
IN THE INVESTIGATION CONDUCTED BY MR PETER HARRIS (“THE INVESTIGATOR”)

**MR BUTHELEZI’S 2ND ANSWERING IN REPLY TO THE MEC’S UNSIGNED STATEMENT
DATED NOVEMBER 2008**

I the undersigned

SIBUSISO BUTHELEZI

do hereby state as follows:

1. I am the Head of Department of the Gauteng Department of Public Transport, Roads and Works (“the Department”).
2. The facts contained herein are within my personal knowledge and belief, save where the converse appears from the context, and are both true and correct.
3. I have read Mr. Ignatius Jacobs (“the MEC”)’s unsigned statement (“the Statement”) dated November 2008.
4. I need to state at the outset that I am extremely concerned that though the Statement is dated November 2008, it was only provided to me on 15 April 2009 and I am required to respond thereto in a matter of few days.
5. I further need to place on record that the lethargy in availing the Statement to me has compromised my ability to respond as comprehensively as I would have done had the Statement been availed timeously and adequate time given to me to respond.
6. Be that as it may, I have attempted to provide as detailed a response as possible;

POINT IN LIMINE : Misconduct/Poor Performance

7. The Premier in paragraph 1.3 of his letter of 30 September 2008 states that the MEC’s allegations, pertaining to Buthelezi must be limited to possible misconduct. The MEC in his 1st statement and 2nd statement continually attempts to draw the investigation away from alleged misconduct and attempts to focus on inter alia alleged poor performance. The MEC fails to grasp that misconduct and poor work performance are not the same.

8. Poor work performance means that there is an objective standard of performance against which the employee can be measured and which the employee has failed to meet. In other words the person is not capable of doing the work commonly known as incapacity. Misconduct on the otherhand means the intentional breaking of a rule. The investigation scope is however limited to misconduct and not poor work performance. I do not believe that I am guilty of poor performance, I am just attempting to assist the investigator with the scope.
9. As a result thereof all the MEC's allegations about alleged poor work performance should be disregarded and stuck out from his statements.

Problems with MEC's Second statement

10. The MEC's statement received on 15 April 2009 comprised of 298 pages. The MEC then sent a supplementary statement of 7 pages which I received on 17 April 2009.
11. The MEC did not limit himself to my e-mail of 18 September 2008 and my subsequent statement(s) and to the 3 issues raised by him previously but raised several new issues. He interalia questioned my relationships and/or contracts and/or Department payments to people such as:
 - Sam Jafta
 - Stan Thusini
 - Mollo Molefi
 - Joshua Mkhonto
 - Tebogo Mogashoa
 - Aziz KaraAnd with entities such as:

- Bahlodi Group Holdings
- Maziya Construction
- Urban Energy Conservation
- Urban Dynamics
- Power House Consortium
- Tebfin
- SSM Telematics
- Ekuthuleni Consulting CC
- MNS Attorneys
- Mogotsi Attorneys
- Dumabezwe Consulting

12. The MEC further raised new documents and/or issues relating to issues relating to Jabulani, its contractors and TT4 and I3S.
13. In short I have 305 pages of new allegations I have to reply to.
14. The MEC's new statement is also difficult to follow as it is numbered incorrectly. It is numbered 1-47, 1-6, 1-19, 1-24 and 1-101 and 1-7.
15. The annexures he refers to are duplicated, does not link up with his statement and several annexures are just missing.
16. The MEC often does not attach evidence or provide enough particulars for me to answer thereto or for the investigation to investigate it. A lot of the allegations are vague and is just a cheap attempt to vilify me. I therefore have to spend a lot of time to answer vague and unsubstantiated allegations.
17. Having read the Statement and although not surprised, I am concerned that the MEC has once again attempted to deflect the investigation's focus away from the allegations contained in my e-mail.

CITY PRESS

18. I have no interest in participating in the mudslinging talents of the MEC. I have in paragraph 18 of my previous 23 page statement already shown how the MEC uses City Press to vilify me. The MEC is up to his old tricks. On 6 May I received an e-mail from a reporter at City Press. It is interesting to note that the e-mail is sent to me not and the Department's spokesperson. The reporter's questions is an exact duplication of the MEC's new allegations against me, I attach same as "**Annexure X1**". The MEC is not willing for the investigation to take its course but attempts to interfere by causing a media war and putting pressure on the Department from external sources.
19. My response herein is motivated by my desire to see the investigation through and I reiterate my earlier submission that MEC's allegations are vexatious, frivolous, scandalous and embarrassing and should therefore be stricken out as irrelevant to the mandate given by the Premier. Central to my complaint is the MEC's irregular interference in my work.
20. Alternatively, should the Investigator be of the view that that it is proper to deal with the MEC's allegations, I respond thereto as set hereunder.

21. AD PARAGRAPH 2.1

The contents of this paragraph are denied in their entirety. Without restating my earlier averments in this regard, I submit that my conclusions are tenable and reasonable. It is not enough for the MEC to merely characterize my allegations as farfetched and untenable without referring any evidence in this regard.

22. AD PARAGRAPH 2.2

The contents of this paragraph are denied and the MEC is put to the proof thereof.

23 AD PARAGRAPH 2.3

- 23.1 I reiterate my earlier statement that the MEC has in fact issued irregular instructions to Departmental officials. The purpose of the various statements by various officials that I attached to my answering statement was to demonstrate that my allegations were not a figment of my imagination.
- 23.2 I attached the various statements by the officials mentioned in my answering affidavit as evidence that the MEC has a *prima facie* case to answer.

23.3 The purpose of these statements was to confirm that the meetings that I considered to have been irregular had in fact taken place.

24. **AD PARAGRAPH 2.4**

I reiterate my earlier submission that the MEC has in fact acted unlawfully. This bare denial on the part of the MEC is not helpful and in the light of my earlier allegations, the MEC is challenged to provide evidence to rebut my allegation that he acted unlawfully.

25. **AD PARAGRAPH 2.5**

25.1 The contents of this paragraph are denied. I repeat my earlier submission that the MEC has usurped my powers as the HOD.

25.2 **Example A: Bus Transformation Project**

25.2.1 This is one of the major projects undertaken by the Department in the last few years to improve the provision of public transport services in Gauteng and entails *inter alia* the monitoring of the efficient utilization of the bus subsidy allocated and ensuring that the Department receives value for money with regard to the bus subsidy payments.

25.2.2 The current public bus transportation system in Gauteng is subsidy-based, which loosely means that bus operators provide public transportation services and thereafter claim certain amounts for tickets sold from the Department.

25.2.3 In terms of this model, the Department can only pay the operators once it has received money from the National Department of Transport ("NDOT").

25.2.4 This system is however fundamentally flawed as the Department never really knows the value of the subsidy claims from the operators until these are submitted and when NDOT will eventually transfer money into its account. There is therefore always a delay on the payments of these subsidies.

25.2.5 This system causes the operators to find themselves in the unenviable position of continuing to provide services rendered. Commuters, on the other hand, demand uninterrupted reliable service from the bus operators.

25.2.6 In view of this anomaly, the Department and the operators have consulted together on several occasions to resolve this matter but these efforts invariably issued in failure.

- 25.2.7 These failures ultimately compelled bus operators to approach the High Court (“the Court”) for an order compelling the Department to settle their claims.
- 25.2.8 The Department made representations on its inability to pay but unfortunately the Court did not find such an argument persuasive and instead found in the operators’ favour.
- 25.2.9 This situation was not endemic to Gauteng and prevailed in other provinces as well, thus becoming a national crisis.
- 25.2.10 In an attempt to extricate provinces from this crisis, NDOT evolved a plan to restructure the current subsidy model. This plan would have implications for all provinces and necessitated the development of a new subsidy model in Gauteng.
- 25.2.11 In terms of this new subsidy model, the funds meant for the public transport subsidization would be transferred to the provinces in accordance with the provisions of the Division of Revenue Act (“DORA”).
- 25.2.12 Provinces would then be required to make a determination regarding the utilization of the said funds for public transport subsidy.
- 25.2.13 In keeping with the new subsidy regime, the Department initiated a plan for Gauteng that entailed terminating all the month to month contracts and taking over the provision of public transport.
- 25.2.14 This would enable the Department to re-negotiate new terms with public transport operators.
- 25.2.15 The Department identified one of its trading entities, G-Fleet, as the most suitable entity to manage public transport services, procure the vehicles and appoint operators to run subsidized bus services on its behalf.
- 25.2.16 It was envisaged that this plan would be implemented with effect from 01 April 2009. I attach hereto a memorandum sent to inter alia the Trading Entities Acquisition Council, Provincial Treasury and the office of the Auditor General as “**Annexure X**” with further details of problem. I further attach hereto as “**Annexure Y**” copies of a slideshow presentation by NDOT for the Gauteng PTIC dated 20 March 2009. In same NDOT explained the requirements in terms of DORA with the proposed solution in terms thereof.
- 25.2.17 The MEC was advised of these plans and declared his principled support for such interventions.

25.2.18 However and to my surprise, the MEC addressed a letter to me on 25 February 2009 suddenly withdrawing his support and effectively stopping the Department from implementing these interventions. The letter is attached hereto for ease of reference as "**Annexure A**".

25.2.19 In particular, he instructed me as follows: "Any planned short-term interventions must be temporarily suspended with the view of enabling the new Executive Authority to consider the proposals and make determinations based on the 4th Term policy direction and most importantly within the context of the new mandate; Any attempts to introduce any new projects must be stopped..."

25.2.20 The core of my grievance in this regard is that by stopping all planned short-term and new projects, the MEC has effectively stopped me from discharging my duties as the accounting officer of the Department.

25.2.21 As indicated, accounting officers are the custodians of financial management and systems of internal control in terms of the PFMA and I submit that the MEC has acted beyond his powers by effectively divesting me of power conferred on me by legislation.

25.2.22 This act by the MEC has put the Department in an invidious position as it means that the Department cannot continue implementing projects that are aimed at taking the Department out of the current subsidy crisis. More especially as there is already a court order against the Department and probably more to follow if the Department does not change course.

25.2.23 Further it is inappropriate for the MEC to issue a blanket instruction and not deal with each matter case by case. The Department is now prohibited from implementing other critical projects and the Head of Department is also now unable to make critical decisions which adversely affects the Department, and ultimately the public.

25.3 Example B: North West Bus Subsidies

25.3.1 This matter relates to two Interim Contracts ("the/these Contracts") operated by the North West Star ("NWS"). These Contracts were ceded to the Department in late 2007 as a result of the Cross Boundary Municipalities Law Repeal and Related Matters Act.

25.3.2 When these Contracts were ceded to the Department, there was no concomitant transfer of funding. This meant that the Department had to pay these subsidies ("demarcations subsidies") out of its own coffers, further depleting the limited subsidy received from NDOT, culminating in a situation where the Department could no longer fulfil its subsidy obligations to NWS.

25.3.3 As a result of the Department's inability to fulfil its financial obligations, NWS brought an application against the Department for an order compelling it to pay the demarcations subsidies. The Department immediately instructed its lawyers through e-mail correspondence attached hereto as "**Annexure B**" to oppose the application by NWS and advised the MEC accordingly.

25.3.4 The MEC however instructed that the Department should not oppose the application in his e-mail of 27 February 2009 attached hereto as "**Annexure C**". As the accounting officer and having applied my mind to this matter, I was convinced that there were several advantages in opposing this matter.

25.3.5 I communicated my reasons to the HOD of Treasury and the MEC in my e-mail correspondence of 03 March 2009, which is attached hereto as "**Annexure D**". In the first instance, I offered my reasons for my view that the North West Government was liable for the payment of these subsidies. Secondly, I requested clarity about where the money to settle the demarcation subsidy was going to be sourced from if the Department were to pay as per the MEC's instructions. Thirdly, I appealed in writing in an 21 page undated correspondence handed to the MEC on 2 March 2009 to reconsider his decision and to allow the Department to oppose the application on the ground *inter alia* that the North West Government was responsible for the payment of these subsidies. I attach proof thereof as "**Annexure DA**". In same I attach an order that was made as a result of consent by *inter alia* the MEC (as Respondent) and SABOA (South African Bus Operators Association) and North West Star (Applicants). In terms thereof the Department has to pay *interalia* the following sums:

- a) R 1 570 075,51 and;
- b) R 3 063 010,52 and;
- c) R69 442 938,01 and;
- d) R23 153 129,60 and;
- e) R 1 756 034,49 and;
- f) R 5 759 142,17

The above amounts totals to:

R104 744 330,03

25.3.6 I further indicated that it would be in the Department's interest to explore resolving this dispute through the mediation and arbitration procedures set out in the Inter-Governmental Relations Framework Act.

25.3.7 However, I was disappointed when I received a curt response from the MEC on 03 May 2009 in which he stated: "*Hi Sbu, my decision stand(sic)*" I attach herewith the said e-mail marked "**Annexure E**".

- 25.3.8 There is no indication *ex facie* the e-mail from the MEC that he considered the issues I had raised in my earlier e-mail correspondence. I am aggrieved that this is yet another instance of the MEC issuing an instruction that effectively interfered with the accounting officer's legitimate decision on the management of risk and financial control.
- 25.4 It is my contention that the MEC's instructions alluded to the above have constrained my ability to discharge my duties to the levels and standards required by the PFMA. In fact, these instructions have divested me as the HOD and accounting officer of powers legitimately conferred by the PFMA.
- 25.5 As stated in the preceding paragraphs, my primary duty in terms of the PFMA is to ensure that systems of financial and risk management control are in place. My interventions outlined above were aimed at protecting the Department's interests in accordance with my statutory obligations.
- 25.6 I have also attempted to persuade the MEC to change his decision, but was disappointed that the MEC gave short shrift to what I consider to have been a legitimate request by an accounting officer. It was further disappointing to note that the MEC's response to my plea did not address itself to the substance of my request for the reversal of his decision. I consequently will have no alternative but to lodge a formal complaint against the MEC with the Public Service Commission in regard to the above.

