

## Merchant of Falsehoods

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- A. On 04 November 2008 I received a document titled “*Submission Made by MEC Ignatius Jacobs*”.
- B. In this document, the MEC purportedly responds to the e-mail that I addressed to him and other officials within the Department on 18 September 2008 (“the e-mail”)
- C. The MEC has also made counter-allegations against me in his Submission.
- D. Mr. Peter Harris (“the Investigator”) was appointed by the former Premier (Shilowa) to investigate the allegations contained in the E-mail.
- E. I have submitted a statement (“This and That”) to the Investigator which supports comprehensively the issues raised in the e-mail.
- F. As a reminder, the gist of the issues raised in the E-mail are the following:
  - a. The need to ensure a sound procurement and control environment at the Department; and
  - b. The MEC’s role in undermining my efforts to streamline management and the procurement environment within the Department.
- G. These allegations have been supported by *inter alia*, affidavits and supplementary documents.
- H. I have noted that the MEC’s Submission does not make reference at all to the Statement that I presented to the Investigator.
- I. I can therefore only conclude that the MEC, at least at the time of drafting his Submission, had not had sight of my Statement.
- J. As the MEC had not had sight of my Statement and has not confined himself to the mandate of the investigation, I consider his Submission as being completely irrelevant.

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### POINT IN LIMINE

- K. I noted that the MEC had requested the Investigator to conduct a forensic investigation in respect of a number of allegations that he has made against me.
- L. Whilst I had nothing to hide, I pointed out to the Investigator that the issues raised by the MEC fall outside the scope of his investigation.
- M. In a letter dated 30 September 2008, the then Director General in the office of the Premier, Mr. M Mokoena, instructed the Investigator specifically investigate the following:
- “1.1 *Allegations by the Head of Department, Mr. S Buthelezi against MEC Jacobs, contained in the attached e-mail dated 18 September 2008 (“the e-mail”);*
- 1.2 *Allegations against the officials mentioned in the “e-mail”;*
- 1.3 *Allegations of possible misconduct that may be made by the MEC against Buthelezi”*
- N. It is my understanding that the Investigator was instructed to investigate only allegations emanating from the e-mail.
- O. I submit that if the Investigator were authorized to investigate any and all possible allegations by the HOD or the MEC, the investigation could not conceivably be brought to conclusion.
- P. The gravamen of the MEC’s Submission is that I had to be suspended on grounds of *inter alia* insubordination, misconduct and poor performance.
- Q. I submit however that the MEC had not made out a case for insubordination, misconduct or poor performance.

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- R. Even if it were to be conceded that a case has been made against me, the MEC had not followed the correct procedures as outlined in the Senior Management Code (“SMS Code”) and the Performance Management Agreement (“the Performance Agreement”) entered into on 18 August 2008 between the MEC and me.
- S. I further find it extremely odd that the MEC has deemed it prudent to raise issues regarding my performance only after my e-mail. Why has the MEC not previously raised these issues?
- T. Upon the conclusion of the perusal of the MEC’ Submission, it is abundantly clear that the above principles were not considered at all.
- U. In the circumstance, I requested the Investigator to strike out all complaints not relevant to the mandate given by the Premier.
- V. Alternatively should the Investigator form the view that these complaints should indeed form part of his mandate, I responded to some of these allegations as set out herein below.
1. where I had no knowledge of the contents of any allegation / paragraph, I requested the MEC is put to the proof thereof. Needless to say, this request was ignored.
  2. I have provided a statement to Mr. Peter Harris (“the Statement”) substantiating the allegations contained in my e-mail of 18 September 2008 (“the E-mail”). The MEC tended to dismiss the contents of my email. But:
    - 2.1 I am satisfied that even a superficial and shallow perusal of the Statement will indicate that it contains specific facts and details, contrary to the MEC’s assertions.
    - 2.2 The E-mail is very clear in that I was acting in my capacity as the Accounting Officer of the Department. This notwithstanding, I have sent to the MEC a letter apologizing for the unintended effects of the email.

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2.3 Though I have tendered an apology for the unintended consequences of the E-mail, I stand by its contents and such apology does not derogate from its veracity and should accordingly not be construed as an admission of any wrongdoing on my part.

### 3. **The MEC's Letter to the Premier**

3.1 I confirm having perused the letter ("the letter") referred to in this paragraph.

3.2 It is curious to note that the Letter makes reference to "*bringing the department into disrepute*".

3.3 I note that the language in the Letter is the same as that used in the article published in the City Press of 12 October 2008.

3.4 I therefore hold a strong suspicion that the Letter unmask the MEC's Nicodemus hand in the publication of various scandalous articles by City Press.

### 4. **Meeting with the Premier**

4.1 Save to admit that a meeting did take place on 29 September 2008 in which the MEC raised concerns regarding the manner in which I had raised issues in the E-mail, I deny that the allegations were baseless and vexatious and the MEC is put to the proof thereof.

4.2 I have presented documentary evidence to the Investigator in the form of a statement, affidavits, correspondence and other reports substantiating the allegations contained in the E-mail.

