
AFFIDAVIT

I, the undersigned,

HENDRIK ROEDOLF HEYNEKE

do hereby make oath and state:

1. I am duly authorised to depose to this affidavit in my capacity as Portfolio Manager: Transport at the Organisation Undoing Tax Abuse (OUTA).
2. The contents of this affidavit came to my knowledge within the normal course of business and, unless stated otherwise, are in all aspects true and correct.
3. I am an adult male employed as Portfolio Manager: Transport by the Organisation Undoing Tax Abuse ("OUTA") with business address 318 Oak Street, O'Keeffe & Swartz Building, 10th Floor, Ferndale, Randburg, Gauteng.
4. In my capacity as Portfolio Manager, I have in my possession and under my control records, accounts and other documents relevant to the subject matter.
5. By virtue of the foregoing, the facts and allegations deposed to by me fall within my personal knowledge and are to the best of my belief both true and correct, save where otherwise stated or where it so appears from the

context. Where I make legal submissions, I do so on the basis of legal advice.

A. MANDATE & INTRODUCTION

6. OUTA is a proudly South African non-profit civil action organisation, supported and publicly funded by people who are passionate about improving the prosperity of our nation. OUTA was established to reintroduce accountability to government and to challenge the abuse of authority with regards to taxpayers' money in South Africa.
7. OUTA is a non-profit company incorporated under the Companies Act 2008 with non-profit company registration number: 2012/064213/08, and with its head office situated at 318 Oak Avenue, Randburg, Gauteng, South Africa.

B. THE FACTS

8. The Parties

- 8.1. Tahal South Africa Proprietary Limited ("Tahal SA"), a company with limited liability with registration number 2007/026650/07 and which registered place of business was at Suite 41 Vdara building, 2nd Floor, 41 Rivonia Road, Sandhurst Sandton, Gauteng. Tahal SA was deregistered during November 2018 and is currently in liquidation.
- 8.2. David Clive Hirshchowitz, was a major male, with identity document number [REDACTED], acting in his capacity as a director of Tahal SA during the period 2013 to date, and as the sole director of Jet Capital,

whose full and further particulars are unknown to the Complainant. It has been reported that David Hirshchowitz passed away during December 2018.

- 8.3. Dean Hirshchowitz a major male and presumed son of David Hirschowitz, a presumed employee of Tahal SA, and whose full and further particulars are to the Complainant unknown.
- 8.4. Avishay Eyal, a presumed major male, an unknown identity document number who acted in his capacity as a director of Tahal SA during the period 2013 to 2015, and whose is currently listed as Vice President of Tahal Asia as per the Tahal Group website¹. Full and further particulars are to the Complainant unknown.
- 8.5. Neshika Pillay-Naidoo a major female who was acting in her capacity as Chief Executive Officer of Tahal SA during the period 2013 to 2016, currently presumed to be residing at an unknown address in Australia. Full and further particulars are to the Complainant unknown.
- 8.6. Aftec Capital Investments Proprietary Limited ("Aftec"), a company with limited liability and registration number 2012 /215573/07, having its registered place of business at Unit 7 Guild House, 239 Bronkhorst Street, Brooklyn, Pretoria.
- 8.7. Selwyn Michael Nathan, with ID number [REDACTED] who acted as a sole director of Aftec and whose full and further particulars are to the Complainant unknown.

¹ <https://www.tahal.com/about/management/> accessed on 6 May 2019.

- 8.8. Jet Capital Investments Proprietary Limited (“Jet Capital”) a company with limited liability with registration number 2012/215567/07, having its registered place of business at Suite 4 2nd Floor Ivdara Building, 41 Rivonia Road, Sandhurst, Johannesburg.
- 8.9. Jason Ngobeni a major male, who acted in his capacity as the City Manager of the City of Tshwane (CoT) whose full and further particulars are to the Compliant unknown.
- 8.10. Nkhangweleni Siliga a major male, who acted in his capacity as an Executive Director of the City Management and Planning in the CoT whose full and further particulars are to the Compliant unknown.
- 8.11. Ntsako Hobyani a major male, who acted in his official capacity as Director: Development Facilitation for the CoT and member of the Bid Specification and Bid Evaluation Committee whose full and further particulars are to the Complainant unknown.
- 8.12. Zashe Pheeha a major female, who acted in her capacity as a member of the Bid Specification Committee for the CoT whose full and further particulars are to the Complainant unknown.
- 8.13. Pamela Nkgabutie-Rakolle a major female, who acted in her capacity as an official of Supply Chain Management for the CoT and member of Bid Specification Committee whose full and further particulars are to the Complainant unknown.
- 8.14. Elias Ngolele a major male who acted in his capacity as Group Legal for the CoT and member of the Bid Specification Committee whose full and further particulars are to the Complainant unknown.