25.7 Example C: MEC'S MANAGEMENT DASH BOARD

- 25.7.1 Another example to demonstrate the MEC's interference in my work as the accounting office, I attach **annexures E1, E2 and E3** all of which deals with the so-called MEC's Management Dash Board. **Annexures E1 and E2** appear to be a fraudulent attempt by John van Rooyen (always acting on behalf of the MEC) working together with PWC and Dornier.
- 25.7.2 In this instance they tried to smuggle through the DAC two project charters disguised as if they were just a single project. In other words the DAC believed it was authorising a R34m project when it in fact was tricked to authorise a R70m project.
- 25.7.3 The differences in the two documents are subtle, you really need to have your eyes wide open in order not to fall prey to the MEC's vultures. One document has PWC logo at the bottom while the second document has Dornier. The second subtle difference is in the reference numbers, the PWC document is J.2(a) while the Dornier document is J.2(b). the third subtle difference is that PWC quoted R34.580.850 while Dornier was quoting R34.427.470. This attempt did not see any light of day because I dared to question the document when it was presented to me for signature. This obviously irritated the MEC who at this point had already formulated an opinion that I had something against Dornier and PWC. I wish to draw the investigator's attention to the fact that

there are 4 names of interest as far as this is concerned – MEC, John van Rooyen, PWC and Dornier.

25.7.4 I have attached annexure E3 to demonstrate that Dornier is not new to the departmental scene. Just a couple of days before I took over as HOD of this department, the MEC had already summoned all senior manager of the department to a workshop run by Dornier (4th November 2004). The MEC has been trying since 2004 to shove Dornier down the departmental proverbial throat. His frustration is my refusal to accept his unlawful interference in the administration of the department.

25.7.5 A close scrutiny of the so-called MEC's Management dashboard Charter specifically states that this project is from a "Branch" called "Office of the MEC". I have to state at this point that there is no such a branch in the department. The departmental structure signed off by the MEC himself created 5 branches – being Finance, Corporate Services, PMU, Public Works and Transport. The first time I heard of this sixth branch was when I read this document. I was expected to be a member of the Project Steering Committee (the MEC clearly understood that what he was doing was illegal) and needed me to be in this so-called steering committee to rubber stamp and regularize this illegal and potentially fraudulent project. My refusal to participate in this unlawful project certainly further infuriated the MEC.

25.7.6 The scope of this project is clearly intended to usurp my powers as the HOD. Page 3 of Annexure E1 document states that "... initiatives that will enhance the ability of the MEC's Office to attain improved strategic and operational effectiveness ..."

25.8 Example D: PROMOTION OF MS. J. VAN ANTWERPEN TO CHIEF DIRECTOR: MANAGING ACCOUNTING

25.8.1 Candidates were being interviewed for the position of Chief Director for Management Accounting. On or about 27 August 2008 two possible candidates were short-listed.

25.8.2 The first candidate was Ms. Nyubuse with a score of 40,3%. The second candidate was Ms. Van Antwerpen with a score of 38,3%. The parties recommended Ms. Nyubuse for the position as she had the higher score. Proof thereof is attached as **Annexure EA1**.

25.8.3 It is standard practise that I would have to give my input as to whom I recommend for the position, and that I would appoint the successful candidate or authorise the CFO to appoint the successful candidate.

25.8.4 It is not in the job description of the MEC to select candidates or to finalise the appointments of candidates or to authorise the CFO to make appointments.

25.8.5 The MEC through the CFO appointed the successful candidate and I in my capacity as HOD was sidelined.

25.8.6 No explanation was further given as to why the second best candidate namely Ms. Van Antwerpen was nominated. This is clearly irregular. I attach hereto proof as **Annexure EA2** that Ms. Van Antwerpen applied for the position at the MEC's request. This was after the CFO was instructed to look for candidates outside the Department.

25.8.7 Ms. Van Antwerpen was appointed on 31 October 2008 with effect from 1 November 2008. Proof thereof is attached as **Annexure EA3**.

25.8.8 The CFO first advised me of the appointment more than a month later, namely on 9 December 2008 and once the appointment was already made. Proof thereof is attached as **Annexure EA4**.

25.8.9 It is irregular that the MEC instructed the CFO to appoint the Chief Director of Management Accounting without my involvement.

26. **AD PARAGRAPHS 2.6-2.7**

26.1 The contents of these paragraphs are denied.

26.2 I have not accused the MEC of having acted in a corrupt manner.

26.3 Perhaps the denial of an allegation I have not made is a Freudian slip on the part of the MEC.

26.4 I place it on the record that when certain information came to my attention, I acted properly in my capacity as the Accounting Officer and I have no regrets in this regard.

26.5 I reiterate my submission that the MEC has in fact issued instructions that undermine my authority as the HOD and that this interference continued unabated until his last day in office. Kindly refer to the issues above relating to the MEC's attempt to thwart the bus transformation project which is in accordance with DORA, the MEC's intransigent behaviour regarding the North West bus subsidies and his refusal to allow the Department to oppose legal action resulting in a judgement by consent in excess of 104 million Rand as aforesaid; and the Appointment of the Chief Director for Management Accounting.

26.6 These are examples of the MEC failing to act in the interest of the Department.

27. AD PARAGRAPH 2.8

- 27.1 I deny that I have acted in an unlawful manner. The allegation contained herein is so vague and embarrassing that it is difficult to respond thereto. It is a mere statement calculated to denigrate my name without providing a shred of any evidence in its support.
- 27.2 I deny further that I have flouted the provisions of the Public Finance Management Act (“PFMA”). On the contrary, it is the MEC that has flouted the provisions of the PFMA by usurping powers that are the exclusive preserve of accounting officers as per section 38 of the PFMA.
- 27.3 Section 38 of the PFMA states:

“The accounting officer for a Department, trading entity or constitutional institution-

must ensure that that Department, trading entity or constitutional institution has and maintains-

(I) effective, efficient and transparent systems of financial and risk management and internal control (own emphasis).

- 27.4 The instructions issued by the MEC have made it impossible for me as the accounting officer to discharge my duties with regard to my financial and risk management obligations as prescribed by the PFMA.

28. AD PARAGRAPH 2.9

- 28.1 The contents of this paragraph are so malicious, scandalous and vague that it is impossible to plead thereto. The MEC does not provide any iota of evidence to support his gratuitous statement and I put him to the proof thereof.
- 28.2 I deny that I am corrupt and challenge the MEC to adduce evidence in this regard.
- 28.3 I reserve my rights to institute legal proceedings against the MEC in this regard.

29. AD PARAGRAPH 3

I have no knowledge of the contents of this paragraph and the MEC is put to the proof thereof.

30. AD PARAGRAPH 4

- 30.1 The so-called organogram (Annexure AA1) is not attached to the Statement.
- 30.2 I am therefore not in a position to respond to this allegation and will only do so once the so-called organogram has been presented to me.

31. **AD PARAGRAPH 5 and 6**

- 31.1 As I have stated above, Annexure AA1 is not attached to the Statement.
- 31.2 It is accordingly not possible to respond thereto and I challenge the MEC to avail all documents that are the subject of Annexure AA1.

32. **AD PARAGRAPH 6.1**

- 32.1 I refer to the investigator to paragraphs 30-31 of the my 1st statement to be read herein as if specifically incorporated. It is clear from such that it is unlikely that SCM can accept bribes and promise a contractor that it's appointments will be guaranteed as it is unable to substantially influence the tender process. It is unlikely that the SCM would be able to influence both the CFST and the DAC. Mollo Molefi is one of the Department officials that confirmed my complaint against the MEC and the MEC is clearly just attempting to discredit him.
- 32.2 It is patently false that the recommendations to the DAC are made by the Director: SCM. The MEC is contradicting himself. Kindly refer to paragraph 60 of the MEC's first statement. In such the MEC states that the CFST and not the SCM makes recommendations to the DAC.
- 32.3 It is disappointing to note that the MEC betrays staggering ignorance of the Department's Supply Chain Management Process.
- 32.4 In his haste to foment scandals, he has failed to familiarize himself with the Department's Supply Chain Management processes.
- 32.5 Had the MEC properly applied his mind to the Supply Chain Management process, he would have realized that I do not participate in DAC meetings and have never once participated in DAC meetings.
- 32.6 If the CFST nominates one contractor, the DAC has to accept the contractor unless, if the DAC changes the criteria. The MEC alleges in his statement that this would cause the DAC to be merely a rubber stamping authority. This is not the case, the DAC oversees the CFST. If the CFST recommends more than one contractor the DAC can nominate one using the set selection criteria. Once a contractor has been nominated by the CFST and such nomination was confirmed

by the DAC, the chairperson of the DAC has to sign off the successful contractors contract with the Department before the contractor can start work. (If a contractor attempted to be selected through a bribe, it would be easier to do it through the DAC than the CFST. More especially as the DAC is made up specific parties and their identities are publicly known. The CFST changes from project to project as each project requires different expert professionals).

- 32.7 Information on how procurement is undertaken at the Department is freely available and in abundance.
- 32.8 However, I am certain that the MEC is not interested in understanding this process as his primary interest lies in waging a witch-hunt and throwing mud in all directions in the hope that it might find its target. In this regard, the MEC has placed reliance on gossips he gets from well known information paddlers – three of whom are discredited individuals who were fired (alternatively resigned under suspect circumstances) from the National Intelligence Agency (NIA) – one of whom being the MEC's close relative. What is worrying about these information paddlers is that the MEC has found a way to have them paid by the department (without my approval as the Accounting Officer) in various unauthorized processes thus flouting the PFMA.
- 32.9 If the MEC sought to comment on procurement, he should at least have familiarized himself with the Department's procurement process.
- 32.10 The MEC also bleats an amazing statement when he states that "*Molefi recommends tenders favoured by Buthelezi himself*". How the MEC knows which tenderors are favoured by Buthelezi boggles the mind.
- 32.11 For the record, Buthelezi does not favour any tenderors. Tenderors are appointed by DAC and Buthelezi does not participate in this process.

33. **AD PARAGRAPH 6.2**

- 33.1 I admit that Stan is a friend and was one of three groomsmen at my wedding in September 2004.
- 33.2 The relevance of this statement escapes me and perhaps the MEC will shed some light thereon at a later stage.

34. **AD PARAGRAPH 6.3**

- 34.1 I have previously addressed this allegation by stating that the legal dispute between Bahloodi and the Dept of Housing happened after I had left the Department of Housing. Issues of poor performance emerged during the implementation stage of the Evaton project.

34.2 During this period there were no adverse performance issues identified. However later in the year during 2006/07 financial year, serious concerns were noted where the performance of this PMRG was brought into question, in particular, several missed deadlines and poor workmanship were identified in the Emoyeni Conference Centre upgrade project – without hesitation, I terminated Bahlodi/Africon PMRG contract. The projects in which Bahlodi (in partnership with Africon) were involved is attached as Annexure G in my previous answering statement.

35. **AD PARAGRAPH 6.4**

35.1 Urban Energy Conservation is a company owned by Ms Melissa Whitehead (“Melissa”). I have since learned from the MEC’s statement that Stan is a director of this company – this was not the type of information readily available to me.

35.2 Melissa was appointed by the MEC himself as one of the experts advising the Gauteng Transport Management Authority (GTMA).

35.3 It is the MEC himself that needs to explain why he would appoint someone and then complain that they were paid for services for which he appointed them.

35.4 The relevance hereof escapes me, but I wish to point out that should this prove to be relevant the MEC did not attach proof thereof. In view of the short time I have to answer I can not be expected to dig up these old payments.

36. **AD PARAGRAPH 6.5**

I have no knowledge of the contents of this paragraph and the relevance thereof escapes me.

37. **AD PARAGRAPH 6.6**

37.1 Power House Consortium was one of the Professional Management Resource Groups (PMRG) that had been appointed through an open proposal call. Its appointment is therefore a matter of public record. There is nothing sinister in its appointment.

37.2 I am not sure what point the MEC is making here. There is no allegation of irregularity herein and if the MEC seeks to insinuate that there was something untoward and irregular in the appointment of the Power House Consortium, then he needs to state what was allegedly irregular and adduce evidence in this regard.

- 37.3 As tempting as it is, the MEC cannot be allowed to make wild statements without providing any shred of evidence to substantiate his allegations. "*He who accuses must prove*'

39. **AD PARAGRAPH 6.7**

The contents of this paragraph are denied and I challenge the MEC to provide evidence in this regard.

39. **AD PARAGRAPH 6.8**

- 39.1 I strenuously object to this allegation. If the MEC wishes to persist with such allegation he must give further particulars thereof . This statement has no substance and there is nothing concrete that I can respond to except to deny it.
- 39.2 I am not sure what power or authority allows the MEC to make such insulting and defamatory statements.
- 39.3 To state that Joshua Mkhonto is my right hand man who elicits bribes from contractors and then pass them on to me is the cusp of recklessness, undiluted arrogance and, with respect, irrationality.
- 39.4 I demand a written retraction of this allegation and my rights in this regard are reserved.

40. **AD PARGRAPH 6.9**

- 40.1 This appears as another campaign by the MEC to attempt to discredit the witnesses against him.
- 40.2 For the MEC's information, it is not an offence for a contractor to receive regular contracts.
- 40.3 I need to state upfront that if companies do not get regular business, they will simply cease to exist. The *raison d'être* of any business is commercial sustainability and this means getting regular contracts. I have no doubt that this is the ethos of all commercial enterprises.
- 40.4 In a tinsel world inhabited by the MEC and his ilk, it is an offence to receive regular contracts. Fortunately, we do not live in a world carved by the MEC and information paddlers who are actively involved in illegal intelligence work. This practice of gathering illegal intelligence using private information paddlers (one of the companies the MEC relies on for this purpose is called Corporate Risk Consulting) will be brought to the attention of the relevant authorities.
- 40.5 The critical question for me is whether contracts are obtained legally or not. If not, then I would, as the HOD, unless of course the MEC usurps my powers, institute an investigation and act in

accordance with the findings thereof. The MEC does not give particulars as to why he believes something untoward is happening.

- 40.6 With regard to Mogashoa's entity, I am aware that his company was appointed following an open tender process. It is an open secret that Mogashoa's company was indeed investigated and that investigation indicated that there was nothing untoward about the appointment of Mogashoa's company.
- 40.7 We live in a free society and companies have a constitutional right to employ every strategy to conduct legitimate business and if some companies outperform others in this regard, so be it but I sense that the MEC would rather have such companies pilloried, hung, drawn and quartered.