4.3 It would be a comforting illusion to dismiss the E-mail as baseless, vexatious and the MEC should know that.

### 5. **MEC's request for my suspension**

5.1 As the MEC should know, the SMS Code does not make provision for arbitrary suspensions.

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- 5.2 In requesting the Premier to grant him authority to “*deal with him appropriately*”, the MEC betrays a shocking lack of understanding of the regulatory environment governing discipline in the public service.
- 5.3 I am aware that the MEC may not find this thrilling in view of the fact that he has laid bare his fangs for “*dealing with me appropriately*” but the Premier’s directive that I be reprimanded is fair, correct and in accordance with the SMS Code.
- 5.4 The ethos of discipline in the public service is not geared towards retribution. This is an elementary principle that should be comprehended by all, especially those who occupy senior positions within government and those who hold executive authority.
6. I have a statutory obligation to raise the kind of issues that I raised in the e-mail. I would have been remiss in my duty if I had not done so. I was the Accounting Officer and the PFMA enjoined me to take responsibility and be accountable. The e-mail was one of the interventions that I embarked upon in an attempt to streamline the procurement environment within the Department, particularly the manner in which the Departmental Acquisition Committee (DAC) carried out its duties. I denied that the contents of the E-mail are defamatory and challenged the MEC to adduce evidence in this regard.
7. I agreed that the Performance Agreement referred to herein is the primary document that regulates all performance-related issues between the MEC and the HOD. My concern is however that the MEC does not seem to respect the Performance Agreement as evidenced by the manner in which he seeks to dispense punishment without reference to the Performance Agreement as his first port of call.
- 7.1 In this paragraph, the MEC alleged that I had avoided my performance evaluation, that I constantly postponed evaluation sessions for 2006 / 07 because I was aware that he intended to raise non-performance issues with me.
- 7.2 These allegations are denied in their entirety. In the first instance, it is completely false that a performance evaluation was conducted for the financial year-ended 2005 / 06.

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- 7.3 On 05 April 2007, the MEC addressed a letter to the Public Service Commission (“PSC”), a copy of which I still have.
- 7.4 In this letter, the MEC advised the President Commissioner, Dr Mjijima, of an Executive Management Team (“EMT”) Meeting of 20 March 2007 which resolved that no Senior Management Service member would be assessed for the financial year 2005/2006. How can the same MEC therefore claim that he conducted a performance review in 2005/2006?
- 7.5 Perhaps the MEC is referring to my performance Verification Statement but the MEC needs to appreciate that there is difference between the two.
- 7.6 I did complete my performance Verification Statement which was submitted to the Office of the MEC and received by the then Director in the Office of the MEC, Ms Rae Davids.
- 7.7 I have not had sight of the scores the MEC allocated and the verification statement after it was signed by the MEC, if he did in fact sign it.
- 7.8 It is however fallacious for the MEC to state that I underwent a performance review in 2005/2006. It would have been odd for the MEC to have conducted a performance review in the face of an EMT decision and his having advised the PSC in writing of its decision to exempt all SMS members from performance reviews.
- 7.9 I therefore called upon the MEC to adduce evidence in support of his statement that he conducted a performance review for the 2005/2006 financial year end and to provide the dates, time and venue where this evaluation took place as well as provide a list of all panelists who participated in this session
- 7.10 With regard to the 2006/07 performance evaluation, I advised the Investigator that I did complete my Performance Verification Statement and this was submitted to the Office of the MEC. It was again received by the then Director in the Office of the MEC, Ms Rae Davids.
- 7.11 Predictably, I have not had sight of the scores the MEC allocated – neither have I had sight of the Verification Statement after it was signed by the MEC if he did in fact sign it.

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- 7.12 Various attempts were made by Ms Rae Davids to set up a panel for a review session without any success despite my availability to attend such a session.
- 7.13 I must also state that it is not my responsibility to set up the review panel. This is the MEC's responsibility.
- 7.14 It would indeed be peculiar for me to set up my own panel to review my own performance.
- 7.15 The question that the MEC needs to answer is, assuming that I had deliberately and successfully thwarted attempts to subject myself to a performance appraisal, what corrective steps did he take to address the situation as the Executive Authority of the Department?
- 7.16 His failure to take action would indicate either that the MEC lacks the necessary management *nous*, does not comprehend the PSC Guidelines on Performance Evaluation or will say everything, even to an Enquiry commissioned by the Premier, in an attempt to denigrate my reputation.
- 7.17 In a further demonstration of the MEC's vast but unfortunate expanse for inventiveness, he has alleged that he intended raising issues of **non-performance** with me(Own emphasis).
- 7.18 Though clever, I find this statement disingenuous, vulgar and meretricious in the extreme.
- 7.19 I predicate this statement on the MEC's own statement contained in the Annual Report for the year in question.
- 7.20 In his introduction to the Annual Report, the MEC extols my performance to the skies and heaps monumental praises for unequalled performance on me.
- 7.21 In his speech to the Legislature on the occasion of his presentation of the Annual Report, the MEC once again complimented me on my good performance.
- 7.22 I am now nonplussed at the MEC's remarkable *volte face* on my performance in less than a year of having showered me with praise for my meritorious performance.

