

Eskom submission to the

Standing Committee on Public Accounts (SCOPA)

For the meeting of 15 October 2020

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# Summary

The report provides information on matters of interest requested by the Standing Committee on Public Accounts (SCOPA) for further engagement with Eskom Holdings SOC Limited.

In order to provide the committee with original reports the report will also include the following five annexures:

Annexure 1A - Report on the investigation of ESKOM’s COO

Annexure 1B - The supplementary report that is part of Annexure 1A

Annexure 2A - Lifestyle Audit Report (Password: **elrfse01**)

Annexure 2B - Lifestyle Audit Report (Password: **elrfse01**)

Annexure 3 - Trengove SC’s Report

It must be noted that the report termed Annexure 1A has been red-acted to protect the names of the whistle blowers and other participants who are not necessarily implicated in the alleged irregularities or wrongdoing. Annexure 3 is the report on accusations against the Group Chief Executive.

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# 1. List of Vetted Senior Executives and Supply Chaim Management Officials

The processing of Eskom Vetting applications for the various departments and categories of personnel was hampered by the pandemic and the declaration of the various lockdown levels. Several vetting applications for EXCO members were processed to completion by State Security Agency (SSA) and are now awaiting the SSA Vetting Board for approval. Albeit that the SSA process remains slow. Eskom management continues to implement vetting and awareness. The following areas are in progress:

* Procurement and Supply Chain Management (PSCM) practitioners – Senior Managers
* Primary Energy Division- Senior Managers
* Generation Division- PSCM and Power Station General Managers
* Transmission Division- Senior Managers and PSCM Managers
* Distribution – Operating Unit General Managers and PSCM Managers
* New executive appointments

Below is the status of Exco member vetting:

Table 1: Exco members vetted as at 31 May 2020

****

# 2. Black and Veatch and Aveng Africa Contracts

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Contract Number** | **Supplier** | **Start Date** | **Expiry Date** | **Service Description** | **Plant Area** | **Currency** | **Current Value** | **Original Value** |
| 4650005743 | 11052257   Black and Veatch  | 2006/03/15 | 2022/06/30 | Engineering & Project Man Services  |  | ZAR | 12 475 037 207.20  | 75 000 000.00 |
| 4650012950 | 11054145   AvengAfrica  | 2011/02/22 | 2020/12/01 | Fixed Charge Items  | Kusile Power Station (GCD) | ZAR  | 1 740 726 436.69  | 1. 1 355.43
 |

# 3. Status update on the investigation conducted on Black & Veatch Contract

On 30 March 2020, Eskom Assurance and Forensic was tasked to conduct a high-level review on the various modifications, Delegation Control Forms (DCF) allocations and contingencies that were executed against Contract 4650005743 for Black & Veatch. The contract was awarded in December 2005 at the initial value of R 75 000 000 (seventy five million rand) as part of the broader Engineering Houses Programme which had an estimated value of R283 million for a duration of five (5) years. Since inception until 2017, the contract value has been mainly increased through Delegation Control Forms which were approved by various Group Executives.

**Summary of the outcomes:**

* In December 2007, the Black and Veatch contract was split into two contracts (off-shore and on-shore) under the same contract number without prior approval from the Board.
* Contract value was increased from R2 473 854 981.00 to R12 180 059 100.00 without necessary committee approval.
* This resulted in unauthorised/irregular expenditure to the value of R9 706 204 119.00.
* Below is the table of delegation of consent forms which constituted the aforementioned irregular expenditure:



* The approval minutes for modifications 2 and 3 could not be provided to Assurance and Forensic for verification.
* The contract value cannot be increased by a delegation of consent form.
* Modification submissions should have been presented to the adjudicating body
* The approval minutes for modifications 2 and 3 could not be provided to Assurance and Forensic for verification.
* The contract value cannot be increased by a delegation of consent form.
* Modification submissions should have been presented to the adjudicating body, which there is no proof that these were submitted to a committee for approval;
* The Board of Directors Tender Committee (BODTC) approved modification no. 1 and 4 without the detailed breakdowns of the modifications submitted to them, for understanding the cost breakdowns submitted to them on the modifications. The Committee was only provided the high level category breakdown. Therefore, A&F was unable to comment on the validity of the modifications.
* Most individuals involved in this transaction are no longer employed by Eskom and it is evident that proper hand-over procedures did not occur, as numerous documents could not be found.
* Further investigation should be conducted to determine if any conflicts of interest were apparent from establishing the contract and to establish the validity of supporting documentation substantiating the modifications and delegation of consent form values.