41. **AD PARAGRAPH 6.10**

- 41.1 Once again, I am not sure what point the MEC is making when he states that Mkhonto and Mogashoa share the same business address. Maybe he will provide further clarity as to the relevance of this statement as I do not find it epoch-making that business people share business addresses.
- 41.2 Tebfin and SSM Telematics have indeed received contracts from the Department. I am not certain why this is an issue if the contracts were obtained legitimately.
- 41.3 If the MEC has *prima facie* evidence of criminality, I challenge him to lay charges of corruption against me with the police. It is important that these allegations are thoroughly investigated.
- 41.4 I am confident that terse and veiled references to corrupt activities on my part will not withstand robust scrutiny.

42 **AD PARAGRAPH 7**

- 42.1 I have stated in my previous submission to the Investigator that I do concede that the I3S Project has indeed been experiencing numerous challenges, which I have given my personal attention for more than two years.
- 42.2 The MEC alleges that an amount of R100 000 000.00 has been disbursed on the I3S Project without any tangible result.
- 42.3 I stated in my earlier submission and I reiterate 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.

- 42.4 I also stated that all payments were preceded by a process of independent certification. I attached a report from the Independent Certifier (IC) in this regard as “**Annexure F1**”. From the report it is clear that every cent spent has been accounted for.
- 42.5 It is therefore incorrect for the MEC to create the impression that an expenditure of R100 000 000.00 was incurred in vain. This point has been made repeatedly.
- 42.6 I repeat my earlier advice that MEC needs to familiarize himself with the I3S Project to enhance his understanding.
- 42.7 I can confirm that consequent to South African National Roads Agency’s (“SANRAL”) refusal to grant the I3S Project access to strategic interchanges, the scope of the project had to be revisited with a new focus being directed at the R24 and R21. That change of scope resulted in a decision to move from the Service Level Agreement (“SLA”) 1 to SLA 2. Moreover, there was a failure to secure adequate funding, which prompted another decision to change SLA 2 as it was based on direct funding of the project to SLA 3 as the latter would work as an operating lease arrangement.
- 42.8 Once a successful contractor is appointed the Department and the contractor have to sign a contract. The contract between the Department and Data Mobility would consist of a complex three part agreement consisting of a signed Master Rental Agreement (MRA), a project Implementation Plan (PIP) and accepted instructions to Perform Work (IPW).
- 42.9 The appointment of Data Mobility was dependant on the finalisation and signature of the three part agreement failing which the appointment of Data Mobility would become null and void.
- 42.10 Ashira acting on behalf of the Department in its respective letters dated 30th July 2008 and the 31st July 2008 to Data Mobility’s attorneys, Shepstone and Wylie demanded that Data Mobility provide a contract that complies with the Departments requirements failing which Data Mobility’s appointment would be terminated. The aforesaid letters are attached hereto as **annexures F2 and F3** respectively.
- 42.11 Given the fact that the SLA 3 (Master Rental Agreement) that was legally compliant could not be produced by Data Mobility, a notice of termination of contract was sent to Data Mobility months before the commencement of this investigation. Thus, the MEC is again not forthcoming with the truth in this regard.

42.12 Data Mobility in more than 14 months was not able to provide a contract acceptable to the Department. Any delay therefore suffered in the I3S contract was therefore not a result of any fault on my part. I in fact put legal pressure on Data Mobility to resolve the issue.

42.131 Should one have regard to Annexure I attached to my first statement it is clear that the I3S project is vast. The project is planned to be rolled out bit by bit over 10 years. "Annexure I" attached as aforesaid shows that parts of it are operational. The MEC has however in his letter dated 25 February 2009 ordered the Department to suspend work on the I3S. Kindly refer to paragraph 14.2 of "Annexure A" attached as aforesaid. In the same letter the MEC states that he wishes to suspend many other projects and that employees should rather spend their time writing reports about their successes and "celebrating their successes" rather than saddling the new Executive authority with burdensome projects.

44. **AD PARAGRAPH 8**

There is no deed search attached to the MEC's statement. I have no knowledge of the contents of this paragraph. The relevance of the statement contained herein further escapes my comprehension.

44. **AD PARAGRAPH 9**

I object thereto. The MEC must state in his statement what his complaint is and substantiate same so that I can answer thereto. He must further give me copies of the documents he intends to furnish the investigator with

45. **AD PARAGRAPHS 10-14**

45.1 The contents of this paragraph are noted.

45.2 It is standard practice to appoint attorneys with contracts of such a scale. They make sure that written contracts are in place and oversee the project and make sure that targets are achieved and legal problems are quickly resolved. Further all invoices are issued to MNS. MNS check if all invoices are correct and then hand same to the Department for payment. With the money MNS receives from the Department it then pays the relevant parties such as Dornier, the NAC and NAPO.

45.3 It cannot be said that the mandate of MNS and Dornier overlaps as each party has their own area of expertise and MNS is in no way duplicating Dornier's work. To enable MNS to do the necessary work it would draw on Dornier and NAC's skills on a needs basis

- 45.4 If the MEC had looked at the invoices making up the said amount, he would have realized that the bulk of the money paid went to various consultants, in particular to Dornier, which the MEC has described as a credible transport company internationally. On a fairly consistent basis Dornier's invoice would be in excess of R2 million per month for each project for the work that was actually undertaken by MNS and other technical consultants. This caused consternation within the consortium and the Department as Dornier's input was compromising the overall quality of MNS' deliverables whilst at the same time charging unjustifiable amounts. MNS checked all the invoices received and has previously objected to the exorbitant fees charged by Dornier on various occasions. MNS has therefore saved the Department a lot of money.
- 45.5 I refer the investigator to "Annexure E3" attached as aforesaid. It is a presentation by Dornier dated 4 November 2004 to demonstrate the fact that there has been a long term relationship between the MEC and Dornier.
- 45.6 It is also important to note that Dornier along with New Africa Consulting (NAC) were imposed on MNS by the MEC himself and was not appointed as per standard tender /DAC process. I am told MNS reluctantly agreed to sub-contract work to Dornier out of fear that their refusal may upset the MEC.
- 45.7 Donovan Nadison, the principal of NAC and a director of Dornier is a close associate of PWC. Donovan Nadison is also a close associate of the MEC. I believe that as a result of his association with the MEC, the MEC ensured that Dornier and NAC obtained contracts. I have in paragraphs 62.2-62.33.6 of my first statement dealt with PWC and will elaborate later thereon.
- 45.8 The MEC, in his haste to manufacture a scandal, has completely ignored this fact.
- 45.9 I submit that if the MEC been motivated by a genuine desire to investigate wrongdoing, he would have realized that the bulk of the amount charged was in fact paid to Dornier, a company the MEC has described in paragraph 13 of his statement as "*an expert transport consulting firm*".
- 45.10 In respect of the Gautrain project, Dornier Consulting ("Dornier") was appointed as a sub-contractor to MNS and not in its own right. The MEC is therefore once again fabricating issues when he states that Dornier was appointed in its own right.
- 45.11 MNS together with its sub-contractors Dornier, Napo and NAC had to perform an inspectorate function on behalf of the Department.
- 45.12 The Department at the time experienced problems with the independent certifier. There was also the added problem of lack of capacity to verify the validity of the claims.

46. **AD PARAGRAPH 15**

46.1 The contents of this paragraph are admitted but again the relevance thereof are lost on me. The MEC is correct when he points out that MNS was appointed to undertake other projects not related to the Gautrain Project for the Department.

46.2 MNS was appointed through a transparent tender process in 2006 to undertake *inter alia*:

46.2.1 Bus Transformation, which included:

- monitoring the efficient utilization of the bus subsidy allocated;
- ensuring that the Department receives value for money with regard to the bus subsidy payments;
- conducting a status quo analysis of the monitoring mechanisms that existed at the time..

46.2.2 The determination and operationalization of the Strategic Public Transport Network.

46.2.3 The provision of technical advice on public transport-related issues; and

46.2.4 Project Management.

46.3 In this regard, MNS has performed work for the Department as part of its initial brief.

46.4 MNS has also provided legal support services to the Department as and when required. In fact MNS was appointed in 2002/2003 pursuant to a public tender for the appointment of service providers on the Department's panel of legislation and legal services. This was prior to my joining the Department.

46.5 During 2002/2003 the Department issued a public tender for the appointment of service providers on the Department's panel of legislation and legal services. The person responsible for the tender at that particular time was a certain Adv Jeanette Monare.

46.6 MNS Inc duly submitted a proposal and was selected as one of the firms suitably qualified to be on the panel and issued with instructions as and when required by the Department. Indeed MNS Inc did provide various legal services to the Department from 2002/2003 on numerous occasions from various officials and entities within the Department.

- 46.7 In this regard, MNS has provided legal services to entities of the Department including the following:
- Impophoma Infrastructure Support Entity;
 - the Urban Transport Fund;
 - g-Fleet; and
 - Gauteng Transport Management Authority
- 46.8 Various other officials of the Department such as the former Deputy Director General: Transport has given work to MNS without my knowledge, interference or influence.
- 46.9 In fact the MEC has himself personally given work to MNS and Dornier to provide advice on the ill-fated Monorail project.
- 46.10 It is therefore cynical of the MEC to suggest or create an impression that the appointment of MNS was sinister.

47. **AD PARAGRAPH 16**

- 47.1 As already stated herein MNS performs both legal and non-legal work.
- 47.2 I have no doubt that companies are within their rights when they diversify their services to include legal and non-legal services.
- 47.3 It should be noted that MNS Consulting was established in 2005 to with the object of participating in projects and tenders in partnership with other entities
- 47.4 This enabled MNS to acquire expertise in other technical aspects not falling traditionally within the legal sphere.
- 47.5 In early 2008, MNS brought this aspect to the attention of the Department and requested the Department's consent to cede the non-legal work from MNS Attorneys in favour of MNS Consulting.
- 47.6 Therefore, the provision of legal and non-legal services by MNS is perfectly legally permissible.

48. **AD PARAGRAPH 17**

- 48.1 I have no doubt that the Department's legal section comprises highly competent people.

- 48.2 MNS was not appointed on the basis that our legal Department lacks the required legal expertise.
- 48.3 MNS was appointed to supplement the legal expertise that already exists at the Department.
- 48.4 Legal work performed by MNS complex assignments requires extensive research and it would not be possible for the Departmental legal team to handle the volume of work.
- 48.5 It is standard procedure for the Department to refer some work to the State Attorney and some other work to private firms. This is quite a common practice in government as a whole.

49. **AD PARAGRAPH 18**

- 49.1 The MEC should note that as the HOD, I do not get involved in the validation of claims.
- 49.2 All enquiries in respect of value for money should be referred to the Chief Director, Mr. Eze Raboroko.
- 49.3 Kindly refer to what is stated above. MNS only received a small portion of the 65 million Rand.
- 49.4 If the MEC believes that MNS's fees are exorbitant he has to refer to a specific invoice of MNS and state which item thereon is exorbitant. His allegation is too vague to address the issue properly.

50. **AD PARAGRAPH 19**

The documents referred to are not attached.

51. **AD PARAGRAPH 20**

- 51.1 It is denied that the scope of the work by MNS are beyond their capabilities.
- 51.2 MNS has built credible expertise in the field of transport management, particularly in the last three years.
- 51.3 MNS has *inter alia* undertaken and completed the following work for the Department:
- The design of the Strategic Public Transport Network for Gauteng;

- Performing a due diligence exercise of the SANRAL Freeway Improvement Scheme;
- Compiling audit reports to the Standing Committee on Public Accounts;
- Provided various legal opinions to the Department Public Private Partnerships; and
- Perused, analyzed and provided advice to the Department on the Gautrain Concession Agreement; and
- Integrated Fare Management.

51.4 It is shocking that the MEC will defame other parties if that will provide him with the opportunity to shed me in a poor light. I will advise MNS that the MEC published defamatory allegations against them if they wish to take it further.

51.5 It is further denied that MNS would take Dornier's report and append their own logo's. If this is true the MEC should have no problem to prove it. He merely has to attach a copy of the alleged report by Dornier and the same report by MNS but with Dornier's logo thereon. The MEC's allegations are serious but cannot receive serious consideration without further particulars as to which report MNS duplicated and copies thereof as proof.

52. **AD PARAGRAPH 21**

52.1 The contents hereof are denied. I have however appointed a new firm of attorneys to set the MEC's mind at ease.

52.2 It is concerning to me that the MEC only complains about MNS assistance 7 months after the fact and whilst I have a deadline of 3 weeks to answer. I therefore had to appoint a new attorney whose involvement in this matter was minimal and a give her numerous documents and files to familiarise herself with the matter. He must have been aware of the severe prejudice I would suffer.

52.3 I do not believe there is anything improper about using internal resources such as MNS Attorneys to assist with internal investigations more especially as the investigation is against the MEC, myself and other state officials.

52.4 The MEC further did not allocate a number to his annexure neither did he actually annex it. I am therefore unable to respond thereto.

53. **AD PARAGRAPHS 22-26**

53.1 The Department, in the execution of its mandate and in its everyday operations encounters complex legal issues which require intricate expertise in specific fields of law. The legal consultants appointed by the Department render expert legal support to the legal directorate of the Department and the Department as a whole.

53.2 The services rendered by the aforesaid Consultants entail, *inter alia*, extensive legal research, engaging the services of Counsel and providing objective legal advice to the Department which may comprise drafting of legal opinions and agreements.

53.3 I agree with the MEC that the Department has a fully fledged and operational legal Department, however I submit that it is not abnormal for a Government Department to engage the services of private legal consultants and the state attorneys. I submit that it is in fact necessary, in view of the immensity of legal issues that the Department requires advise on, to have attorneys on its panel who are familiar with the dynamics of transport and are readily accessible to provide urgent advice.

53.4 The MEC refers to a Mr. Lloyd Mogorosi, just as a point of correction the correct spelling of his surname is Mogotsi. As an illustration of expertise services rendered to the Department Mr. Mogotsi renders a service of a project manager for the Outdoor Advertising initiative on behalf of the Department and an independent certifier for the I3S project.

53.5 I disagree with the assertion by the MEC that the appointment of legal consultants by the Department results in fruitless and wasteful expenditure. The Department was recently engrossed in a High Court application launched by *inter alia*, the South African Bus Operators Association (“SABOA”).

53.6 The Department had initially engaged the services of the State Attorneys to represent its interests in this matter and defend it against a damning court order, which could have been avoided. I will not expand on this issue save to say that the State Attorneys failed to protect the interests of the Department which resulted in judgment in excess of R300 million being granted against the Department.