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- 7.23 I do believe that the MEC is manufacturing falsehoods in a misdirected attempt to deflect attention from the real issues that he needs to address.
- 7.24 I have no doubt that the Department has performed extremely well under my leadership.
- 7.25 The performance of this Department since 2005 is not comparable to any period prior. As a case in point and on Public Works in particular, the average expenditure on infrastructure projects prior to 2005 was way below 50% per annum.
- 7.26 Under my leadership, the expenditure is way above 95% per annum. This means that all projects that had either failed or stalled prior 2005 were not only revived, but were also implemented to completion between 2005 and 2008. Such details are found in the Annual Reports which the MEC has perused and signed. In this regard I provided documentary evidence in the form of reports from the Department's Professional Management Resource Groups(PMRGs).
- 7.27 I therefore reiterate my earlier statement that the MEC is guilty of mendacity in respect of my performance and my performance evaluation.
- 7.28 How the MEC expects anyone to place credence on his further utterances in view of the above falsehoods boggles the mind.
8. The gravamen of the MEC's allegation in this paragraph is that he discussed my performance with other senior managers within the Department with a view to establishing whether in their view I was performing my duties as required.
- 8.1 In my opinion, this is vintage MEC, "a leader" who will discuss me or my performance behind my back with all and sundry, turn around and pontificate about poor performance on my part despite reporting good performance on my part to the Legislature and in other publications.
- 8.2 I reiterate, the MEC is firmly trapped in the clutches of an advanced mendacity complex.



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### 9. **Jabulani Hospital**

The MEC alleges that he became aware of the issues surrounding the Jabulani Hospital because he “kept his ears to the ground” and the information he gleaned from this strategy was the basis of his investigation into the progress on Jabulani Hospital.

9.1 He further states that he started investigating the Jabulani Hospital project “personally”.

9.2 I am now no longer surprised at all by these statements as they fit the MEC’s management style.

9.3 Be that as it may and without admitting any allegation in respect of the Jabulani Hospital, I am duty-bound to raise the following points in response thereto:

9.3.1 Exactly when did the information come to the attention of the MEC?

9.3.2 If the information came to his attention early on in the construction Project, why did it take so long for the MEC, the Executive Authority who employs the proverbial-ears-to-the-ground strategy, to investigate whatever issues of concern?

9.3.3 If on the other hand the MEC obtained this information recently, are his ears actually on the ground?

9.3.4 What was the nature of this personal investigation and what are his qualifications in his this regard?

9.4 I raise these questions to demonstrate that the MEC has by his own admission employed questionable methods to obtain readily-available information from faceless individuals, thus undermining my authority in the eyes of senior managers and others.

9.5 The MEC did not have to keep his ears on the grounds. All he ought to have done was to keep his head above board.

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10. While I take no exception to the MEC conducting a personal site visit, I find it ironic that these visits only took place in October/November 2007(almost two years after commencement of construction) and the sole purpose of these visits is said to have been “to establish progress of the construction”.
  - 10.1 I was also alarmed that these visits appear to have coincided with the withdrawal of the partners of the Joint Venture that was appointed to construct the Jabulani Hospital and the visit to my office by Mr. Paul Morris (who also goes by the name Dr Paul Tladi) as stated on page 20 of the Statement.
  - 10.2 I do not consider it past the MEC to have had a hand in fomenting discord amongst the members of Joint Venture and the visit to my office by Mr. Morris/Dr Tladi.
  - 10.3 In view of the MEC’s “proverbial-ears-on-the ground-strategy”, surely the MEC ought to have known that problems on the construction of the Hospital erupted soon after the appointment of the Joint Venture and ought to have been aware of the interventions I had embarked upon on numerous occasions in an attempt to resolve the challenges afflicting the Project.
11. **AD PARAGRAPHS 33-34 of the MEC’s statement**
  - 11.1 In this paragraph, the MEC refers to being “alarmed” at the slow progress made on the completion of the Project and having discussed his concerns with me.
  - 11.2 He further states that he requested that I give him an explanation for this and expresses a desire to place me on terms for failure to give him an explanation.
  - 11.3 I deny having ever had such a discussion with the MEC.
  - 11.4 I further challenged the MEC to adduce evidence to substantiate his statement that I have failed in my reporting duties and to explain the methodology he employed to monitor my performance.
  - 11.5 On the contrary, the MEC has failed me in that despite having submitted monthly reports to him, he at no stage gave me tangible or constructive feedback on the Reports, formally or informally.

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- 11.6 Furthermore, the MEC alleges that I undertook to provide him with a response but that to date I had not delivered on my undertaking. I deny having ever promised to provide him with such an explanation as no such request was made.
- 11.7 Be that as it may, following various negative media reports on the Project and the former Premier's (Shilowa) request for an explanation sometime early September 2008, I presented a detailed explanation to the former Premier in the presence of MEC's Jacobs and Hlongwa and then new DG Mallele Petje in a meeting convened by the former Premier at his residence in Braynston.
- 11.8 Once again the MEC has not reflected the facts accurately.
12. The MEC's submission in this regard clearly demonstrates his active involvement behind the scenes as I had suspected and stated as such in my Statement.
- 12.1 The MEC suggests that I only started taking action against the Ilima Joint Venture only in June 2008. This is patently false.
- 12.2 During 2007 I specifically intervened by changing the structure of the professional team by *inter alia* replacing the Principal Agent with a Construction Project Manager (CPM) whose task included providing not only a supervisory role, but also proactive mentorship.
- 12.3 Dr TJ Lupepe ("Dr Lupepe"), who led the Ilima Joint Venture, had specifically complained about being "strong armed" by Group 5 and the impartiality of the Principal Agent whom he alleged had been coercing him to hand over the Project to Group 5
- 12.4 I had at least 3 meetings with Dr. Lupepe in the period from November 2007 to April 2008.
- 12.5 I referred Dr Lupepe to Impophoma to seek assistance.
- 12.6 The then CEO of Impophoma (Mzwandile Kibi) even went on to suggest various solutions to the problems at project level, including the use of the so-called Project Card as a way of short circuiting the challenges of cash flow.
- 12.7 It is therefore misleading for the MEC to say that I only started addressing the problem only when I became aware of his investigation.

