

42. Therefore my view is that DAC acted unlawfully by changing the evaluation criteria and proceeding to award the Tender to Patula, particular in view of the earlier disqualification of Patula¹⁰.
43. It is therefore critical in my view to investigate how the Principal DAC arrived at the decision to appoint Patula and to probe whether KRK might be willing to disclose whether there were any untoward means used by DAC members in their appointment.
44. In the light of the circumstances surrounding this Tender, it is not unreasonable to conclude that Patula was elevated to win the Tender through dubious means. It is proper in my view therefore that both KRK¹¹ and Patula¹² be approached to shed more light on this matter.
45. These irregular proceedings relating to this Tender were brought to my attention by the 'DDG' Deputy Director General: Public Works: Mr. Gilberto Martins¹³ and the Deputy Director General: Project Management Unit: Mr. Sibusiso Mpanza¹⁴.
46. Upon learning of these allegations, I communicated my concerns to the MEC and specifically made reference to the feed-back from the two DDGs mentioned in paragraph 45 above.
47. The MEC responded by saying that his 'intelligence sources' had informed him that the biggest problem within DAC was the Director; Supply Chain

¹⁰ Please refer to Annexure X3 for the record of the DAC proceedings and the minutes of the said meetings

¹¹ MNS Attorneys trying to make contact with this contractor KRK

¹² MNS Attorneys trying to make contact with this contractor Patula

¹³ Mr Gilberto Martins can be contacted at 082 902 9977

¹⁴ Mr Sibusiso Mpanza can be contacted at 082 909 3710

Management: Mr. Zakhe Ngqobe and recommended that I had to find ways and means of removing him from his position.

48. I complied with the MEC's request by removing Mr. Zakhe as the Director of Supply Chain Management and replaced him with Mr. Mollo Molefi.
49. Having removed Mr. Zakhe and replacing him with Mr. Molefi, I embarked on another intervention to strengthen and streamline DAC. In this regard I appointed Mr. Maseko as the convener of all CFSTs in attempt to streamline procurement processes.
50. Notwithstanding these interventions, I continued receiving complaints from contractors that they were being bullied by some DAC members into make payments (bribes) aimed at ensuring that their Tender bids would succeed. Some of these contractors expressed their reluctance to come forward on the basis that they would be victimized.

Complaint by Mr Molefi

51. On 17 July 2008, I was copied an email addressed to the Chairperson of DAC, Mr. John van Rooyen by Mr. Mollo Molefi in which he raised several concerns in relation to DAC proceedings at a meeting held on 16 July 2008. The e-mail is attached herewith marked "**Annexure G**"
52. The fundamental point of the email from Mr. Molefi was that the Principal DAC did not follow proper tender procedures in that inter alia DAC did not apply the advertised criteria in evaluating the tender.
(My emphasis)

53. On 19 July 2008, I resolved to respond to the email from Mr. Mollo as I formed the view that the issues raised therein warranted my intervention as the accounting officer to provide guidance to DAC.
54. In my response, I gave strict instructions to Mr. Molefi to implement sound procurement processes and to finalize the Policy Review and the Strategy for the Management of the Roster.

My personal experience with MEC's irregular conduct

55. A tender was issued and advertised for Kempton Park Hospital and a tender was awarded. The MEC called me almost 6 months after this tender was awarded. He called me to a meeting and advised me to offer the tender to a Chinese consortium, this notwithstanding the fact that this had already been awarded to the successful bidder. In fact, I am still busy even now trying to persuade the winning bidder to change their plans and try accommodate the Chinese "investors". This is again an irregular request which I reluctantly referred to MNS Attorneys to try to investigate how this can be implemented if at all.

Intervention on 20 July 2008

56. On 20 July 2008, I penned an email to Mr. Molefi, attached herewith as "**Annexure H**" instructing him to undertake the following:
- Finalize the revised departmental procurement policy;
 - Take over control over the entire procurement; including CFST, Secretariat, Document Management;
 - Adopt a project management approach to Contract Management.