53.7 In the interest of the Department and in mitigation of the circumstances caused by the failure by the State Attorneys to safeguard its interests, the Department instructed MNS who were supported by Senior Counsel to assist in this matter.

- 53.6 The MEC once again disregarded my authority as the Accounting Officer of the Department and issued an instruction not to defend any of the matters pending against the Department. This is just one of many instances wherein the MEC has usurped my authority as the Accounting Officer of the Department resulting in a hindrance to the proper execution of my mandate. This matter is a subject of the complaint I lodged recently with the PSC.
- 53.7 I submit that the appointment of legal Consultants to the Department is in fact aimed at preventing irregular, fruitless and wasteful expenditure.

54. **AD PARAGRAPH 27**

- 54.1 I deny the assertion by the MEC that “there is no evidence” that I have complied with my obligations in terms of the PFMA.
- 54.2 I submit that the MEC has not substantiated his allegations and until such time that he does, the Investigator should accept that there is in fact no evidence that I have not complied with my obligations in terms of the PFMA.

55. **AD PARAGRAPH 28**

The MEC only attached invoices regarding Tsosanang.

56. **AD PARAGRAPHS 29-36**

- 56.1 As indicated Annexures AA7-AA9 referred to is not attached. In my preceding statement, it is denied that I have a personal relationship with Ms. Thandi Senoamali.
- 56.2 I have in my preceding statement invited the MEC to substantiate this allegation which he avows so confidently. To my surprise, the MEC has not substantiated this allegation and I submit, with respect, that until such time that he does, the investigator should not entertain such allegations.
- 56.3 I never stated that Tsosanang no longer renders services to the Department. I stated in paragraph 2.4.4 of a document dated 22 August 2008 attached to the MEC’s first statement as Annexure T1 on page 152 that Tsosanang resigned from the TT4 during March 2007. Although I stated she resigned March 2007 from the TT4 this was an error. She resigned March 2008. Tsosanang continued performing functions in the Department and its entities. She had resigned only from TT4.

57. AD PARAGRAPHS 37- 39

- 57.1 After Ms. Senoamali's resignation from TT4, Ms. Gambu in her capacity as Director of Ekuthuleni Consulting CC, joined TT4 to render a service of Chartered Accountancy.
- 57.2 I am advised that Ms. Gambu thereafter approached Ms. Senoamali with a business proposal. The terms of the business proposal were that Ms. Senoamali would assist Ms. Gambu by furnishing Ekuthuleni with capital to enable it to properly render a service to TT4. It was further agreed that Ms. Senoamali will obtain a share in Ekuthuleni.
- 57.3 It is notable that Ms. Senoamali and Ms. Gambu have a history together as they were both previously employed by the same employer prior to Ms Senoamali's appointment at the Department.
- 57.4 It is also worth noting that Ekuthuleni was already contracted to TT4 before the inclusion of Ms. Senoamali as a member of Ekuthuleni. I am advised that Ms. Senoamali and Ms. Gambu are agreeable to provide the investigator with statements to this effect should the investigator deem it necessary.
- 57.5 I take exception to the MECs submission that I have replaced Ms. Senoamali with Ms. Gambu in an attempt to create the impression that Ms. Senoamali does not receive work from the Department. The allegation is accordingly denied and the MEC is put to the proof thereof. I can highlight that Ms. Senoamali resigned from the TT4. She was not fired. If she did not resign she would still be a member of TT4 and no rouse would be necessary to keep her on board.
- 57.6 I stated in my earlier statements that the MEC's gripe as far as it relates to the TT4 has nothing to do with their value for money as he has tried to portray it in his various submissions. It rather has to do with his unhappiness with the TT4 having replaced PWC in his so-called Turn Around Strategy ("TAS"). Note the scope of work of the original Project Charter for the TT4.

Appointment of Ebeneza

- 57.7 For the benefit of this investigation, I will go back to the beginning. I was appointed the Head of Department ("HOD") on 08 November 2004. Within the first three months of my appointment, I became alert to glaring control weaknesses that existed within my Department. The situation was so dire that I immediately formed the opinion that the most effective and efficient manner of dealing with the situation was to conduct an internal audit through the GSSC. I was so motivated in my decision by a desire to unravel the chaotic state of affairs that I inherited in the Department. It is for this reason that the bulk of the work done by Ebeneza emanated from the GSSC Report.

57.8 In or around August 2005, I received the Auditor General's Report ("the Report) for the financial year ended 31 March 2005. This is a summary of the Report:

- | | | |
|--------|------------------------------------|-----------------|
| 57.8.1 | Vote 9 | - qualification |
| 57.8.2 | Government Motor Transport Trading | - disclaimer |
| 57.8.3 | Motor Road Plant Fund | - disclaimer |

57.9 Confronted with this negative Report and the outcome of the initial Internal Audit Report, itself a chronicle of abject failure of our internal control systems, I would have failed my duty as the HOD had I ignored these immense challenges. I therefore had to initiate the best possible way of dealing with this matter. I reached the conclusion that I needed to obtain the services of a professional to assist the Department to get to the root of the problem.

57.10 At the time it came to my attention that Ms. Nembambula the Managing Director of Ebeneza, was about to leave the Gauteng Department of Housing and join the private sector. I had worked with Ms. Nembambula in her capacity as CFO of housing.

57.11 I was particularly impressed with Ms. Nembambula as she was a Professional Management Accountant and possessed impeccable academic credentials. Further during her tenure as the CFO, the Department of Housing had moved from multiple audit qualifications and disclaimers to the 2003/2004 report that did not even had matters of emphasis.

57.12 When I engaged Ebeneza, it was already towards the end of the year and just a few months towards the end of the financial year. It was within this context that I firmly believed that I needed to appoint urgently a Consultant that would by the end of the year have made tremendous strides in addressing the problems relating to the weak systems of internal control. It was in this context that I appointed Ebeneza.

57.13 I immediately instructed Ebeneza to undertake the following on behalf of the Department:

57.13.1 Analyze the root cause of the collapse in our systems of internal control as evidence by the internal audit report from the Gauteng Shared Services Centre ("GSSC") and the qualified reports ("the Reports") from the Auditor General ("the A.G"); and

57.13.2 Recommend solutions aimed at resolving the queries raised in the Reports.

57.14 Although I was partly influenced by the Report in contracting Ebeneza, I however specifically appointed it to assist the Department to lay a solid foundation that would enable the Department to receive unqualified audit reports in future. Ebeneza was therefore not necessarily contracted to

resolve the audit queries on behalf of the Department but to put in place a sound basis for control systems.

57.15 Prior thereto to the resolution of audit queries were the responsibility of the following officials:

57.15.1 Mr. Marthinus Koen: Director Risk Management;

57.15.2 Mr. Gerrit Van Rensburg: Deputy Director: Risk Management

57.16 I need to point out these two gentlemen actively ignored their obligations and failed to discharge the mandate conferred to them.

57.17 At the end of the audit of the 2004/05 I further convened a special meeting of the Broad Management Team (BMT) at which, among other things I dealt with “key organizational challenges” – presentation previously attached to my answering statement as “**Annexure R**”. In this presentation I highlighted a number of issues, including financial, compliance and control issues. There were issues of unsubstantiated payments, accruals raised in error and wrong allocation of transactions etc. – I have to highlight that the MEC was present at this BMT

57.18 It was against this background that Ebeneza was appointed to deal systematically with the root cause of these problems. The status report of the Ebeneza project is attached to my first answering statement as “**Annexure S**”. From the aforesaid annexures it is clear that Ebeneza made great strides. Ebeneza was appointed at the end of 2005 and was already in March 2006 able to do a report on the strides it made and milestones it achieved.

57.19 It is a matter of public record that Ebeneza’s appointment and without good reason was unceremoniously terminated by the MEC on or about Friday 13 October 2006 and promptly replaced by PWC.

Appointment of PWC

57.20. The MEC wanted me to appoint PWC. Initially I refused.

57.21. The MEC handled our disputes the same way he always did. He badmouthed me to the media causing adverse reports to be written about me. He then caused an investigation by PWC to investigate inter alia if I can refuse to appoint the PWC. Therefore PWC had to investigate whether they must be appointed or not. This is absurd and PWC should never have agreed to the investigation as it is a clear conflict of interests..

- 57.22 Kibi was the chairperson of the DAC at the time. The MEC had the DAC authorize the appointment of PWC to deal with the audit disclaimers and queries in the auditor general's report. The PWC initiative was called the MEC's TAS (Turn around Strategy).
- 57.23 The appointment of PWC was also confirmed by SEMT (Strategic Executive Management Team). Finally I relented and authorised the appointment of PWC in my letter dated 13th October 2006 to the CFO attached as annexure T to my previous answering statement . It is however clear from annexure T that I distanced myself from such appointment.
- 57.24 Even if the DAC has the authority to appoint PWC against my advise , it flies in the face of a state organs duty to take just and fair administrative action.
58. PWC's mandate was primary to resolve the issues raised by the Auditor general during 05/06 audit for the Department to achieve a clean audit for 06/07.
59. The appointment of PWC marked a public display of the MEC's interference in the operations of the department. A close scrutiny of the TAS founding documents demonstrate in no uncertain terms that not only did the MEC interfere in my work, but also that the MEC effectively sought to replace me as the HOD with a team of consultants headed by PWC. I refer to **Annexure P** attached to my previous answering statement.
60. The Department's subsequent financial audits for the financial years ending on 31 March 2006 and 2007 were also not unqualified.
61. Perusal of the PWC report to the MEC dated 24th April 2007 (attached as **annexure P** as aforesaid) clearly demonstrates that the TAS had not had the desired effects. PWC was appointed with the goal that the Department would receive an unqualified audit. A number of audit disclaimers and qualifications were still being anticipated by PWC (notwithstanding the fact that they were appointed already in October 2006 to make sure that these risks were eliminated).
62. In light of the above I requested PWC to provide me with a detailed report (not a power-point presentation) detailing the progress with their phase 1 performance. By the end of June 2007 being the end of the audit process, PWC had not presented this report to me as requested. I understood this as either their sense that they had nothing to show for all the funfair surrounding their appointment and their TAS, alternatively, they did not feel obliged to give me any report since they reported directly to the MEC.
63. The PWC charged about R7 million Rand for phase 1 of the MEC's TAS.

Appointment of TT4

64. TT4 was instructed to do a performance audit on the work PWC did and what progress they made. Further to consolidate the reports of all the identified interventions undertaken by PWC in phase 1 of TAS, highlight achievements, progress made outstanding issues and propose recommendations for further action. As proof thereof I attach TT4's project charter for the performance audit on PWC phase 1 as **annexure G**.
65. TT4 also had interviews with each of the Departments PWC had to help turn around in terms of their Turn Around Strategy. The results were disappointing. Most of the Departments did not feel that PWC assisted them, or that PWC sent them such junior people who were unable to assist them that the Departments had to attempt to use their internal resources to rectify the problems.
66. Consequently if PWC's phase 1 of TAS was successful TT4 would not have to raise issues or make recommendations to resolve such issues. Although TT4 did many reports on the above matter I would like to highlight two.
67. The first report attached hereto as **Annexure H1** is dated 3 December 2007. The report deals with all the relevant departments within the Department. It summarises the problems the A.G raised, gives background and then makes recommendations.
68. I further attach hereto as **Annexure H2** a further summary of the issues raised and recommendations made by TT4. PWC was therefore grossly unsuccessful in their task. It proved to be an expensive mistake by the MEC which merely served to delay resolving issues in the Department.
69. The Department therefore terminated PWC's mandate and let TT4 continue to put measures into place for the Department to obtain a clean audit. TT4 was therefore created to deal with PWC's failure. I further refer to the TT4 project charter dated 17 September 2007 which shows its primary scope of work, attached as annexure G as aforesaid.

PWC and Ukuba Management Scandal

70. As stated in my first answering statement PWC was involved in another scandal during 2008 for committing plagiarism.
71. In a project that the Department gave PWC to do PWC outsourced the bulk of the work to Ukuba Management. Ukuba Management charged about R500 000,00 and PWC charged the Department about 8 million Rand.

72. Bowman and Gilfillan attorneys acting on behalf of Ukuba management sent correspondence to the Department advising that PWC committed material and apparent plagiarism by using Ukuba Management's report and then charging the Department for same at an inflated price.

73. The Department had to resolve the matter by withholding about R500 000,00 of fees written by PWC and paying same to Ukuba Management. Kindly refer to **Annexure AA2** attached to my first answering statement that attach proof of the above. This is over and above their irregular tender during 2007 previously discussed and attached as **Annexure E1**. It is therefore concerning why the MEC still continues to try and push PWC down the Department's throat.

74. **AD PARAGRAPH 40**

74.1 The content of this paragraph is denied. I take exception to the MEC's assertion and submit, with respect that the MEC is out of order in attacking my professional work ethic on the basis of a "suspicion".

74.2 It rather appears as if the MEC is playing a political game. He attempts to identify parties which are assisting me in the performance of my duties and then attempts to soil them with false allegations so that the Department will no longer use their services . Without their assistance the Department may suffer which will give the MEC the opportunity to state that the I am not performing. I take exception to these underhanded tactics.

74.3 I am not a politician. I am the Departments accounting officer and I try to render my services to the best of my ability.

74.4 The MEC is further hoping that the people whom he is defaming will not take legal action in fear that they may lose their contracts with the Department, which renders them easy targets.

75. **AD PARAGRAPH 41**

The basis for the MECs allegation of a conflict of interest is denied. In view of the lack of substantiation by the MEC in this regard, I will not comment further until such time that he does provide such evidence. It rather appears as if the MEC is playing a political game.

76. **AD PARAGRAPH 42**

The content hereof is denied and the MEC is put to the proof thereof.

77. **AD PARAGRAPH 43**

Ashira provided the investigator with inter alia its invoices and supporting documents relating thereto. Ashira fees cannot be said to be excessive as Ashira charges in terms of DPSA (Department of Public Service and Administrator) rates which are also published in the Government Gazette.