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13. As I stated in my Statement (This and That), my instructions on the appointment of the new Joint Venture ( Ilima/TauPride) to Ivan Pretorius were very clear in this regard.
- 13.1 This was intended to be my decision as the Accounting Officer. I had already made the decision to appoint Ilima/TauPride and the report was to go to the DAC only for noting and for the record as I am the only person who can authorize deviations from standard procurement procedures.
- 13.2 Again in this paragraph, the MEC is placing himself and John van Rooyen at the center of what happened at this time and the subsequent City Press reports.
- 13.3 If my relationship with the MEC soured, it would have been as a result of other reasons and not as a result of his having “questioned the progress on the Jabulani contract”.
- 13.4 This is a facile justification for the MEC’s sinister attempts to ride roughshod over my attempts to implement sound control systems in the procurement environment at the Department.
- 13.5 I deny that I was not comfortable with the MEC monitoring my performance. On the contrary, I have often wondered why the MEC had not made any effort to give me feedback on my reports i.e. monitor my performance.
- 13.6 As the Executive Authority, it should not have mattered to the MEC whether I was comfortable or not with him monitoring my performance.
- 13.7 His job is *inter alia* to monitor performance as he clearly articulated in various parts of his Submission. It is irrelevant whether his subordinates feel comfortable or not. He still has a duty to discharge his obligations without fear or favour. The ability to perform one’s duties without being overly concerned whether one’s subordinates will feel comfortable or not is the touchstone of good leadership and management.
- 13.8 It is completely false for the MEC to suggest that the purpose of the E-mail was to “*retaliate with vitriol*”. The e-mail was always clear in its intent and purpose.

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- 13.9 In the e-mail and subsequent correspondence, I indicated that its purpose was to ensure that proper procurement practices were implemented at the Department. It is the MEC that has responded with unrestrained vitriol against me and one need only have regard to the nature of the footless allegations he has made against me.
- 13.10 It is also false to suggest that I was motivated by a desire to preside upon the MEC to abandon any investigation as I was not at the time aware of the existence of any investigation, especially one personally conducted by the MEC.

### 14. **Integrated Safety and Security System (I3S)**

- 14.1 I agree that the MEC and I have had discussions on the I3S Project.
- 14.2 However, my view was and remains that the MEC has never sought to understand the issues related to this project.
- 14.3 The MEC has displayed a discomfoting interest in me dismissing the Prime Contractor (DMTS).
- 14.4 Initially, he attempted to influence the replacement of DMTS with Dornier Consulting. When these efforts failed, he attempted to have AA Enterprises appointed and when his efforts yet again failed, he attempted to have EADS appointed.
- 14.5 Though the MEC seeks to cast me in a bad light, he has not behaved as a paragon of probity and his statements thus far betray a mind bent on deflecting attention from its own frailties.
- 14.6 While I deny that I have failed dismally as alleged by the MEC in this paragraph, I do concede that the I3S Project has indeed been experiencing numerous challenges, which I had given my personal attention for more than two years.
- 14.7 The MEC alleges that an amount of R100 000 000.00 has been disbursed on the I3S Project without any tangible result.
- 14.8 The MEC ought to know that in any engineering project, there is project planning, financing, preliminary design, detailed design, compliance with building and environmental regulations, execution, monitoring and evaluation etc.

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- 14.9 This project also had at least 12 months of “proof of concept” operation in real life environment.
- 14.10 All payments are preceded by a process of independent certification.
- 14.11 It is therefore incorrect for the MEC to create the impression that an expenditure of R100 000 000.00 was incurred in vain.
- 14.12 I am certain that if the MEC had taken the time, as the Executive Authority, to familiarize himself with the I3S Project, he would have grasped its subtleties.
- 14.13 I am however certain that the MEC spends the generality of his time proverbially “keeping his ears on the ground” instead of making genuine attempts to understand his Department and its projects.
- 14.14 The February 06 agreement, SLA1, was intended for all projects to proceed with the implementation of initial activities. These initial activities were clearly defined as Milestones 1.1 to 1.3 of the project proposal.
- 14.15 SLA 1 made a provision for all parties to adapt and update the proposal from time to time to respond to a changing context.
- 14.16 SLA 1 was limited to an initial budget of R94m (R40m for 05/06 and R54m for 06/07).
- 14.17 It was envisaged that an addendum to the SLA would have been agreed to and attached within 12 weeks of the signature to this SLA
- 14.18 A Project Steering Committee was established consisting of all strategic role players such as the DPTRW, Dept of Community Safety, the National Intelligence Agency, and JMPD etc
- 14.19 SLA 1 had to deliver on Milestones 1.1 to 1.3
- 14.20 I attached therewith the project close out report for 2005/06 – I am satisfied that all the intended objectives were met adequately.
- 14.21 I pointed out to the Investigator that SLA 2 was signed in November 2006 and SLA 3 in September 2007 respectively.