57. In the midst of all these interventions, Mr. Molefi was called to Mr. Van Rooyen's office whereat he was requested by Mr. van Rooyen, the Head in the MEC's office, to make available all DAC submissions to him prior to tabling at DAC.
58. Mr. Molefi refused to comply with this request and indicated that he would only submit the agenda and not the actual submissions as this would be tantamount to pre-adjudication and constitute an irregularity.
59. In the next DAC meeting, apparently in retaliation to Mr. Molefi's refusal to accede to Mr. Van Rooyen's unlawful request, DAC refused to consider the items on the agenda. The Principal DAC had therefore lost its independence and now acted as a puppet of its then chairman Mr Van Rooyen.
(My emphasis)
60. Mr. Molefi was dismayed and proceeded to report the matter to me.
61. I advised him that it would be critical for him to ensure that there was a proper paper trail on the matter.
62. Mr Van Rooyen enjoys the protection of the MEC. Mr Van Rooyen also instructed his attorney to send a letter of demand to me on October 6 2008 demanding that I retract the allegations in my letter dated 18 September 2008 in so far as it pertains to him.
63. On 05 September 2008, I decided to make further inputs by amending certain clauses of the Trading Entities Acquisition Council with the object of ensuring that the Director: SCM took complete control of the procurement process while ensuring that DAC would focus on adjudication. This email is attached herewith marked "**Annexure I**".

Informal complaint against a DAC member and spouse

64. A certain contractor was successful with its tender. The contractor allegedly was being strong-armed into paying a bribe of up to 20% to the wife of one of the DAC members. The contractor will not come on record at this stage for fear of victimization, however, the contractor will fully cooperate should the matters reach the courts

Complaint by Mr Jafta against MEC

65. On 11 September 2008 and while I was working hard at improving DAC processes, I got an SMS communication from Mr. Jafta, the Chief Executive Officer: g-Fleet¹⁵, regarding a meeting that had taken place in the MEC's office on 10 September 2008, a meeting that had been arranged at the MEC's instance.
66. Mr. Jafta informed me that the MEC had requested him to find space for the Chief Operations Officer ("CFO") of Impophoma Infrastructure Support Entity¹⁶,

¹⁵ *The Department of Public Transport, Roads, and Works is responsible for managing, controlling and reporting on the efficient, effective and economical use of the government assets held under Government Garage Motor Transport (g-FLEET). g-FLEET is managed separately as a trading entity from the normal Vote account of the Department. The primary function of G-FLEET is to provide an efficient, effective, economical and fair system of fleet management operations for the benefit of client Departments and to protect the Government assets. The Head of Entity is accountable to the Head of Department.*

The entity manages the inter-governmental lease/rental fleet program, fuel operation, pool car rental, equipment acquisition and disposal, new equipment registration and license processing. As at 30 April 2007, the total fleet was 5958. In terms of operations, g-FLEET operates in Bedfordview (Head Office); Vereeniging; Pretoria; Loveday street, and Johannesburg Airport kiosk

¹⁶ *Impophoma, previously known as the Major Road Plant Fund, was established by Gauteng Department of Public Transport, Roads and Works (GDPTW) as a Trading Account, (in compliance with Treasury Regulations and Public Finance Management Act, No 1 of 1999, as amended), to address the following challenges:*

Mr. Fred Mochotli('Mr. Mochotli'), as the MEC was not happy with the negative working relationship between the Chief Executive Officer ('CEO') of Impophoma, Mr. Mzwandile Kibi and Mr. Mochotli¹⁷.