**Recommendations:**

* The process followed to define the various modification amounts and the substantiation documentation should be further investigated by Forensic.
* Consequence management should be considered for the lack of contract management. It also needs to be considered in terms of the User, Buyer and Approval Committee.
* Management to establish if any over payment took place and if so, consult with Legal for possible recovery process to be followed.
* In the event of individuals not in the employment of Eskom, consider legal avenues such as criminal case or criminal charge.
* Unauthorised/irregular Expenditure to the value of R R9 706 204 119.00 should be condoned and reported:
* Board of Directors Tender Committee should only recommend and approve respectively the modifications after assessing and understanding the detailed cost breakdowns, assessing all pertinent / relevant information to make an informed decision.

# 4. Cost Benefit Analysis of the Take or Pay Contracts

Dealing with large value trades, suppliers and buyers require some form of performance guarantee. This becomes more prevalent when a supplier or buyer of a product invests significant up-front capital to establish its plant or manufacturing facility. It is common commercial practice for high value contracts to have penalty clauses as the means to ensure performance guarantees, and coal contracts are no exception. Generally, funders prescribe minimum contractual production by miners to make funding viable. It would be impractical for Eskom to have certainty of electricity production planning without guaranteed coal supply, especially with no alternative baseload replacement power. The unit cost of production for Open Cycle Gas Turbines at ~R3012/MWh, which cannot replace coal fired baseload one on one, is almost tenfold the R381/MWh blended unit cost of production of coal-fired power stations.

Power stations require certainty of coal volume at a specified rate/tempo and quality to function consistently. The suppliers of coal similarly invest in a mining operation to supply coal to Eskom. Those suppliers also require certainty of offtake in order to meet the buyer’s supply requirements, to run their operations, repay their capital and operating expenses, and earn a shareholder return.

In most procurement deals, suppliers and buyers require a minimum or guaranteed offtake/supply in order to hedge their investments and ensure performance between the respective parties. All of Eskom’s coal supply agreements have some form of performance guarantees. It is unlikely for any supplier or buyer to enter into a high value contract at the back of capital-intensive assets, to enter into a contractual arrangement with no performance guarantees padded in the form or penalties.

The Eskom fixed-price contracts have monthly/quarterly and annual volume targets. In the case of Medupi, Eskom is entitled to levy a failure to supply penalty against Exxaro in the event of failure to meet the set supply targets. Should Eskom not be able to take this coal, the supplier is entitled to a failure to offtake penalty as if the coal was delivered, hence the principle take-or-pay. The terms and conditions of this penalty regime are as per the underlying agreement.

Failure offtake penalties rarely occur in the Witbank area, as Eskom has options to deliver coal to alternative power stations. However, in the Lephalale area where Medupi and Matimba Power Stations operate, any issues that hamper the ability to offtake coal potentially result in a take-or-pay penalty being levied, as there are not many commercially favourable options available to Eskom.

Eskom constructed extra coal stock capacity to accommodate supply above burn while the production ramps up. The additional stockpiles mitigate the take-or-pay penalty; however, they do not completely eliminate the risk. Other production interruptions and plant breakdowns can stop the offtake of coal, e.g. the breakdown of conveyor belts or labour strikes.

The contract entered into with Exxaro Coal (Pty) Ltd in 2008 is a long-term fixed-price contract, linked to an escalation index contract. Due to the delays in the commissioning of Medupi Power Station Eskom became liable for under-offtake penalties as per the provisions of the Coal Supply Agreement.

Had Medupi construction been on schedule, completed on time but Grootegeluk mine construction/expansion delayed, Eskom would have claimed undersupply penalties from Exxaro. The under-supply penalties would have been calculated on the same basis as the under-offtake penalties Eskom has paid to date. It is unfortunate that Eskom is the late party in this case.