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14.22 As in many engineering projects, the I3S Project entailed project planning, preliminary designs, detailed designs and execution followed by monitoring and evaluation. This particular project also had “proof of concept stage”.

14.23 At the same time, challenges started emerging within the project JV and these are now being dealt with through a formal mediation process.

14.24 I have no doubt that every cent paid to DMTS can be linked to specific deliverables and a process to verify this assertion is welcome.

14.25 It is also important to note that the MEC did in fact attempt to muscle in other service providers in the name of PWC and Dornier Consulting in an attempt to duplicate this project.

### 15. **Budget Statements 3**

15.1 I noted that the MEC in this paragraph was referring to the Budget Statement 3 (BS3). His account of the process is however very general and theoretical.

15.2 It should be noted that not a single year since 1994 to date has this articulation by the MEC ever been implemented. In fact there is not even any provision in law or practice prescribing this process.

15.3 The MEC’s account of the process is very good and I will adopt it going forward, but at present it does not resemble reality.

15.4 In reality, the budget process works thus:

15.4.1 Every year (in or around February), the MEC responsible for Finance presents Budget Statements to the Legislature;

15.4.2 Budget Statement 1 is the budget policy statement;;

15.4.3 Budget Statement 2(BS2) contains the details of the various departmental budgets (budget votes), including the manner in which the departments (votes) have allocated their appropriated voted funds into “programmes”

15.4.4 The Department is Vote 9 and until the past financial year it had 5 programmes, namely

- programme 1-finance and corporate services;

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- programme 2 -public works;
- programme 3-transport infrastructure and engineering;
- programme 4-public transport;
- vote 5 (community based projects).

15.4.5 It should be noted that prior to 2004 we also had programme 6 (traffic management) and that from this year we will have a new programme 6 (Gautrain);

15.4.6 These details are then presented to the Legislature by the MEC for Finance and Economic Affairs through an Appropriation Act such that the budget becomes a legislated instrument.

15.4.7 The importance of BS 2 is in the fact that it attempts to enforce effective and efficient utilization of budgets. It is structured in such a way that it details the Objectives, Outputs, and intended outcomes – this is widely published every year by Treasury.

15.4.8 The BS 3 contains the capital projects per department.

15.5 With regard to the financial years 2006/07 and 2007/08 there were no Budget Statements 3 (BS 3) in Gauteng. If I am wrong in this regard, I humbly request the MEC to make copies thereof to the Investigator..

15.6 Our Department did compile its BS 3 and this was submitted to Treasury for publication. I attached therewith our BS 3 for the past 4(four) years marked.

15.7 The reason there are no BS 3s for the client departments for these 2 financial years is simply that all of them failed to produce the BS 3's for their departments

15.8 I then took it upon myself to produce the BS 3's not only for my department, but also for all the client departments.

15.9 I did this as I believed that it was the right thing to do. I have furthermore finalized the BS 3's for all these client departments for the next financial year 2009/10 and I sent these on 3 November 2008 to all the client departments for their signatures

15.10 While I admire the MEC's enthusiasm, I want to stress that the fancy process he has outlined is not anchored in reality.



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- 15.11 In reality, I sat through long nights drafting the BS 3's for client departments. I have done so for the past 2 financial years.
- 15.12 I had however been disappointed that these client departments have not even bothered to sign the BS 3's even after I have produced same on their behalf.
- 15.13 The MEC does not seem to know this fact and I believe this is either because he is not interested, or is more concerned with peripheral issues.

### 16. **on matters of procurement and the PMRG's**

- 16.1 The MEC fails to mention that the Departmental Acquisition Council (DAC) derives its authority from the delegations that I assigned to it as the Accounting Officer.
- 16.2 In terms of the PFMA, the Accounting Officer is responsible for all the expenditure of a department.
- 16.3 With regard to Project Management Resource Groups (PMRGs), the Investigator should note that I was appointed as the HOD for this Department on 08 November 2004.
- 16.4 Upon my appointment, I was confronted by gross under performance of almost all capex projects.
- 16.5 My response to this crisis was to introduce PMRGs.
- 16.6 It would be presumptuous of me to claim the intellectual property to the concept of PMRGs.
- 16.7 It is however critical to provide background information on PMRGs.
- 16.8 I had first introduced the concept while I was the HOD of the Gauteng Department of Housing. They were called Regional Professional Teams (RPT's) at the time.
- 16.9 I had learned this model from my various travels to various countries, especially Canada, Norway and Germany, where this model is applied in the context of Social Housing.