67. On 12 September 2008, I sent an SMS message to the MEC advising him that his instruction to Mr. Jafta to find space for Mr. Mochotli at g-Fleet was not helpful at all as the problem was not only with Mr. Mochotli but with Mr. Kibi as well due to their tendency for factionalism.
68. The MEC responded through an SMS message, which read:
"Hi Sbu, my view on this matter is(sic) known, I would like you on this matter to take my approach. Thanks,Nash"
69. Mr. Jafta alleges that the MEC also informed him that as a Coloured MEC, there were expectations from "comrades" in the Coloured townships to award work to them and that he therefore needed to make a plan. In this regard, the MEC informed Mr. Jafta that either Ms. Rae Davids or Mr. John van Rooyen would facilitate meetings with these comrades.
(My emphasis)
70. A few days later, Mr. Jafta was invited to a meeting scheduled for 17 September 2008 by Mr. van Rooyen.

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- *Inefficiencies in the use of equipment;*
 - *Failure to complete projects by small contractors;*
 - *Limited resources to provide quality service and equipment; and*
 - *Lack of skills particularly the artisans.*
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¹⁷ *The problems of Impophoma have been going on for about 2 years now. At one point I even described the situation being the Kibification and Mochothlification of this entity because of their factionalism. I appointed Mr Paul Maseko to mediate and try to establish a condusive working environment for all. Please refer to Annexure X4 to view how two senior managers have different views of what their entity was about
Annexure X5 to view my strategic interventions via the Task Team of four (TT4)
Annexure X6 to view the business process maps aimed at defining the operation of this entity*

71. This meeting was attended by Mssrs Van Rooyen, Leandro Samuels, Carl Beck and Mr. Jafta, who was informed that Mssrs Samuels and Beck were players in the fleet management industry and Mr. Jafta was requested by Mr. Van Rooyen to find space for them as per the MEC's directive. Again this is an irregular request.
72. Upon learning of these allegations, I received similar allegations from Ms Phindile Mbanjwa and Mr. Paul Maseko.
73. This was the basis of my addressing an e-mail to the MEC on 18 September 2008, in which I placed on record my concerns regarding the instructions by the MEC to senior officials within the Department which I considered patently irregular. I felt obliged to copy this e-mail to other relevant senior officials so that they would feel empowered to take a stance against irregularities.
74. I need to state categorically that when I composed this e-mail dated 18 September 2008, there was no desire on my part to undermine the MEC's authority or to tarnish the reputation of his office and the Department.
75. My intention was merely to ensure that the officials who had made these allegations against the MEC and other officials within the Department were brought into the loop of my communication with the MEC.
76. I do concede that the tone of the e-mail was angry in nature but this was probably caused by my frustrations as they occurred against the backdrop of my efforts to streamline and improve procurement processes within the Department.
77. While I have accepted the reprimand, it does not derogate from the veracity of the contents of the e-mail in relation to procurement processes being undermined

by the kind of instructions issued by the MEC to officials of the Department as attested to in the affidavits.

78. As a case in point, I have made the point in the e-mail that I had since 2007 brought to the MEC's attention the problems at Impophoma brought about by the negative working relationship between the CEO and the CFO.
79. I specifically raised a concern that the MEC had not provided any advice on the resolution of the problems at Impophoma.
80. Subsequent to Mr Jafta's complaint about the MEC in paragraph 65 above, the MEC unilaterally and without my prior knowledge and consent redeployed him to another trading entity. I am concerned that the MEC is attempting to usurp my authority and is effectively using his authority to muzzle complainants.

Complaint by Phindile Mbanjwa against MEC

81. Ms Mbanjwa is the Acting Chief Executive Officer for GPG Kopanong Precinct. The state owns several buildings in Johannesburg. The MEC advised her to sell the buildings to investors from Kuwait which properties the state would then rent from the investors. Again the MEC gave instructions without a tender being issued or advertised and without following procedure.

Jabulani District Hospital

82. It is now a matter of public record that various articles were published in the City Press ("the articles") with regard to the construction of the Jabulani Hospital around the timeline of the e-mail.