- 8.15. Makgorometje A. Makgata a major male or female who acted in his/ her capacity as Strategic Executive Director for the CoT whose full and further particulars are to the Complainant unknown.
- 8.16. Siphiwe Masango a major female who acted in her capacity as Director: Spatial Planning and member of the Bid Evaluation Committee whose full and further particulars are to the Complaint unknown.
- 8.17. Moroka Kaotsane a major male who acted in his capacity as Director: Performance Management for the CoT and member of the Bid Evaluation Committee whose full and further particulars are to the Complainant unknown.
- 8.18. Morutse Mphahlele a major male who acted in his capacity as Deputy Director: Contract Compliance for the CoT, whose full and further particulars are to the Complainant unknown.
- 8.19. Lindiwe Kwele a major female who acted in her capacity as Chairperson of the Executive Acquisition Committee for the CoT, whose full and further particulars are to the Complainant unknown.

9. Evidence and Information Obtained

- 9.1. The majority of evidence used in this affidavit was obtained from Labour Court litigation (held in Johannesburg) between Ms. Neshika Pillay (Pillay) and another and Tahal under case number JS190/17.
- 9.2. The abovementioned matter was set down for trial during November 2018 but was halted due to the fact that Tahal SA was placed under

liquidation right before the trial could commence rendering any litigation futile.

9.3. The information on which this affidavit is based, was obtained from the First Applicant and is in the public domain.

9.4. Further evidence was obtained by way of whistle blowers within CoT.

10. **Background**

10.1. On or about 6 April 2016, Pillay sent a letter dated 4 April 2016 to Mr David Hirschowitz (David) titled: “*RE: MYSELF / TAHAL SA (PTY LTD)*”. Said letter forms part of the trial bundle prepared by Pillay and is attached hereto marked “**A**”.

10.2. In her letter, Pillay made certain allegations which could be deemed to be of criminal nature, amount to maladministration and ultimately results in State Capture.

Tender irregularities and corruption in City of Tshwane

10.3. On or about 10 April 2013, a Tender Advertising Request (TAR) was sent to the Executive Director: Supply Chain Management for the City of Tshwane. The Tender Advertising Request is annexed hereto marked as “**B**”.

10.4. Said advertisement listed the tender heading as, “*Request for Proposals for the identification and packaging of catalytic interventions and projects*”

require to fast track the development of east capital to realise the required economic growth.”

10.5. According to the abovementioned TAR, the project cost estimated was valued at the sum of R8 million and was signed by:

- 10.5.1. Makgorometje A. Makgata, Strategic Executive Director of City Management and Planning, on or about 14 October 2014,
- 10.5.2. Nkhangwelani Siliga, Executive Director of City Management and Planning, on or about 14 October 2014,
- 10.5.3. Lindiwe Kwele, the Deputy City Manager, on or about 16 October 2014.

10.6. Further details of said tender could not be obtained as it was not on the CoT’s website. A desktop search reveal that on 27 March 2014 the CoT made a statement regarding:

*“...provision of **new** infrastructure and timely planning for **growth** that is sustainable. ... **Opportunities** for people to **achieve their full potential** are maximised through **their** own **City of Tshwane Rapid Transit (TRT): Spatial Development Policy: services interventions” have been identified of which the following two clusters ...**”² Unfortunately, the link to the article was inaccessible.*

10.7. According to Pillay’s letter, during late 2014 Tahal Consulting Engineers (Tahal Consulting) a subsidiary of Tahal SA, drafted the Terms of

²[PDF]prepared by - Tshwane <http://www.tshwane.gov.za/sites/Departments/City-Planning-and-Development/RSDf%2020171/Region%205%20RSDf%20Doc%202017.pdf> attempted access on 26 April 2019.

