

## Trans-Caledon Tunnel Authority (TCTA)

WSP3 (LHWP)	ZAG000019993
WSP4 (LHWP)	ZAG000020009
WSP5 (LHWP)	ZAG000020017

### REPORTABLE IRREGULARITY - AMD CENTRAL BASIN O&M CONTRACT

(extract from page 236 of the 2017/18 Annual Report )

#### Background:

Around September 2016, TCTA's management were alerted to potential problems with invoices received from the Service Provider for operations and maintenance (O&M) at the Acid Mine Drainage (AMD) Central Basin plant in Germiston, Gauteng.

On investigation it was discovered that on 28 July 2016 a letter of award had been issued by the Supply Chain Manager appointing the Service Provider to a R243 million (*excluding provisional sums*), three year contract to provide O&M services at the Central Basin plant.

A contract of that value requires the approval of the Board, which had not been obtained in this case. The Supply Chain Manager had thus exceeded delegated authority and the appointment of the Service Provider was irregular. Consequently, Management proposed the cancellation of the contract.

#### In November 2016, TCTA's Board approved the following:

1. the cancellation of the Service Provider's contract;
2. that management enter into negotiations and settle with the Service Provider in respect of services delivered between 1 August 2016 and 31 December 2016;
3. the expenditure on the contract was deemed irregular and as a result the Board ordered a forensic investigation into the circumstances leading to the procuring of the Service Provider's services;
4. that a fresh, open, tender process be initiated to secure a contractor for O&M services at the Central Basin AMD plant; and
5. that the contract with the Service Provider be allowed to continue as an interim measure before finalisation of the appointment of a new O&M service provider. In coming to this decision the Board considered the risks presented by discontinuing operations at the plant:
  - (i) the risk of environmental degradation resulting from rising acid mine water levels, including the contamination of ground water resources; and
  - (ii) the risk of damage to the plant and equipment arising from vandalism if it was to be left unattended and idle for an extended period. The risk also existed that abandonment of the works could necessitate recommencing the entire works, which had a capital cost of over a billion rand;

On 29 May 2017, the Board appointed ENS Forensics (Pty) Ltd ("ENS") to investigate the circumstances under which the O&M services contracts at the AMD Central Basin plant had been awarded to the Service Provider.

ENS's investigation was concluded in October 2017 and their report was adopted by the Board.

**The key findings of the ENS report were, among others:**

- that there was strong evidence of fraud and corruption in the awarding of the contract and in the circumstances surrounding the appointment of the Service Provider; and
- that there was evidence of possible black empowerment fronting or fraud

**The report's key recommendations were, among others:**

- the conduct of the former CEO and Supply Chain Manager be reported to the SAPS for investigation on charges of fraud and/or corruption;
- that the conduct of the Service Provider be reported to the SAPS for investigation for possible black empowerment fronting or fraud, as well as a Directorate of Priority Crime Investigation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act 2004; and
- that the ENS Forensic Report be referred to National Treasury's Specialised Audit Services for further consideration and possible further investigation in conjunction with the SAPS

**The following actions were implemented:**

- a case was opened with the SAPS (case number Lyttelton CAS 29/12/2017) for further investigation and prosecution, on the role of the former CEO and possible fronting by the Service Provider;
- disciplinary actions were taken against the Supply Chain Manager, which resulted in him being released from his duties; and
- a report was made to the Minister of Water and Sanitation, in addition the matter will be referred to National Treasury as recommended

TCTA's external auditors for the 2017/18 financial year, EY, concluded that the matter was a Reportable Irregularity and it has been reported as such on page 236 of the 2018 Annual Report.

A new AMD Central Basin O&M service provider was appointed in March 2018 following a tender process.

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