83. These articles further fuelled the negative environment within which the e-mail was written.
84. The central thrust of the Articles was that the contract was messy and an impression was created that the failure to deliver the Hospital was due to inefficiency or even corruption on my part.
85. It is therefore critical at this stage to set out the grounds for my concerns regarding the Articles and the reasons for my suspicion that these provide further proof of interference by the MEC.
86. In or around 10 March 2006, the Department issued a tender (“the Tender”) for the construction of the Jabulani District Hospital.
87. Upon receipt of all the bids submitted, DAC proceeded with the evaluation and adjudication of the Tender.
88. DAC awarded the Tender to the iLima JV¹⁸ at a contract amount of R334 850 250.00(Three hundred and thirty four million eight hundred and fifty thousand two hundred and fifty rand).
89. The Department and the JV thereafter entered into a Principal Building Contract (“the Contract”) on 31 July 2006.
90. The material terms of the contract were *inter alia* the following:

¹⁸ *Ilima JV consisted of iLima Projects, Yikusasa Construction, TTR Enterprise and Motheo Construction Their contact are as follows: iLima – Dr TJ Lupepe
Yikusasa –
TTR – Ms Martha
Motheo – Dr Thandi Ndlovu*

- 90.1 The JV would construct a 330 bed District Hospital in Zola, Soweto, the gateway clinic and outbuildings which were to be handed over by 01 December 2008;
- 90.2 The Hospital was to be completed at the end of May 2008("the agreed date").
91. Shortly after the appointment of the JV, I received complaints from *inter alia* the Project Team, Departmental officials and Ilima itself regarding conflicts within the JV.
92. The Department attempted on several occasions to resolve the said conflicts but these attempts did not succeed.
93. Due to the failure of the JV to resolve the conflicts, the other members of the JV elected to withdraw from the Project.
94. As a result of the withdrawals, the overall progress of the project was materially hampered.
95. It is critical that an investigation be conducted and each member of the JV be afforded an opportunity to state independently what the cause of the disputes were.
96. As a result of the conflicts, a view was expressed to me by the then Chairperson of the DAC, John van Rooyen, that the contract with the JV had to be cancelled and a new tender be issued. This was in or about November 2007.
97. In June 2008, the DAC took a decision to re-tender this contract. In my capacity as the accounting officer, I did not agree with DAC and accordingly varied¹⁹ its

¹⁹ In terms of Sec 44(3) of the PFMA

decision.

98. I was concerned that the route taken by DAC would contribute to further delays and set a wrong precedent for the Department in terms of which the Department would find itself having to re-issue tenders every time a member of a joint venture elected to withdraw.
99. In particular, the leader of the JV, Ilima Projects had indicated that it had capacity and the commitment to complete the Project.
100. My decision in this regard had also been informed by a legal opinion on an unrelated matter which had indicated that members of a joint venture are jointly and severally liable for contract deliverables, see **Annexure J**.
101. Having varied the DAC decision and upon appointing Ilima to complete the Project, **Annexure K**, I was visited without prior arrangement by Mr Paul Morris. Mr Paul Morris²⁰ had, in or around February 2008, done the same thing, he had just rocked up at my office without prior arrangements.
102. I have known Mr Morris for approximately ten years and had worked with him in my capacity as consultant in those days. I was therefore not particularly worried that Mr Morris had come to my office without an appointment and was in fact happy to see him.
103. Mr Morris told me that he had been to visit the MEC and I was not surprised at all as I recalled Mr Morris telling me in our earlier years that he was a close friend of the MEC.
104. Mr Morris told me that he had been mandated to obtain my consent to remove Ilima Projects from the Project and replace it with Yikusasa Building Contractors.