Reference in respect of 5 feasibility studies (the Tshwane Project) instead of the CoT.

- 10.8. In support of this, Pillay included an e-mail dated 28 August 2014, addressed from one Yerushalmi Shlomo, using e-mail address [REDACTED], to [REDACTED]. Attached to the e-mail correspondence were two documents titled “*TOR – August 27 – MG.[3].docx*” and “*Terms of Reference 112[1].docx*” respectively.
- 10.9. On the face of it, the documents both purport to be a “*Request for Proposals (RFP)*” in respect of “... *the Identification and Packaging of Catalytic Interventions and projects required to fast track the development of Tshwane New City in the East and to realize its economic growth potential*”. Said e-mail and attachments are attached hereto and marked “**C**”, “**C1**” and “**C2**” respectively.
- 10.10. According to the information sheets included in the attachment by Pillay, one Nkhangweleni Siliga was the author of the documents and it was purportedly created on 27 and 28 August 2014 respectively.
- 10.11. On or about 18 November 2014, the City Manager, Jason Ngobeni, sent a Memorandum appointing certain officials to the Bid Specification Committee (“BSC”) for the abovementioned tender, now designated CPD 03-2014-15. These officials included:
- 10.11.1. Mr Nkhangweleni Siliga (Chairperson),
 - 10.11.2. Mr Ntsako Hobyani,
 - 10.11.3. Ms Zashe Pheeh,
 - 10.11.4. Ms Pamela Nkgabutie-Rakolle (Supply Chain Management),

10.11.5. Mr Elias Ngolele (Group Legal).

10.12. The Memorandum also described the responsibilities of the BSC in terms of Regulation 7 of the Supply Chain Management Regulations issued in terms of the Municipal Finance Management Act, 2003.

10.13. The abovementioned Memorandum is annexed hereto marked as “**D**”.

10.14. On or about 28 January 2015, the BSC held a meeting, chaired by Mr Siliga, in which the members of the BSC signed the declaration of interest forms and resolved to approve the tender for advertisement with minor amendments and a re-worked evaluation criteria.

10.15. However, certain individuals who were not listed as BSC members also signed declarations of interest for the same tender. These officials included:

10.15.1. Zondani Alby [surname illegible], on or about 28 January 2015,

10.15.2. Madimetja Rapolai, on or about 28 January 2015,

10.15.3. Sphiwe Masango, on or about 29 January 2015,

10.15.4. “Catherine”, on or about 1 December 2014,

10.15.5. John Nicolaus du Preez, on or about 1 December 2014.

10.16. Furthermore, Zondani Alby and Madimentja Rapolai signed the attendance register for the aforementioned meeting. Both of these individuals signed as members of the SCM Department.

10.17. The aforementioned attendance register, declarations of interest and BSC meeting resolution are annexed hereto as a bundle marked “**E**”.

10.18. On or about 28 January 2015, Makgorometje A. Makgata sent a letter to Shareeza Singh, the Executive Director of SCM, requesting a “short advertisement period” for tender CPD 03-2014-15. He lists his reasons for doing so as:

- 10.18.1. The subject tender is part of the 18 months programme of the Mayor’s term of office,
- 10.18.2. It is one of the unnegotiable item / game changers,
- 10.18.3. The delivery of the project must happen before the end of the current political leadership’s term of office,
- 10.18.4. There was a delay from Supply Chain in terms of putting the item into the agenda.

10.19. Both the delay and the shorter advertisement period constitute a deviation from procurement policy, which is only justified in certain circumstances and after a request from National Treasury. None of said circumstances applied and we know of no request to National Treasury.

10.20. It is unknown who authorised Mr Makgata to write this letter or in terms of what resolution it was written. It must also be noted that Mr Makgata co-signed the above-mentioned Tender Advertising Request.