78. **AD PARAGRAPH 44**

- 78.1 Ms Hazel Gumedé Shelton is an attorney whom specializes in rendering services within the public service sphere. She was also a member of TT4. TT4 has been commissioned by the Department to provide project management capacity and support on various projects within the Department.
- 78.2 She was appointed by the Department in 2005 as a member of the commission of inquiry established by the MEC to investigate models of infrastructure financing for the Gauteng Provincial Government. Her role and mandate in terms thereof was to provide strategic legal and policy advice with regard to the issues the Commission was established to address. For ease of reference I attach Ashira's letter of appointment as **annexure I**.
- 78.3 The Department's legal unit made a motivation to the DAC that it is unable to cope with its work and that it needs legal assistance. This is how the 'Legal Service Incubator' project started. The Department would look at its database and look which BEE compliant legal service provider provided sterling services in the past and then give them work and at the same time help such BEE firm to develop.
- 78.4 In 2007 Ashira was further appointed into the Department's legal services Incubator initiative. I attach a copy of the letter of appointment as **annexure J**. In terms of same, Ashira was to provide legal support from time to time when it was needed and to provide assistance in respect of a group of projects as listed in the appointment letter relating to the raising of finance and infrastructure delivery.
- 78.5 Most of the work that Ashira receives is not from my office but from various managers from the Department. Similarly the bulk of the payment it receives is not from services rendered to the Office of the Head of Department but from other parts of the Department.
- 78.6 However due to the fact that Ms Gumedé Shelton became the sole director of Ashira she no longer had the time to spend on TT4 projects. It was on this basis that she requested to step down from her engagement with TT4 which I accepted.

78.7 Although Ashira is no longer part of TT4 it still continues to render services to the Department and in 2008 it received a five year contract with the Department . Such contract was not signed by me but by Legal Services.

79. **AD PARAGRAPHS 45 AND 46**

79.1 The content of these paragraph are noted. However I challenge the MEC to adduce evidence to support his allegation that the amount paid to TT4 are out of proportion to the services rendered.

79.2 On behalf of TT4 I have to object to the MEC's defamatory statements . I further object to his defamatory sting that the Department as result of my interference pays parties whom do not render any services alternatively over pay them.

79.3 I have requested the TT4 to submit full reports relating to the scope of their work to the investigator's office for evaluation and objective determination with regard to value for money. I await the investigator's analysis of the information provided. I want to place on record that to the best of my knowledge, every assignment given to the TT4 was executed with due care, enthusiasm and diligence. I have no doubt with regard to value for money. The same cannot be said of the PWC, and I would like to propose that the investigator does the same with regard to PWC's performance, i.e. compare their scope of work against delivery and what has been paid to PWC to date.

79.4 I have stated before that the performance by the PWC team leaves much to be desired. I have picked two examples to demonstrate my point. The first has to do with the finalization of the departmental organizational structure. At the time when the MEC insisted that this work be done by PWC, I had already finished this task utilizing the services of Ukuba Consulting at a fraction of the costs. What was most disturbing was the plagiarism of the Ukuba report by PWC who later billed and were paid millions of rands. This matter became a subject of legal dispute between Ukuba and PWC. In the settlement PWC agreed to pay a penalty of R500 000.00 for having plagiarized Ukuba work proof thereof is attached as "Annexure T" to my prior answering statement.

79.5 Another example is the Gauteng Infrastructure Renewal Investment Plan (GIRIP) project. The MEC insisted that I stopped using the services of Melissa Whitehead and give this project to PWC, to which I agreed in good faith and in the interest of harmony. From the correspondence attached as "**Annexure K**" herein, it is clear that no progress has been registered in over two years – this largely due to the incompetence of the resources assigned to this project by PWC. Progress was only registered after I had to intervene by introducing additional capacity to this project (Emba, Urban Econ and Dr Karungu).

Acresa

80. The MEC to his 1st statement attached Acresa's TT4 contract with the Department as annexure T2 on page 165. This contract is important as all the members of TT4 signed almost identical contracts including LMT.
81. Should one have regard to paragraph 30 of such contract it states that Acresa's hourly rate exclusive of Vat is R812,00 per hour and that it is envisaged that Acresa will work upto 250 hours per month . This totals R203 000,00 per month excluding Vat. It further states that same is subject to review.
82. In other words if the Department needs Acresa for longer than 250 hours per month the Department may require same and Acresa will comply therewith . Should one have regard to Acresa's invoices for the period of September 2007 to October 2008 one must exclude a once off subcontracting fee of R899 200,00.
83. Once this is deducted it is clear that Acresa fees result in a monthly average of R203 557,00 which falls within the ambit of the contract. Acresa did a statement of its own which I attach hereto as **annexure L**.

LMT

84. At this point I want to take the opportunity to also answer to paragraphs 158-168 of the MEC's first statement. The principal member of LMT, Ms Teffo is qualified as a town planner. She also does project management support and quality assurance.
85. Before Ms Teffo's appointment as a member of TT4 she already had a contract with the Department. This contract is attached to the MEC's first statement as annexure T4 and can be found on page 189. In terms of this contract LMT would work a minimum of R160 hours per month for a sum of R75 000,00 excluding Vat. This comes to R468,75 per hour. This contract was signed in 2007 and parties agreed that such price would increase annually. LMT would also be allowed to claim (limited) cellphone expense and travel expenses (which contractors are not allowed to claim in the TT4 contract). Further, should one have regard to paragraph 57.1 of the contract which deals with the scope of the employment it is clear that same is limited to the work of the Department for Transport only.
86. LMT's TT4 contract is not limited to work for the Department of Transport. LMT's fee in the TT4 contract is similar to that of Acresa in that it also charges R812,00 per hour excluding Vat for 250 hours per month which amount of hours can be reviewed regularly by the parties.

87. The MEC in his 1st statement therefore compares apples with pears. More especially as he attempts to link up LMT's invoices in terms of TT4's work done to her other contract attached as T4 to the MEC's 1st statement as aforesaid. Should one have regard to the LMT invoice the MEC refers to on page 210 of his first statement it is clear that LMT charged for TT4 work. The invoice refers to TT4 project team meetings and work done for the departments other than the Department of Transport.

88. It is not certain why the MEC complains that LMT's invoice on page 209 of his first statement includes fees for LMT's other employees namely Khoza and Malinga. The contract is between LMT and the Department and as such there is no limitation that fees can only be written by one employee of LMT namely Ms Teffo. It must also be noted that Khoza and Malinga as employees of LMT is also entitled to charge R812,00 per hour . LMT was however gracious enough to allow a reduced fee of R500 excluding Vat for them.

89. It is therefore incorrect for the MEC to state that TT4 is made up of 5 members. It is made up of 4 members.

90. **AD PARAGRAPH 47**

90.1 Save to state that the MEC has again shown his fascination with issues that are outside the ambit of this Enquiry, it is evident that the sole purpose of the MEC introducing these irrelevant issues is to cast negative aspersions on my *persona* and soil my professional reputation.

90.2 It is well known to the MEC that Data Mobility Technology Solutions (Pty) Limited ("Data Mobility") was appointed through an open and thorough adjudication process as envisaged by the Constitution, PFMA and Treasury Regulations. A brief perusal of "Annexure G" attached as aforesaid being a Dornier Consulting's presentation to the department dated 4th November 2004 will show that the MEC had wanted Dornier to be the one implementing the I3S project. In my mind, this explains the MEC's unwarranted assault on Data Mobility's involvement with this project and in the process attempt to raise suspicion where non exist.

90.3 Prior to the appointment of Data Mobility, the following occurred:

- the Department issued a Request For Proposal ("RFP");
- all the proposals that were received as a result of the RFP were evaluated by the Cross Functional Sourcing Team ("CFST"), which includes the proposal from Data Mobility ;
- the preferred bid was referred to the National Intelligence Agency ("NIA") for vetting; and

- the preferred bidder was submitted to DAC for consideration and appointment.
- 90.4 Throughout the foregoing process, I was not involved and I deny that I interfered with either the evaluation of all bids that were received as a result of the RFP in order to sway the decision of DAC in favour of Data Mobility as insinuated by the MEC.
- 90.5 It would indeed assist this Enquiry for the MEC to furnish evidence that is contrary to the process that was followed in awarding the contract to Data Mobility or which points to me meddling with the procurement process undertaken by the Department that culminated in the appointment of Data Mobility.

91. **AD PARAGRAPHS 48 - 49**

The contents of these paragraphs are noted. The MEC did not attach annexure AA10 either. Alternatively the MEC did not number his annexures so that it will link up with his statement which makes finding annexures difficult and the proverbial ‘needle in the haystack’. This prejudices my right to answer thereto.

92. **AD PARAGRAPH 50**

Save to state that I note the content of this paragraph, if it were to be found that this issue of Data Mobility is pertinent to the terms of reference of this Enquiry, I suggest that the Investigator must summon Data Mobility and in particular, Mr. Makhosonke Thusini (“Mr. Thusini”) to give explanation of this allegations made by the MEC as I have nothing to offer to the allegations made by the MEC in this regard.

93. **AD PARAGRAPHS 51 – 52**

Should the MEC find these allegations pertinent he should investigate same as these allegations does not relate to me.

94. **AD PARAGRAPH 53**

- 94.1 It is not clear to me what the MEC’s intentions are in referring to or rather imposing Mr. Thusini upon me as my *‘childhood friend’*. I do not deny that Mr. Thusini is a friend.
- 94.2 I further deny that Mr. Thusini presence at my wedding is evidence of a corrupt relationship with me.

95. **AD PARAGRAPH 54**

The contents hereof are denied.

96. **AD PARAGRAPH 55**

Save to state that the contract to Data Mobility was awarded by DAC in December 2006, at that point there was no '*cloud hanging over Bahlodi Construction*' that I was aware of at the time. Furthermore, the contract was only concluded after NIA had completed its vetting process and DAC approved Data Mobility appointment. I must re-iterate that I am not directly involved in the evaluation or procurement of service providers by DAC.

97 **AD PARAGRAPH 56**

The contents hereof are denied with the contempt it deserves.

98. **AD PARAGRAPH 57**

Although Mr Thusini and I are friends I have never given Mr Thusini any special favours because of our history.

99. **AD PARAGRAPH 58**

- 99.1 I have no knowledge of the meetings between the MEC and Mr. Thusini. If indeed the meetings took place, they were not at all on my behest and I am not privy to the discussions in those alleged meetings.
- 99.2 On occasion that I wanted to have a meeting with the MEC, I called him directly and I met him in December 2008. The fact of the matter is that the MEC is deliberately avoiding meetings with me and proof to that are the meetings I have set up since January 2009 for us on each and every Friday, but the MEC has refused to make himself available for these meetings.
- 99.3 I do not need any person to talk on my behalf and in particular with regard to this matter.
- 99.4 This smacks of the MEC's previous allegations that I sent someone to his home to make threats which he was never able to substantiate nor which he pursued.

100. **AD PARAGRAPH 59**

I deny the alleged unlawful misconduct on my part and MEC must adduce evidence to substantiate this libelous statement.

101. **AD PARAGRAPH 60**

- 101.1 By MEC's own assertions, Mr. Thusini was not the Director of Data Mobility when the latter was appointed by the Department. It seems the MEC is trying by 'hook or crook' to link the appointment by DAC of Data Mobility to the so-called 'close' friendship between myself and Mr. Thusini.
- 101.2 The MEC is fully aware that Data Mobility was appointed following an open call for proposal and it was ultimately approved by DAC. At no stage did I partake in the evaluation by CFST or the vetting by NIA or a decision by DAC to contract the services of Data Mobility for the I3S Project.

102. **AD PARAGRAPH 61**

I deny any alleged personal relationship with Mr. Aziz Kara.

103. **AD PARAGRAPH 62**

- 103.1 The whole allegation by the MEC is nothing but a figment of his imagination and it should be rejected as it lacks the truth. The R40 000 000.00 payment by the Department was linked to Milestone 1.1 of the I3S Project.
- 103.2 Any payment by the Department of monies to an organization based on the fact that the latter has to pay shares to its shareholders or directors as suggested by MEC would amount to a flagrant abuse of public funds and as an Accounting Officer of the Department I would have refused such payment as it contravenes the PFMA.

104. **AD PARAGRAPHS 63-64**

- 104.1 The contents of this paragraph are denied. It is my humble request to the Investigator to clarify the terms of reference to the parties in order to obviate a situation where the complaint that I lodged, which prompted this Enquiry becomes a non-issue in this Commission and all irrelevant issues that are presented with a tinge of sensationalism are brought to foreshadow the main issue which has to be decided upon.

- 104.2 Be that as it may, I wish to add that Mr. Joshua Mkhonto (“Mr. Mkhonto”) is not my ‘right hand man’ and I do not award contracts to contractors and MEC knows that DAC is responsible for awarding contracts to contractors.
- 104.3 In this paragraph, the MEC makes grave allegations about the elicitation of bribes, which is a criminal offence and the MEC is enjoined and compelled to report such incidents to the police in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or the MEC will be considered to have obstructed the ends of justice, which is a criminal offence. This serves as a formal advise to the MEC to urgently report the matter to the police.

105. **AD PARAGRAPH 65**

- 105.1 No annexure AA11 and AA12 is attached.
- 105.2 The contents of this paragraph are denied and the MEC is put to the proof thereof. It is clear, however, it is clear that another erroneous and ill-conceived presumption is being made by the MEC in this regard as a fact whereas the opposite is true.
- 105.3 The MEC seems to base this ill-conceived presumption on the fact that since Mr. Mkhonto is a director of the company which has its registered address 139, The Bridles, Douglas Crescent, Sundowner (“the Bridles”), therefore I have dealings with that company.
- 105.4 I do not have an interest or shares in the company known as Mponeng Holdings (Pty) Limited and the MEC knows that for a fact.
- 105.5 For the benefit of the Investigator should this issue be considered relevant in the Enquiry, the Bridles property is indeed one of the properties registered in an *inter vivos* trust, which is administered by my ex-wife and me.

106. **AD PARAGRAPH 66**

- 106.1 The contents hereof are denied and the MEC is put to the proof thereof.
- 106.2 The content of this paragraph are shocking and are news to me, I am not aware of any government tender awarded to Boldy Trading Enterprises CC (“Boldy”).
- 106.3 Neither Boldy nor any person whatsoever has made payments to me for my or my family’s personal expenses for my personal expenses, the MEC must furnish evidence of this allegation or withdraw it. My rights remain reserved herein.

107. **AD PARAGRAPH 67**

The contents of this paragraph are denied with the contempt it deserves.