(my emphasis)

²⁰ Mr Paul Morris can be contacted at 084 457 4397

Threat by Mr Morris, a friend of MEC

105. When Mr Morris realised that I was not interested in heeding his advice, he stated that if I did not cooperate, “things would get nasty”.
106. At this stage, I referred Mr Morris to Mr. Reggie Kukama of TauPride (“Mr Kukama”), who I believe further referred him to Dr Lupepe of Ilima Projects.
107. I think it is critical for Mr Morris to be interviewed to explain the precise meaning of his statement and for Dr Lupepe²¹ to disclose his discussions with Mr. Morris.
108. In or around May/June 2008, I instructed the Chief Director: Public Works: Mr Ivan Pretorius²² to enter into a contract with Ilima Projects. I attach herewith the e-mail containing the said instructions marked “**Annexure J**”. I specifically instructed that this was to be a labour-only contract²³ in terms of which Plant, Equipment and Materials would be supplied by Impophoma
109. I specifically instructed Mr Pretorius to enter into a contract with Ilima and take it to DAC for noting.
110. However, Mr Pretorius did not oblige my instruction fully but rather proceeded to take the matter to DAC for decision.
111. It is a matter of public record that DAC held a different view and I had in fact been aware since 2007 that DAC had sought to re-issue the Tender.
112. I was concerned at the decision made by DAC because it seemed to reflect Mr Morris’s position regarding the need to re-issue the Tender. In particular I was concerned that Mr Morris was a friend to the MEC who in turn is close to Mr Van Rooyen.

²¹ Dr TJ Lupepe can be contacted at

²² Ivan Pretorius can be contacted at

²³ Labour only Contract is when the contractor is only responsible for the professional service e.g construction but the management and coordination including the paperwork, the subcontractors, the materials etc of the project rests with the Department

113. Around 15 August 2008 I started receiving questions from City Press regarding the problems relating to the Jabulani Hospital.
114. The articles were completely biased, inaccurate and completely unfair as they sought to paint me in a negative light despite having provided comprehensive information to the journalists from City Press. This created an impression in my mind that perhaps this was an example of what Mr Morris meant when he said things could turn nasty if I did not cooperate with the request that he had communicated me.
115. In one of my responses to the questions from the City Press journalist, I had deliberately and aggressively stated that information had been stolen from my computer and had registered my displeasure at the manner in which the journalists had obtained information. I attach herewith the e-mail I sent to City Press in this regard marked “**Annexure L**”.
116. On 02 September 2008, I had the opportunity to meet with 2(two) journalists from City Press.
117. One of the journalists told me after the meeting that they did not steal any information and that such information was given to them by Mr Van Rooyen²⁴. Upon learning of this, I again saw this as another instance of the actualisation of the threat made to me by Mr Morris.
118. In the days that followed, the Department resolved to continue with the Project with one of the contractors that had initially tendered as well.
119. The Department had considered one of the joint ventures that had initially tendered, Mvelaphanda JV, but it declined on the basis that it was already overstretched. I attach herewith the letter marked “**Annexure N**”.
120. This left one JV in contention, namely Maziya/Bahlodi JV. However, the

²⁴ I have since referred the matter to the Gauteng Head of the National Intelligence Agency – **Annexure M**

Department could not proceed with this appointment as Bahlodi was involved in disputes with government and was no longer active on the CIDB database.

121. I therefore met with Maziya and informed it that the Department had taken a decision to appoint it on condition it did not partner with Bahlodi. I attach herewith the letter from Maziya stating that it will comply fully with the Department's condition by not partnering with Bahlodi. I attach herewith copies of letters marked "**Annexure O**" and **Annexure P**".
122. However, correspondence recommending Maziya/Bahlodi found its way to the City Press and this was an error made by the officials who had drafted the submission in the meeting at which I was not present, see **Annexure Q**. The basic facts are summarised in **annexure R**. other documents that may be of relevance at a later stage are attached at the back

CONCLUSION

123. Taking all the issues raised herein into consideration, I have formed the view that it is not unreasonable for me to conclude that the MEC's actions have undermined my efforts which are aimed at ensuring that DAC officials adhere to the highest ethical standards in procurement practices at all times.
124. The MEC's habit of having private meetings with senior officials and issuing instruction which is irregular is causing tension in the workplace and people are now divided into factions, those who listen to the MEC and those who follow procedures. If the DAC continues to usurp the powers of the CFST, and the MEC continues to usurp the powers of the Department and Head of Department specifically, there are no checks and balances left to prevent corruption and to retain the Department's integrity.