



MINISTER
TRADE, INDUSTRY AND COMPETITION
REPUBLIC OF SOUTH AFRICA

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Mr Mzwandile Masina, MP

Chairperson: Portfolio Committee on Trade, Industry and Competition

Parliament of the Republic of South Africa

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(by e-mail: Mr Andre Hermans, ahermans@parliament.gov.za)

Dear Honourable Chairperson,

**ALLEGATIONS ABOUT CONFLICT OF INTEREST AROUND THE NATIONAL LOTTERY
BIDDING PROCESS AND THE INDEPENDENCE OF BOARD MEMBERS**

Your letter received on 18 September refers.

- 1. What is the process for the consideration of the issuing of the fourth National Lottery Licence, particularly the call for bids, evaluation, adjudication, recommendation and final issue of the licence?*

I am advised by the NLC that the licensing process is governed by Sections 10(a), 13(1), 13(2)(a) and 14(3) of the Lotteries Act, 1997. The process commenced with the preparation of a Request for Proposal Document (RFP Document) by the Board which was approved by my predecessor for publication in August 2023. The RFP document invites prospective applicants to submit an application that meets the requirements of the RFP Document. The RFP Document sets out the requirements for the application process, the criteria for evaluating the license applications by an evaluation committee of technical experts and adjudication by the Board culminating in a recommendation to the Minister who appoints a licensee after consultation with the Board. The Evaluation Committee of experts was sourced via an independent assessment process and the Board made the appointments. The Board is responsible for the RFP licensing process.

2. *Whether the Minister is aware of any concerns surrounding the fairness and transparency in the current lottery licence process?*

Except for the letter received from the Portfolio Committee and another one received from United Civil Society in Action (USCA), I am not aware of concerns surrounding the fairness and transparency in the current lottery licence process..

3. *What measures have been implemented to ensure that the bid evaluation and adjudication process is fair given perceived conflict of interest?*

I have been advised by the NLC that the Board and everyone involved in the licensing application process operates in terms of an approved Conflict of Interest Framework, which requires Board members, the Commissioner, Executives of the NLC involved in the process, members of the evaluation committee as well as all advisors to declare their interest as well as confirm that there is no conflict of interest. All these participants are also required to declare whether they have any relationship with the applicants, the companies involved either as shareholders, service providers to the applicants as well as all the executives and key individuals related to the applicants. These declarations are subjected to an independent review by attorneys to determine whether any possible conflict of interest exists.

4. *Whether he is aware of the identities of the experts that were members of the bid evaluation committee and their appointment process?*

I am not aware of the identities of the experts that are members of the bid evaluation committee.

5. *To what extent are/were board members that have previous involvement with the NLC's lottery licensing processes been directly involved in the appointment of the evaluation committee and/or in the adjudication process?*

I have been advised by the NLC that the Commissioner together with an NLC executive and an industry expert interviewed the potential members of the evaluation committee and the Board approved the appointments. With regards to the 2nd part of the question I have been advised by the NLC that the Board constitutes itself as the adjudication committee once the evaluation committee hands it the report.

6. *Whether any of the bid evaluation committee members have any current/prior employment history and/or financial interest in any of the bidding companies or in their sub-contractors or related companies?*

I have been advised by the NLC that no member of the evaluation committee has any current nor prior employment history; nor financial interest in any of the applicants, their subcontractors or related companies.

7. *Whether Malatji and Company were involved in the previous process, its role and the fees associated with this, as well as its role in the current process, including its fees?*

I have been advised by the NLC that in their previous capacity as directors of Gildenhuis Malatji Attorneys, Tebogo Malatji and Luise von Durkheim, acted as legal advisors to the then Board during the third licensing process as well as in the subsequent successful opposition of the court legal challenge of my predecessor's decision to award the third licence. I was further advised by the NLC that Tebogo Malatji and Luise von Durkheim are now directors of Malatji and Co which is one of the firms on the NLC's panel of attorneys. They have assisted the Board in the drafting of the RFP document and provide the Board with support on legal matters that arise relating to the licensing process. In relation to the fees paid to Malatji and Co, the NLC confirms that the firm has rendered services on the fourth licence process from February 2020. Payments to the firm also include disbursements for various experts who were required to support the RFP drafting process. The disbursements accounts for approximately a third of Malatji and Co's invoices. The fees and disbursements paid to the firm over the four years are as follows:

2020: R 5 812 705,62
2021: R 4 508 088,39
2022: R 2 652 149,91
2023: R 3 907 567,95
2024: R 8 085 370,67

8. *Whether he is aware of any board member that may have provided advice to any bidding companies?*

Lefapha la Dikgwebisano, Diintaseteri le Tiholisano • Lefapha la Kgwebo Indasteri le Phadišhano • uMnyango wezoHwebo neZimboni kanye noMncintiswano • Muhasho wa zwa Mbambadzo, Makwevho na Mułatšisano • Die departement van handel, nywerheid en mededinging • Kgoro ya Kgwebo Indasteri le Kgaisano • Ndzawulo ya V uxavisi, Mabindzu na Mphikizano • Litiko leT ekuhweba tiMboni neKuncintiswano • ISebe lezoRhwebo noShishino kunye noKhuphiswano • UmNyango wezokuRhwebelana, amaBubulo nama Phaliswano

I have been advised by the NLC that from the declarations submitted by Board members, none of them have provided any advice to the applicants/bidding companies.

9. *Whether the Minister is aware of the potential conflict of interest in relation to Ms L Bethlehem, who is a member of the evaluation committee, as she is a former employee of a shortlisted bidding firm, Hosken Consolidated Investment?*

I have been advised by the NLC that Ms Bethlehem commenced employment with Genesis on 01 July 2024. Her appointment was made after Genesis' involvement in the 4th license application process had ended. I am further advised that she is not a member of the evaluation committee and was not involved in any work performed by Genesis in relation to the 4th License application process. Anthony Felet and Jean van Tonder of Genesis provided financial analysis support work to the evaluation committee which ended in June 2024. They are also not members of the evaluation committee.

10. *In addition, the Committee had general governance concerns regarding the appointment of non-executive board members that have played senior management roles in the Department and at its entities. The Committee is concerned that their previous roles, particularly in relation to NLC activities, may affect their objectivity in overseeing the NLC.*

I have been advised by the NLC Board that the appointment of Ms Scholtz, former DDG of the Department, as Commissioner of the NLC followed rigorous and due processes which included the advertisement of the post, headhunting, interviews, competency tests etc. I believe the appointment of former senior executives, namely the former Director-General of the Department and the former Competition Commissioner and current Chief Financial Officer by my predecessor were also in recognition of their experience and expertise in areas related to the work of the NLC. The appointments were also taken through Cabinet processes and endorsed by Cabinet.

11. *Whether the Minister is concerned by the composition of the board given the number of former senior managers from the Department and/or its entities, and whether this would be considered a conflict of interest?*

I believe my predecessor applied his mind to the appointment of the NLC Board given the context of the allegations of maladministration, the SIU investigation and the urgent need to re-establish the credibility of the entity in the public eye.

I also believe that the entity has mechanisms in place to address conflict of interest.

Yours sincerely,



MR PARKS TAU, MP
MINISTER OF TRADE, INDUSTRY AND COMPETITION
Date:30/09/2024