10.21. The aforementioned letter is annexed hereto and marked as “**F**”.

10.22. On or about 6 February 2015, the Tender Advertisement was published in the government tender bulletin. The aforementioned advertisement is annexed hereto and marked as “**G**”

10.23. On or about 9 February 2015, Eyal Avishay, Neshika Pillay-Naidoo and David Hirschowitz by way of an e-mail discussion indicated that they are “*extremely confident in the Tshwane project*”, the “*other bigger competitor in the Tshwane region in Bigen Africa. However, given the tight timeframe and [their] involvement thus far, their possible contention is negligible*” and that “*the tight time frame is more likely to work in [their] favour*”. Further, David Hirschowitz indicated that the “*Tshwane feasibility was pre arranged and [they] are confident...*” and that they will “*...need to somehow find a way contractually of doing both feasibility and implementation without breaking the legal PFMA act.*” Said e-mail discussion is attached hereto and marked annexure “**H**”.

10.24. On or about 2 April 2015, the Bid Evaluation Committee (“BEC”) held a meeting to evaluate tender CPD 03-2014-15. The members of the BEC were identified as:

- 10.24.1. Mr Nkhangwelenui Siliga (chairperson), Executive Director: City Development,
- 10.24.2. Mr Ntsako Hobyani, Director: Development Facilitation,
- 10.24.3. Ms Sipiwe Masango, Director: Spatial Planning,
- 10.24.4. Mr Moroka Kaotsane, Director: Performance Management,
- 10.24.5. Mr Morutse Mphahlele, Deputy Director: Contract Compliance.

10.25. Of the above-mentioned members, Mr Siliga, Mr Hobyan, Mr Kaotsane and Mr Mphahlele were present for the meeting.

10.26. During the meeting the BEC resolved:

- 10.26.1. To disqualify two tenderers based on their failure to complete all the necessary required information / documents as per SCM requirements,
- 10.26.2. That Tahal SA met all the technical criteria and scored the maximum points, and
- 10.26.3. To recommend Tahal SA for the tender.

10.27. The above-mentioned BEC meeting resolution is annexed hereto and marked as “I”.

10.28. Subsequent to the abovementioned BEC resolution, the Bid Adjudication Committee (“BAC”) made a submission to the Executive Acquisition Committee (“EAC”) in which the recommend that Tahal SA be awarded the tender.

10.29. In the submission, the cost of the tender is estimated at R8 million per annum, with the available budget estimated at the same amount. Further, the quoted price for the 3-year duration of the contract is recorded at R30 664 348 (VAT exclusive).

10.30. It must be noted that the following documents are recorded as annexures to the submission:

- 10.30.1. Annexure A – Advertisement of tender,
- 10.30.2. Annexure B – Tender evaluation,
- 10.30.3. Annexure C – Admin disqualification,
- 10.30.4. Annexure D – Scoring,
- 10.30.5. Annexure E – Company details,
- 10.30.6. Annexure F – CAATS report,

10.30.7. Annexure G – BEC signed minutes.

10.31. Of the above-mentioned annexures, only annexures C and E were in our possession and are annexed to the submission.

10.32. The BAC submission is annexed hereto and marked as “J”

10.33. On or about 15 April 2015, Mr. Bongani A Mntambo, the Acting Executive Director of SCM, sent a letter to the Bid Adjudication Committee (“BAC”), in which he detailed the following concerns raised by the SCM:

10.33.1. The two-stage bid process, consisting firstly of evaluating the conceptual technical proposals and secondly evaluating the technical proposals together with prices, was not followed.

10.33.2. The evaluation criteria were not appropriate, whereby it was noted that the second evaluation criteria relating to Project Management Capability and referring to the project management methodology the team would apply was measured and scored in terms of the number of years of experience. It is unclear as to how the methodology can be measured in such a way.

10.33.3. There was no correlation between the pricing schedule used in the tender document and the requirements of the proposal. This could have made it impractical for the bidders to price.

10.33.4. There was a lack of information in the tender document as the document was silent on the evaluation stages that were to be used. This created confusion amongst the bidders,

who did not quote or quoted incorrectly as the 90/10 preference point system was not indicated to form part of the evaluation criteria. Further, the general conditions of the contracts were not considered and included as required by Regulation 21 of the Municipal Supply Chain Management Regulations of the MFMA.

10.33.5. Mr Mntambo concluded that the tender document caused confusion and was incomplete, the evaluation criteria was inappropriate, and the two-stage bidding process should have been followed.

10.34. This meant the bidders could have become confused and might have been disadvantaged during the bidding process. Consequently, the bidding process was not fair, transparent, competitive and cost effective.