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- 16.10 I adapted it to our Gauteng environment – parallel to this I also created Xhasa and the Gauteng Partnership Fund (GPF)
- 16.11 It is my understanding that the National Department of Housing uses the GPF extensively. In fact, in his State of the Nation address in Feb 2010, President Zuma announced an allocation of R1 billion to such a fund.
- 16.12 It is also my understanding that the RPT model has been adopted by most provinces and that it is more effective than the erstwhile developer driven model.
- 16.13 Some of our PMRGs are also actively involved in Housing RPTs in Gauteng and other provinces.
- 16.14 In 2006, I further extended the model to the Roads Maintenance projects.
- 16.15 I therefore have full confidence in the PMRG model and am satisfied that they played a crucial role in turning around the Department's projects.
17. **about the processing of payments in the Jabulani Hospital project**
- 17.1 The allegations contained herein are vague and embarrassing.
- 17.2 The MEC questions whether payments were duly authorized in accordance with the practices and procedures of the PFMA and the practice derivatives in place from time to time is NOT within his personal knowledge.
- 17.3 Shorn of its frills, the MEC is professing ignorance of any wrongdoing on my part yet has the temerity to conclude that it is a matter that requires further investigation. Surely, this is counterintuitive by any standard. An investigation is conducted on the basis of *prima facie* evidence.
- 17.4 I therefore called upon the MEC not to abuse the Harris Enquiry by throwing mud in all directions with the hope that it might besmirch someone.
- 17.5 He who alleges must prove and the MEC has merely alleged wrongdoing on my part without providing any evidence and accordingly I dismiss it with contempt.

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- 17.6 With regard to the MEC's allegations regarding payments to Ilima, my understanding is that no payment to any contractor can be processed unless the payment claim has been certified by a Principal Agent (PA) or a Construction Project Manager (CPM).
- 17.7 The MEC's allegations in this regard are therefore without foundation.
18. **the new / revised contract for Jabulani Hospital**
- 18.1 I admitted that indeed a new contract based on the new operating model for contractors was entered into (the contract was only finalized in January 2009).
- 18.2 the same way as I created the RPTs, Xhasa and GPF in Housing – and in the same way as I have introduced the PMRGs in 2005 and RMPT's in 2006, I introduced Impophoma in 2006 and the Impophoma Call Centre in 2007.
- 18.3 I introduced the Labour Only construction methodology in 2008.
- 18.4 There is nothing sinister about these innovative interventions. Innovation is the lifeblood of an organization.
- 18.5 I am not aware of the DAC having applied its mind to the contract.
- 18.6 There is again clearly a lack of understanding on the part of the MEC (and the DAC in the event the DAC did indeed consider the question of a managing agent).
- 18.7 In any construction project, the following key players come into the playing field – a client, the professional team, and the contractor.
- 18.8 These players interact to deliver a product, be it an RDP House, a clinic, an office block or a Gautrain. The relationships are the same and do not change in the context of this new operating model.
- 18.9 In the case of the Jabulani Hospital, the Department is the client under my leadership as the HOD, ably represented by the DDG, the Chief Director, the Director, and the Internal Project Manager (IPM) in particular. The professional

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team consists of architects, engineers, quantity surveyors, etc and these are under the leadership of the Construction Project Manager (CPM)<sup>1</sup> The contractor provides construction contract management (managing agent, being Tau Pride in this instance), plant and equipment (Impophoma) and labour (Maziya in this case)

- 18.10 There is no overlap of responsibilities.
- 18.11 As the MEC should be aware, the procurement of goods and services in Government is regulated by *inter alia* the Constitution, the Preferential Procurement Policy Framework Act No 5 of 2000(PPPFA”), the Public Finance Management Act of 1999/2000 (“PFMA”), the Regulations thereto (“Treasury Regulations”) and Treasury Practice notes issued from time to time.
- 18.12 Section 44 of the PFMA states clearly that the Accounting Officer may delegate any of his powers to an official/s within his department.
- 18.13 Thus DAC exercises a delegated power on behalf of the HOD in his capacity as the Accounting Officer.
- 18.14 However the PFMA states in section 44(3) that the accounting officer has the power to confirm, revoke or vary any decision taken by an official as a result of a delegated power. If in the opinion of the Accounting Officer, DAC has taken an inappropriate decision, he has the right to vary or revoke such a decision.
- 18.15 It is therefore incorrect and dishonest to suggest that an Accounting Officer acted *mala fide* when he varied DAC’s decision.
- 18.16 The Department has tight internal control measures to ensure that no payments can be effected without all the relevant documents being on file – this point is accurately summarized by the MEC himself in paragraphs 66 to 70.
- 18.17 The MEC’s submission in this regard is curiously consistent with the line of questions I received from the City Press, which in my view places him as the author or at least an active participant in the drafting of the City Press questions and subsequent report.

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<sup>1</sup> CPM regulated through Construction Project management Act of 2000

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- 18.18 The email in question refers to the 2006 clearance certificate as I had placed reliance on the fact that iLima would not have been appointed in the first instance without a valid tax clearance certificate.
- 18.19 This concern was resolved when copies of the tax clearance certificates were sent to my office by the IPM.
- 18.20 Contrary to the MEC's assertions, the Record of Decision (in terms of Treasury Practice Note 6 of 2007) sent to Treasury, DAC and the Office of the AG does cover the issue of potential financial losses and specifically makes reference to the legal action being taken against the JV.
- 18.21 I further attached therewith a report by Mncedisi Ndlovu and Sedumedi attorneys (MNS) on the legal steps taken against the Ilima Joint Venture.

Needles to say, the investigator, Peter Harris, chose to ignore all my submissions in this regard.