108. **AD PARAGRAPH 68**

- 108.1 Again no annexure AA13 is attached. The content of this paragraph is noted. For the record and for the benefit of the Investigator, I know Mr. Mkhonto, he hails from a village in Mpumalanga a few kilometres outside Nelspruit.
- 108.2 Around 2003 or 2004, my late mother read about Mr. Mkhonto in the newspaper that he had passed his matric but did not have funds to register at university to pursue his studies. My mother then sent my sister to look for him and bring him home in Orlando West.
- 108.3 As Mr. Mkhonto was growing older, I allowed him to move into the Bridles and if anything the Annexure "AA13" attached to the MEC's statement demonstrates that Mr. Mkhonto has no clandestine intentions or dealings, he willingly stated his residential address, gave details of his business and where he is employed. All Mr. Mkhonto's private business interests have nothing to do with me.

109. **AD PARAGRAPH 69**

To avoid prolixity I will not regurgitate the contents of sub paragraph 2.6 above, save to say the allegation contained therein is denied.

110. **AD PARAGRAPH 70**

The contents of this paragraph is noted.

111 **AD PARAGRAPH 71**

- 111.1 Save to admit that Ms. Senoamali renders a service to the Department during its audit process, I take exception to the MEC's averments that documents relating to the audit process are "white-washed" by Ms. Senoamali to cover up my "illegal and corrupt activities". My rights in this regard are reserved.
- 111.2 The Department employs the services of Ms. Senoamali during the audit process as she has vast auditing experience.

111.2 The MEC has always been aware of the aforesaid service rendered by Ms. Senoamali to the Department, and has not until now alleged misconduct of this nature. The MEC as the Executive Authority has a duty to report any misconduct promptly and efficiently.

111.4 The MEC has never before raised an issue of my alleged “illegal and corrupt activities” which is concerning. The MEC’s motives for raising it now are questionable and I can only conclude that same is aimed at tarnishing my reputation.

111.5 The MEC’s assertions are based on an allegation that there is a personal relationship between myself and Ms. Senoamali. As stated above this allegation is denied and has not been substantiated by the MEC. Until such time that he does so I submit, with respect that all allegations stemming from this allegation be disregarded by the Investigator.

112. AD PARAGRAPH 72

112.1 The contents of this paragraph are denied.

112.2 I call upon the MEC to clarify his gratuitous statement that there is a corrupt relationship between Thusini and me in relation to the Data Mobility contract.

113. AD PARAGRAPH 73

113.1 The Annexure, AA 14 is not attached to the Statement.

113.2 I am therefore not in a position to comment further on this matter save to state that I am not aware of the billboard contracts that the MEC is referring to.

114. AD PARAGRAPH 74

114.1 Again there is no annexure AA15 attached. I can confirm that sometime in the 1990s we did set up a tourism business with Stan Thusini by the name “Made in Soweto”.

114.2 For the record, the initiative was aborted when I joined the Department of Housing in November 2000.

114.3 I hope that the MEC is not in any way suggesting that I acted illegally by setting up a tourism business prior to November 2000.

114.4 If that is what the MEC means, I challenge him to demonstrate in what manner I acted illegally or inappropriately.

115. **AD PARAGRAPH 75**

- 115.1 I find this allegation insufferably exasperating and defamatory.
- 115.2 I am not sure which friends I awarded contracts to as contracts are awarded by DAC.
- 115.3 The MEC is once again abusing the investigation by making puerile allegations that have no basis in fact whatsoever.
- 115.4 Contrary to his statement that I need to be stopped, I appeal to the Investigator to stop the MEC from making such wicked and intemperate statements.
- 115.5 My rights remain fully reserved.

116. **AD PARAGRAPH 76**

- 116.1 I reiterate that the MEC has not only undermined my authority in the past. He continues to do so in a cavalier manner.
- 116.2 This is the reason I have lodged a grievance against him with the Public Service Commission.

117. **AD PARAGRAPH 77**

The contents of this paragraph are noted.

118. **AD PARAGRAPH 78**

The contents of this paragraph are admitted.

119. **AD PARAGRAPH 79.1**

- 119.1 I reiterate my earlier submission that the purpose of the e-mail was to raise issues regarding the manner in which the MEC had issued unlawful instructions. I deny that I have attempted to sow division within the Department.

119.2 I am personally not aware of any factions but as the MEC has stated in his previous statement, he is particularly skillful in “keeping his ears on the ground”, which appears to involve illegal gathering of intelligence using discredited information paddlers.

119.3 I am sure his famed Machiavellian tactics have enabled him to identify these factions if these exist. By calling Departmental officials into his office, behind my back, issuing unlawful instructions, the MEC is the one guilty of sowing disunity where such exists.

119.4 I am further surprised to learn that the MEC has at times overlooked my questionable conduct.

119.5 Why would the MEC overlook questionable conduct on my part? Is he not obligated to take action where questionable conduct comes to his attention?

119.6 On the contrary, it is this statement by the MEC that is questionable. It is his behavior that is questionable. If he took his office seriously, he would not have overlooked any perceived questionable conduct.

120. **AD PARAGRAPH 79.1.1, 79.1,2**

120.1 I find this allegation quite charming as I am not aware that I have supporters at the Department who benefit from my unlawful activities and detractors.

120.2 I request the MEC to make available the names of my supporters and detractors to the Investigator for further investigation.

121. **AD PARAGRAPH 79.2**

The contents hereof are denied.

122 **AD PARAGRAPH 80**

122.1 I agree with the MEC that I have a good understanding of my functions and duties as the accounting officer. I was the first HOD to be appointed at the age of 33 years. I would not have achieved same if I had a cloud of irregular conduct over my head.

122.2 It is this understanding that has compelled me to lodge a complaint of interference by the MEC.

123.3 The Department would have been a much better place if the MEC had the same understanding of his duties as an executive authority.

123. **AD PARAGRAPH 81**

- 123.1 The contents of this paragraph are denied.
- 123.2 The MEC should know that deviations, where they do occur, are part of the Department's supply chain management policy and these are allowed by Treasury Regulations.
- 123.3 The MEC is however not interested in the legal position. He is interested in throwing mud at me.

124. **AD PARAGRAPH 82**

- 124.1 The contents of this paragraph are denied. I note that the MEC does not deny the allegations.
- 124.2 I challenge the MEC to substantiate the claim that I was aware that he was investigating various projects.
- 124.3 For the record, I was never made aware of these investigations and I have since requested the CFO to provide me with a detailed list of all payments made to service providers for the past 4 years.
- 124.4 It must be noted that in paragraphs 39-41 the MEC states that I used my email of the 18th September 2008 as a smokescreen to detract the MEC's attention from my alleged poor performance in the Jabulani contract. The MEC now suddenly states that I sent such email because of the pressure I received from him in regards to the Data mobility and TT4 contracts.

125. **AD PARAGRAPH 83**

The contents of this paragraph are denied. I took leave in the same way that I have always done previously. I certainly do not require the MEC's consent to take leave. This is another instance of the MEC's concerted campaign to cast me in a negative light.

126. **AD PARAGRAPH 84**

The contents of this paragraph are noted.

127. **AD PARAGRAPHS 85, 85.1-85.3**

The contents of this paragraph are denied.

128. **AD PARAGRAPH 86**

A statement from the MEC's security guard is required to confirm same, failing which this must be struck out as hearsay.

129. **AD PARAGRAPH 87.1**

I have no knowledge of the contents of this paragraph and the MEC is put to the proof thereof. I specifically require proof that the MEC complained about the security guards behavior at the time of the alleged incident and an explanation why the company did not provide the MEC with another security guard . I am not sure why the MEC states that Enlightened Security formed a joint venture with T. Mogashoa and request that it be struck out due to its irrelevance.

130. **AD PARAGRAPHS 87.2-91**

The contents of this paragraph are noted

131. **AD PARAGRAPH 92-93**

The contents hereof are denied.

132. **AD PARAGRAPH 94**

132.1 I deny the MEC's assertions that I do not have authority over DAC. The MEC should note the provisions of the PFMA and Treasury Regulations in this regard.

132.2 It is my responsibility as the Accounting Officer of the Department in terms of section 38 of the PFMA to ensure, inter alia, that the Department has and maintains:

"(i) effective, efficient and transparent systems of financial and risk management and internal control;
(ii) ...;
(iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
(iv) a system for properly evaluating all major capital projects prior to the final decision on the project. (my own emphasis).

132.3 Therefore, the MEC's view in this regard is flawed and DAC as a structure within the Department operates within a delegated mandate from me, as the Accounting Officer of the Department, the delegation which is made in terms of section 44 of the PFMA.

132.4 Thus, according to section 44(3) of the PFMA, I may 'confirm, vary or revoke any decision taken by DAC as the Accounting Officer of the Department.

133. **AD PARAGRAPH 95**

All the allegations contained in this paragraph are denied and my rights in this regard are reserved.

134. **AD PARAGRAPHS 96 – 98**

The contents of these paragraphs are noted. I note that the MEC does not state that he will launch an investigation against Van Rooyen to investigate the truthfulness thereof. I doubt that the MEC will launch an investigation due to the MECs friendship with Van Rooyen.

135. **AD PARAGRAPH 99**

I deny having raised any concerns about any official with the MEC. The issue relating to the Director of Supply Chain Management Unit was addressed as articulated in the 1st and 2nd Statements that I have submitted in this Enquiry.

136. **AD PARAGRAPHS 100-101**

The contents of these paragraphs are noted.

137. **AD PARAGRAPH 102**

Paul Maseko became convenor of the CFST on the 12th October 2007.

138. **AD PARAGRAPH 103**

In my capacity as the HOD of the Department and an Accounting Officer in terms of the PFMA, I have already commissioned investigation on these matters and obviously, should there be any truth or merit to the allegations of misconduct against officials concerned, the necessary disciplinary action would inevitably follow.

139. **AD PARAGRAPH 104**

I submit that the MEC must cause an investigation to be launched against Van Rooyen.

140. **AD PARAGRAPH 105**

Kempton Park

140.1 The Department advertised the following tender regarding Kempton Park Hospital;

140.1.1 The tender is to reinstate, revitalise and renovate the existing Kempton Park Hospital.

140.1.2 The successful bidder will have a rental lease with the Department.

140.1.3 The Departments objectives were to create a self sustainable medical centre that would be a private hospital and also accommodate a certain percentage of low income patients and create an inspirational medical centre.

140.1.4 The proposal had to be submitted by the 31st October 2006 and the Department would give preference to a BEE compliant contractor with the following criteria;

- a) *A developmental plan for Kempton Park to achieve the Departments objectives.*
- b) *The Tenderer must show its Financial status*
- c) *Developmental finance and commitment thereto.*
- d) *CV of similar projects*
- e) *Details of Lease proposal with Department*
- f) *Composition of contractor in terms of shareholding and management.*
- g) *Representation of expertise in disciplines required.*
- h) *Demonstrated experience and knowledge in medical facility industry.*

140.3 KPHC (Kempton Park Hospital Consortium) went through the vetting process with flying colours and was appointed as the successful party. The reasons for the recommendation are as set out in two documents attached hereto as **annexures N1 and N2** respectively. Annexure N1 shows that Kempton Park is not operating and is as such a liability. The cost of security alone is R600 372,00 per annum.

140.4 KPHC was constituted from PROPCO and OPCO as follows;

- PROPCO consists of TAU Pride (Pty) Ltd and Tebfin.
- OPCO consists of KOPM Logistics (Pty) Ltd and Netcare (Network Health Care Holdings Pty Ltd).

140.5 PROPCO would facilitate construction, refurbishment and the lease agreement of the hospital with the Department. Once the hospital was completed OPCO would manage the day to day operation of medical treatment. OPCO would further facilitate medical equipment and sourcing of healthcare practitioners and the day to day aspects of operation. From OPCO Netcare would be the main party running the hospital. It would therefore be a Netcare accredited hospital.

140.6 The refurbishment alone would cost R200 Million Rand. KPHC satisfied the Department of its financial ability to complete the project. Further that it was BEE compliant more especially as PROPCO is 100% black owned and has 50% interest in KPHC and OPCO is 47% black owned and also has a 50% interest in KPHC.

140.7 Annexure N2 dated the 12th April 2007 attached as aforesaid repeats the emphasis the Department and Department of Health placed on the objectives and that the refurbishment of the hospital be done by a party that is BEE compliant. Further that even once the refurbishment is complete that BEE medical practitioners will participate in providing health care. Paragraph 2 thereof shows that KPHC had the highest score in the criteria.

140.8 Annexure N2 also records that the DAC recommends that KPHC receive a 25 year lease. In terms of the Department's policy the Department only provides 15 year leases. The Department can only approve 25 year leases if the MEC approves same. The DAC approved the 25 year lease in principle in its document dated 25th April 2007 (attached hereto as **annexure O**). More especially as KPHC showed the Department that it would require a lease of at least 25 years to recover its investment of about R200 Million.

140.9 The lease agreement was therefore material to the tender and to finalise the appointment of KPHC the MEC would have to authorize the 25 year lease before the lease could be signed.

140.10 The MEC to this date however never approved the lease. The MEC wanted KPHC to give the revitalisation of the Kempton Park Hospital project to Heibei (a consortium of Chinese

businessmen). It was intended that the Department would be the Lessor, KPHC would be the Lessee and that KPHC would sublease the Kermpton Park Hospital to Heibei.

140.11 **The MEC agreed to authorise for Heibei at the latter's instance and request a 99 year lease**

All of the parties whom submitted tenders would have been aware that the lease would have been between 15-25 years. It would have therefore made a substantial difference in the tender process if the parties whom applied were advised of the 99 year lease as it would have inter alia been much easier to get their R200 million investment back over 99 years and also to get financial backing for same. Further, in terms of the tender process such a material deviation would have the effect that the tender process would have to start afresh.

140.12 If KPHC out of their own initiative wished to sublease the project to a third party it would not be allowed. The successful party has to go through the vetting process and the DAC process to see if it qualifies in terms of the criteria. Nobody now knows if HeiBei would have passed the aforesaid process more especially as it was not BEE compliant.

140.13 Heibei's objectives are further not in accordance with those of the Department. Heibei is a company from China which would use the Kempton Park hospital as training hospital for Chinese students. Kempton Park Hospital would not be a Netcare type hospital. It would be a training hospital for traditional healers , herbalists and also Western medicine.