The benefits of a performance guarantee in the form of take or penalties are:

* Suppliers can raise significant capital to construct dedicated collieries to meet Eskom long-term coal requirements.
* Certainty of long term coal supply and production planning.
* Predictable electricity supply.
* Guarantee that suppliers will not chase other lucrative markets for better prices, compromising Eskom supply.
* Eskom and miners will not end with stranded high value assets.

Below is an illustration of fixed price penalty calculations for failure to supply by Exxaro and failure to offtake by Eskom:

|  |  |  |
| --- | --- | --- |
|  | **Action**  | **Penalty Calculation** |
| Under-Supply  | Eskom charges the supplier a fixed R/ton based on the prevailing contract price for coal not delivered  | Prevailing unit price (R/J) |
| Under-Offtake  | Supplier charges Eskom a fixed R/ton based on the contract price for coal not delivered | Prevailing unit price (R/GJ) |

* Eskom and Exxaro are both subject to the same quantum of penalties in the event of supply or offtake non-performance.
* Eskom and Exxaro are both subject to the same quantum of penalties in the event of supply or offtake non-performance.
* Exxaro had the advantage of operating which required expansion of the mine pit and construction of additional coal washing plants.
* Generally, the Lephalale coal deposits require washing to meet Medupi coal spec.
* Grootegeluk mine enjoys close proximity to the power station making conveyor construction a compelling proposition.

Below is comparison of a potential take or pay cost avoidance scenarios had Eskom not contracted with Exxaro for coal supply from Grootegeluk mine.

|  |  |  |
| --- | --- | --- |
| **Comparison**  | **Cost to Eskom****(FY13-FY20)** | **Difference** |
| Current Situation: Total actual Medupi cost incurredActual coal costs and penalty paid to date of R9,3Bn  | R25,3bn | N/A |

|  |  |  |
| --- | --- | --- |
| **Comparison**  | **Cost to Eskom****(FY13-FY20)** | **Difference** |
| Scenario 1: Coal from MpumalangaBased average contracted prices for 18.4 CV coal in Mpumalanga (As Received Basis) and current road rates ( no rail to Medupi available) | R37,8bn | R12,6bn |
| Scenario 2: Coal from alternatives in LephalaleBased on mine development concept level prices from three Lephalale reserve owner for 18.4 CV coal (As Received Basis) and current road rates ( no rail to Medupi available) | R26,5bn | R1.2bn |

* Scenario 2 is based on quoted prices from two miners who are currently busy developing their mines. There are no other operating mines in Lephalale that could have alternatively supplied Medupi to date. The most advanced mine development project in Lephalale is to come on stream in 2022.
* Both scenarios 1 and 2 would require additional capital for coal offloading infrastructure, be it rail or road, to adapt Medupi coal receiving capability, similar to Kusile.
* The operating cost related to coal handling at the power station on both scenarios is not included.
* Delivering 14Mt by road to Medupi would be very difficult as witnessed already at Kusile. The country would have incurred additional costs to maintain the roads due to heavy loads.

# 5. Cases handed over to law enforcement agencies and case numbers thereof

As at end of Quarter 1 FY 2020/21, Forensic has in total recommended 80 instances of criminal prosecution. Forensic registered 59 cases with South African Police Service (SAPS) while 21 are in the process of being registered. Four of the registered cases have been closed by the SAPS. Details of the criminal cases are reported in the tables below.

**B1 - Completed criminal cases**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **CriminalCase No** | **Forensic CaseNumber** | **Amount Involved** | **PoliceStation Name** | **Criminal Case Outcome** |
| 92/4/2018 | 69/07/2017 | R 300 390.00 | Lephalale | Provisionally withdrawn from the court roll. |
| 797/01/2019 | 05/01/2018 | R 355 114 289.20 | Witbank | The Prosecuting Authority declined to prosecute the matter, in that there was no prospect of a successful prosecution |
| 183/01/2018 | 25/03/2018 | R 4 272.40 | Volksrust | The former employee was convicted of fraud and sentenced to two years’ imprisonment, which was wholly suspended for five years. |
| 183/01/2018 | 25/03/2018 | R 4 272.40 | Volksrust | The implicated person was not an employee but was also convicted of fraud and sentenced to two years imprisonment, which was wholly suspended for five years. |

Eskom is concerned regarding the outcome of the last case tabled above and is in the process of reviewing its work and options to facilitate successful prosecution.