19. **on Bahlodi and Maziya**

- 19.1 To my knowledge, Bahlodi is different from "Bathlodi" and I do believe that the MEC has made a genuine mistake as these names are very similar. The company in question is Bahlodi.
- 19.2 All my instructions in this regard were very clear with regard to Bahlodi that it had to be excluded because it was involved in a dispute with government.
- 19.3 Royal Yard was in the same situation. Until about 2 months before this matter came to the head, the dispute with Royal Yard was not yet resolved.
- 19.4 I subsequently received a call from Ms. Lorreta King of Royal Yard who had called to thank me for having helped resolve her dispute with the department.
- 19.5 I advised her that her company could not be involved in this project too and she in response advised me that she had even forgotten about this project and that it was no longer of interest to her.
- 19.6 She advised me that all she wanted was an opportunity to be considered for future projects.

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- 19.7 The MEC is correct when he says that the legal proceedings only commenced after my departure from the Gauteng Department of Housing (GDOH).
- 19.8 There were no performance issues that could have arisen around the timeline of my departure from Housing as the project was still at a planning stage and did not even have a budget. Implementation had not yet commenced
- 19.9 Performance issues arose during the implementation stage of this project
- 19.10 These issues I only learned about in the media sometime in or about 2006 – at this time I had nothing to do with the project
- 19.11 The relevance of this paragraph is not clear to me and seems to demonstrate that the MEC is clutching at straws in attempt to buttress a case built on quicksand.
- 19.12 In fact, I specifically called Mr. Azziz Kara of Bahlodi to inform him that his company had been excluded from this project and he advised me that though he felt aggrieved by this decision, he understood and would not contest or dispute such a determination
- 19.13 I reiterate my earlier statement that the law allows me to undertake procurement through procedures other than normal competitive bidding.
- 19.14 I therefore deny that I acted contrary to the law in appointing Maziya.
- 19.15 The issue of urgency may not be serious enough in the MEC's view but to me it is a serious matter.
- 19.16 I deny any wrongdoing in respect of Jabulani Hospital and the MEC is put to the proof thereof.
- 19.17 I have placed my version on the Jabulani Hospital on record to the Harris Enquiry and in various media. I stand by this version.
20. **the Task Team of Four (TT4)**
- 20.1 TT4 was created in June/July 2007 and was initially intended to operate for 6 months. However, its mandate was subsequently extended as a result of its good

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work, the general hard work of its members and the exceptional quality of its reports.

- 20.2 The background to TT4 is intricately linked to the MEC's TurnAround Strategy and the role of the PricewaterhouseCoopers(PWC) in particular.
- 20.3 The adverse audit outcome of 2006/07 had been long coming. In my view it was opportunistically elevated to crisis proportions by the Office of the MEC who was getting informal advice from leading figures from PWC, including its Africa continental Director, Mr. Jonathan Cowood, whom I had an opportunity to meet some months later.
- 20.4 I did not disclose at that stage the contents of my discussions with Mr. Cowood
- 20.5 Fortunately I had the wisdom of insisting on not being alone during this dinner meeting – in short, I have a witness – save only to state herein that Mr. Cowood did in fact confirm that the TurnAround Strategy was his idea and had been working on it weeks if not months before it was tabled as an emergency intervention in October 2006.
- 20.6 It should be noted that the problem of lack of controls pre-dates my arrival in this department.
- 20.7 I had tried various means to deal with the issues internally through BMT and the Office of the MEC without success and without any support from the MEC.
- 20.8 I ultimately took it upon myself to address the situation by procuring the services of various consultants such as Ebeneza in particular.
- 20.9 Ebeneza had been instrumental in turning around the control environment at the Department of Housing, in particular on addressing the Auditor General's queries.
- 20.10 Ebeneza was however later unceremoniously fired by the MEC at a press conference and replaced by PWC without my participation or approval as the Accounting Officer. The MEC personally appointed PWC.
- 20.11 I need to point out that the MEC's appointment of PWC did not enjoy the support of the former Premier, the subsequent Premier who was the MEC for Finance

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and Economic Affairs and the former Chief Whip who is currently the MEC for Finance.

- 20.12 In a meeting convened by the former Premier, where the above were present along with the former DG, a decision was taken to rather use the services of GSSC and Treasury to increase the Department's capacity to resolve the issues that had emerged from the audit process.
- 20.13 Characteristically, the MEC ignored the outcomes of that meeting and proceeded with appointing PWC.
- 20.14 In my correspondence to the MEC of October 2006, I advised that I would not be party to this appointment and also advised the MEC to work closely with the Chief Financial Officer and MNS Attorneys on this issue so as to avoid the risk of unauthorized expenditure.
- 20.15 It is also important to note that the brief the MEC had given to PWC included forensic investigation against me as the accounting officer.
- 20.16 The scope of this investigation is almost a mirror image of the MEC's submission herein about procurement related issues.
- 20.17 Though I am aware that PWC did in fact find no wrong-doing on my part , the MEC has not deemed it necessary to provide me with a copy of the PWC report in this regard and I have not had sight of this report to date.
- 20.18 It should be clear at this point that the tactic employed by the MEC of trying to discredit and malign my integrity and suitability for the post I was occupying is not new.
- 20.19 He has tried it previously without success. I am also aware that he has employed the services of another outfit by the name of Strategic Risk Consulting whose principal is Paul Botha.
- 20.20 This Paul Botha was a permanent feature in the Office of the MEC, and still is even under the new MEC Nkosi.