140.14 The appointment of HeiBei is an unlawful and administratively unfair action that could open the Department to legal action.

140.15 KPHC and Heibei never finalised the contract. All the Department resources spent on advertising, vetting and appointing KPHC was fruitless. Due to MEC'S meddling KPHC never received the tender. The Kempton Park area further lost out on the use of a private hospital, which would accommodate a certain percentage of the low income group. Furthermore the Department is still faced with a R600 000,00 plus security bill per annum for a hospital that is not operational.

140.16 If I was like the MEC and wanted to wage my concerns with the MEC in the media I am sure that the media would love this story.

141. **AD PARAGRAPHS 106 –106.2**

141.1 If the MEC is serious about not condoning irregular conduct I challenge him to instruct me to cause an investigation agsint Van Rooyen

141.2 I also wish to remind the investigator that the ambit of its investigation is not limited to the MEC but to all relevant parties.

142. **AD PARAGRAPHS 108 –108.3**

The MEC admits advising Jafta that Mr Mochotli was causing tension at the workplace and that after his meeting with Jafta that he sent me an sms to take his approach. This can only mean that I was expected to move Mr. Mochotli.

143. **AD PARAGRAPHS 109**

This paragraph deals with both the MEC and Van Rooyen. The MEC does not deny or admit that he gave direction to Van Rooyen to find space for Samuels and Beck in the fleet. It appears as if the MEC and Van Rooyen's relationship is irregular and should be investigated.

144. **AD PARAGRAPH 110**

The contents hereof are noted.

145. **AD PARAGRAPHS 111- 112**

145.1 With respect to the manner in which I dealt with my complaint against the MEC through an e-mail dated 18 September 2008, I have written a letter of apology to the MEC for also sending the letter to other parties, which letter was attached to my founding statement. The MEC cannot however state that I did not approach him as in my letter of 18 September 2008 I clearly did approach him. The MEC's statement's are further full of "untested statements" against me.

145.2 The MEC is not willing to take responsibility for the mistakes he makes.

145.3 The MEC to his 1st statement marked annexure M attached a senior performance agreement entered into between the parties. Paragraphs 6(1)-6(3) thereof relates to the MEC's obligations . I quote same her for convenience sake: "....*The MEC will:*

1. *Create an enabling environment to facilitate effective performance by Mr S Buthelezi*
2. *Provide access to skills development and capacity building opportunities*
3. *Work collaboratively to solve problems and generate solutions to common problems within the department that may be impacting on the performance of Mr S Buthelezi".*

145.4 The default provision in paragraph 12 thereof states inter alia that Mr Buthelezi's conduct may constitute default/breach if his performance is found to be unsatisfactory during a performance appraisal with due regard to corrective action have been duly undertaken.

- 145.5 The agreement therefore requires assessments in the form of performance reviews and appraisals. If the MEC finds my performance unsatisfactory he must engage me in a consultation process in which he addresses his concerns and I am given the opportunity to reply thereto.
- 145.6 The default provision states that if a default occurs the MEC must give the Head of Department an opportunity to remedy such or present him with a plan to satisfaction of both parties. The MEC according to his own statement never engaged the HOD for the parties to come up with a plan to deal wit the issues relating thereto eg Jabulani and I3S projects.
- 145.7 The contract between the parties is not a normal one of employer-employee but provides for the fact that both parties have senior positions and that both parties can take corrective action against each other. The contract creates a relationship where “iron sharpens iron”.
- 145.8 The contract in fact in paragraph 12 thereof states that the HOD may take corrective action if “the MEC is in breach of the performance or compliance with any terms , condition or obligation” which is what I did in my email of 18th September 2008.
- 145.9 The contract is every clear. Before the MEC can take punitive steps agsint Buthelezi or request the Premier to take punitive steps he first have to comply as set out above. Thereafter in terms of the Grievance Rules issued in Government Gazette number 25209 of July 2003 a party may submit the grievance to the Premier. If the party is dissatisfied by the outcome the Premier must refer the matter to the PSC('Public Service Commission").
- 145.10 The MEC is also an official of the Department and consequently he has to share responsibility for the successes and failures of the Department. The MEC has not with any of the projects that he deems problematic took the lead to remedy same. He has in fact shouldered all the responsibility onto me.

146. **AD PARAGRAPH 113**

This issue is moot. The Premier has already dealt with me for forwarding my email of the 18th September 2008 to other senior officials. The remainder of the contents hereof are denied.

147. **AD PARAGRAPH 114**

I deny these allegations and the implications made herein. Although the DAC is not a rubberstamping authority it has to follow CFST's recommendations. If it does not it normally has to do with criteria issues and the process has to start over. I repeat that paragraph 56 of the MEC's first statement confirms that CFST makes recommendations to the DAC not the SCM. The

MEC attached as Annexure T8 (on page 149) to his first statement an e-mail by Van Rooyen that confirms that the SCM does vetting (not recommendations to DAC).

148. **AD PARAGRAPH 115.1**

- 148.1 It is ironic that the MEC states that he refused to reprimand me as he did not believe that the sanction imposed by the Premier was proper.
- 148.2 This was a lawful directive from the Premier and I find astonishing that the MEC proudly states his defiance of a lawful directive from the Premier and yet has the temerity to pontificate about respect for authority.

149. **AD PARAGRAPH 115.2**

The contents hereof are denied. The MEC does play a role. He uses people like Van Rooyen to do his bidding.

150. **AD PARAGRAPH 116**

- 150.1 With regards to the issues of Kibi, Mochothli and Van Rooyen I made serious allegations.
- 150.2 Should one have a regard to paragraphs 12-14 of my e-mail of 18 September 2008 which is attached to the MEC's statement as **Annexure A** and paragraphs 65-73 of my first 23 page statement the allegations I make can be summarised as follows:

SUMMARY OF BUTHELEZI'S ALLEGATIONS

- 150.2.1 I advised the MEC in 2007 of the conflict between Mr. Kibi the CEO and Mr. Mochotli the CFO.
- 150.2.2 I advised him of my frustration.
- 150.2.3 The efforts I made to restore order.
- 150.2.4 The MEC never provided leadership or input in a year of constant problems caused thereby or once it after it allegedly came to his attention in 2008.
- 150.2.5 The MEC then on or about 10 September 2008 without my knowledge called a meeting with senior managers which includes Mr. Jafta and Mr. Mpanza.
- 150.2.6 On 11 September 2008 I was advised by Mr. Jafta about a meeting he had on 10 September 2008 with the MEC at the MEC's instance.
- 150.2.7 The MEC did not invite me to the meeting nor obtained my advice after the meeting.

- 150.2.8 The MEC instructed Mr. Jafta in the meeting to remove Mochothli *inter alia* “so that his people can have space to operate”.
- 150.2.9 The MEC did not rather tell Jafta to take it up with me.
- 150.2.10 Jafta said that the MEC advised him in the meeting 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.
- 150.2.11 On 12 September 2008 I sent the MEC an sms that I am not happy to redeploy Mochothli.
- 150.2.12 The MEC replied by sms “*Hi Sbu my view on this matter is known. Would like you on this matter to take my approach. Thanks Nash*”.
- 150.2.13 I questioned as to why he would consider removing Mochothli as Kibi under performs grossly and behaves cluelessly.
- 150.2.14 I challenged the MEC that the MEC does not address Kibi’s under performance due to their personal friendship.
- 150.2.15 Kibi further approached the MEC directly to request that Mochothli be redeployed, without any discussions with me.
- 150.2.16 The MEC did not tell Kibi to take it up with me. My complaint is that state officials will not appreciate hierarchy and my position as HOD if people can address issues directly with the MEC.
- 150.2.17 The MEC listened to Kibi and gave instructions to remove Mochothli without obtaining advise from the HOD. I can not understand why, if the MEC decided to move Kibi or Mochothli why he would choose Kibi.
- 150.2.18 The MEC does not respect the HOD’s authority in this matter and the lack of respect are prevalent to the other public officials which undermines the HOD’s authority.
- 150.2.19 Van Rooyen in following the MEC’s instructions further requested Jafta to find space for Mr. Samuels and Beck in the fleet management industry.
- 150.2.20 The MEC’s reply in paragraphs 210-212 in his first statement and paragraphs 116, 125-125.6 of his second statement are summarised as follows:

150.3 RE: SUMMARY OF MEC’s REPLY TO BUTHELEZI’S ALLEGATIONS

- 150.3.1 The MEC denies in Ad paragraph 210 of his first affidavit that I told him of any instability in Impophoma due to conflict between Kibi and Mochothli.

- 150.3.2 The MEC states however that he did have informal verbal discussions with me about the matter (which I deny).
- 150.3.2.1 The MEC advises that he only obtained knowledge of the conflict in 2008.
- 150.3.2.2 He states that he blamed Mochotli for the tension but does not state why.
- 150.3.2.3 He further states that he did not think that Mochothli acted in the best interest of the public. He does not state why.
- 150.3.3 In paragraph 211 of his first statement he states that he did not suggest to Jafta that Mochotli to be redeployed from Impophoma.
- 150.3.4 The MEC then states in paragraph 116 of his second statement that I had the discretion to decide whether to take action against Mochloti or not.
- 150.3.5 In the very next sentence he implies that he instructed me to move Mochotli and that I did not follow his directions. More especially as the MEC in paragraph 212.2 of the MEC's first statement states that I am obliged to follow his instructions
- 150.3.6 The MEC's answers are that of a politician. It is vague and he is not willing to commit to a position.
- 150.3.7 He further does not state what acts he did to resolve the conflict.
- 150.3.8 The MEC admits he had a meeting with senior managers Jafta and Mpanza but states that Jafta called the meeting with the intention to discuss the Impophoma conflict.
- 150.3.9 The MEC does not deny that he did not invite me to the meeting with Jafta and Mpanza.
- 150.3.10 I stated that the MEC and my communication in this regard was by sms.
- 150.3.11 The MEC states that it is verbal but he does not state what was said.
- 150.3.12 The MEC in paragraph 212.1 in his first statement states that Kibi must deal with allegations of poor performance.
- 150.3.13 The MEC as politician specifically avoids this question of Kibi's performance as it is not difficult to prove objectively.
- 150.3.14 If the MEC admitted Kibi's under performance, it would beg the question as to why he would state to Jafta that Mochotli is the problem and not Kibi. It would further confirm my contention that the MEC's advise served to protect his personal friendship with Kibi and not his interest to the Department. This is why I believe that he refuses to answer as to whether Kibi under performs or not.

150.3.15 I outright challenged the MEC to state as to why he would favour Kibi's performance and asked whether it is due to their personal friendship.

150.3.16 It is important for the MEC to reply to this allegation. More especially as it goes to the heart of the allegations in my e-mail of 18 September 2008, that the MEC has irregular relationships with senior officials.

150.3.17 The MEC admits the visit by Kibi but states that it is due to his "open door policy".

150.3.18 He does not deny that Kibi requested Mochloti to be moved.

150.4 I submit that my investigation into the challenges at Impophoma revealed that Mr. Kibi was responsible to a great extent for the challenges at Impophoma. It is clear from the above that the MEC did not answer each of my allegations. That his answers are vague and contradictory and that of someone that has something to hide.

151. **AD PARAGRAPH 117**

The contents of this paragraph is denied.

152. **AD PARAGRAPH 118**

The contents of this paragraph are noted.

153. **AD PARAGRAPH 119-119.2**

The contents of this paragraph is noted and I agree that Mr. Morris should be interviewed by the Investigator.

154. **AD PARAGRAPH 120**

I reaffirm my submission in this regard as contained in my preceding statement.

155. **AD PARAGRAPH 121**

I have advanced in my previous statement my reasons for my conclusion that the MEC was behind the publication of various articles in the City Press.

156. **AD PARAGRAPH 122**

The contents of this paragraph are noted.

157. **AD PARAGRAPH 123**

- 157.1 It is clear that the MEC did not understand my 1st answering affidavit and I will therefore have to amplify thereon. I am guided in my answer by the MEC's allegations in his first answering statement in paragraph's 76 to 132.
- 157.2 On the 10th March 2006 the Department issued a public tender for the construction of a new 330 bed Hospital in Zola Soweto.

1st Jabulani Contract: Ilima JV

- 157.3 During May 2006 the Department awarded the contract to Ilima Projects , Yikusasa, TTR and Motheo Construction JV referred to as Ilima JV. Ilima was the lead contractor. Ilima's participation in relation to services, profits, losses , costs and expenses and the like was 60% and the other three parties were 40%.
- 157.4 Each party to the joint venture had to provide financial bank guarantees to the Department in accordance with their respective percentage liability. Ilima was however the only party of the Ilima JV to obtain same. After 2-3 months it became clear that the other parties were not able to provide such bank guarantees and Ilima had to obtain 100% of the bank guarantees which it did. The other parties failure to comply caused a delay and work only started during August 2006. Some of the other parties wanted to withdraw from the JV but on the 24th July 2006 the Department was advised that they would not withdraw.
- 157.5 During December 2007 and February 2008 most of the parties withdrew from Ilima JV. Ilima continued to attempt to deliver on the project. Ilima itself throughout showed it's willingness and ability to complete the project. The Department did not believe that Ilima itself did not perform but understood that Ilima was hamstrung by the non-functioning of the JV as a whole.
- 157.6 The Ilima JV was in addition therewith faced inter alia with the following external difficulties;
 - The original site for the Jabulani Hospital was on the Zola Community health clinic site.

- The Provincial and Health Authorities did not agree to the site as it would cause the Zola Community health clinic to close for the duration of the work and the community would have to commute across Soweto.
- There was also state budget constraints. During April 2007 almost a year after the project started the budget allocation was not finalised between the Department of Health and the Department. It was therefore unclear as to what the acceptable construction programme should be as it depended on available funds. The Department therefore had to ask the Ilima J.V to reduce production on site.
- Due to budget constraints the Department did not have a Construction Project Manager (CPM) (in this case Tsiya Developments) on the project between November 2006 and March 2007, which caused a further delay.
- The Jabulani Hospital project's budget was only finalised in 2007 under budget statement 3, which clarified the source and quantum of funds from the National Health Hospital Revitalisation Program.

157.7 The parties had 24 months to build the Jabulani hospital. The contract expired on the 10th May 2008 due to the efflux of time.

157.8 The Department and myself attempted to assist the JV by re-appointing Tsiya Developments as (CPM) during March 2007.