10.35. The aforementioned letter is annexed hereto and marked as “**K**”.

10.36. On or about 16 April 2015, the Executive Acquisition Committee (“EAC”), resolved to appoint Tahal SA for tender CPD 03-2014-15 at a variable tender amount of R30 664 348.00 (excluding VAT). The resolution was approved by:

10.36.1. Lindiwe Kwele, Chairperson of the EAC, on or 22 April 2015,

10.36.2. Jason Ngoben, the City Manager, on or about 28 April 2015.

10.37. The above-mentioned EAC resolution is annexed and marked as “**L**”.

10.38. Subsequent to this resolution, the EAC made a submission in which it recommended that Tahal SA be awarded the tender. This submission included the scoring of Tahal SA's tender by the BEC in which Tahal SA received a perfect score.

10.39. It must be noted that the following documents are recorded as annexures to the submission:

- 10.39.1. Annexure A – Advertisement of tender,
- 10.39.2. Annexure B – Tender evaluation,
- 10.39.3. Annexure C – Admin disqualification,
- 10.39.4. Annexure D – Scoring,
- 10.39.5. Annexure E – Company details,
- 10.39.6. Annexure F – CAATS report,
- 10.39.7. Annexure G – BEC signed minutes.

10.40. The above-mentioned submission is annexed hereto and marked as “**M**”. Unfortunately, none of the aforementioned documents are annexed to the submission in our possession.

10.41. Pillay stated in her letter that early in 2015 the Tshwane Project was put out on tender. Tahal submitted a tender bid which allegedly included 20% broker fees, and which was envisaged to be paid to Aftec Solutions (Aftec). The tender was allegedly awarded to Tahal during mid-2015.

10.42. It is alleged that Aftec was a “*recently established*” purpose-built vehicle and associate of Tahal and Pillay was instructed to pay the “broker fee” over the Aftec.

- 10.43. It is further alleged that Tahal appointed two contractors, Auswell Mashaba Consulting Engineers (AMCE) and SML Engineers, as subcontractors to execute the Tshwane tender that was awarded to them possibly resulting in Tahal subcontracting their “*core competency*” to unknown companies. The reasons for the subcontracting was unknown as the Municipality would’ve had to award the tender to a bidder who possessed the required skill to execute the tender.
- 10.44. Included in Pillay’s Labour Court Discovery bundle was several transcribed meetings purportedly between herself and other Tahal employees.
- 10.45. In one particular transcribed meeting titled “2016/03/18” and seemingly between, Pillay, Dean Hirshchowitz and “Manuel”, one of the topics discussed was the CoT tender in relation to a City of Ekurhuleni (CoE) tender.
- 10.46. Dean explained that “...*like with Siliga [he] it was a gift*”. From the discussion it would seem that Dean had given Siliga a gift in exchange for something else. It is believed that the “Siliga” referred to is the same Mr Nkhangweleni Siliga who was the Executive Director City Development for the CoT for the period September 2012 to June 2017, whom authored the abovementioned Terms of References and is currently the Industrial Investment Executive for the CoE³.
- 10.47. Dean further indicated that “...*Selwyn looks after them...*” and that “*A lot of the things, we’ll get from Ekurhuleni, mustn’t be used for Ekurhuleni people [...], again Tshwane. Ekurhuleni’s not as important as Tshwane.*”

³ Employment information obtained from Mr Siliga’s LinkedIn profile at <https://www.linkedin.com/in/nkhangweleni-siliga-pr-pln-9b995320/?originalSubdomain=za> accessed on 18 February 2019.

It's helping us to get through the next couple of months or the next couple of phases."⁴ Said transcript is attached hereto and marked annexure "N".

10.48. On or about 23 July 2015, while the Service Level Agreement negotiations were ongoing between Tahal and the CoT, there was a discussion between Avishay Eyal (Eyal), Pillay and Dean in which the contract term in relation to the value of the tender was discussed.

10.49. Eyal expressed concern regarding the "3 year or 12 months" time frame as it would bind Tahal for a period of 3 years in which Tahal would have to commit resources. In response Pillay and Dean Hirschowitz advised that the project would be completed in less than the 12 months required and the reason why the 3-year period was included was to justify the tender amount. Said e-mail discussion is attached hereto and marked "O".