**B2 - Cases under investigation by law enforcement agencies**

| **Criminal case no.** | **Forensic case no.** | **Amount Involved** | **Police station name** |
| --- | --- | --- | --- |
| 266/11/2019 | 23/05/2017 | R 39 478 485.07 | Sandton |
| 138/4/2018 | 33/10/2017 | R 4 394 672.00 | Dannhauser |
| 102/11/2019 | 40/10/2017 | R 95 000 000.00 | Sandton |
| 233/11/2019 | 20/12/2017 | R 46 800.00 | Sandton -JHBCommercial |
| 03/04/2019 | 17/02/2018 | SAPS to define amount involved. | East Rand Organised Crime |
| 103/11/2019 | 25/02/2018 | R 260 000 000.00 | Sandton |
| 456/5/2018 | 20/03/2018 | R 5 196 991 857.35 | Sandton |
| 114/11/2019 | 27/10/2017 | R 731 064.30 | Sandton |
| 01/04/2018 | 15/01/2018 | R 526 119.41 | Melkbosstrand |
| 507/09/2017 | 20/05/2017 | R 134 000 000.00 | Sandton |
| 59/7/2017 | 19/04/2017 | R 3 251.00 | Lephalale |
| 115/11/2019 | 2018-12221 | R 200 000 000.00 | Sandton |
| 03/04/2019 | 2018-12267 | R 19 700 000.00 | Germiston Organised Crime |
| 152/11/2019 | 2018-12276 | R 160 000.00 | Cleveland |
| 571/11/2019 | 2018-12386 | R 718 694.45 | Brooklyn |
| 103/11/2019 | 2018-12400 | R 52 764 793.80 | Sandton |
| 96/02/2020 | 2018-12423 | R 49 752 013.88 | Sandton |
| 567/11/2019 | 2018-12424 | R 80 876 283.80 | Brooklyn |
| 50/11/2019 | 2018-12451 | R 2 216 713.00 | Hendrina |
| 495/7/2019 | 2018-12522 | R 15 592 500.00 | Witbank |
| 464/11/2018 | 2018-12568 | R 31 074 717.33 | Sandton |
| 452/05/2018 | 2018-12622 | The process of determining the amount involved is in progress | Sandton |
| 453/05/2018 | 2018-12623 | As above | Sandton |
| 454/05/2018 | 2018-12624 | As above | Sandton |
| 455/05/2018 | 2018-12625 | As above | Sandton |
| 456/05/2018 | 2018-12626 | As above | Sandton |
| 94/5/2019 | 2019-12764 | R 4 400 000.00 | Mount Frere |
| 520/11/2019 | 2019-12821 | R 4 119 830.00 | Witbank |
| 108/11/2019 | 2019-12897 | R 17 000 000.00 | Sandton |
| 17/11/2019 | 2019-12938 | R 3 320 200.00 | Ogies |
| 03/04/2019 | 2019-13023 | R 8 800 000.00 | Germiston Organised Crime Unit |
| 40/02/2020 | 2020-13143 | R 51 152 582.97 | Sandton |
| 106/11/2019 | 10/04/2016 | R 15 000 000.00 | Sandton |
| 53/7/2016 | 32/04/2016 | Could not be determined | Ermelo  |
| 147/6/2017 | 13/02/2017 | Fictitious Eskom contract award letters on RFI GEN 3230. This transaction was cancelled after RFI | Sandton |
| 44/04/2017 | 03/03/2017 | R 93 014.34 | Beacon Bay |
| 170/11/2017 | 12/07/2015 | R 1 000 000.00 | ClevelandBranch |
| 23/05/2017 | 27/02/2015 | R 906 000.00 | Kriel |
| 64/02/2020 | 15/03/2016 | R 112 833.96 | Sandton |
| 409/05/2017 | 16/12/2016 | R 318 432.67 | Sandton |
| 55/02/2018 | 38/10/2016 | R 851 000.00 | Hendrina |
| 294/02/2017 | 30/09/2016 | R 190 890.00 | Stellenbosch |
| 58/04/2017 | 21/01/2016 | R 1 818 689.54 | Cleveland |
| 385/10/2015 | 24/07/2015 | R 5 000.00 | BoksburgNorth |
| 15/9/2015 | 27/05/2015 | R1 591 249.47 | Komati |
| 37/10/2016 | 15/05/2015 | R 1 713 674.95  | Kriel |
| 991/3/2017 | 08/05/2015 | R 3 252 344.76 | Witbank |
| 654/11/2019 | 12/02/2015 | No amount involved. Submission of fraudulent document | Witbank |
| 24/08/2015 | 07/12/2014 | R 518 584.00 | Hendrina |
| 330/03/2015 | 16/11/2014 |  R 307 874.80 | Witbank |
| 1485/8/2015 | 25/10/2014 | R 6 914 600.00 | Bloemfontein |
| 215/6/2015 | 13/10/2014 | R 271 585.92 | Bloemfontein |
| 692/7/2014 | 20/05/2014 | Could not be determined | Pinetown Commercial Branch |
| 1216/4/2015 | 19/03/2015 |  R 84 397.49 | Sandton |
| 203/03/2020 | 30/03/2014 | R 83 236.26 | Sandton |

**B3 - Cases being registered with law enforcement agencies**

| **Criminal case no.** | **Forensic case no.** | **Amount Involved** | **Police station name** |
| --- | --- | --- | --- |
| Being Registered | 92/11/2017 | R 774 600.00 | To be confirmed |
| Being Registered | 09/04/2017 | R 3 467 750.04 | To be confirmed |
| Being Registered | 19/01/2018 | R 730 449.28 | To be confirmed |
| Being Registered | 2018-12290 | R 128 801.13 | To be confirmed |
| Being Registered | 2018-12443 | R 25 478 577.53 | Middelburg |
| Being Registered | 2019-12661 | R 800 000.00 | To be confirmed |
| Being Registered | 2019-12891 | R 2 861 093.57 | With Hawks |
| Being Registered | 08/11/2016 | Could not be determined | To be confirmed |
| Being Registered | 20/02/2016 | No amount involved: Theft of Eskom equipment | To be confirmed |
| Being Registered | 49/05/2016 | R 68 446 876.80 | To be confirmed |
| Being Registered | 22/08/2016 | Not quantified | To be confirmed |
| Being Registered | 09/10/2016 | R 2 939 140.50 | To be confirmed |
| Being Registered | 04/11/2016 | R 2 036 032.48 | To be confirmed |
| Being Registered | 05/12/2016 | R 14 700 000.00 | To be confirmed |
| Being Registered | 43/04/2016 | R 2 400 000.00 | To be confirmed |
| Being Registered | 20/06/2015 | Amount to follow from further investigation by SAPS | To be confirmed |
| Being Registered | 39/07/2014 | R433 500.00 | To be confirmed |
| Being Registered | 2018-12292 | R 29 070 442.98 | To be confirmed |
| Being Registered | 2018-12398 | R 45 294 922.14 | To be confirmed |
| Being Registered | 2019-12898 | R 6 053 421.36 | To be confirmed |
| Being Registered | 2020-13142 | R 114 362 778.2 | To be confirmed |

# 6. Report on contracts that were overpaid by R4 billion

The verbal feedback regarding the possible overpayment was stated by the Chief Operating Officer (COO) during the discussions with SCOA during the 14-16 October 2019 visits to Eskom. No formal detailed report has been submitted to DPE or SCOA with regard to contractual overpayments; this being due to the fact that the investigations by the SIU, NPA, Bowman Gilfillan and Eskom into these overpayments to the contractors involved are ongoing and **not complete** at this stage. The details of the validity of these payments and the quantum thereof are being verified.

From the onset, Eskom needs to define clearly what we mean by “overpayment” in these contracts. This refers to contracts that Eskom entered into with these suppliers, whose values the current management team is of the view were inflated above the most realistic prices. By “overpayment” we mean Eskom bound itself into contracts that, in our opinion, paid too much for the services offered. To this end, Eskom has initiated investigations, through the SIU, on these contracts, with a view to amend the contracts in question and to claw back some of the money that we believe was inflated.

The contractors involved in these investigations include:

|  |  |  |
| --- | --- | --- |
|  | Contract | Estimated Overpayment |
| 1 | ABB South Africa (Package 21A) | R1bn |
| 2 | Tenova Mining and Minerals SA (Pty) Ltd (Package 24B, 24C and 24E) | R735m |
| 3 | Tubular Construction Projects (Pty) Ltd (Package 11A &17A) | R1bn |
| 4 | Stefanutti Stocks Basil Read JV (Package 16) and Stefanutti Stocks Izazi JV (Package 28) | R1bn |
| 5 |  Various site service contracts (Not in SIU scope) | R180m |  |

1. ***ABB – Estimated overpayment - >R1billion.***
2. **The circumstances which led to the overpayment**

ABB was appointed using a closed procurement tender strategy. The strategy included three (3) suppliers who had previous experience with the Hitachi Boiler and Alstom Turbine combination. The three (3) suppliers that were qualified and listed by Eskom Engineering were ABB, Siemens and Maul Bilfinger.

All three (3) companies sent information on reference plants and these were visited by Eskom Engineering and a mini Factory Acceptance Test (FAT) was done and witnessed on the product. During this phase Maul Bilfinger did not meet the FAT and withdrew.

During the tender between Siemens and ABB, the ABB price was higher than the price submitted by Siemens, however due to technical price adjustments made to the Siemens tender, ABB emerged as the cheaper option. The adjustment on Siemens was due to the fact that Siemens could not meet the synchronisation date for Kusile Unit 1. This is being tested and a forensic investigation of these adjustments is in progress and not complete. It is suspected that the dates used by Eskom during tender stage were never realistically achievable but this criterion was used to award the contract to ABB.

Once the execution of the works commenced ABB were issued with four (4) major variation orders (VO)) with no substantiation documentation or records. These variation orders include:

* Kusile Unit 1 - Acceleration – R251m – VO was issued in February 2016
* Kusile Unit 1 - Demobilisation Claim- R179m – VO was issued in October 2017
* Kusile Unit 2 - Cabling – R311m – VO was issued in October 2016
* Kusile Unit 2 - Acceleration – R290m – VO was issued on February 2017

These variation orders do not have all the requisite particulars to assess or verify the delays or costs claimed and were grossly inflated.

The SIU first met with representatives of ABB and their legal team on 6 August 2018 at which time the SIU was informed that ABB was conducting an internal investigation following information that came to their attention through the media. On 15 January 2019 the SIU met with representatives of ABB and their legal team to discuss ABB’s findings at that point in time. The SIU is in the process of finalising its own investigation. A number of meetings took place during 2019 and 2020 during which the parties discussed the process for establishing the value of the overpayment made to ABB. Initial engagements with ABB have resulted in ABB verbally offering to pay back approximately R240m. Further discussions are ongoing.

1. **The officials involved**

Numerous employees including the then project director, employer representative and contracts managers are being investigated by the SIU.

1. **The names of the contractors and the nature of contracts**

Contract number 4600056682 with ABB South Africa (Reg No 1965/002429 /07) is for the Control and Instrument (C & I) system for Units 1 - 6 and the balance of plant at Kusile Power Station. Impulse International was the main subcontractor for ABB on Units 1 and 2. Leago EPC (Pty) Ltd was ABB’s industrialisation partner until 2019.

1. **The consequences of these actions**

No consequences or actions have been meted out as yet as the investigation by the SIU and the NPA are incomplete. None of the main role players are currently working for Eskom.

The SIU has briefed counsel to institute proceedings to:

(1) set aside the contract concluded between Eskom and ABB on the basis that it was corruptly procured; and

(2) request an order for just and equitable relief, which will include repayment by ABB of all overpayments made to them by Eskom as a result of the C&I Contract and Variations Orders (“VOs”) thereto.

1. ***Tenova Mining and Minerals SA (Pty) Ltd – estimated overpayment - R735m.***
2. **The circumstances which led to the overpayment**

Tenova Mining and Minerals SA (Pty) Ltd had claims for extension to the Time for Completion due to the delayed access to site and disruptions. In September 2015 the Contractor and the Employer engaged in a series of negotiations and both parties settled at R700m in 2016. Due to cash flow constraints from the Contractor, the Employer confirmed entitlement of R400m on 4 March 2016 while continuing with the assessment of the claim and R300m on 18 March 2016 was later confirmed.

During the approval of a global settlement there were claims that were excluded from the settlement since the events were still on-going and the Contractor was unable to quantify the impact. All these claims were settled at a value of R35m in January 2017.

This settlement agreement does not have all the requisite particulars to assess or verify the delays or costs claimed. On 23 August 2019 the SIU informed Eskom via a letter that they were investigating the Tenova contract for potential overpayment. The SIU further confirmed that on 1 October 2019, evidence in support of criminal charges against the relevant role players was referred to the NPA.

On 3 December 2019 Eskom’s senior officials met with the senior management team of Tenova including Tenova’s external legal representative and Eskom tabled that the global settlement agreement did not follow the correct contractual processes and was inflated. Tenova management stated that they were not aware and indicated that they will start an independent investigation on the matter. On 31 July 2020 Tenova responded that their investigation have found no form of any overpayment.

1. **The officials involved**

The project director, the projects employer representative and the project senior contracts manager at the time were involved with the settlement and negotiations. Two of the then contracts managers resigned with immediate effect when the investigations were initiated.

1. **The names of the contractors and the nature of contracts**

Contract Numbers. 4600011975, 4600012597 and 4600012166 with Tenova Mining and Minerals SA (Pty) Ltd are for the complete design, procurement, delivery to site, erection, cold and hot commissioning of the Terrace Materials Handling Systems for the Kusile Power Station Project.

1. **The consequences of these actions**

Two of the contract managers involved resigned in the face of disciplinary action by Eskom, based on the SIU’s findings. The other two Eskom officials involved resigned prior to the investigation. The SIU’s investigation revealed substantial amounts of gratification paid by Tenova via a “sub-contractor” (to whom R46 242 000.00 was paid by Tenova) to Eskom officials and/or persons/entities connected to them. Tenova also self-reported to South African authorities that it found evidence of payments related to overseas travels of an Eskom employee. The SIU has referred the evidence collected, pointing towards the commission of the crimes of, *inter alia*, money laundering, grand corruption and racketeering by the seven (7) individuals to the NPA for the institution of criminal proceedings.

Eskom has initiated the re-evaluation of the previously approved extension of time with forensic planning experts to ascertain actual entitlement. The findings in this regard will inform the SIU’s civil proceedings.

1. ***Tubular Construction Projects (Pty) Ltd estimated overpayment of R450m and R163m. General Electric (GE) estimated overpayment of R400m.***
2. **The circumstances which led to the overpayment**

The Contractor submitted a value engineering proposal, which when evaluated led to Modification # 1. This modification was approved throughout Eskom governance structures including National Treasury. As part of National Treasury’s approval they requested that an independent audit be conducted. This was duly undertaken by Harvest. However, the items included in the modification remain questionable as to whether they provided Eskom any value and/or if the Contractor was really entitled to the additional monies.

The Tubular Construction Projects (Pty) Ltd contract was also an outcome of a de-scoping exercise concluded through a settlement agreement in February 2017 with Alstom (now General Electric), the main contractor originally appointed for the execution of the air cooled condenser scope of work.

The employer’s representative and contracts manager at the time did not recover the advance payment made to the contractor due to there being a R495m claim being lodged by the contractor. The advance payment would have been offset against this claim if the adjudication went against Eskom. Eskom was successful in defending this claim and the advance payment bond for a value of R163 701 263,00 was encashed in April 2020.

An investigation into the settlements reached and paid to GE in the de-scoping exercise has also been initiated. The amount under investigation is R400m.

Tubular Construction Projects (Pty) Ltd was also awarded a contract (P17A) for the Waste Water Treatment Plant in December 2012 after a de-scoping exercise from the contract originally awarded to Mott McDonald/PDNA. This contract and the circumstances around the de-scoping are also being investigated.

1. **The officials involved**

The project director and project employer’s representative were involved with the negotiations and approval of this modification at that time.

1. **The names of the contractors and the nature of contracts**

Tubular Construction Projects (Pty) Ltd.