157.9 As some of the parties to the Ilima JV withdrew it meant that it was no longer the same Ilima JV that was originally vetted and appointed by the DAC. This however did not mean that Ilima was no longer liable to perform its duties in the contract.

157.10 Ilima had a level 8 grading with the CIDB (Construction Industry Development Board). At the time of the tender Ilima was the only black contractor at such a high level which was the reason the DAC appointed them. Even though the Ilima JV did not succeed, the drive for BEE empowerment did not change. I decided to rather help Ilima to develop and applied developmental measures rather than punitive measures.

157.11 My duty as Head of Department is to ensure that the Department has and maintains the appropriate procurement and provisioning system which is fair, equitable , transparent , competent and cost effective. The mere fact that some of the partners of Ilima JV withdrew did not oblige the Department to recommence the tender process. Compliance with the Department Procurement System could be done in a number of ways within the regulatory framework.

157.12 The one method is to give them access to PMRG's. This is a database of all the building professional such as architects, quantity surveyors, project managers and land surveyors. The PMRG's are appointed through a public tender process. The lead PMRG was TauPride/Moteko JV. Another method is to use labour only contractors. The Department also relies on Impophoma a division of the Department to provide material, plants and equipment.

157.13 As stated above rather than penalizing Ilima the Department decided to rather give them assistance which lead to the 2nd Jabulani contract.

2nd Jabulani Contract: Ilima assisted by TauPride/Moteko JV, Impophoma

157.14 On the 1st August 2008 the Department entered into a new contract and appointed TauPride/Moteko JV as a managing agent in its capacity as lead PMRG. Impophoma was also instructed to give Ilima the necessary support. Impophoma is well positioned to provide services as it is able to acquire plant, equipment and material at low prices as it makes its purchases in bulk. It further gives the Department the ability to maintain the adequate control measures over the provision and use of construction equipment on the project and thereby achieve value for money. The contractor's pricing will be limited to labour costs only and in this way the Department will be able to control the budget of the project in regard to other aspects such as the acquisition of construction materials plant and equipment and other professional services. In addition, the decision to relieve the contractor of the duty of acquiring construction plant and equipment will accelerate the completion of the project.

157.15 This 2nd contract was in line with the proposal by the Director of Project Management attached to the MEC's first statement as annexure I4 and can be found on page 129 of his statement.

157.16 I note that the MEC to his 1st statement attached a document on page 138 which purports to be a Ilima and TauPride joint Venture. I notice that it is a draft unsigned document that I have no knowledge of. It gives the impression that the new contractor is Ilima/TauPride JV. This is incorrect. Ilima is the only contractor. TauPride only provided support in its capacity as PMRG.

157.17 The MEC in paragraph 92 of his 1st statement alleges that the original contact sum of R334 million would increase to R692 million. This is also incorrect. The sum of R334 million referred to the bill of quantities only. Should one have regard to paragraph 4 found on page 132 attached as annexure I4 to the MEC's 1st Statement it is clear that the repriced bill of quantities is R493 million. Further should one have regard to the bill of quantities for a Germiston hospital of the same size the bill of quantities tender awarded was for the sum of R490 million (about the same as the Jabulani repriced bill of quantities).

157.18 It emerged at the DAC that Ilima JV under costed the bill of quantities in its first tender. This unfortunately is quite common amongst black contractors as they tend to price themselves too low in an attempt to get a tender. This is also why I instructed TauPride to assist Ilima in all aspects of construction management and cost control.

157.19 I further wish to amplify my response to paragraphs 96-96.2 of the MECS 1st statement. The DAC recommended that the Department enter into a 2nd contract with Ilima, on the basis that TauPride assists as CPM. This recommendation was subject thereto that a proper contract must be drawn up to show the respective roles of Ilima and TauPride. The chief Director of Capital works Mr Ivan Pretorius and the Head of the Departments Legal Services was instructed to provide such a contract which it duly did.

157.20 The DAC recommended in the alternative that the original Ilima JV be rejuvenated. (It was therefore clear that the DAC also did not believe that it was advantageous the Jabulani hospital contract be retendered). In annexure I5 attached to the MEC's first statement I advised the DAC that I find their alternate proposal namely to rejuvenate the Ilima JV preposterous.

157.21 In my capacity as Head of Department I have to take responsibility for DAC procurement decisions. I am therefore not merely a rubberstamping authority. I only delegate my powers to the DAC. I attach hereto as **annexure Q** a memorandum, inter alia to the Gauteng Treasury and Auditor General that sets out the background to the 2nd and 3rd Jabulani contract.

157.22 For sake of convenience I quote herein paragraphs 3.1.1-3.3 of annexure Q which sets out the reasons that the DAC and I decided to keep Ilima as a contractor after the collapse of the Ilima JV.

“3.1.1 The time consuming nature of tender processes which would have resulted in considerable delays of the project.

3.1.2 The costs that would have been incurred to bring the original contract to an administrative closure.

3.1.3 Increased costs for the preparation of new tender documentation secure a new contractor

3.1.4 Cost escalations in the construction industry at the time which exceeded the Department budget of the project

3.1.5 The Departments desire to mentor and uplift Ilima as the only black contractor that was registered by the Construction Industry Development Board as a level 8 contractor

- 3.2 *Taking the above stated factors into account , the Head of Department (the HOD) in his capacity as the Accounting officer , decided that a more prudent approach would be to allow Ilima to proceed with the project under closer supervision by the Department.*
- 3.3 *Thus, subsequent to the expiry of the original contract in May 2008, the DPTRW engaged in further negotiations with Ilima. The Basis of this engagement was the Department's service delivery obligation to facilitate the successful implementation of the project. In addition, and to reiterate, the Departments commitment to applying developmental as opposed to punitive measures, in furtherance of its polices of supporting black economic empowerment companies , was fundamental consideration”.*

157.23 The Jabulani Hospital project was further important for the following reasons;

- The Premier made a commitment to deliver on the Jabulani hospital as early as 2003.
- A new hospital was urgently required by the Soweto community as the Chris Hani Baragwanath Hospital was unable to meet its needs and a new hospital was needed to deal with the overflow of patients from Chris Hani Baragwanath Hospital.
- Prior to the commencement of the project there were already 6 000 signatories to petition commencement of the project.
- The project was further an important source of job creation.
- Any unnecessary stoppage or delay would cause irreversible damage to the delivery programme, erode socio – political confidence and support to the project, cause a public uproar of non-delivery and strain relations between Soweto and the Department.

157.24 At the conclusion of the 2nd contract Ilima was requested to submit a tax clearance certificate but took a long time to provide same. The certificate was eventually produced as an attachment to an invoice issued by Ilima on the 20th August 2008 for Twenty one million five hundred thousand Rand (R21 500 000,00) for purposes of mobilising the project.

157.25 Due to Ilima's initial reluctance however to produce the tax certificate and other circumstances that came to light the Department deemed it prudent to investigate the validity of the tax clearance certificate.

157.26 From the investigation it came to light that Ilima's tax affairs were not in order. In particular it appeared that their value added tax returns has been outstanding since November 2006 and that

their tax returns has been outstanding since 2004. SARS further confirmed that a tax clearance certificate submitted by them cannot be relied upon for purposes of completeness and validity. Thus Ilima through its conduct placed the Department at risk as the Department is precluded by the law from entering into and continuing any business relationship with any entity whose tax affairs are not in order.

157.27 The second contract with Ilima was terminated on or about 4th September 2008 about a month after the contract was signed. Ilima's therefore never received the R21,5million it requested.

157.28 All payments to the Ilima JV was in terms of the first contract and was certified in terms of Department processes and authorised by the relevant official, not myself.

Jabulani third contract: Maziya as contractor assisted by Tsiya and TauPride

157.29 In summary;

- The DAC appointed the Ilima JV in terms of standard tender process. The DAC authorised the second Jabulani contract with Ilima and I appointed the contractor Maziya in the third Jabulani contract.
- The Maziya/ Bathlodi JV was one of the contractors that was shortlisted. As the MEC points out correctly the Department of Housing instituted legal action against Bathlodi and Bathlodi could therefore not be considered. I submit it is therefore a splitting of hairs to state that the DAC only shortlisted the Maziya/ Bathlodi JV and not Maziya personally.
- Maziya only had a level 7 CIDB rating. If the Department appointed Maziya construction as labour contractor Maziya would be exempted from the CIBD requirements it would ordinarily have to satisfy to undertake a project such as Jabulani Hospital. As part of developing contractors and SMMEs the Department developed labour only contracts. The service of contractors needed to be augmented to ensure that they deliver on contracts. This was the basis of Maziya's engagement and it would also be cost effective.
- The other contractor that was also shortlisted by the CFST /DAC was Mvelaphanda Construction. Mvelaphanda advised that it was not able to assist with the Jabulani Hospital contract as it since become engaged with the other projects of the Department in Natalspruit, Germiston and Mamelodi.
- In the third Jabulani Contract Maziya was appointed as labour contractor only, Tsiya the PMRG whom was involved from the first Jabulani contract would facilitate as CPM. Further the same model of TauPride and Impophama tailored for the second Jabulani contract would

continue in the third Jabulani contract. TauPride would be contract Manager and Managing agent and Impophama would provide equipment plant and material as aforesaid

- Service level agreements were entered into between the Department and Impophama, the Department and TauPride, and a construction contract between The Department and Maziya. This will obviate the need for subcontractor relationships between Maziya and subcontractors, which will allow Maziya to focus only on the construction work of the hospital. The appointment of Maziya is also in line with the Department's developing strategy.
- Maziya augmented by Tsiya, TauPride and Impophama appears to be successful. The contractor has thus far met its contractual obligations.

Deviation from standard procurement processes

157.30 The appointment of Maziya Construction is a deviation from standard procurement procedures and is necessitated as detailed herein.

157.31 Section 217(1) of the Constitution Act 108 of 1996 and section 38 of the Public Finance Management Act 1 of 1999 ("the PFMA") requires the DPTRW as an organ of state in the provincial sphere of government to contract for goods or services in accordance with a system which is fair, equitable, transparent competitive and cost effective.

157.32 The above legislative provisions and regulations must be read in conjunction with the precept of Practice Notes which deal with procurement of goods and services by mean other than through the invitation of competitive bids and introduces reporting measures related thereto.

157.33 The Practice Notes provide substance to the provisions of regulation 16A6.4 in that they allow for cases of emergency where immediate action is necessary, or if the goods and services required are produced by or available from a sole service provider. The Practice Notes, in particular Practice Note 6 of 2007/8, necessitate that under emergency circumstances the decision for the deviation and reasons thereto must be recorded and approved by the accounting officer. The MEC attached the aforesaid practice note 6 on pages 162-164 of his first statement.

157.34 It is plain to see that the qualification for the deviation must inter alia an emergency and hence it is crucial to have a clear understanding of the term "emergency". "Emergency" in terms of the Oxford Dictionary means a state of affairs that calls for immediate action. The decision to appoint Maziya Construction has been necessitated by the need to progress the construction of the hospital on an urgent basis. A failure to ensure continuation of execution of the works can only result in further costs for the Department and should be prevented.

157.35 In terms of paragraph 3.4 of the practice note a deviation as aforesaid has to be reported to the Treasury and Auditor General only. It further states that if the Treasury and A.G agree that their failure to dispute such report will be deemed as acceptance of the steps the HOD wishes to take. Further that if the Treasurer and Auditor General disagrees that they will take further actions if and when necessary.

157.36 It is therefore not for the MEC or even the Honourable Investigator Harris to decide whether the deviation from standard procurement procedure is justified or not. The report to the Treasurer and Auditor General setting out the department's deviation from standard procurement practice was sent by me timeously, already in 2008, and is attached as aforesaid as Annexure Q.

157.37 It is clear that the MEC was also a recipient of my report. It is therefore dishonest of the MEC not to advise Mr Harris that I did comply with Department procedures. The Treasurer and A.G had sight of my report already in 2008 as aforesaid and have never queried or disputed same.

158. **AD PARAGRAPH 124**

The contents of this paragraph are denied. I submit that the MEC has usurped my authority in the execution of my duties as the Accounting Officer for the Department. A recent illustration of such usurpation of my authority was the MEC's instruction not to defend the application against the Department as indicated in paragraph 1 above.

159. **AD PARAGRAPH 125-126**

The contents hereof are noted.

160. **AD PARAGRAPH 126**

The contents hereof are noted.

161. **AD PARAGRAPH 127**

The contents of this paragraph are denied and the MEC is put to the proof thereof.

162. **AD PARAGRAPH 128**

- 162.1 The contents of this paragraph are denied.
- 162.2 There is substance and merit to the allegations that I have made against the MEC in my email of 18 September 2008 and my founding statement.

163. **AD PARAGRAPH 129.1-129.7**

- 163.1 I deny that I have contravened section 38 of the PFMA. On the contrary, I submit that the MEC has interfered with the powers conferred on me by section 38 of the PFMA.
- 163.2 MNS, Ashira and Mogotsi Attorneys were appointed in accordance with the Department's Supply Chain Management processes.

164. **AD PARAGRAPH 129.8**

The contents of this paragraph are denied and the MEC is put to the proof thereof.

165. **CONCLUSION**

- 165.1 Having read the MEC's response to my statement, I submit that the MEC has not adduced any shred of evidence to support his sweeping, libelous, malicious and unfounded allegations.
- 165.2 On the contrary, the Statement by the MEC is a catalogue of innuendoes, conjecture and downright fabrication.
- 165.3 If the MEC has made these allegations seriously, I fail to understand why he has not laid charges against me as he is duty-bound to do so.
- 165.4 I suspect that the MEC has not done so because he is fully aware that his allegations are nothing but smoke and mirrors designed to divert the Investigator's attention from the serious matters that I have raised.
- 165.5 They are a transparent ruse designed to malign my name in the hope that I will be afraid to expose his brazen attempts to undermine my authority. I have no intention of succumbing to such intimidatory tactics.
- 165.6 His allegations have no basis in fact and are a mere rehash of his earlier scurrilous allegations.

165.6 I am concerned that the MEC has deemed it fit to fabricate so many allegations with not a vestige of some redeeming evidence.

165.6 Though baseless, the venomous and arbitrary nature of the allegations cannot be go unnoticed or unchallenged. I will therefore obtain legal counsel on my rights in this regard.