10.50. According to the letter Pillay alleges that there was collusion and that the subcontractors had to be appointed if Tahal was to receive the implementation tender on another tender (seemingly the Tshwane Rietvlei and Roodeplaat Water Projects, further details of this tender is unknown).

10.51. Pillay further alleges that the Tshwane tender was extended by 10.5% on the condition that 80% of the extension be diverted back to CoT officials.

10.52. On or about 3 August 2015, Neshika Pillay-Naidoo sent a letter of award to Selwyn Michael Nathan, the sole director of Aftec Capital Investments Pty Ltd ("Aftec"), for consulting services for Tahal SA in regard to tender

⁴ At page 6 of the transcript attached hereto and marked annexure "D".

CPD 03-14-15. In terms of the letter, Aftec would receive 20% of the project value, amounting to a sum of R6 128 870.00.

10.53. It must be noted that according to the CIPC certificate, Selwyn Nathan was previously a director of Tahal SA. The CIPC certificate in respect of Aftec is annexed hereto and marked “**P**”.

10.54. The award was subject to the signature of an SLA between Tahal SA and the CoT and the payment was to be made according to the milestone program agreed to by the City of Tshwane. Pillay-Naidoo further stated: *“Payments will be made 7(seven) days of payment from the City of Tshwane.”*

10.55. The aforementioned letter of award is annexed hereto and marked “**Q**”.

10.56. According the financial statements of Tahal SA, it received the following amounts from the City of Tshwane:

- 10.56.1. R2 542 704.40, on or about 30 November 2015,
- 10.56.2. R3 372 975.26, on or about 31 December 2015,
- 10.56.3. R830 270.86, on or about 15 February 2016,
- 10.56.4. R830 270.86, on or about 1 March 2016,
- 10.56.5. R3 082 380.67, on or about 31 March 2016.

10.57. The total payment that Tahal SA received from Tshwane thus amounted to R10 658 602.05.

10.58. Further, Tahal SA’s financials reveal that Aftec received payment from Tahal SA in the following amounts:

- 10.58.1. R446 088.49, on or about 1 December 2015,
- 10.58.2. R674 595.06, on or about 4 January 2016,
- 10.58.3. R166 054.00, on or about 17 February 2016,
- 10.58.4. R166 054.00, on or about 1 March 2016,
- 10.58.5. R308 238.07, on or about 2 March 2016,
- 10.58.6. R308 238.07, on or about 2 March 2016.

10.59. From the above, it seems that Tahal SA made their payments to Aftec soon after they received payment from the City of Tshwane.

10.60. The total funds paid to Aftec by Tahal SA during the 2015 to 2016 period amounted to R2 069 267.90, with an amount of R4 059 602.00 still owed in terms of the consulting agreement.

10.61. Tahal SA's bank statements detailing the above are annexed hereto and marked "**R**".

10.62. OUTA also examined Aftec's bank statements, in which it is evident that:

- 10.62.1. Of the R2 069 267.90 paid to Aftec by Tahal SA, Aftec paid a company called Jet Capital a sum of R994 274.18,
- 10.62.2. This amounted to 48.05% of the money received from Tahal SA,
- 10.62.3. Jet Capital then paid a sum amounting to R30 000.00, back to Aftec Capital.
- 10.62.4. Payments made from Aftec to Jet Capital was supported by an agreement between Dean Hirschowitz and Selvyn Nathan on 24 August 2015 in terms of which Aftec would pay 45% of fees received from Tahal SA in respect of the

Tshwane tender. Said agreement is attached and marked “**S**”.

10.63. The above-mentioned payments and the lack of activity and transactions in Aftec’s account indicate that the account was created solely to receive payments from Tahal SA and to pay Jet Capital.

10.64. It must further be noted that David Hirschowitz is the sole director of Jet Capital.

10.65. Aftec’s bank statements and Jet Capital’s CIPC certificate are annexed hereto and marked “**T**” and “**U**”, respectively.

10.66. OUTA also examined Jet Capital’s bank statements, in which it is evident that a series of transactions occurred as reflected on 5 statements over the period 19 January 2016 to 13 February 2016.