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- 20.21 The project manager was at some point Mr. Lebelo Maloka, the Chief Director Communication and later it was Ms Rae Davids, the then Director in the Office of the MEC.
- 20.22 Though I was the Accounting Officer of this Department, I had never been involved with the appointment of this company, nor had I ever been involved with authorizing or approving its payments certificates.
- 20.23 I appealed to the investigator to do a comparative analysis of the PWC reports and the TT4 reports
- 20.25 It must also be noted that not all of the “PWC scope” was allocated to the TT4. Some was allocated the GSSC, Emba PMRG and TauPride PMRG.
- 20.26 At the time of the 2007/08 audit, most of the substantial 2006/07 adverse audit findings had not been resolved by PWC, thus in my capacity as the Accounting Officer, I sought to find alternative means to address the crisis
- 20.27 Notwithstanding the public posturing by the MEC and PWC about the success of the TurnAround Strategy, PWC flatly refused to take responsibility for the quality of its work.
- 20.28 It is instructive to note that it took more than 2 months for PWC to produce a close out report for phase 1 of the TurnAround Strategy and eventually when it did, the report was less than satisfactory, considering how much PWC had been paid up to that stage of the project.
- 20.29 It was against this background that I decided to appoint TT4 to do it.
- 20.30 The quality of work from the PWC team has been less than what I expect from any consultant, especially a global brand that PWC is supposed to be.
- 20.31 With the exception of those payments relating to the Committee of Inquiry, and in some cases where a service has been rendered directly to my office, I do not certify payments as this is the responsibility of individual managers responsible for particular projects. TT4 is no exception in this regard and I attached all payment certificates relating to TT4 for consideration by the investigator.

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- 20.32 I have already stated that TT4 is doing what was necessarily done by Ebeneza initially and later by PWC as part of the TurnAround Strategy. In fact the credit that the MEC has proudly bestowed on PWC rightfully belongs to TT4.
- 20.33 To therefore suggest that the role of TT4 could be equated to that of the functions of the accounting officer clearly demonstrates that the MEC may not be familiar with the provisions of the PFMA.
- 20.34 It is not correct to assume that the TT4 does not have the ability or capacity to provide a meaningful contribution on whether there has been compliance with the terms of the agreement as alleged by the MEC.
- 20.35 By its nature, any audit process is governed by International Audit Guidelines and Standards – these guidelines and standards are structured that any auditor qualified in the field of auditing can “provide a meaningful contribution”.
- 20.36 Be that as it may, this was still work in progress and the final report was due in February 2009 and I cautioned against hasty conclusions in this regard.
- 20.37 In the event that the Investigator should find that there was merit in conducting a further investigation into TT4, I3S and Jabulani Hospital, I was most willing to provide all the necessary documentation in this regard, which I did.
- 20.38 In that event, however, I further humbly requested that the Investigator also includes payments to PWC and Strategic Risk Consultants in his investigation. Again, needless to say, the investigator was not keen, and never did venture into investigating the PWC and Paul Botha.

### 21. **CONCLUSION**

- 21.1 I repeat my earlier submission that the Investigator had no authority to investigate the complaints made against me by the MEC as these are completely irrelevant and do not fall within the scope of the Investigator’s terms of reference.
- 21.2 I submit that the Investigator was authorized to investigate only issues emanating from the e-mail. The e-mail was one of many other interventions on my part to

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streamline procurement and management processes within the Department and to bring to the MEC's attention that he was undermining such efforts.

21.3 Furthermore, the MEC's Submission that I be suspended for what he terms insubordination, misconduct and poor performance is ill-conceived because he has in a hasty attempt to deflect attention away from his own failures, neglected to consider principles governing discipline in the public service. He has unsheathed his vindictive claws by demanding that I be suspended without having made a *prima facie* case and following the stipulated procedures. The SMS Code does not allow this.

21.4 The SMS Code provides *inter alia* that:

*"discipline must be applied in a prompt, fair, consistent and progressive manner; and there be a*

*fair hearing in a formal or informal setting".*

21.5 In addition, the Performance Agreement, of which the MEC is signatory, also stipulates that a member of the Senior Management Service can only be suspended if he/she has committed an act of default as defined in Annexure A of Chapter 7 of the SMS Code. The MEC has however not demonstrated that I have committed an act of default.

21.6 Accordingly and as tempting as it might be, it is premature to recommend that I be suspended without having established whether an act of default has been committed in the first place, in which case he would have followed the stipulated procedures.

21.7 The MEC has neither adhered to the procedures set out in the Performance Agreement nor has he observed the principles enunciated in the SMS Code.

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21.8 The nature of his Submission also indicates that he has not fully applied his mind to the Investigator's terms of reference.

I therefore requested the Investigator to strike out the MEC's complaints relating to my performance as well as any contemplated disciplinary action as these were irrelevant.

Furthermore, the MEC had not complied with the procedures set out in the Performance Agreement and the SMS Code.

I further requested the Investigator to find in my favour based on the facts and the arguments herein.

All my pleas were ignored by the investigator.

In my next document, I will be detailing this travesty of justice