1. **The consequences of these actions**

The Eskom staff involved with this investigation have resigned from Eskom. The SIU has referred evidence to support charges against the relevant role players to the NPA, resulting in the arrest of four individuals (including two former Eskom officials) The SIU is considering the institution of civil proceedings and has requested the appointment of experts to assist in the quantification of losses incurred by Eskom.

1. ***Stefanutti Stocks Basil Read (SSBR) - (P16) & Stefanutti Stocks Izazi JV (SSIJV) - (P28) – estimated overpayment of R1bn.***
2. **The circumstances which led to the overpayment**

Stefanutti Stocks Basil Read (SSBR) P16 put in claims for additional preliminaries and general (P & G) due to prolongation and stacking - working in multiple areas at the same time. These claims were not substantiated as required by the contract.

The employer’s representative and contracts manager at the time (2015 to 2018) made interim payments to the contractor without the requisite substantiation. This was done on the basis that they would conclude an overall “settlement agreement”. There was no consistency or verification of the actual P & Gs being paid on a monthly basis. The monthly payments varied between R15m to R50m per month.

No settlement agreement was reached and in early 2018 the new project director stopped the interim payments that were being made. SSBR referred this action (non-payment) to the dispute adjudication board (DAB).

Eskom successfully defended this adjudication and is now in mutually agreed discussions with SSBR and the standing DAB about the process to determine the actual claim entitlement. Progress has recently been made in relation to the delay analysis between the contractor and Eskom experts. The quantum analysis will begin once adequate progress is made to the delay analysis.

Stefanutti Stocks Izazi Joint Venture (SSI-JV) P28 - during the execution of the contract, certain compensation events (CE’s) were agreed and paid without the final measurements being done. The contractor has also submitted various other deemed accepted CEs claiming that the work was done and needs to be paid for at the contractor’s CE values. These disputes are currently in adjudication.

1. **The officials involved**

The project director, project employer representative and contracts manager at the time were involved with the management of these compensation events.

1. **The names of the contractors and the nature of contracts**

Contract No. 4600013202 with Stefanutti Stocks Basil Read Joint Venture (SSBR-JV) for the construction of miscellaneous structures (81 buildings including the unit auxiliary bays) at the Kusile Power Station Project (P16) and

Contract No. 4600054179 with Stefanutti Stocks & Izazi Joint Venture (SSI-JV) for the construction of site finishes (roads, paving and landscaping) at the Kusile Power Station Project.

1. **The consequences of these actions**

The Eskom staff involved in this investigation have resigned from Eskom. The contracts are currently under investigation by the SIU. The SIU has to date referred evidence in support of criminal charges against 11 role players involved in Package 28 to the NPA in June 2020. Progress on the investigations may conclude that additional Eskom staff were involved. Action will be taken as soon as the investigation results become available. The SIU is considering the institution of civil proceedings and has requested the appointment of experts to assist in the quantification of losses incurred by Eskom. The investigation in respect of Package 16 is ongoing.

An expert review and analysis, between the parties started in November 2019 and is being conducted on all payments made to Stefanutti Stocks under Packages 16 and 28 as well as Package 10. The expert reviews are required in order to identify and quantify overpayments.

1. ***General – (> R180m)***

There are numerous other services, corporate social investment and Panel contracts that have been “red flagged” in multiple audits and reviews done on the project. Although these findings do not fall within the ambit of overpayment, these findings have been referred to Eskom Assurance and Forensic, Eskom Legal or possibly the SIU for further investigation.

The project experienced problems in extending contracts to conclude the forensic, delay and quantum investigations. These problems are now mostly resolved and progress is evident.

For the purpose of clarification, it must be noted that once an Eskom employee resigns, he or she is outside Eskom’s scope, and the law enforcement agencies then need to take over the process. Additionally, Eskom is supporting the law enforcement agencies to pursue civil claims against former employees involved in all the contracts mentioned above.

1. ***Current strategies being adopted***

Eskom management’s strategies (supported by other agencies i.e. SIU, NPA and Bowman Gilfillan in respect of contract investigations include:

1. Stopping the ‘bleeding’
2. Preventative control measures implemented, now managed on a daily basis to prevent a reoccurrence;
3. Recovering unlawful payments through legal processes, and
4. The recouping of historical overpayments.