10.67. In the first statement there were 5 payments made as well as 1 instance funds received including:

- 10.67.1. SP Hirschowitz – a payment of R43 967,69,
- 10.67.2. DC Hirschowitz – a payment of R20 000,00,
- 10.67.3. Edward Nathan Sonne – a payment of R30 000,00,
- 10.67.4. Stepney Investments – a payment of R25 000,00,
- 10.67.5. DC Hirschowitz – a payment of R120 000,00,
- 10.67.6. SM Nathan – a payment of R30 000,00,
- 10.67.7. Selwyn Nathan received funds amounting to of R238 843,39.

10.68. In the second statement one payment was made to DC Hirschowitz, amounting to R77 392,31.

10.69. In the third statement, 23 payments were made, including:

- 10.69.1. DC Hirschowitz – R208 266,10,
- 10.69.2. DC Hirschowitz – R376 851,02,
- 10.69.3. D Dunn – R10 000,00,
- 10.69.4. Lejwe La Metsi – R180 353,77,
- 10.69.5. Lejwe Game SB – R149 750,00,
- 10.69.6. DC Hirschowitz – R82 844,54,
- 10.69.7. SM Nathan – R60 000,00,
- 10.69.8. D Dunn – R10 000,00,
- 10.69.9. DC Hirschowitz – R240 000,00,
- 10.69.10. D Dunn – R4 000,00,
- 10.69.11. DC Hirschowitz – R120 000,00,
- 10.69.12. SM Nathan – R30 000,00,
- 10.69.13. DC Hirschowitz – R15 000,00,
- 10.69.14. B Schachat – R5 000,00,
- 10.69.15. SM Nathan – R800 104,57,
- 10.69.16. DC Hirschowitz – R370 000,00,
- 10.69.17. DC Hirschowitz – R40 000,00,
- 10.69.18. DC Hirschowitz – R60 000,00,
- 10.69.19. Lejwe La Metsi – R44 099,90,
- 10.69.20. DC Hirschowitz – R50 000,00,
- 10.69.21. DC Hirschowitz – R96 000,00,
- 10.69.22. Lejwe Game Farm – R44 099,90,
- 10.69.23. DC Hirschowitz – R150 000,00.

10.70. The aforementioned financials are annexed hereto and marked “V”.

10.71. It must be noted that Letjwe La Metsi Game Lodge is owned by David Hirshowitz and it is suspected that several CoT officials have been hosted and entertained there in order to secure tenders.

10.72. A further tender was awarded to Tahal, during the beginning of 2016, by the Tshwane Economic Development Agency (TEDA). The TEDA allegedly contracted with the CSIR to complete a pre-feasibility and feasibility study for an Agro-Processing Hub. TEDA allegedly awarded the implementation of the Agro-Processing Hub to Tahal to the tune of R400 million. Again, Aftec was used as a vehicle in terms of which 20% of value of the tender was diverted back to CoT municipal officials.

10.73. Pillay drafted a diagram, included in her Labour Court Discovery bundle, to better explain the relationship between Tahal, Selwyn Nathan, David Hirschowitz, Freddy Greaver, CoT in respect of the tender awarded. Said diagram is attached here to and marked “W”.

Tender irregularities and corruption in Polokwane Municipality

10.74. A similar occurrence allegedly transpired with a tender issued to Tahal by Polokwane Municipality in terms of which a 13% “broker fee” was included in the tender submitted and the tender terms of reference was again drafted by Tahal and/ or Pillay on instruction of Dean.

10.75. In support of this allegation Pillay included several documents in her Labour Court Discovery Bundle.

- 10.76. On 19 January 2014 Polokwane Municipality advertised a Request for Proposals (RFP) in respect of tender notice number: PPP5/2014, *“Funding and Implementation of Capital Projects Proposals”* in the Rapport/ City Press. Said advertisement is attached and marked **“X”**.
- 10.77. On or about 5 August 2014 the Polokwane Municipality addressed a letter to Tahal advising that their proposal submitted in terms of the abovementioned was considered and that they would have to submit a letter of commitment and a subsequent financial model for the implementation of the project. Said correspondence is attached and marked Annexure **“Y”**.
- 10.78. On or about 19 December 2015 Dean sent an e-mail to *“Mike/ Yaron”*, presumed Tahal-colleagues, in which he advised the recipients of two projects in Polokwane - the Waste Water Treatment plant and Water Treatment Plant. He further stated that: *“...the ball is our [Tahal’s] court, please find attached the draft TOR, its given to us to add as we deem fit... include everything beneficial to Tahal South Africa... This needs to be completed by tomorrow evening. This will then be published this week or the following.... You will see the attached also the Draft Feasibilities – This is HIGHLY confidential...”*. The e-mail was forwarded to Pillay on 20 December 2015 and was accompanied by an attachment titled *“Terms.docx”*. Said e-mail and attachment is attached hereto and marked annexure **“Z”**.
- 10.79. According to the document attached to the e-mail, referred to above, the Polokwane Municipality had issued a tender and published an RFP during 2014. However, before the process could be finalised and the tender awarded, the Department of CoGTA advised that the Municipality

should rather follow the National Treasury Guideline as the majority of the transactions were Public Private Partnership by nature.

10.80. According to an undated Municipal document issued under the same Bid Under (PPP5/2014) and titled "*IMPLEMENTATION OF WASTE WATER MANAGEMENT PROJECTS IN POLOKWANE MUNICIPALITY FOR A PERIOD OF TWENTY YEARS (20) IN OFF BALANCE SHEET BASIS*", Tahal and two other companies were invited as "*pre-qualified service providers to implement waste and water management projects*". Bids had to be submitted by 15 February 2016. The relevant document is attached hereto and marked annexure "**AA**".

10.81. On or about 9 March 2016 Pillay and David had e-mail correspondence in which Pillay alluded to the fact that Tahal's submission to Polokwane may have been formulated to accommodate certain irregularities in order for Tahal to obtain financing outside the scope of the tender.

10.82. David further reaffirmed his confidence in the fact that Tahal would be awarded the tender and that there was "*extra Agricultural 'Potential'*" funded outside the scope of the funding received from the Bank and which the bank would not allow. Said e-mail is attached hereto and marked annexure "**BB**".

10.83. On or about 30 March 2016 Pillay, on behalf of Tahal, directed correspondence to the Municipal Manger of Polokwane, Ms F Maboya. She confirmed Tahal's provisional appointment for the implementation of the tender and certain points of discussion and negotiation brought up at an earlier meeting. Said correspondence is attached hereto and marked annexure "**CC**".

10.84. On or about 31 March 2016, one S de Klerk from Binnington Chiba Consultants (Pty) Ltd addressed correspondence to the Acting Chief Financial Officer of the City of Polokwane, Mr Joel Makgata, confirming that they act on behalf of Tahal and that Tahal accepts the awarding of contract no. PPP5/2015 for the implementation of Polokwane Municipality Wastewater Treatment Works, Dalmada Wastewater Treatment Plant and Other Water Sources on an Off-balance Sheet Efficiency and Risk Basis in Polokwane. Said correspondence is attached hereto and marked annexure “DD”.

C. **CONCLUSION**

10.85. In conclusion, we hold that the above-mentioned conduct on the part of the government officials together with the conduct on the part of Tahal employees and directors constitute, amongst others:

- 10.85.1. Fraud,
- 10.85.2. Corruption,
- 10.85.3. Bribery,
- 10.85.4. Maladministration in connection with the affairs of local government,
- 10.85.5. Abuse or unjustifiable exercise of power by persons performing a public function,
- 10.85.6. Improper or unlawful enrichment and the receipt of an improper advantage by a person as a result of an act by the public administration, connected with the affairs of local government, and

10.85.7. An act by persons performing a public function which results in unlawful and improper prejudice to the City of Tshwane.

10.86. In the instance we request the SAPS and relevant administrative bodies to institute the necessary investigations and take prosecutorial and/or other steps to hold all perpetrators and conspirators accountable.

SIGNED AT RANDBURG ON THIS ____th DAY OF _____2019.

DEPONENT

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT SHE/HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT WHICH WAS SIGNED AND SWORN TO BEFORE ME AT RANDBURG ON THIS 19TH DAY OF SEPTEMBER 2017, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO. R1258 OF 21 July 1972, AS AMENDED, AND GOVERNMENT NOTICE NO. R1648 OF 19 AUGUST 1977, AS AMENDED, HAVING BEEN COMPLIED WITH.

COMMISSIONER OF OATHS

FULL NAME:

POSITION HELD:

BUSINESS ADDRESS: