

Annexure A: Summary of detailed audit findings

Page no.	Finding	Classification					Rating			Number of times reported in previous three years	Status of implementation of previous year(s) recommendation
		Misstatements in financial statements	Limitation of Scope	Non-compliance with legislation	Internal control deficiency	Service delivery	Matters affecting the auditor's report	Other important matters	Administrative matters		
Procurement and contract management: Quotations											
1. Deviations not justifiable											
	PMTE MMB COAF 01 - Procurement of services through a deviation: Approval was not obtained from a delegated official and unjustified emergency procurement.			X	X						
	PMTE JHB COAF 03 - Deviation not justified (emergency procurement)			X	X						
	PMTE JHB COAF 04 - Deviation not justified (emergency procurement)			X	X						
	PMTE DBN COAF 05 - Procurement of services through a deviation – Reasonability of deviation.			X	X						
	PMTE PE COAF 01 - Procurement of services through a deviation – unjustified.			X	X						
	PMTE PLK COAF 01 – Matter 1: Sufficient time to source normal quotation			X	X						
	PMTE PLK COAF 01 – Matter 2: Unjustified Emergency Deviation.			X	X						
	PMTE BLM COAF 03 - Deviation not justified (emergency procurement).			X	X						
	PMTE BLM COAF 04 - Deviation not justified (emergency procurement)			X	X						

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		Misstatements in financial statements	Limitation of Scope	Non-compliance with legislation	Internal control deficiency	Service delivery	Matters affecting the auditor's report	Other important matters	Administrative matters		
	PMTE KMB COAF 03 - Procurement – Reasonability of deviation.			X	X						
2. Payments not approved in line with the SCM Delegations											
	PMTE PLK COAF 02 - Payments not approved in line with the SCM Delegations.			X	X						
	PMTE MMB COAF 03 – Procurement of services through a quotation – Approval was not obtained from a delegated official on quotations.			X	X						
	PMTE DBN COAF 03 - Approval was not obtained from a delegated official.			X	X						
3. Preference Points											
	PMTE CPT COAF 04 – Winning bidder is non-responsive.			X	X						
4. Non-tax compliant supplier											
	PMTE DBN COAF 04 - Quotations awarded to a non-tax compliant supplier.			X	X						
5. Local content and production (designated sectors)											
	PMTE CPT COAF 05 – Local content procurement not in accordance with the National Treasury Designated Sector Instruction notes.				X						
6. Advertisement of tender and publication of awards											
	PMTE CPT COAF 06 – Bid advertising and bid award publications.				X						
Procurement and contract management: Competitive Bids											
7. Limitation of scope - Deviation											

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		Misstatements in financial statements	Limitation of Scope	Non-compliance with legislation	Internal control deficiency	Service delivery	Matters affecting the auditor's report	Other important matters	Administrative matters		
	PMTE PTA COAF 02 – Limitation of Scope		X								
8. Preference Points											
	PMTE KMB COAF 01 - Competitive bidding – supplier scoring the highest points was not selected and the assessment performed to justify not selecting the highest bidder does not provide assurance on the validity of the conclusion made.			X	X						
9. Minimum functionality criteria											
	PMTE CPT COAF 02 – Functionality not applied appropriately.				X						
	PMTE CPT COAF 03 - Winning bidder did not meet minimum functionality score of 50%			X	X						
	PMTE DBN COAF 07 - Bid awarded to supplier who did not meet the minimum functionality score and evaluation criteria differed from the bid document.			X	X						
	PMTE DBN COAF 08 - Bid awarded to supplier who did not meet the minimum functionality score and evaluation criteria differed from the bid document.			X	X						
10. Local content and production (designated sectors)											
	PMTE HO COAF 02 – Local Content				X						
	PMTE JHB COAF 02 - Local content procurement not in accordance with the National Treasury Designated Sector Instruction notes.			X	X						

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	PMTE KMB COAF 02 - Procurement and Contract management – Local content.			X	X						
11. Advertisement of tender and publication of awards											
	PMTE CPT COAF 01 – Tender advertised for less than 21 days.			X	X						
Procurement and contract management: Contract Management											
12. Extension of time											
	PMTE CPT COAF 07 - Extension of time with financial impact.			X	X						
	PMTE MMB COAF 02 – Contract Management: Extension of time with cost			X	X						
	PMTE DBN COAF 01 – Contract Management: Extension of time with cost			X	X						
	PMTE DBN COAF 02 – Contract Management: Extension of time with cost			X	X						
	PMTE JHB COAF 05 - Extension of time with cost.			X	X						
	PMTE JHB COAF 06 - Extension of time with cost			X	X						
	PMTE HO COAF 03 – Extension of time with cost			X	X						
	PMTE HO COAF 04 – Extension of time with cost			X	X						
13. Variation order											
	PMTE PLK COAF 03 - Fruitless and Wasteful Expenditure contract management at Polokwane Regional Office.			X	X						
14. Limitation of scope – Contract management											

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	PMTE MMB COAF 04 - Requested information not provided (Limitation of scope)			X	X						
Emerging Findings:											
15. Pre-qualification criteria											
	PMTE BLM COAF 01 - Winning bidder is non-responsive.			X	X						
	PMTE BLM COAF 02 - Winning bidder is non-responsive.			X	X						
	PMTE JHB COAF 07 – Winning bidder is non-responsive			X	X						

PROCUREMENT AND CONTRACT MANAGEMENT

QUOTATIONS

1. Deviations not justifiable

Requirements:

Section 38(1)(a)(i) and (iii) of the Public Finance Management Act states that; *“The accounting officer for a department must ensure that the department, trading entity or constitutional institution has and maintains effective, efficient and transparent systems of financial and risk management and internal control; an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective...”*

Furthermore, section 38 (1)(c)(ii) states that; *“The accounting officer for a department must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct...”*

Section 44 (1) of the Public Finance Management Act states that; *“The accounting officer for a department, trading entity or constitutional institution may*
(a) in writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to an official in that department, trading entity or constitutional institution; or
(b) instruct any official in that department, trading entity or constitutional institution to perform any of the duties assigned to the accounting officer in terms of this Act.

Paragraph 3.3.3 of Practice Note 8 of 2007/08 states that; *“If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the accounting officer / authority or his / her delegate”*

Section 8.1 and 8.2 of the National Treasury Instruction Note 3 of 2016/17 states that;

8.1 *“The Accounting Officer/Accounting Authority must only deviate from inviting competitive bids in cases of emergency and sole supplier status”*

8.2 *“An emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids”*

MMABATHO REGION

Nature

During the regional audit of procurement through quotations, the following was noted:

Background

An emergency services were required for repairs of a leaking roof at Bungalow 1300 Klipdrift at SANDF Potchefstroom and that a deviation stated below was processed to deviate from the three written quotation process.

According to the Worx4U and manual form completed by the Chief Works Manager, a request was made on the 12 November 2020. Furthermore, inspection of the job card completed by the contractor, it also indicated that the services were requested on the 12 November 2020 for the repairs to be done on the leaking roof.

Based on the completed contractor's site register, Letsimane Trading and Projects, work commenced on the 11 January 2021 till 25 February 2021. Which coincides with the job card. The work was completed

by the contractor on 25 January 2021. Furthermore, it was noted that the work was certified to have been satisfactorily completed on 09 March 2021.

The final hand-over of completed services to client department SANDF Potchestroom-Klipdrift was certified on 07 April 2021 that the services were rendered by Letsimane Trading and Projects.

An internal memo dated the 15 April 2021 was submitted to the Chairperson of the Regional Bid Committee (RBAC) from the Chief Works Manager for the ratification of issuing an order and payment amounting to R481 922.85 for the repairs completed on the leaking roof at Bungalow 1300 Klipdrift.

However, according to the PA12: Approval by the RBAC, the matter was referred back on 28 April 2021. A follow up internal memorandum was submitted to the Chairperson of the RBAC from the Chiefs Works Manager on the 13 May 2021 for a brief clarity as per the RBAC's motion to refer back the matter.

Based on inspection of the second PA12: Approval by the RBAC dated 18 May 2021, the members of the RBAC unanimously elected for the deviation to be referred back again to the Chief Works Manager. The motion was approved by the Chairperson of the RBAC on the same date.

However, the supplier was paid for services rendered on the 20 May 2021.

Reference ID	Supplier	Description of services	Amount (R)
47464	Letsimane Trading and projects	Ratification for the repairs of roof leaking at bungalow 1300 klipdrift : SANDF Potchefstroom on emergency	481 922,85

Auditor's assessment

Issue 01

Base on the above, the leaking roof that was caused by rain and wind would be considered as an immediate risk to property as damage to property was incurred due to inclement weather conditions.

According to the Worx4u, a request was made for repairs to be made on a leaking roof at SADNF Potchefstroom bungalow 1300 on the 12 of November 2020 and based on the contractor's register was only attended to by the contractor on the 11 of January 2021, therefore services to repair the roof only commenced 2 months after the request to repair the roof was made.

Although the leaking roof would be considered to be an emergency, the untimely action took by management and contractor to repair the roof is an indication that sufficient time was available to invite other competitive bids for the repairing of the roof. Based on auditors assessment on work conducted on quotations, we noted that the lead time taken by the region to invite three (3) quotations is on average five (5) to seven (7) days.

It is with the stated reasons that the emergency is not justified based on the timeframe taken to attend to the damage to property as it indicate that there was sufficient time to get 3 quotations.

Issue 02

Part 4.4.9 of the SCM Circular 49 of 2017 further states that RBAC shall ratify emergency procurements up to the value of R75 million. However, the emergency procurement was referred back by the RBAC on the 28 April 2021 and 18 May 2021, therefore not ratifying the emergency procurement.

Therefore, no approval was obtained to deviate from the three written quotations based on an emergency nor was the deviation ratified by the RBAC.

It is on the above discussion that the payment is considered irregular expenditure.

Impact of the finding

The above may result in the following:

- Irregular expenditure with amounts of **R481 922,85**
- Non-compliance with section 38 and 44 of the PFMA
- Non-compliance with National Treasury instruction notes

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Management did not ensure that deviations by the trading entity were approved and reviewed by the delegated official in order to comply with the relevant SCM laws and regulations.

Financial and Performance Management

Management did not review and monitor compliance with applicable laws and regulations.

Management did not implement procurement processes in an appropriate manner to ensure that SCM regulations are adhered to

Recommendation

It is recommended that management should ensure that the entity complies with all applicable laws and regulations.

Procurement through deviations should be reviewed and approved by the approved delegated official as per the SCM prescripts.

Management response

I am not in agreement with the finding for the following reasons:

Issue 01

Call ref No. ID – 47464 was logged for urgent repairs to be made on a leaking roof at SADNF Potchefstroom bungalow 1300 on the 12 of November 2020. Works Management had to conduct a feasibility study and compile a scope of work before quotations are invited. The process commenced on the 13th of November 2020 and had to be held in abeyance during the festive season. In January 2021 another complain was raised by the client as a result of the heavy rain that occurred during the festive season and early January 2021. The department was forced to abandon the urgent procurement process it started and appoint a contract on an emergency basis to eminently address this issue. The contractor was appointed on the 10th of January 2021 and commenced with the work on the 11th of January 2021.

Issue 02

The emergency procurement was referred back by the RBAC on the 28 April 2021 but approval was granted by the RBAC on 18 May 2021, therefore ratifying the emergency procurement. The PA-12 date 18 May 2021 indicates that Letsimane Trading and Projects 34 cc has been approved with an amount of R481,922.85. The tick box for “Refer back” was erroneously ticked by RBAC members when signing off the PA-12. The matter has since been corrected.

Auditors Conclusion

Management’s response is noted. However, the finding remains based on the following:

Issue 01

Management stated that a call ref No. ID – 47464 was logged for urgent repairs was made for the leaking roof at SADNF Potchefstroom bungalow 1300 on the 12 November 2020 and the process commenced on the 13 November 2020 and had to be held in abeyance during the festive season.

However, the festive season was considered to reasonably commence around the 15 December 2020, indicating that there was sufficient time from the 12 November 2020 to 15 December 2020 for management to commence the quotation process as per SCM regulations. As mentioned in the content of the finding, the lead time taken by the region to invite three (3) quotations is on average five (5) to seven (7) days.

Furthermore, it is not evident on how management considered it an urgent process when timeous action was not taken and the “urgent procurement process” had to be abandoned when another emergent situation occurred, therefore resulting in the issue not being addressed eminently.

Therefore, the stated reasons that the emergency is not justified based on the timeframe taken to attend to the damage to property as it indicate that there was sufficient time to get 3 quotations

Issue 02

Management has indicated that the PA-12 dated the 18 May 2021 indicates that Letsimane Trading Projects 34 cc had been approved with an amount of R481 922.85, therefore stating that the tick box for “Refer back” was erroneously ticked by RBAC members when signing off the PA-12.

It is not evident how the all the RBAC members would erroneously tick the “Referred back” tick box based on the experience and consistent use of the PA-12 form. Furthermore, it was noted that the PA-12 was pre-typed with the approval of the ratification by the RBAC.

Furthermore, there is no further evidence that the ratification had since been corrected.

JOHANNESBURG REGION

Issue 01

Nature

During the audit of supply chain management, we noted that the JHB regional office appointed a service provider for the operation and maintenance of coal fired boilers for a period of 3 months at Boksburg prison, through a deviation process.

Background:

We noted that the chief works manager wrote a memo to the acting regional manager on 13/04/2021 regarding a compliant for repairs to their boilers. Further noted that the prison needs the boilers to prepare food, provide warm showers for the inmates, laundry, and other basic services. Therefore, the steam is required 24 hours daily without interruptions.

The contractor at that time had a 24-month contract that was expiring on the 14/04/2021.

As per inspection of the internal memo, the Project Manager was unable to issue a bid for the repair services as they were excluded from the April 2020 project plan. The services were then included in the September 2020 project plan and the April 2021 plan. The Chief Works Manager cited that the BSC had difficulty meeting and thus requested approval from the Regional Manager for the recommendation to appoint an emergency specialized service provider to ensure repairs, maintenance and compliance with the Occupational Health and Safety Act.

RB Mas Trading (Pty) Ltd was appointed under emergency procurement deviation as per the letter of award dated 21/04/2021 for a period of 3 months.

Auditor's assessment

The need for repair and maintenance of boilers is a standing order, which the department is aware of. Removing it from the April 2020 procurement plan due to the re-prioritization of projects resulted in the procurement process being delayed. This then resulted in a self-inflicted emergency when the existing contract was expiring. Therefore, with adequate plan and taking into account that the department had sufficient time to source a successor on the project we deem the emergency not justified.

Impact

The above may result in the following:

- Non-compliance with section 38(1) (a) (iii) and 38(1) (c) (ii) of the PFMA,
- Non-compliance with paragraph 8.1 and 8.2 of the *National treasury SCM Instruction Note 3 of 2016/2017*.
- Irregular expenditure of R347 960.00

Internal control deficiency

Financial and Performance Management

Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management.

Management is reluctant to procure these services mentioned by following normal procurement processes and has opted to deviate from normal procurement processes. A succession plan was not in place while the original contract was active.

Recommendation

It is recommended that:

- The auditee should exercise caution going forth when procuring emergency goods and services.
- The auditee ought to ensure that there is adequate planning to reduce the need for emergency procurement.
- The auditee should ensure that emergency procurement is the last resort and should be used in exceptional circumstances as guided by the procurement laws provided by National Treasury.

Management response:

We are not in agreement with the finding that the long term contract was not procured due to poor planning and that Management is alleged to be reluctant to procure the said services following the normal procurement processes. This happened due to the following reasons:

1. There was no adequate movement on the procurement process as per the Procurement Plan due to the effectiveness of the COVID-19 pandemic on the procurement plan process to all bid committees.
2. The majority of BSC and BEC members do not have data and cell phones to enable them to connect virtually through **Zoom or Microsoft Teams** from their respective offices or homes, seeing that the Department was mandatorily operating on a rotation basis.
3. At some time, the JHB Regional Office officials were rotating in working from the office. Therefore, it was not easy to have fruitful meetings or to form a quorum on BSC and/or other committees as officials were not allow to hold meetings in boardrooms.
4. The Tender and Quotation processes require briefing sessions to be conducted to the prospective bidders/tenders if the bid processes are to be open, fair, transparent, etc. With regard to the Local Content and Production (PA 36 and Annexure C), during the COVID-19 pandemic, there was no site briefing allowed to take place at all tenders that were advertised or in procurement process. We had a challenge on how we were going to educate the contractors (service providers) on the provisions of the Local Content and Production (PA 36 and Annexure C) and as the site briefing was the only way to explain the Local Content and Production. By allowing the tender to be advertised, we were risking the high possibility of getting the tender to lapse and we then prevented the fruitless & wasteful expenditure by not advertising the tender because both term

contracts and quotations go the same route. **Annexure C, D, E, F, G and H are to support the above assertion.**

5. The relaxation of the COVID-19 levels by the Disaster Management Committee and /or DPSA from say, 4 to 3, 2 or 1:
 - Has led to the Department increasing the staff Rotation % from, say 30% to 50%, 75% or 100%, which then enable the committee members form a quorum.
 - The COVID-19 Compliance Officer also approve the Bid Committee meetings subject to the compliance to COVID-19 protocols.
 - The Department keeps intensifying the training of Bid Committee members and SCM officials with a view to develop strategies of packaging the bid documents with a view to provide the adequate information.

Auditor's conclusion

Based on the management response and provided supporting documents, our audit response is as follows:

1. There was no adequate movement on the procurement process as per the Procurement Plan due to the effectiveness of the COVID-19 pandemic on the procurement plan process to all bid committees.

As per inspection of the internal memo to the acting Regional Manager, the Project Manager was unable to issue a bid for the repair services as they were excluded from the April 2020 project plan.

2. The majority of BSC and BEC members do not have data and cell phones to enable them to connect virtually through **Zoom or Microsoft Teams** from their respective offices or homes, seeing that the Department was mandatorily operating on a rotation basis.
3. At some time, the JHB Regional Office officials were rotating in working from the office. Therefore, it was not easy to have fruitful meetings or to form a quorum on BSC and/or other committees as officials were not allow to hold meetings in boardrooms.

As per inspection of the internal memo to the acting Regional Manager, the Project Manager states that the services were then included in the September 2020 project. Further, the Project Manager states that the contractor at that time had a 24-month contract that was expiring on the 14/04/2021. Therefore, the auditee had approximately 8 months to implement adequate planning for the procurement through an open bidding process.

4. The Tender and Quotation processes require briefing sessions to be conducted to the prospective bidders/tenders if the bid processes are to be open, fair, transparent, etc. With regard to the Local Content and Production (PA 36 and Annexure C), during the COVID-19 pandemic, there was no site briefing allowed to take place at all tenders that were advertised or in procurement process. We had a challenge on how we were going to educate the contractors (service providers) on the provisions of the Local Content and Production (PA 36 and Annexure C) and as the site briefing was the only way to explain the Local Content and Production. By allowing the tender to be advertised, we were risking the high possibility of getting the tender to lapse and we then prevented the fruitless & wasteful expenditure by not advertising the tender because both term contracts and quotations go the same route. **Annexure C, D, E, F, G and H are to support the above assertion.**

In conclusion, we maintain that the need for repair and maintenance of boilers is a standing order, which the department is aware of. Removing it from the April 2020 procurement plan due to the re-prioritization of projects resulted in the procurement process being delayed. This then resulted in a self-inflicted emergency when the existing contract was expiring. Therefore, with adequate planning and considering that the department had sufficient time to source a successor on the project we conclude that the emergency procurement was not justifiable and could have been avoided.

Issue 02

Nature

During the audit of supply chain management, we noted that PMTE procured cleaning services for a period of one month at the Johannesburg magistrate court through a deviation process.

Background

Through inspection of the internal memorandum approved by the regional manager, we noted that the regional office has not been able to appoint a long-term cleaning contract since 2019. The last attempt to appoint a provider was an advertised bid on the 18th of June 2021 and closing on the 01 July 2021. The process was aborted due to the fact that only two bids were received. The Project Leader hence requested support for an emergency procurement of cleaning services from the 06/08/2021 to 05/09/2021.

The contract was awarded to Susani Teaya Project (Pty) Ltd on 01/09/2021 and the reference number is JHB 21/126.

Auditor's assessment

Based on our evaluation of the circumstances that brought about this emergency, we are of the opinion that the procurement of cleaning services was not unexpected as management is aware that these services are in constant demand. Furthermore, based on the timelines it is evident that management had sufficient time to finalise the procurement process. Thus, although the situation (not having cleaners) poses *an immediate risk to health*, the events leading up to the procurement could have been avoided.

Impact of the finding

- Non-compliance with Public Finance Management Act paragraph 38
- Non-compliance with National treasury SCM Instruction Note 3 of 2016/17
- Irregular expenditure of R468 395.

Internal control deficiency

Financial and Performance Management

Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management.

Management is reluctant to procure these services mentioned by following normal procurement processes and has opted to deviate from normal procurement processes. A succession plan was not in place while the original contract was active.

Recommendation

- Management should have a succession plan in place to allow the procurement process sufficient time from initiation phase to awarding in order to have a seamless handover once.
- Management should disclose the Irregular Expenditure

Management response:

We are not in agreement with the finding that the long term contract was not procured due to poor planning and that Management is alleged to be reluctant to procure the said services following the normal procurement processes. This happened due to the following reasons:

1. There was no adequate movement on the procurement process as per the Procurement Plan due to the effectiveness of the COVID-19 pandemic on the procurement plan process to all bid committees.

2. The majority of BSC and BEC members do not have data and cell phones to enable them to connect virtually through **Zoom or Microsoft Teams** from their respective offices or homes, seeing that the Department was mandatorily operating on a rotation basis.
3. At some time, the JHB Regional Office officials were rotating in working from the office. Therefore, it was not easy to have fruitful meetings or to form a quorum on BSC and/or other committees as officials were not allowed to hold meetings in boardrooms.
4. The said tendering problems were exacerbated by the fact that first Project Manager was hospitalised for a long period due to COVID-19 related ailment. He ended up passing on. The situation then also destabilised the tendering process for this project, until Management decided to appoint another Project Manager to take over from where her predecessor left off.
5. The Tender and Quotation processes require briefing sessions to be conducted to the prospective bidders/tenders if the bid processes are to be open, fair, transparent, etc. With regard to the Local Content and Production (PA 36 and Annexure C), during the COVID-19 pandemic, there was no site briefing allowed to take place at all tenders that were advertised or in procurement process. We had a challenge on how we were going to educate the contractors (service providers) on the provisions of the Local Content and Production (PA 36 and Annexure C) and as the site briefing was the only way to explain the Local Content and Production. By allowing the tender to be advertised, we were risking the high possibility of getting the tender to lapse and we then prevented the fruitless & wasteful expenditure by not advertising the tender because both term contracts and quotations go the same route. **Annexure C, D, E, F, G and H are to support the above assertion.**
6. The relaxation of the COVID-19 levels by the Disaster Management Committee and /or DPSA from say, 4 to 3, 2 or 1:
 - has led to the Department increasing the staff Rotation % from, say 30% to 50%, 75% or 100%, which then enable the committee members form a quorum.
 - The COVID-19 Compliance Officer also approve the Bid Committee meetings subject to the compliance to COVID-19 protocols.
 - The Department keeps intensifying the training of Bid Committee members and SCM officials with a view to develop strategies of packaging the bid documents with a view to provide the adequate information during the COVID-19 pandemic period.

Auditor's conclusion

Based on the management response and provided supporting documents, our audit response is as follows:

1. There was no adequate movement on the procurement process as per the Procurement Plan due to the effectiveness of the COVID-19 pandemic on the procurement plan process to all bid committees.

Based on our evaluation of the circumstances that brought about this emergency, we are of the opinion that the procurement of cleaning services was not unexpected as management is aware that these services are in constant demand.

2. The majority of BSC and BEC members do not have data and cell phones to enable them to connect virtually through Zoom or Microsoft Teams from their respective offices or homes, seeing that the Department was mandatorily operating on a rotation basis.
3. At some time, the JHB Regional Office officials were rotating in working from the office. Therefore, it was not easy to have fruitful meetings or to form a quorum on BSC and/or other committees as officials were not allowed to hold meetings in boardrooms.
4. The said tendering problems were exacerbated by the fact that first Project Manager was hospitalised for a long period due to COVID-19 related ailment. He ended up passing on. The situation then also destabilised the tendering process for this project, until Management decided to appoint another Project Manager to take over from where her predecessor left off.

5. The Tender and Quotation processes require briefing sessions to be conducted to the prospective bidders/tenders if the bid processes are to be open, fair, transparent, etc. With regard to the Local Content and Production (PA 36 and Annexure C), during the COVID-19 pandemic, there was no site briefing allowed to take place at all tenders that were advertised.

Through inspection of the internal memorandum approved by the regional manager, we noted that the regional office has not been able to appoint a long-term cleaning contract since 2019. The last attempt to appoint a provider was an advertised bid on the 18th of June 2021 and closing on the 01 July 2021. The process was aborted due to the fact that only two bids were received.

Therefore based on the timelines, it is evident that management had sufficient time to finalise an open procurement process. Thus, although the situation (not having cleaners) poses *an immediate risk to health*, the events leading up to the procurement could have been avoided through adequate planning.

DURBAN REGION

Nature

During the regional audit of procurement through Deviation, the following was noted:

Background

Emergency services were required at Waterval Prison for repairs to faulty boilers (Boiler number 1 and 2) stocker. A deviation process processed followed to appoint to Coldpoint Aircon Service CC.

The call was logged on Worx4U on 04 October 2021 and approved by the Regional Manager (RM) on 25 October 2021. As per inspection of the motivation to procure the services under emergency an internal memo dated 28 October 2021 stated the following reasons:

- There is currently one boiler running at Waterval prison, boiler number 1, and that boiler number 2 is out of service as the stocker matt is completely burnt and other critical components are not working.
- The disfunctioning of boiler number 2 has put a lot of strain on boiler number 1 as it has been running 24/7 for a long time without any minor or major service.
- Currently boiler number 1 is under performing because it needs major service, so fixing boiler number 2 will assist in boiler rotation as required by the regulation for vessels under pressure and it release the operational strain on boiler number 1.

Delays relating to approval of the call were explained as follows:

- Delays were experienced on WM Archibus systems being faulty and was reported to ITC as the call was logged on 04 October 2021 and could only be accessed and proceeds on the 18 October 2021.
- Delays were also experienced from the RM's office in speedily approving the service because of the presidential visit in the province and that the RM had to attend to prestige matter on the week of 18-23 October 2021 that is why they got the approval on the 25 October 2021.

It was recommended on the 28 October 2021 by the CWM to request appointment of Cold point aircon service on a strip and quote basis as approved by the RM, Cold point Aircon service are on site on a 24 months term contract of boiler operation for the service of repairs to stocker for boiler no 1 & 2 and the recommendation was supported by DD: Facilities on the 28-10-2021.

According to discussions held with the works manager, it was noted that boiler number 2 has not been working for a period of almost 2 years.

Request ID	Supplier	Description of services	Amount (R)
103027	Coldpoint Aircon Service CC	Waterval Prison;Repair to Faulty Boiler Number 1 and 2 Stocker for 24 months term	432 600

Auditor's assessment

Based on the details stated above, it is clear that the matter was urgent as it imposes a risk to human life however according to the Worx4u, a request was made for repairs to be made on faulty boilers on the 04 October 2021 and the approval was made on the 25 October 2021. Although the repairs to faulty boilers in prison would be considered to be an emergency, the untimely action took by management to approve the request is an indication that sufficient time was available to invite other competitive quotes for the repairs of faulty boilers as according to SCM Circular No. 0160 of 2021/22 the maximum number of days for invitation of price quotations is 7 calendar days for quotation thresholds up to R500 000. Furthermore, there no evidence was provided to support both claims of delays stated on the motivation.

Furthermore, it is stated on the motivation that “fixing boiler number 2 will assist in boiler rotation as **required by the regulation for vessels** under pressure and it release the operational strain on boiler number 1”. This means that when boiler 2 died, the pressure was definitely going to affect the performance of boiler 1. Therefore, the process of obtaining competitive quotations could have commenced at the time that boiler 2 stopped working.

According to the motivation, there was a term contract which was meant to initially deal with the maintenance of these 2 boilers of which it was not clear as to how the 2 boilers reached this stage of not functioning and poor performance if they were meant to be maintained to preserve they condition. It was further noted that the scope of the current contract does not include repairs.

Section 4.4.9 of the SCM Circular 49 of 2017 further states that RBAC shall ratify emergency procurements up to the value of R75 million. However, there was no indication of ratification made by RBAC.

Therefore, no approval was obtained to deviate from the three written quotations based on an emergency.

Impact of the finding

The above may result in the following:

- Irregular expenditure with amounts of R432 600
- Non-compliance with section 38 and 44 of the PFMA

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Management did not ensure that deviations by the department were approved and reviewed by the delegated official in order to comply with the relevant SCM laws and regulations.

Financial and Performance Management

Management did not review and monitor compliance with applicable laws and regulations.

Management did not implement procurement processes in an appropriate manner to ensure that SCM regulations are adhered to

Recommendation

It is recommended that management should ensure that the entity complies with all applicable laws and regulations.

Procurement through deviations should be reviewed and approved by the approved delegated official as per the SCM prescripts.

Management response

I am not in agreement with the finding for the following reasons:

Repairs were part of the term contract as per attached BOQ scheduled 3 documents, hence the appointment of Cold Point Aircon Services as the service provider on a 24 months term contract. As part of the contract the necessary approvals must be obtained to ensure compliance and cost containment.

It should be noted that ratifications only happen once the claim has been submitted by the contractor on completion of the works, however this process has not been finalized as yet.

With regards to boiler no.2, we are in agreement with the AG's view however as part of our term contract the assessment was conducted and a report was provided which detailed the necessary repairs.

Auditors Conclusion

Management's response is noted that ratification is done once a claim has been submitted, however the finding remains based on the following;

Management was unable to respond to the main issue communicated in the finding, that "although the repairs to faulty boilers in prison would be considered to be an emergency, the untimely action taken by management to approve the request is an indication that sufficient time was available to invite other competitive quotes for the repairs of faulty boilers"

It should be noted that management has yet to provide their evidence to support both reasons of delay stated on the motivation.

Furthermore, management is in agreement with how the matter arose to require emergent action. It should further be noted that according to management's motivation for the deviation, it was stated that repairs were out of the scope of the term contract and therefore, a Work4U request was required for the repairs.

Management reasonably knew that "boiler number 2" is required to be working to assist in the boiler rotation as required by the regulation for vessels under pressure and to be able to release the operational strain on "boiler number 1". It is of the view that management could have reasonably responded to the boiler number 2 that went out of order before boiler number 1 was under pressure and therefore became faulty which then resulted in the situation becoming emergent. Therefore, the process of obtaining competitive quotations could have commenced at the time that boiler 2 stopped working.

PORT ELIZABETH REGION

Nature

During the regional audit of procurement through quotations, the following was noted:

Matter 1 – Deviation not justifiable

Background

During the audit of quotations testing, it was noted that a quotation deviation process was followed in which a single supplier was appointed based on an emergency, instead of the usual minimum three quotations.

The service was carried out at the Uitenhage Police Station. This was for the repairs of sewer line cast iron pipes. The sole contractor sourced and appointed was Lulonke Projects (Pty) Ltd.

This service was for the repair/removal of all cast iron pipes that clogged the sewer system. This was deemed an emergency as this situation could pose a threat to public health.

According to management this was a serious and unexpected situation that posed an immediate risk to health, life, property and environment which caused an urgency to action and as such management did not have sufficient time to follow a normal quotation process

The following timelines were noted:

No	Date	Detail	No of days between each event
1	2021/05/21	Request by SAPS to PMTE for services	15 days
2	2021/06/05	Contractor reports to site to perform services	

Auditor's assessment

According to management, this was an emergency and as such required urgent attendance.

However, it was noted that from the date this emergency was reported to management to the date when the contractor actually reported to site, there was a period of 15 days.

Considering the above number of days (15 days) for the emergency to have been attended to indicates that there was sufficient time for management to source quotations through a normal process.

Therefore, it is evident that there was no need to have deviated from the normal procurement process and thus the deviation is not justified considering the turnaround time for attending to the emergency.

Based on the above assessment, and the non-compliance with paragraph 3.3.3 of Practice Note 8 of 2007/08 the above expenditure is irregular

Matter 2 – Deviation not justifiable

Background

During the audit of quotations testing, it was noted that a quotation deviation process was followed in which a single supplier was appointed based on emergency, instead of the usual minimum three quotations.

The services were carried out at the Klipplaat Police Station. The service related to repairs of a leaking roof. The sole contractor sourced and appointed was Deltype CC.

Furthermore, according to management this was a serious and unexpected situation that posed an immediate risk to health, life, property and environment which caused an urgency to action and as such management did not have sufficient time to follow a normal quotation process

The following timelines were noted:

No	Date	Detail	No of days between each event
1	2021/09/22	Request by SAPS for attending to leaking roof	27 days
2	2021/10/18	Contractor reports to site	

Auditor's assessment

According to management, this was an emergency and as such required urgent attendance.

Furthermore, according to SCM circular 160, paragraph 3.2.2, *"The maximum number of days for the invitation of price quotation is 7 days for quotation thresholds up to R500 000"*. This circular was effective at the date of award of the deviation quotation.

However, it was noted that from the date this emergency was reported to management to the date when the contractor actually reported to site, was a period of 27 days.

Considering the above number of days (15 days) for the emergency to have been attended to indicates that there was sufficient time for management to source quotations through a normal process.

Therefore, it is evident that there was no need to have deviated from the normal procurement process and thus the deviation is not justified considering the turnaround time for attending to the emergency.

Auditor also inspected email communication between DPWI official M Carolus and Regional Manager, J. Van De Walt dated 25 June 2021, in which the conditional assessment report with cost estimations was shared with the RM. This furthermore solidifies the auditors view that management was aware of the problems experienced by the client department SAPS.

Based on the above assessment, and the non-compliance with paragraph 3.3.3 of Practice Note 8 of 2007/08 the above expenditure is irregular

Impact of the finding

The above may result in the following:

- Matter 1 - Irregular expenditure with amounts of **R178 349,00**
- Matter 2 - Irregular expenditure with amounts of **R84 845,60**
- Non-compliance with section 38 and 44 of the PFMA
- Non-compliance with Practice Note 8 of 2007/08

Internal control deficiency

Financial and Performance Management

Management did not review and monitor compliance with applicable laws and regulations.

Management did not implement procurement processes in an appropriate manner to ensure that SCM regulations are adhered to

Recommendation

- Management should ensure that the entity complies with all applicable laws and regulations.
- Management should ensure detailed assessments are performed prior to appointment of service providers for the need of emergency procurement.

Management response

Management is not in agreement with the finding.

Matter 1

Management hereby attaches the Job Card for the supplier site inspection and making safe as at 21 May 2021 (See Annexure A).

Matter -2

Management hereby attaches the Job Card for the supplier site inspection and making safe as at 1 October 2021 (See Annexure B).

Management would like to advise that it is not correct to link the email that was sent to the Regional Manager on 25 June to this call that was logged in September 2021. Please see page 2 of the report (Annexure C) in which the below is extracted.

Internally

Repair broken internal doors, cupboards and iron monger	R 3 000.00
Vanish wooden and seal vinyl floor	R 12 000.00

Auditors Conclusion

Matter 1:

Management comments are noted. Management disagrees with the finding.

Auditors' assessment and conclusion:

Auditors have noted that additional information submitted as per annexure A, in which the actual date the contractor first reported on site was on 25 May 2021.

Furthermore, auditors noted that the department has an internal document Day-to-Day maintenance guideline, which lists SAPS as a priority level 3, with a turnaround time of 8 hours and resolution time of 24 hours.

It is, further noted that from date of reporting of the matter by the user department SAPS on 21 May 2021, to the date when the departments' appointed service provider reported to site on 25 May 2021, there was a turnaround time of 5 days.

Based on the above assessment, it is evident that management had sufficient time to have sourced the services through a normal quotation process.

Therefore, the finding remains and related impact will be reported on the management report.

Matter 2:

Management comments are noted. Management disagrees with the finding.

Auditors' assessment and conclusion

Auditors have noted that additional information submitted as per annexure C, in which the actual date the contractor first reported on site was on 01 October 2021.

Furthermore, auditors noted that the department has an internal document Day-to-Day maintenance guideline, which lists SAPS as a priority level 3, with a turnaround time of 8 hours and resolution time of 24 hours.

It is, further noted that from date of reporting of the matter by the user department SAPS on 22 September 2021, to the date when the departments' appointed service provider reported to site on 01 October 2021, there was a turnaround time of 10 days.

Based on the above assessment, it is evident that management had sufficient time to have sourced the services through a normal quotation process.

Therefore, the finding remains and related impact will be reported on the management report.

POLOKWANE REGION

Nature

During the regional audit of procurement through quotations, the following was noted:

Matter 1 – Sufficient time to source normal quotation

Background

During the audit of quotations testing, it was noted that a quotation deviation process was followed in which a single supplier was appointed on the basis of emergency, instead of the usual minimum three quotations.

The service was carried out on building no 514 at 62 Hoedspruit Maruleng Rural SANDF and the supplier Andymol Construction and Projects (Pty) Ltd was appointed to provide the service.

This service was for the repair of the faulty bio filter facility that affected the water supply. This was deemed an emergency as this situation could pose a threat to public health.

The following timelines were noted:

No	Date	Detail	No of days between each event
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1	2020/06/26	Request by SANDF to the PMTE for services	0
2	2020/06/27	RM approves the service as an <i>Emergency</i>	1 day
3	2020/07/06	Contractor reports to site to perform services	10 days

Auditor's assessment

According to management, this was an emergency and as such required urgent attendance.

However, it was noted that from the date the RM approved the service as an emergency to the date when the contractor actually reported site, was a space of 10 days.

With consideration of the above number of days (10 days) for the emergency to have been attended to for the client department, it is indicative of the fact that there was sufficient time for management to source quotations through a normal process.

Therefore, it is evident that there was no need to have deviated from the normal procurement process and thus the deviation is not justified considering the turnaround time for attending to emergency.

Based on the above assessment, that the payment is considered irregular expenditure.

Matter 2 – Deviation as emergency unjustified

Background

During the audit of quotations testing, it was noted that a quotation deviation process was followed in which a single supplier was appointed based on emergency, instead of the usual minimum three quotations.

This was deemed an emergency by management as this was for the repair of faulty air conditioner at Lenyenye Magistrate Court Office. The emergency appointment was awarded to Andymol Construction and Projects (Pty) Ltd on the 14 March 2021

Auditor's assessment

According to par 8.2 of the NT Instruction Note 3 2016/17 on Preventing and Combating Abuse in the SCM systems, it was noted that:

"An emergency procurement may occur when there is a serious and unexpected situation that poses immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids"

Based on this paragraph 8.2, there was no evidence that the faulty air conditioner in a magistrate court posed immediate risk to health, life, property or environment.

Based on the above assessment, it is clear that the emergency was not justified and as such, management should have obtained the repair services through a normal quotation process.

Therefore, based on the above assessment b the deviation was unjustified and thus irregular expenditure for expenditure incurred to date.

Impact of the finding

The above may result in the following:

- Matter 1 - Irregular expenditure with amounts of **R231 859.27**
- Matter 2 - Irregular expenditure with amounts of **R127 470.72**
- Non-compliance with section 38 and 44 of the PFMA

Internal control deficiency

Management did not review and monitor compliance with applicable laws and regulations.

Management did not implement procurement processes in an appropriate manner to ensure that SCM regulations are adhered to

Recommendation

- Management should ensure that the entity complies with all applicable laws and regulations.
- Management should ensure detailed assessments are performed prior to appointment of service providers for the need of emergency procurements.
- Ensure adherences to the provisions of National Treasury Instruction Note 3 of 2016/17

Management response

Matter 1

Management disagrees with the finding, the above mentioned complaint was logged during a hard log down on 30 June 2020, and the contractor went on site and conducted diagnostics, brought in temporary measures while sourcing the necessary materials. The contractor received the parts only on the 9 July 2020 and immediately went on site to complete the work. He did not include the 30th of June 2020 as he only spent a short time on site. Furthermore, the department did not use a single supplier to render services; the quotation register that was provided to AG clearly demonstrates a rotation of suppliers.

Matter 2

Management disagrees with the finding, HVAC that are referred to Heating, Ventilation, Air Circulation on our maintenance manual index page V and Air conditioners, must be responded to within 2 Hours and Resolved within 8 Hours as outlined in our Day to Day Maintenance guidelines for courts and they are given priority 2 Colour coded Red or Urgent, Let me break this down into priority, most of the court rooms have limited windows that are situated high up the wall some are inaccessible and some court room have no windows at all especially the High courts, windows provide ventilation which is air that human being need for their biological functioning, If there no windows in court and the court is packed with people as they will suffocate, this pose serious risk to health this translate the nonfunctioning of air conditioners or HVACs in the court room as an emergency. Furthermore we all know that Limpopo province is hot, Attorneys, Judges and prosecutors wear robes in courts will they survive with the heat this is another health risk that also translate into an emergency. It is not practically possible to source quotations within two hours. Additionally the department did not use a single source, several suppliers were used as per the quotation register that was provided to AG.

Auditors Conclusion

Matter 1

Management comments noted. Management disagrees with the finding.

Auditors' assessment and conclusion:

Firstly, the time of logging the call as per records was dated 26 June 2020 and not as per management response of 30 June 2020.

Furthermore, according to management, the complaint was logged during the "*hard lockdown*" period on 30 June 2020"

This however this is incorrect as the "*hard lockdown*" period was only under Alert level 5, which took effect from midnight 26 March to 30 April 2020.

Additionally, Alert level 4 was in effect from 01 May 2020 to 31 May 2020, in which the State published Gazette no 43258, which detailed the following sectors as operational:

1. Construction and Related Services (Inc. Trades Persons) were already allowed to trade:
 - Civil engineering for Public Works projects (including water, energy, sanitation).
 - Public Works civil engineering and construction works
 - Road and bridge projects, including local road repairs.
 - Critical maintenance and repairs.

Furthermore, the period of logging the call was 26 June 2020, which was under Alert level 3 which was in effect from 1 June to 17 August 2020.

In conclusion, auditors have noted managements' inconsistencies with absence of tangible evidence to support managements' assertions above, as result the finding remains and will be reported further in the management report with related impact.

Matter 2

Management comments noted. Management disagrees with the finding.

Auditors' assessment and conclusion:

The following matters should be noted:

- Based on management response, there are significant indicators that management places stringent reliance on their internal guideline document without thorough application to par 8.2 of the NT Instruction Note 3 2016/17 on Preventing and Combating Abuse in the SCM systems.
- The definition of *Emergency* provided in Instruction Note 3 2016/17 on Preventing and Combating Abuse in the SCM systems, which defines that an Emergency Procurement:

"May occur when there is a serious and unexpected situation that poses immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids"

- Management did not provide any tangible proof in respect of the specific instance that indeed there was absence of windows in relation to the particular courtroom or office, nor was there evidence to substantiate how this was an immediate risk to life that prevent management from following the normal quotation process.
- No evidence submitted to confirm whether the particular courtroom or office was in use during the said period of the procurement, and if the absence of an air conditioner prevented management from obtaining three quotations.
- Management further makes a number unverifiable statements such as:
 - *"We all know that Limpopo province is hot".*
 - If auditor were to consider this as evidence, a number of factors would need to be answered for that particular day, such as:
 - The exact weather conditions of the day,
 - Whether it was raining,
 - whether it was significantly cooler as the southern hemisphere approached autumn during this time.
 - This all would not suffice to support managements' assertions as the facts become extremely circumstantial.

Therefore based on above assessment, it can be concluded that the finding remains and will be reported further in the management report with related impact.

BLOEMFONTEIN REGION

Issue 01

Audit findings

During the audit of supply chain management for quotations, we noted that there was a deviation from normal SCM processes for the operation of water and sewage treatment plant in Goedemoed Correctional Services. The emergency procurement was awarded to D-Matt supplies on the 7th of April 2021 on a month-to-month basis for a period not exceeding 6 months.

We performed further procedures and noted that the contract for the above-mentioned service was extended to the same supplier in June 2020 for a period not exceeding 8 months based on an emergency procurement. The emergency procurement was extended again in April 2021 for a period not exceeding 6 months.

The emergency procurement is still active with the same supplier as of 25 February 2022. The total amount paid to D-Matt Supplies from 24th June 2020 to 25th February 2022 amounts to R 3 842 195.45. The procurement does not qualify as per the definition of emergency procurement, specifically the "Unexpected situation" and "insufficient *time to invite competitive bids*" element as the department should have initiated and concluded the open bid processes in the period where the first emergency procurement (11 months) was approved. As a result, the irregular expenditure from April 2021 to 25 February 2022 amounts to R 1 878 132.36

Furthermore, the Regional Adjudication committee endorsed the April 2021 emergency procurement and stated that payments should not exceed R500 000.

Below is a summary of the award:

No	Deviation number	Project description	Supplier Name	Total value of the contract	Expenditure to date
1	ID 72647	Operation of water and sewage treatment plant in Goedemoed Correctional Services.	D-MATT Supplies	R 500 000	R 1 878 132.36

Impact of the finding

- Non-compliance with Public Finance Management Act paragraph 38
- Non-compliance with National treasury SCM Instruction Note 3 of 2016/17
- Irregular expenditure of R 1 878 132.36

Internal control deficiency

Financial and Performance Management

Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management.

Management is reluctant to procure these services mentioned by following normal procurement processes and has opted to deviate from normal procurement processes for 2 years.

Management did not implement the over-spending controls set by the Regional adjudication committee when the emergency contract was endorsed and approved.

Recommendation

- It is recommended that management should enhance compliance procedures to ensure compliance with the applicable laws and regulations relating to supply chain management to ensure consistency, specifically the National treasury SCM Instruction Note 3 of 2016/17
- Management should implement controls set in place by the Regional adjudication committee in order to avoid over spending.
- Management should initiate and conclude an open bidding process for the above contract and avoid Irregular expenditure
- Management should disclose the Irregular Expenditure

Management response:

I do not agree with the finding.

In terms of Paragraph 8.2 of National Treasury SCM Instruction No 3 of 2016/17, An emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is an insufficient time to invite competitive bids.

As per Day to Day Guidelines and Facilities Management Business Process under Item 7,1,4 - this service is regarded as an emergency service and the Regional Manager has emergency delegation to approve this request as an emergency as per the Facilities Management business process. Therefore, we are not in agreement that this is a deviation as the work was done in line with Facilities Management business process

Failure to attend to this as an emergency was going to results in contravention of the following act:

- Contravention of drinking water quality failures as per Water Service Authorities in terms of section 62 of the Water Services Act 1997 (Act no 108 of 1997). Contravention of Occupational Health and Safety Act, Act of 85 1993 as amended in terms of Section 30 taking into consideration the number of employees who stays in the facility and the public at large
- Secondly discharging of poor effluent quality for water treatment works would have resulted in contravening the Water Service Authorities in terms of section 62 of the Water Services Act 1997 (Act no 108 of 1997) and environment regulations due to water pollution as result of untreated sewerage discharged into the river

Furthermore, this was declared as an emergency because Goedemoed Prison to mitigate the health and safety risk and litigation against the Department due to poor quality drinking water and untreated sewer as the prison host many inmates and employees.

The normal procurement processes of an open tender process was followed. An normal procurement process of an open tender procedure was followed and could not be concluded as the all bidders failed the responsive criteria in terms of qualifications except the one bidder left who refused to negotiate their offer price as it was way above the tender estimate

Auditor's conclusion

Management's response is noted.

Based on the response, it seems we agree that poor quality drinking water and untreated sewer at the prison, which hosts many inmates and employees, is a serious situation that poses an immediate risk to health, life, property or environment and calls an agency to action.

However, we differ with regard to the other two conditions that must be present in order to bring justification for management to deviate from inviting competitive bids:

Was the situation unexpected:

Management, and more specifically the project leader is well aware that a service provider which must ensure that water is of drinkable quality and the sewage system is operating effectively, is a standard requirement for the prison. This is to avoid contraventions with the Water Services Act 1997 (Act no 108 of 1997), the Occupational Health and Safety Act, Act of 85 1993 and any health related litigations.

Therefore, the situation was not unexpected e.g. a burst pipe.

Was there insufficient time to invite competitive bids:

Based on our assessment, the contract was already on deviation as at June 2020 and further extended on a month-to-month basis in April 2021. We further confirmed with the project leader that there has not been a service provider appointed as of yet. This brings the total term of the deviation to 22 months.

Therefore, management has had sufficient time to initiate and conclude a normal procurement process

In conclusion, we disagree with management's response. The finding will remain.

Issue 02

Audit findings

During the audit of supply chain management for quotations, we noted a deviation from normal SCM processes for AF336790 MASERU BORDER POST: Water and sewerage operation and maintenance. The Bloemfontein region was informed on 22/05/2020 that they are required to assist in the interim for the procurement of the operation and maintenance of water and sewers at the Maseru border post. The contract was for a 6 month period ending 30/11/2020 until the procurement of replacing a contractor can be finalised by the head office as the existing contract at the time was expiring on 23 May 2020.

The RM approved the award for the appointment of BNM Civil Construction. The temporary appointment was further extended on a month-to-month basis at the end of the 6 months term ending 30 November 2020, as the NBAC had not yet convened for approval of the recommended bidder. This was at the recommendation of the head office, and the RM approved the extension of the contract with BNM Civil Construction.

The reasons for deviation does not meet the criteria for emergency procurement. We find that management induced the emergency by not allowing themselves sufficient time to follow normal procurement processes. A succession plan while the original contract was active would have avoided a situation where the region is informed on a day's notice to source a supplier.

Below is a summary of the award:

No	Deviation number	Project description	Supplier Name	Total value of the contract	Expenditure to date
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1	AF336790	MASERU BORDER POST: Water and sewerage operation and maintenance	BNM CIVIL CONSTRUCTION	R 461 270,09	R 461 901 per month
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Impact of the finding

- Non-compliance with Public Finance Management Act paragraph 38
- Non-compliance with National treasury SCM Instruction Note 3 of 2016/17
- Irregular expenditure of R461 901 per month

Internal control deficiency

Financial and Performance Management

Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management.

Management is reluctant to procure these services mentioned by following normal procurement processes and has opted to deviate from normal procurement processes. A succession plan was not in place while the original contract was active as the region was informed on a day's notice to source a supplier.

Recommendation

- It is recommended that management should enhance compliance procedures to ensure compliance with the applicable laws and regulations relating to supply chain management to ensure consistency, specifically the National treasury SCM Instruction Note 3 of 2016/17
- Management should have a succession plan to initiate and conclude an open bidding process for the above contract and avoid Irregular expenditure
- Management should disclose the Irregular Expenditure

Management response

I do not agree with the finding.

In terms of Paragraph 8.2 of National Treasury SCM Instruction No 3 of 2016/17, An emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is an insufficient time to invite competitive bids.

As per Day to day guidelines and Facilities management business process Item 7,1,4 this service is regarded as an emergency service and the Regional Manager has emergency delegation to approve this request as an emergency as per the Facilities Management business process. Therefore, we are not in agreement that this is a deviation as the work was done in line with Facilities Management business process

Failure to attend to this as an emergency was going to results in contravention of the following act:

- Contravention of drinking water quality failures as per Water Service Authorities in terms of section 62 of the Water Services Act 1997 (Act no 108 of 1997). Contravention of Occupational Health and Safety Act, Act of 85 1993 as amended in terms of Section 30, taking into consideration the number of employees who stays in the facility and the public at large
- Secondly discharging of poor effluent quality for water treatment works would have resulted in contravening the Water Service Authorities in terms of section 62 of the Water Services Act 1997 (Act no 108 of 1997) and environment regulations due to water pollution as result of untreated sewerage discharged into the river

Furthermore, this was declared as an emergency because the Land Ports of Entry are a security risk and access to the country. Not been able to put the Water, sewerage operation and maintenance could have led to Occupational Health risks leading to closure of the border line. This would have a ripple effect to thing like extraditions and would have a threat of life as the citizens stuck abroad would be at risk. Maseru Bridge was one of the borders that was open during lockdown because it goes directly to the capital of a SADC county

The normal procurement processes of an open tender process was followed. However, during the period in question, there was Covid 19 and the department could not have envisaged the smooth operation for working at home and a number of lockdowns that were introduced. There was a sufficient succession planning but it was delayed due to the pandemic. At that time, officials were affected/infected by the virus and that lead to a number of postponements that led to delays in finalizing the process on time.

Auditor's conclusion

The Head office informing the Regional Office on 22 May to appoint a contractor for the procurement of the operation and maintenance of water and sewers at the Maseru border post justifies the regional office departing from the standard procurement process considering the time frame and the nature of the services procured. We as the auditors do not dispute this.

They issue we have is that we believe the Head Office had reasonable time to appoint a service provider on both occasions being before the 1st of June 2021 where the regional office was instructed to appoint a contractor for a period of 6 months and the 30th of November 2021 where the head office requested the regional office to extend the contract on a month-to-month basis. We have noted the reasons mentioned above that the head office was delayed by the Covid-19 pandemic and that the department could not have envisaged the smooth operation for working at home, a number of lockdowns being introduced and that officials were affected/infected by the virus that led to a number of postponements that led to the delays in finalizing the process on time.

Lockdown was instituted from 27 March 2020 and this left the department with approximately 2 months from this day to the end of May where the initial contract was expected to lapse, which would imply that by this time the tender process for appointing a new contractor should have been in its final stages. Online meetings were then introduced at the time to ensure continuation of duties for employees.

The department also has a list of approved NBAC members who are permitted to be part of the NBAC, which means that members can be replaced should others not be available. As a result, we feel the reasons provided are not sufficient to justify the head office delegating the Bloemfontein regional office to appoint an interim service provider and further extent the contract on a month-to-month basis also considering the nature of the services required.

KIMBERLY REGION

Nature

During the audit of procurement of goods, it was noted that a deviation to Letsatsi Empire Pty Ltd for Provisioning of cleaning services for 3 months was approved on 03 June 2021 by the Regional Bid Adjudication Committee, the reasons for the deviation was that it was an emergency. The reasons provided are not justifiable based on the factors below:

- On the 28th of May 2021 the department sent a letter to Letlotlo cleaning services terminating their services effectively on 30 May 2021, the reasons for the termination of contract were not included in the letter.
- Inspected the minutes of the meeting with the contractor dated 28 May 2021 and confirmed that the resolution was taken in the meeting that the services for Letlotlo should be terminated and a new service provider be appointed on an emergency basis
- It was further stated in the meeting that the service provider Letlolo was not cleaning and not paying employees in this regard. However, it was not clear how the department tried to rectify the

issue of poor performance of Letlotlo as there was no proof provided to auditors to confirm that the service provider was not performing before the services were terminated. Furthermore it is unclear when the department found out about the fact that employees were not paid by letlotlo and that the court was not being cleaned.

- The service provider had been cleaning the court since 2019 till 2021 and it is unclear when the department identified the service provider to be not performing.
- According to the Assessment of Procurement Instruction by the Project Leader dated 24 May 2021 and approved by the DD: Facilities management on the 25 May 2021, procurement for the provisioning of cleaning services for 3 months was required.
- Furthermore, it was noted that an email was sent to prospective suppliers on the 28th of May 2021 requesting for quotations for the required services and that all documents should be submitted to the Kimberley Regional Office on/before the 11th of June 2021 at 11:00am.

An approval through an internal memo to the Regional Manager was obtained for the emergency procurement of cleaning services on the 28 May 2021 stating that an emergency was due to:

- The service contract with Letlotlo Cleaning Services had been terminated as of 31 May 2021
- The process to source the thirty six (36) month contract is at advert stage
- That it is of vital importance to provide cleaning services at the magistrate court especially in the Covid era.
- That a three month contract will provide SCM with sufficient time to procure the 36 month contracts.

Upon further inspection it was noted that another email was sent to prospective suppliers on the 31 May 2021 stating RFQ: PF43/2021 Kimberley Magistrate Court: Provisioning of Cleaning services for 3 months was cancelled.

It was further noted that an email was sent to one supplier, Micheal Thembu with email address nonkuch69@gmail.com, on the 31 May 2021 for the emergency procurement of PF43/2021 Kimberley Magistrate Court: Provisioning of Cleaning services for 3 months stating that there was an agreement the day before for the contractor to attend to the mentioned emergency.

Taking into account the facts above and the definition of an emergency, it may pose an immediate health risk however, it is evident that there was sufficient time for management to request competitive bids for the services to be rendered. The department had enough time to request the RFQs from service providers for the cleaning services this is evident from the fact that on 24 April assessment of procurement Instruction by the Project Leader was done and approved by DD: Facilities management on 25 April. Therefore, the reasons for the deviation were assessed to be not justifiable.

Cause

Management did not implement procurement processes in an appropriate manner to ensure that SCM regulations are adhered to.

Management did not ensure contract measures were implement for effective contract monitoring to ensure timely procurement of goods and services required that are required on a continuous basis

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Impact

This will result in an irregular expenditure of R493 335.

Internal control deficiency

Financial and Performance Management

Management did not review and monitor compliance with applicable laws and regulations.

Management did not implement proper record keeping in a timely manner to ensure that complete, relevant and accurate information is accessible and available to support financial and performance reporting.

Recommendation

It is recommended that:

Management implements procurement processes in an appropriate manner to ensure that SCM regulations are adhered to.

Management to ensure contract measures are implemented for effective contract monitoring to ensure timely procurement of goods and services that are required on a continuous basis.

Management response

I am not in agreement with the finding for the following reasons

Due to non-performance by the service provider Letlolo Cleaning Services, the services for Provisioning of cleaning services for Kimberley Magistrate Court was abruptly terminated. The termination letter of services by Letlolo Cleaning Services for Cleaning Services was approved 28 May 2021, with the services to end 31 May 2021. The Procurement Instruction approval date per the PI received by SCM is 28 May 2021 (POE attached for ease of reference).

SCM had already began the process of inviting quotations RFQ: PF43/2021 for a three month period with invitation of quotation advert date (28 May 2021) Closing date (11 June 2021) to allow SCM to receive a minimum of three quotations. This request was cancelled due to the termination of the services by Letlolo Cleaning Services. The PI dated 25 May 2021 was for the cancelled 3 months process, it in no way references the emergency.

Furthermore the Regional Office assessed the impact and risk that waiting for the SCM process to conclude would pose to the Client because of the heightened response times in cleaning due to the COVID pandemic which had to be strictly adhered to, to ensure that the Courts were fully compliant. It was found that the High Court would have been negatively impacted and might have been forced to shut down, and not provide judiciary services to the public. This would have been an untenable situation since court dates are determined by the judiciary that places matters on the court

As a contingency plan, a request for emergency was done and submitted to the Regional Manager for consideration and approval granted on 28 May 2021. The approval was granted by the Delegated Official per the SCM Circular No. 49 of 2017 par 3.12.8;

Various service providers were checked from CSD for availability until an available service provider was found. It should be noted that between 28 to 30 May (3 days) SCM wouldn't have been unable to source 3 quotations evaluate and award and ensure that site is handed over timely, there was not enough time to allow for the SCM process to be concluded.

29 May 2021, the estimate was disclosed R496 500 and it was indicated that the range of the quotation that would be acceptable within close range of the estimate to ensure that the price of the emergency is controlled. The price was agreed upon and service provider appointed while awaiting the formal SCM process to be concluded. Letsatsi Empire was forwarded all compliance documents on receipt by SCM from the project leader and site was handed over 01 June 2021.

Auditor's conclusion

Management response has been noted however the finding stands based on the following:

As initially indicated in the COAF it is not clear when the department noted that the supplier is not performing and when they received a complaint about the service provider not paying salaries of the employees.

According to National Treasury SCM Instruction Note 3 of 2016/17 Preventing and combating Abuse Paragraph 8.2 an emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action **and there is insufficient time to invite competitive bids.**

Considering that, the department started the process of looking for a service provider to clean the magistrate court on from the 24 May 2021 as the project leader completed the assessment of procurement instruction and approved by the DD Facilities management on the 25 May 2021. This indicates that the department was aware that they needed a cleaning service provider or they knew the service provider was not performing (Letlotlo).

The reasons provided does not meet the definition of an emergency based on the reasons stated above.

2. Payments not approved in line with SCM delegations

Requirements

Public Finance Management Act (PFMA) paragraph 38(1)(n) states that *“The accounting officer for a department, trading entity or constitutional institution must comply, and ensure compliance by the department, trading entity or constitutional institution, with the provisions of this Act.”*

Public Finance Management Act (PFMA) paragraph 44 of the PFMA states that:

- (1) The accounting officer for a department, trading entity or constitutional institution may—*
 - (a) In writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to an official in that department, trading entity or constitutional institution; Or*
 - (b) Instruct any official in that department, trading entity or constitutional institution to perform any of the duties assigned to the accounting officer in terms of this Act.*
- (2) A delegation or instruction to an official in terms of subsection (1)—*
 - (a) is subject to any limitations and conditions prescribed in terms of this Act or as the relevant treasury may impose;*
 - (b) Is subject to any limitations and conditions the accounting officer may impose;*

Treasury regulations 8.2.1 states that: *An official of an institution may not spend or commit public money except with the approval (either in writing or by duly authorised electronic means) of the accounting officer or a properly delegated or authorised officer.*

Par 4 of SCM Circular 160 of 2021/22 on *Thresholds Values for the Procurement of Goods, Works and Services by means of Petty cash, Written Price Quotations or Competitive:*

4.2. **Delegations to the Authority or Committee responsible for the Adjudication of Price Quotations and Open Competitive Bids:**

These delegations are reflected to the lowest levels and apply also to officials in the line of authority above the lowest level up to DDG (SL15) level.

Provision and/or Description	Delegated Authority or Committee	Applicability and/or Ranges	Conditions
Adjudication of Price Quotations	SCM Practitioner (SL 8)	Range: Above R2000 to R30 000	SCM official involved in evaluation process must not be involved in adjudication process to ensure segregation of duties.
	Assistant Director: (SL9) SCM	Range: Above R30 000 to R100 000	
	Deputy Director (SL11)	Above R100 000 to R300 000	
	Director SCM	Above R300 000 to R500 000	
	BAC's	Above R500 000 to R1 000 000	The current approved Acquisition Standard Operating Procedures in the various SCM: Acquisition Functional Streams for Goods & Services, Infrastructure and Property and Facilities Management apply.

POLOKWANE REGION

Nature

During the audit of written price quotations, it was noted that an official authorized the appointment of a service provider without adhering to the delegations limitations and thresholds of the PMTE. See below:

Supplier name	Description of services	Approver	Designation	Delegation authority	Amount	Official authorized to appointment
JPB UZZI Projects (Pty) Ltd	Gardening Services at Hlanganani Magistrate Office	LM Serepo	Deputy Director: Finance	R100 000 to R300 000	R464 266.55	No Official not authorized. Limited to R300 000.00

The official approved the appointment of supplier as per the written price quotation, which was above their delegated authority. The officials delegated official limited to R300 000.00 however the amount quoted adjudicated amounts to R464 266.55.

Therefore none compliance with FPMA and Treasury regulations 8.2.1 states that; *“An official of an institution may not spend or commit public money except with the approval (either in writing or by duly authorized electronic means) of the accounting officer or a properly delegated or authorized officer).”*

Cause:

This is due to management not implementing the SCM delegations requirements prior to appointment.

Impact of the finding

The above may result in the following:

- Irregular expenditure with amounts of **R464 266.55**
- Non-compliance with section 38 and 44 of the PFMA
- Non-compliance with internal policies

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Management did not ensure that written price quotations adjudication is approved by the delegated in order to comply with the relevant delegations.

Financial and Performance Management

Management did not review and monitor compliance with applicable laws and regulations.

Management did not implement procurement processes in an appropriate manner to ensure that finance delegations are adhered to.

Recommendation

- It is recommended that management should ensure that the entity complies with the finance delegations.
- Management should ensure that payments are authorized in accordance with the approved finance delegations.

Management response

Management disagrees with the finding due to the following:

1. The award of the quotation in question, was done electronically using the devolution system (quotation management system) as per the SCM directive, which requires all offices to use devolution for quotations for goods and services below R500,000.
2. The delegation you're referring to, it is SR 11, the Deputy Director and approver of the quotation in question is Head SCM (Deputy Director) on SR 12. Which is variance
3. In terms of delegations which is illustrated as per circular 160

Delegated authority	SCM Practitioner (SL 8) Range	Assistant Director (SL 9) Range	Deputy Director (SL 11) Above	Director Above
Threshold	R2000 TO R30 000	R30 000 TO R100 000	R100 000 TO R300 000	R300 000 to R500 000

- SCM Practitioner to assistant director's delegation stating threshold range and from deputy director level the delegation is stating above the threshold
- our interpretation is that the deputy director is delegated to approve the quotation above the threshold as per table
- range means be within the threshold and above means over the threshold stated

Auditors response

Management comments are noted. Auditors made the following assessment

- Firstly, the Deputy Director Salary range of approval is between SR11 and SR12. This however does not take away the fact that they are a Deputy Director and not a Director who is on a SR13.

- Additionally based on managements' response above, there is indicators of clear misinterpretation of the requirements of the delegations circular by management.
- If we auditors were to apply the exact explanation provided by managements, it would mean with regards to the last threshold speaking to the delegations of the BAC, the BAC would have powers to approve quotations that are "above" R1 000 000.00.
- This would be in contravention with Treasury requirements, as this then would mean that this is no longer a "Quotations" but rather a "Competitive bid".
- Therefore, without it is clear that as per managements' response that the above interpretation by management is invalid.
- It is clear from the above extract provided under the "Requirements Section" that the range for a deputy director to approve a written quotation is anything "Above" R100 000.00 but limited to a maximum of R300 000.00.
- Based on the above assessment, the finding will remain and will be reported in the Management Report with related impact.

MMABATHO REGION

Nature

During the regional audit of quotations, we noted that a quotation for the rendering of garden services for 12 months at Wolmaransstad magistrate office was adjudicated and awarded by the sub-regional Bid Adjudication Committee on 11 September 2021 which was chaired by a Deputy Director: SCM.

According to SCM Circular 160 of 2021/22 which was effective from the 01 August 2022, the delegated official to approve awards between R300 000- R500 000 is the Director of SCM.

Therefore, the approval of award was not obtained from the approved delegated official.

RFQ	Supplier	Description	Amount (R)
MMB 2021/201 GS	H and M Project Management	Rendering of garden services for 12 months at Wolmaransstad magistrate office	499 968

Impact of the finding

The above may result in the following:

- Irregular expenditure with amounts of **R499 968**.
- Non-compliance with section 38 and 44 of the PFMA

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Management did not ensure that deviations by the trading entity were approved and reviewed by the delegated official in order to comply with the relevant SCM laws and regulations.

Financial and Performance Management

Management did not review and monitor compliance with applicable laws and regulations.

Management did not implement procurement processes in an appropriate manner to ensure that SCM regulations are adhered to

Recommendation

It is recommended that management should ensure that the entity complies with all applicable laws and regulations.

Procurement through deviations should be reviewed and approved by the approved delegated official as per the SCM prescripts.

Management response

I am in agreement with the finding for the following:

The understanding for all intents and purposes was that the delegation is to be for the Head of SCM in regional offices to approve such procurement.

Procurement of MMB2021/201GS and similar procurements will be reviewed and approved by the approved delegated official as per the SCM Circular 161 of 2021/22.

Auditors Conclusion

Management's response has been noted and will be reported in the management report.

DURBAN REGION

Nature

During the regional audit of procurement, it was noted that quotations listed below were adjudicated and awarded by the Sub-regional Bid Adjudication Committee which was chaired by the ASD: SCM.

However, according to SCM Circular 160 of 2021/22 section 4.2 which was effective from the 01 August 2021, the delegated official to approve awards between:

R100 000 - R300 000 Deputy Director: SCM

R300 000 - R500 000 is the Director of SCM

Furthermore, it was stated that the current approved Acquisitions Standard Operating Procedures in the various SCM: Acquisition Functional Streams for Goods and services apply.

Therefore, the approval of the following awards were not obtained from the approved delegated official

Request ID	Supplier	Description of services	Amount (R)
86181	QH7 Construction (Pty) Ltd	SAPS :Gamalakhe ;Repairs to 28X Air Conditioning split units (2weeks period)	136 080

82993	Enzayolinto Trading Enterprise (Pty) Ltd	Ingwavuma Prison, supply and delivery 20 000L of drinking water for a period of three months	394 999.83
81409	Nokwazi-Siwe Trading CC	Justice:PMB High Court :Services & repairs 1x cooling tower ,2x chiller plants 3xVRV ,8x Package units &104 Split type air conditioners for 3 months	447 350
98023	Pakama Group (Pty) Ltd	Ekuseni Youth Prison :Operation & Maintenance of Sewerage treatment plant for 3 months	342 125
Total			1 320 554.83

Impact of the finding

The above may result in the following:

- Irregular expenditure with amounts of R978 429.83
- Possible irregular of R342 125
- Non-compliance with section 38 and 44 of the PFMA

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Management did not ensure that quotations by the department were approved and reviewed by the delegated official in order to comply with the relevant SCM laws and regulations.

Financial and Performance Management

Management did not review and monitor compliance with applicable laws and regulations.

Management did not implement procurement processes in an appropriate manner to ensure that SCM regulations are adhered to

Recommendation

It is recommended that management should ensure that the entity complies with all applicable laws and regulations.

Procurement through quotations should be reviewed and approved by the approved delegated official as per the SCM prescripts.

Management response

I am not in agreement with the finding for the following reasons:

The Sub-Regional Bid Adjudication Committee is appointed by the Region Manager as per the departmental circular 16 of 2012 paragraph 2.2.2 which states "*The appointment of the Sub Regional Bid Adjudication Committee remains the competency of the Regional Manager*".

Circular no 161 of 2021/22 quoted by Auditor General does not provide for the appointment of the Committee as it only outlines the responsibilities in so far as the individuals are concerned. The Regional Manager has clearly delegated in writing the same responsibilities and accountabilities to the committee.

The appointed Chairperson of the committee is the Deputy Director SCM alternated by the Assistant Director SCM.

The Assistant Director when chairing the committee is no longer viewed as an individual authorized to approve only up to R100 000 as per the circular but as the Chairperson of the Committee that is authorized to approve up to R500 000.

Same argument can be raised with the composition of the RBAC/ NBAC, which according to the National Treasury Practice Note of 03 of 2005, the Chief Financial Officer should be the chairperson of the Bid Adjudication Committee, however the departmental practice is not aligned to this practice note.

The above delegations are supported by Section 44 of the PFMA. **ASSIGNMENT OF POWERS AND DUTIES BY ACCOUNTING OFFICERS.** Which provides that the “The Accounting Officer for a department, trading entity or constitutional institution may— **(a) in writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to an official in that department, trading entity or constitutional institution**”

Auditors Conclusion

Management’s response is noted.

Management stated that The Sub-Regional Bid Adjudication Committee is appointed by the Region Manager as per the departmental circular 16 of 2012 paragraph 2.2.2 which states “*The appointment of the Sub Regional Bid Adjudication Committee remains the competency of the Regional Manager*”.

However, no evidence of the above had been submitted by management. The finding remains till such evidence of approval is submitted.

3. Preference Points

Requirement

Public Finance Management Act paragraph 38(1) (a) (i) and 38(1) (a) (iii) states that “The accounting officer for a trading entity must ensure that the trading entity 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;”*

Public Finance Management Act paragraph 38 (1)(c)(ii) states that “The accounting officer for a trading entity must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct”

Preferential procurement regulations, 2017 paragraph 6(3) and 6(4) state that:

- “(3) A tenderer must submit proof of its B-BBEE status level of contributor.*
- (4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-*
 - (a) may only score points out of 80 for price; and*
 - (b) scores 0 points out of 20 for B-BBEE.”*

CAPE TOWN REGION

Audit finding

During the audit of quotation number 10827 for the transportation of learners, the following issue was noted:

Issue 01:

The winning bidder (Maistry Transport) submitted a letter, stating that there is a joint venture between Maistry Transport and Faadiel Tours and transfers.

In accordance with the SANAS (South African National Accreditation System) when bidding through a Joint Venture, the Joint Venture must submit a Consolidated B-BBEE certificate provided that it is not an incorporated entity when responding to tenders. This means that you will have to obtain a new B-BBEE certificate for the Joint Venture, which consolidates each participant's B-BBEE status level. You apply for a Consolidated B-BBEE certificate at your B-BBEE Verification Agency who will issue the Consolidated B-BBEE certificate after combining the Joint Venture Partners' B-BBEE Certificates.

The Consolidated B-BBEE certificate must be tender specific – in other words, it must contain the name and number of the tender that you are responding.

We then inspected the B-BBEE Certificate submitted by the bidder and noted that they only submitted a sworn affidavit. Therefore, the bidder is not eligible to be awarded points for BEE status.

Issue 02:

We inspected the sworn affidavit submitted by the Joint and confirmed that the Sworn Affidavit submitted was not valid in accordance with SANAS.

Through inspection of the PA-16: Preference Point for bids (point 8.1) Maistry Transport declared that they will sub-contract 50% of their services to Faadiel Tours and Transfers.

The two parties submitted one sworn affidavit –BEE certificate, on which they both completed and signed. We then confirmed through a telephonic discussion with DTI and SANAS is that joint ventures must submit a consolidated BBB-EE certificate, which are issued by an accredited institution.

Based on the above assessment, the winning bidder was supposed to be disqualified during the pre-qualification screening phase due to not meeting the stipulated pre-qualifying criteria as per PA-03 (GS):Notice and invitation for quotation, and considered unacceptable tender for submitting an invalid BBEE Certificate.

Furthermore, the bidder would not be eligible for BEE points, as their certificate is not valid. Therefore, the second highest bidder (Capeway Transport) was supposed to be awarded the contract.

Impact of the finding

- Non- compliance with Preferential Procurement Regulation 2017, paragraph 6(3) and 6(4).
- Non- compliance with paragraph 38(1)(a)(i) and (38(1)(c)(ii) of the Public Finance Management Act.
- Irregular expenditure of R 427 500.

Internal control deficiency

Financial and Performance Management

- Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management.
- Management did not sufficiently evaluate the winning bidder's submission file, more especially the validity of the BEE certificate provided.

Recommendation

- It is recommended that management should enhance compliance procedures to ensure compliance with the applicable laws and regulations relating to supply chain management to ensure consistency in how all the bidders are assessed.

- Management should disclose the Irregular expenditure to date.

Management response:

I am in agreement.

There was a confusion with regards to the Sworn Affidavit, bidders were advised if there's an agreement signed by the lawyer both bidders can sign one Sworn Affidavit as part of consolidated status level. Internal control measures have since been implemented to address this deficiency.

Internal control measures have since been implemented to address this deficiency. Where required, it will be ensured that the consolidated BBBEE certificates are signed by accredited verification agency.

Auditor's conclusion

Management response is noted and the corrective actions taken. Going forward we will evaluate the effectiveness of the implemented controls through normal procurement testing.

The finding will remain.

4. Non-tax compliant supplier

Requirements

Public Finance Management Act paragraph (PFMA) 38(1)(a)(iii) states that *"The accounting officer for a trading entity must ensure that the trading entity has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective..."*

Furthermore, section 38 (1)(c)(ii) states that; *"The accounting officer for a department must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct..."*

National Treasury Instruction No. 09 of 2017/2018 section 4 states the following:

"4.1 Designated employee(s) must verify the bidder's tax compliance status prior to the awarding of price quotations or competitive bids.

4.2 Where the recommended bidder is not tax compliant, the bidder must be notified in writing of their non-compliant status and the bidder must be requested to submit written proof from SARS of their tax compliance status or proof that they have made an arrangement to meet their outstanding tax obligations within 7 working days. The bidder should thereafter provide the accounting officer or accounting authority with proof of their tax compliance status which should be verified via the Central Supplier Database or e-Filing.

4.3 Should the recommended bidder fail to provide written proof of their tax compliance status in terms of paragraph 4.2 above, accounting officers and accounting authorities must reject the bid submitted by the bidder.

4.4 In all instances, accounting officers and accounting authorities must ensure that systems are in place in their respective institutions to ensure that all invoices are paid within 30 days from receipt of an invoice, unless determined otherwise in a contract or other agreement."

DURBAN REGION

Nature

During the audit of quotations, we noted that Siyejabula Security services was appointed for the provision of security services as listed in the table below for 9 Golf Street, Ladysmith and at 25 Carlton Road, Ladysmith through the open quotation process.

The regional sub-bid adjudication committee adjudicated and approved the awarding of two quotations to Siyejabula Security Solution on 26 August 2021, however through verification of the CSD history compliance report of Siyejabula Security Solution, It was noted that the service provider was not tax compliance from 25 August 2021 (a day before evaluation and adjudication of the quote) until 1 September 2021.

Furthermore, there was no evidence of a written letter to the bidder notifying them of their non-tax compliance nor a response from the bidder to confirm that there are now tax compliance.

No	Supply Name	Description	Reference	Amount (R)
1.	Siyejabula Security Solution	Provision of security services at 9 Golf Street, Ladysmith	DBN21/07/13	332 359,08
2.		Provision of security services at 25 Carlton Road, Ladysmith	DBN21/07/11	332 359,08
Total Amount				664 718,16

Impact of the finding

- Irregular expenditure of R664 718.16
- Non-compliance with National Treasury Instruction No. 09 of 2017/2018

Internal control deficiency

Financial and performance management

Management did not review and monitor compliance with applicable laws and regulations.

Management did not ensure quotations are awarded to suppliers who are tax compliant.

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls

Management did not ensure that the adjudicated and awarding of quotations by the auditee are in accordance to the relevant SCM laws and regulations.

Recommendation

Management to ensure quotations are awarded to suppliers that have been verified to be tax compliant to comply with the relevant National Treasury Regulations.

Upon adjudication of quotations, management to extract a CSD registration report or compliance history report to confirm whether the selected service provider is tax compliant.

Management response:

I am not in agreement with the finding for the following reasons:

At the time of the evaluation the bidder was compliant as per the CSD report printed on the 18th of August 2022. This verification together with the tax status report with an expiry date of 26 May 2022 was thus

considered for adjudication and award thereof. This is in line with the paragraph 3.1 (b) of National Treasury Instruction Note of 2017/18

Auditor's conclusion

Management's response noted, however the finding remains based on the following:

The central supplier database tax compliance report was drawn by management on the 18 August 2021 for the evaluation and adjudication of the quotation on the 26 August 2021 for which a letter of award was issued in the 27 August 2021.

According to the CSD tax history compliance report, the supplier was note that the service provider was not tax compliance from 25 August 2021 till 1 September 2021.

In terms of National Treasury Instruction No. 09 of 2017/2018, section 4 states the following:

"Designated employee(s) must verify the bidder's tax compliance status prior to the awarding of price quotations or competitive bids."

The emphasis is placed on making sure that a bidder who is awarded a quotation/tender is tax compliant, which create an obligation for management to ensure that any service provider "awarded" a quotation/tender is tax compliant.

5. Local Content and Production (Designated Groups)

Requirement

The Public Finance Management Act, 1999 (Act No. 1 of 1999) paragraph 38(1) states that *“the accounting officer for a department, trading entity or constitutional institution —*

- (a) must ensure that that department, trading entity or constitutional institution has and maintains—*
 - (iii) an appropriate procurement and provisioning system, which is fair, equitable, transparent, competitive, and cost-effective.*
- (c) must take effective and appropriate steps to—*
 - (ii) prevent unauthorised, irregular, and fruitless and wasteful expenditure and losses resulting from criminal conduct;”*

The preferential procurement regulations, paragraph 8(2) state that *“An organ of state must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.”*

National Treasury Designated Sector Circular on “Local production and content as announced by the Minister of Trade and Industry” of 20 January 2012 states that *“The stipulated minimum threshold percentages for local content and production for Textiles, Clothing, leather and footwear sector is 100%.”*

National Treasury Designated Sector Circular number 3 of 2017/18 Pumps, medium voltage motors states that *“The stipulated minimum threshold percentages for local content and production for Pumps, medium voltage motors sector is 70%.”*

National Treasury Designated Sector Circular number 11 of 2016/2017 valve products states the following *“The stipulated minimum threshold percentages for local content and production for valve products sector is 70%.”*

National Treasury Designated Sector Circular number 1 of 2019/2020 plastic pipes states that *“The stipulated minimum threshold percentages for local content and production for plastic pipes sector is 100%.”*

National Treasury Designated Sector Circular number 10 of 2019/20 Electrical cables states the following *“The stipulated minimum threshold percentages for local content and production for electrical cable sector is 90%.”*

National Treasury Designated Sector Instruction Notes paragraph 7.1 states that *“Once bids are awarded, the DTI must be notified of all the successful bidders and the value of the contracts; and provided with copies of the contracts, the SBD/MBD 6.2 Certificates together with the declaration C submitted by the winning bidder.”*

CAPE TOWN REGION

Audit finding

Issue 1 – Local content reporting (Internal Control deficiency)

During the audit of quotations, we noted that RFQ no. 10319 was advertised for making and installing curtains for the formal lounge and sunroom and to replace damaged curtains.

Through the inspection of the invitation to bid document (PA-04), we noted that local content was applicable on the bid and the local content declaration (PA-36 and annex C) were listed on the PA-04 as part of the prequalification criteria used to assess bid responsiveness.

We further confirmed that the invitation to bid document (PA-04) stipulated that prospective supplier(s) are required to provide fully signed and fully completed bid documents as part of the prequalification criteria used to assess bid responsiveness.

We further confirm that the invitation to bid document (PA-04) stipulated that prospective bidding suppliers that do not adhere to the requirements listed on the prequalification criteria will be deemed non-responsive and will not be evaluated further.

We further inspected the local content declaration (PA-36) and confirmed that the threshold for fabrics a subsector of the textile's designated sector was stipulated correctly at 100%.

Through enquiry with the SCM department, it was confirmed that the Department of Trade and Industry (DTI) was not notified of the successful bidder's local content declaration and the value of the contract.

Issue 2- Local content thresholds and DTI reporting (Irregular and internal control deficiency)

During the audit of competitive bids, we noted that RFP no. 1005/19 was advertised for the construction of a new sickbay facility at the Saldanha Military base.

Through the inspection of the invitation to bid document (PA-04), we noted that local content was not ticked as applicable on the bid and the local content declaration (PA-36 and annex C) were not listed on the PA-04 as part of the prequalification criteria used to assess bid responsiveness.

Through inspection of the winning and losing bidders returnable document bid files, we confirmed that all bidding suppliers were provided with a copy of a local content declaration (PA-36) and declared their local content compliance for the tender.

Through inspection of the winning bidder's local content declaration (PA36) we confirmed that the auditee did not stipulate the percentage thresholds of the local content designated sectors that need to be adhered to by the winning bidder.

Further upon inspection of the winning bidder's itemised bill of quantities, we noted that the following designated sectors were applicable as per the DTI's list of designated sectors:

- Plastic Pipes and Fittings - 100%
- Valves -70%
- Steel products and components for construction- 100%.

Therefore, the invitation to tender did not specify the minimum thresholds applicable for local content production as prescribed in the relevant National Treasury Instruction Notes guided by the DTI's list of designated sectors.

Further through enquiry with the SCM department, it was confirmed that the Department of Trade and Industry (DTI) was not notified of the successful bidder's local content declaration and the value of the contract.

Impact

- Non-compliance with the paragraph 38(1) (a)(iii) and (c)(ii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
- Non-compliance with the Instruction Notes on Designated Sectors
- Irregular expenditure

Internal control deficiency

Financial and Performance management

Management did not review and monitor compliance with applicable legislation.

Management did not adequately review bidding documents, in order to ensure that PA- 36: local and production requirements as prescribed by national treasury are adhered to.

Furthermore, management did not ensure DTI reporting as required by the designated sector instruction notes.

Recommendation

Due diligence should be performed on bidding documents prior to advertisement to ensure that they comply with local content rules and regulations.

Management should ensure that the procurement for local content and production complies with the National Treasury Designated Sector Instruction Notes.

Management should provide evidence that the DTI was notified of the successful bidder and the value of the contract for local content

Management response:

I am not in agreement with the finding due to the following reasons:

Issue 1

For RFQ no. 10319, the Regional Office was awaiting confirmation whether the service will be rendered as there were uncertainties that the service is still required. We have since submitted this information to Head Office for reporting purposes to DTI.

Issue 2

For Saldanha Military Base, it must be noted that as much as the local content was not ticked as a responsiveness criteria on the PA-04, the successful bidder did declare their local content compliance on the PA-36. **(See attached Annexure E)**. It is agreed the Regional Office did not notify Head Office for reporting purposes to DTI and will report accordingly.

It must be mentioned that during the implementation of the local content, there was no formal training that was provided. It was therefore not clear how it should be implemented as DTI was not clear when guidance was sought. National Treasury also did not conduct formal training to the Departments, as a result even Service Providers are still having a challenge.

National Treasury has recently requested DTI to conduct training on the Local Content, all Procurement relating/involving Local Content it will be designated accordingly. It was indicated as part of Audit Action Plan in 2021/2022 financial year.

Auditor's conclusion

Management response is noted and the corrective actions taken. Going forward we will evaluate the effectiveness of the implemented controls through normal procurement testing.

The finding will remain.

6. Advertisement of and publication of bid awards

Requirement

The Public Finance Management Act, 1999 (Act No. 1 of 1999) paragraph 38(1) states that “*the accounting officer for a department, trading entity or constitutional institution —*

- (a) *must ensure that that department, trading entity or constitutional institution has and maintains—*
(iii) *an appropriate procurement and provisioning system, which is fair, equitable, transparent, competitive, and cost-effective.*
(c) *must take effective and appropriate steps to—*
(ii) *prevent unauthorised, irregular, and fruitless and wasteful expenditure and losses resulting from criminal conduct;”*

National Treasury instruction note 1 of 2015/2016 “Advertisement of Bids and Publication of Awards on eTender Publication Portal” -paragraph 2.3 states that “*The National Treasury is therefore introducing a web application in the form of the eTender Publication Portal where all PFMA compliant institutions must advertise all their bids and publish all their awarded bids.*”

CAPE TOWN REGION

Audit finding

Issue 1- eTenders Advertising and publication of Award (Internal Control Deficiency)

During the audit of competitive bids, we noted that RFP no. 1005/19 was advertised for the construction of a new sickbay facility at the Saldanha Military base.

Through enquiry with the auditee’s SCM department, it was confirmed that the bid was not advertised on eTenders, and the award was also not published on eTenders.

Issue 1- Publication of Award on Tender Bulletin (Non-compliance)

During the audit of competitive bids, we noted that RFP no. 1005/19 was advertised for the construction of a new sickbay facility at the Saldanha Military base.

Through enquiry with the auditee’s SCM department, it was confirmed that the bid award was also not published on the tender bulletin.

Impact

- Non-compliance with the paragraph 38(1) (a)(iii) and (c)(ii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
- Non-compliance with the Instruction Notes on bid advertising and bid award publications

Internal control deficiency

Financial and Performance management

Management did not review and monitor compliance with applicable legislation.

Furthermore, management did not ensure proper advertising and publication of bid awards as required by the National Treasury.

Recommendation

Management should ensure all bids are advertised on all required media channels and all bid awards are published on all applicable media channels.

Management response:

I am in agreement.

It must be mentioned that challenges were experienced with advertising tenders on the e-Tender as the documents were too big to upload however bids were advertised on CIDB and the DPWI website. The bid advert was advertised on the Government Tender Bulletin, **(Annexure C)** and the award was also advertised. It is unfortunate that the copy was misplaced as numbers of auditors request information more frequently, and as the website for National Government Tender Bulletin is still under construction, it is not possible to obtain such evidence.

Auditor's conclusion

Management response and commitment to ensure that bids and bid awards are published on all the required media channels in future. This will be monitored on future bid adverts and awards.

The finding will remain.

COMPETITIVE BIDS

7. Limitation of scope – Deviations

Requirements

Public Finance Management Act (PFMA) section 40(1)(a) stipulates *that the accounting officer for a department must keep full and proper records of the financial affairs of the department in accordance with any prescribed norms and standards.*

Furthermore, Section 41 states that *“an accounting officer of a department must submit to the relevant Treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the relevant Treasury or the Auditor-General may require”.*

Paragraph 15 of the Public Auditing Act states that the Auditor-General has at all reasonable times full unrestricted access to -

“(a) Any document, book or written or electronic record or information of the auditee or which reflects or may elucidate the business, financial results, financial position or performance of the auditee;

(b) Any of the assets of or under the control of the auditee; or

(c) Any staff member or representative of the auditee”

PRETORIA REGION

Nature

During the audit of supply chain management for the 2021/22 financial year end, the requested information was submitted as at 10 March 2022 with the due date 16 March 2022 information was received accordingly however the letter from national treasury was not submitted to confirm the conditions. Refer below table

No	RFI no.	Information outstanding	RFI request date	RFI due date	Number of outstanding days
1.	RFI – 66 Competitive bid	Tender No: PT15/018 - Letter from National treasury for the approval of Deviation.	10 March 2022	16 March 2022	7 days

Impact of the finding

- Limitation of scope as we were unable to obtain sufficient and appropriate audit evidence to confirm the conditions for approval of Deviation and this can also lead in unfavorable audit outcomes.
- Non-compliance with the PFMA sections 40(1) a.
- Non-compliance with the PFMA section 41.
- Increased time spent to request and collect audit documentation may result in delays in finalising the audit and increase in the audit fee.

Internal control deficiency

Financial and performance management

Management did not implement proper record keeping in a timely manner to ensure that complete, relevant and accurate information is accessible and available to support financial and performance reporting.

Recommendation

It is recommended that all information requested be provided to the AGSA within three days from the date of request as agreed with management.

Officials within the entity are made aware of the audit process and importance of submitting accurate and complete information to the auditors within the required timeframe;

Management response:

Management response not received

Auditor's conclusion

Managements responses was not received accordingly, the limitation of audit finding resulted in managements not submitting the following competitive bid documents for the auditors to test the initial award of the tender, as a result of that the communication of audit finding remains. Refer below table.

Tender Number	Client Department	Awarded Supplier	Tender amount	date of occupation of the lease building
PT/13/045	Public Service Commission (PSC)	JR209 Investments (Pty) Ltd	R1 361 352,38 pm	01-Nov-14

8. Preference points

Requirements:

Section 38(1)(a)(i) and (iii) of the Public Finance Management Act states that; “The accounting officer for a department must ensure that the department, trading entity or constitutional institution has and maintains effective, efficient and transparent systems of financial and risk management and internal control; an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective...”

Furthermore, section 38 (1)(c)(ii) states that; “The accounting officer for a department must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct...”

Section 44 (1) of the Public Finance Management Act states that; “The accounting officer for a department, trading entity or constitutional institution may
(a) in writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to an official in that department, trading entity or constitutional institution; or
(b) instruct any official in that department, trading entity or constitutional institution to perform any of the duties assigned to the accounting officer in terms of this Act.

Section 6(8) of the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017 states that; “Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points”

Section 6(9) of the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017 states that;
“(a) If the price offered by a tenderer scoring the highest points is not market related, the organ of state may not award the contract to that tenderer.
(b) The organs of state may-
(i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
(ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
(iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
(c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the organ of state must cancel the tender”

Section 11(1) and 11(2) of the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017 states that;
11(1) - “A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act.”

11(2) – “If an organ of state intends to apply objective criteria in terms of section 2(1)(f) of the Act, the organ of state must stipulate the objective criteria in the tender documents”

KIMBERLY REGION

Nature

During the regional audit of procurement through competitive bidding, the following was noted:

Background:

According to the PA04: (EC): Notice and Invitation for RFP: ID 83781 for Servicing and Maintenance of kitchen equipment, cold and Freezer rooms at various clients for 24 months, the following were deemed to be the functionality criteria that evaluated the capacity and capability of the prospective bidders:

- References from client/consultants for electrical HT projects
- Artisans and key staff in relation to the scope of work
- Electrical technician (supervisor)
- Financial Capacity

Furthermore, the functionality scoring sheet for MLK Engineering from the panel score was 20/25 for references from clients/consultants for previous electrical HT projects completed and thus, passed functionality stage.

However, based on the assessment of the PA20.7 scoring sheet, MLK Engineering was not tested for price and BBEE scoring even though they had met the functionality. (MLK Bid's was 54.12% below the estimate and thus BEC deemed the bid a financial risk

Based on the "Risk assessment report for bidders who scored the highest points" report which was performed on the 13/09/2021 for the bid submitted by MLK Engineers.

- According to part 2 of the report for the quality of previous work,

"The quality of the previous work performed by the contractor as listed in the DPW-09(EC) had been verified with the references provided and is indicated on the table, but only one has responded to our request to complete the contractor's performance evaluation template and has not affix the official stamp.

From the projects as listed in the table it is clear that the references of the projects listed by bidder, it is clear that quality of work is not satisfactory"

However, according to the responded performance evaluation template, the bidder was evaluated as very good to excellent performance. Furthermore, the bidder was scored on functionality based on the number of projects completed by providing project completion certificates and had scored 4 points indicative of 4 projects being completed. It is not clear whether the department followed up with the references as no proof was included in the risk assessment report also it is not clear how the department reached a decision that the suppliers work was not satisfactory.

Furthermore, the assessment on the quality of work was assessed based on the non-response of the references and also not taking into account the one reference that responded

- According to part 3 of the report for contractual commitment

"The contractual commitment on projects as listed on DPW-09(EC) had been verified with the references provided.

As per the references interviewed, the bidder has not demonstrated an excellent quality of work, the workmanship might be poor and does not always deliver according to the required standard. That the bidder does not have sufficient resources to complete a project of this nature and magnitude. In terms of the technical risk involved, it was evident from the feedback that there is **high technical risk** in appointing the bidder MLK Engineering and Consultants"

However, according to the statements made in the previous point, the references did not respond for the quality of previous work but were available for interviews for contractual commitment. Furthermore, there was no evidence submitted as proof of the interviews that were conducted nor which reference were interviewed.

The statements made are also uncertain as there's an element of uncertainty made such as "the workmanship might be poor and does not always deliver according to required standard"

- According to point 7 for risk analysis:

"The bidder poses a high risk because the basic items of transport and labour rates are far below the market related rates, which might be a problem during the contract period"

However, based on the response from the bidder on the clarification of the price, the bidder specialises in the maintenance and installation of mechanical equipment and had indicated that they have some materials in stock to support them in the project of such magnitude and most of the stock was purchased when the stock was lower than usual and had taken advantage of auctions and specials in their purchasing strategy thereby guaranteeing low prices. That the bidder also has good relations with suppliers that provide discounts.

Therefore, MLK did not change/ alter their price and provided clarity and confirmation of capability and capacity to fulfil the contract.

- Conclusion:

According to the risk assessment, MLK Engineering failed the risk assessment based on technical risk due to the bidding price and the response from reference checks despite being low risk in the Quality of work, contractual commitment, commercial risk, capacity risk.

However, according to the points mentioned in point 2, 3 and 7, the bidder was a high risk which is inconsistent with the conclusion that was provided in the assessment that stated they were low risk.

Auditor assessment:

There are inconsistencies that were identified with in the risk evaluation performed for the bid submitted by MLK Engineering which was the highest scoring bidder that was disqualified. Furthermore, there was no evidence to prove the assessment that was performed through interviews of references, requests made by the Department to verify the material nor proof of communication with the bidder to provide guarantee on the quality of previous project.

Based on section 6(9) of the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017, if the price offered by a tenderer scoring the highest points is not market related, the organ of state may not award the contract to that tenderer. However, the organs of state may negotiate a market-related price with the tenderer scoring the highest points or cancel the tender

However, according to National Treasury Preferential Procurement FAQ item 39, where a supplier offers a price that is deemed to be not viable to supply goods or services as required by the organ of state, measures are in place to mitigate the risk. These may include confirming with the supplier if they will be able to deliver on the price, for which the auditee did and for which the supplier responded to confirm that they can deliver the services, however, the bidder was disqualified. The auditee could have had tight contract measures to mitigate the risk of non-performance. Further action on failures by the supplier to deliver should be handled in terms of the contract including performance warnings and listing on the database of restricted suppliers.

Therefore, MLK should have been evaluated further for price and auditee considered the following contingencies when considering awarding the bid to MLK Engineering

Impact of the finding

The above may result in the following:

- The award was awarded irregularly
- Non-compliance with section 38 and 44 of the PFMA

- Non-compliance with Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Management did not ensure that the highest scoring bidder was risk evaluated suitably and appropriately based on available and accessible information to prove the validity of the risk analysis to not appoint the highest scoring bidder.

Financial and Performance Management

Management did not review and monitor compliance with applicable laws and regulations.

Management did not implement procurement processes in an appropriate manner to ensure that SCM regulations are adhered to

Recommendation

It is recommended that management should ensure that the entity complies with all applicable laws and regulations.

Management to ensure that the highest scoring bidder are evaluated suitably and appropriately for risk based on available and accessible information to prove the validity of the risk analysis to not appoint the highest scoring bidder.

Furthermore, the auditee could have had tight contract measures to mitigate the risk of non-performance. Further action on failures by the supplier to deliver should be handled in terms of the contract including performance warnings and listing on the database of restricted suppliers.

The entity should disclose irregular amount limited to the payment made to date

Management response

I am not in agreement with the finding for the following reasons:

The Region experienced an increase in non-performance by service providers, especially for construction works and the need to perform risk assessment was identified as a tool to mitigate against the identified risk. In terms of circular 6 of 2018 paragraph 5.6 – no bid may be passed over

solely because it is considered low and therefore a financial risk unless there are just reasons for not doing so.

In terms of circular 34 of 2014 paragraph 3.2.10 and 16 – if a bid presents unacceptable financial risk, the department may not award to the highest bidder. In the same principle, once a bidder possess financial risk at the instance of his price been found to be lower than the estimate. Our systems requires us to conduct risk assessment.

During risk assessment, the bidder confirmed the price but could not demonstrate how he was to acquire the substantial material required to execute the work. He could not demonstrate to the satisfaction of the BEC that he has material in stock. The bidder was requested to allow the BEC team to do ex stock material inspection but he was not available at all the proposed dates. Without verification of the availability of ex stock, the BEC viewed the risk too high and not in line with department's risk appetite.

Expectation was that the BEC will conduct inspection of material to establish if the material is fit for the purpose for which it may be required (Servicing and Maintenance of kitchen equipment, cold and Freezer rooms). This is so considering the model, size and specification of the material.

The bidder was also required to provide guarantee on the ex-stock from the manufacturers which he could not provide. The BEC due to their technical expertise, arrived at the position that the risk is untenable. The price offered was well below market value for all items in the BOQ and this gave an indication to the BEC that the bidder poses a high risk of not completing the project due to under-pricing.

At a rand to rand value assessment, the bidder quoted low on material elements like transport and labour which are considered as key costs drivers. In the body of the BOQ, the bidder has no movement to fund and close the gaps caused by low pricing. It is apposite to record that the two items has nothing to do with ex-stock. The AG is of the view that strengthened contract management and warnings would have resolved the risks. As much as we appreciate the advice, if the risk is beyond our appetite, it must be avoided at all cost. This is so to ensure that projects are delivered on time, within time and cost. The measures suggested would have been reactive and placed the project deliverables at risk.

NB: The price estimate BOQ is attached for ease of reference, if we can draw your attention to BILL6 EPWP, the labour requirements alone cost in the margin of R4.3 million and the bidder's offer was R6.5 mil, that alone is an indicator to the BEC that this bidder is a high risk and all these factors were taken into consideration prior to making arriving at a conclusion. It should further be noted that the price was negotiated with the bidder which was eventually recommended to a more reasonable rate from R16 mil to R14 mil. This price is more in line with market rates.

The priced BOQ is attached for ease of reference.

Auditors Conclusion

Management's comments are noted. However, the finding still remains based on the following:

According to management's response, in terms of circular 6 of 2018 paragraph 5.6 – no bid may be passed over solely because it is considered low **and therefore a financial risk unless there are just reasons for not doing so.**

However, circular 06 of 2018 paragraph 5.6 states that; *"No bid may be passed over solely on the basis of "too low" without clarification by the service provider"*

Paragraph 5.5 further states that; *"It is important to not summarily disregard a price as not being market-related. The Department has an obligation to clarify unreasonably low or high prices with tenderers"*

Therefore, the circular does not state that should a bidder be *"too low"* there are therefore considered a financial risk as management has stated above.

According to management's response a risk assessment was performed and the bidder confirmed the price but could not demonstrate how he was to acquire the substantial material required to execute the work. That he could not demonstrate to the satisfaction of the BEC that he has material in stock.

However, the bidder responded through email correspondence dated 09 September 2021 to the Department providing clarity on the bid price and stated that the following:

- That they have some materials in stock to support them in the project of such magnitude and most of the stock was purchased during periods when the cost was in fact lower than usual and have taken advantage of auctions and specials.
- That their pricing strategy for this particular project had been that of factoring in repair and replacement materials within their monthly and yearly recurrent service charges.
- That through good relations with suppliers, they utilize bulk buying for most of the projects which has resulted in major discounts of as much as 30-40%.

Management further stated that the bidder was requested to allow the BEC team to do ex stock material inspection but he was not available at all the proposed dates. That without verification of the availability of ex stock, the BEC viewed the risk too high and not in line with department's risk appetite.

However, management could not provide any evidence of the above communication with the bidder requesting verification of the material and the unavailability of the bidder on the proposed date.

In terms of Circular 34 of 2014 section 3.2.14(ii) states that; *"The risk assessment covers technical and*

commercial risk and can be conducted by externally appointed consultants for the particular project or by Department officials possessing necessary expertise and skills to conduct such”

Furthermore, section 3.2.15 (ii) states the aspects to be covered by technical risk as “reference checks will be conducted with the clients and depending on their **written feedback** and the dynamics of the bid under evaluation, the BEC will rule on the level of risk thereof”

It is not clear which party performed the risk assessment as there was no evidence of acknowledgement by the compiler.

Based on the risk assessment that was conducted on the bid, the quality of the previous work performed by the contractor as listed in the DPW-09(EC) had been verified with the references provided and is indicated on the table, but **only one** had responded to the request to complete the contractor’s performance evaluation template and has not affix the official stamp.

Through inspection of the one responded evaluation template, the bidder was evaluated between the ranks of “very good” and “excellent” for quality of work. It should also be noted that these evaluation templates were submitted directly to the Department by the clients.

The policy states that reference checks will be conducted and depending on the written feedback the BEC will rule on the level of risk. However, based on the risk assessment it was concluded that, *“the projects as listed in the table it is clear that the references of the projects listed by bidder, it is clear that quality of work is not satisfactory”*, without any written evidence of the quality being unsatisfactory.

The Risk Assessment mentioned that the references were interviewed and the bidder had not demonstrated an excellent quality of work, the workmanship **might be poor** and does not always deliver according to the required standard. However, management has not provided evidence of such interviews that were conducted. Which was in contradiction to the mentioned evaluation template that was received.

Furthermore, the bidder was stated under quality assessment to not have sufficient resources to complete a project of this nature and magnitude. However, risk assessment performed on the capacity concluded to state that the bidder has sufficient resources to complete a project of such a nature and magnitude. Which provides two contradicting statements in one report.

Based on the above, numerous inconsistencies were identified in the risk assessment that was conducted to conclude the bidder was a high risk and therefore, disqualified.

9. Minimum Functionality Criteria

Requirement

The Public Finance Management Act, 1999 (Act No. 1 of 1999) paragraph 38(1) states that *“The accounting officer for a department, trading entity or constitutional institution —*

(a) (iii) must ensure that that department, trading entity or constitutional institution has and maintains an appropriate procurement and provisioning system, which is fair, equitable, transparent, competitive, and cost-effective.

(c) (ii) must take effective and appropriate steps to prevent unauthorised, irregular, and fruitless and wasteful expenditure and losses resulting from criminal conduct;”

The Preferential Procurement Regulations, 2017, paragraph 5 states:

“5. (1) An organ of state must state in the tender documents if the tender will be evaluated on functionality”

5. (2) *The evaluation criteria for measuring functionality must be objective.”*

5. (3) *The tender documents must specify-*

- a. the evaluation criteria for measuring functionality;*
- b. the points for each criteria and, if any, each sub-criterion; and*
- c. the minimum qualifying score for functionality.*

5. (6) *A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.*

5. (7) *Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in regulation 11.”*

CAPE TOWN REGION

FIRST ISSUE

Audit finding

During the audit of supply chain management for competitive bids for tender CPTSC25/21 – 24 Hours Security Services at Customs House which was awarded to Hawksvale Security Solutions for a total amount of R 9 486 211,44 .

We noted that the minimum points for functionality was stated as 50 % and that the winning bidder did not meet the minimum functionality score of 50 %:

The Criteria was assessed as follows per PA 04 – Notice and Invitation to Bid.

1) Company experience (30%)

Company experience of similar projects to the minimum value of R 500 000 undertaken in the past 5 years. (Bidders will be required to attach either actual letter of appointment / Service level Agreement / Purchase Order. List of completed projects to be included in the DPW – 09.

Allocation of points is as follows:

- 5 or more projects = 30%
- 4 projects = 24%
- 3 projects = 18%
- 2 projects = 12%
- 1 project = 6%

Assessment:

Completed:

Department of Public Works - Security Services – R 399 520, 77
Phuti Ke Mamoloto Info Tech – Security Services – R 96 000, 00
Nokayamaseela – Security Services – R60 000, 00
Phuti Ke Mamoloto Info Tech – Security Services – R30 000,00

In progress:

Department of Public Works - Security Services – R399 520, 53(60%)

Conclusion : Per inspection of the tender file we noted that the winning bidder has 5 projects in total on the DPW – 09 form and that all of them were below the minimum threshold of R500 000,00 , we therefore allocated 0 points, however management allocated 12% which equates to 2 projects.

2) Infrastructure (30 %)

The bidder must provide proof of existing and operational control room (physical address) with base radio, two licensed roadworthy vehicles or proof of ownership or lease agreement (Certified copies not older than 3 months) and at least two licensed fire arms.

The points for infrastructure requirements will be allocated as follows:

2.1 The bidder must provide proof of existing and operational control room at the bidder's property or rented premises, Bidders to attach atleast 3 color pictures, which must reflect the base radio and other supporting documentation.

Satisfactorily provided = 10

No proof = 0

Assessment: Per inspection of the tender file, we noted that the bidder only attached one color picture , we therefore scored them 0 as the service provider did not attach at least 3 pictures as required and the client scored them 10 points.

2.2) The bidder must provide proof of owning atleast two licensed fire arms in the name of the bidder (Company) or atleast in the name of one of the directors of the company .

Proof of ownership of two or more licensed fire arms provided = 10

No proof = 0

Assessment: Per inspection of the tender file, we noted that only gun one License was attached belonging to AK Mpate for a Handgun, we therefore allocated 0 points and the client allocated 10.

2.3) Bidder to provide proof of owning at least two roadworthy vehicles in the name of the company or any of the directors.

Satisfactorily provided = 10

No proof = 0

Assessment: Per our inspection of the tender documents, we noted that two vehicle licenses were attached as required but both were not certified, we therefore allocated 0 points and the client allocated 10 points.

3) Dog handling license and Security Guards handling certificates.(20 %)

3.1 Where a service provider has submitted proof of dog handling license or the valid agreement:

Satisfactorily provided = 10

No proof = 0

Assessment: Per inspection of the tender file, we noted that a dog-handling license provided and we scored them 10 points, client also scored them 10 points.

3.2. Where a service provider Proof of atleast three certificates of competency of security guards.

Satisfactorily provided = 10

No proof or insufficient team = 0

Assessment: Per inspection of the tender file, we noted that three certificates were attached, we therefore allocated 10 points and the client allocated 10 points.

4) Personnel Experience - Site Supervisor with Grade B Certificate: Attach CV with History of employment and contactable referees (20%)

Grade B Certificates

a) Two or more supervisors in position of Grade B certificates = 10

b) One or none of the supervisors process Grade B certificate = 0

Experience:

Either one or both of the supervisors have the following experience:

- 5 years of supervisory experience = 10
- 4 years of supervisory experience = 8
- 3 years of supervisory experience = 6
- 2 years of supervisory experience = 4
- 1 years of supervisory experience = 2

Assessment: Per inspection of the tender file, we noted that Two Grade B certificates were attached for the following guards (Mdaka L, Peter Vlotman) – we have therefore allocated 10 points and the client has allocated 10 points.

Assessment: Per inspection of the tender file, we noted that two CV's were attached for the following two gaurds:

Mdaka L - Grade B – Registration date: 2013/09/04

P Vlotman – Grade B – Registration date – 2001/12/14

Based on the above, we allocated a total of 10 points as both gaurds have Grade B certificates and both have more than 10 years' experience based on the registration dates per the PSIRA certificates and the client awarded them 10 points.

Therefore based on all of the above, the winning bidder (Hawksvale) scored a total of 40 % and therefore did not meet the 50 % minimum functionality threshold requirement and should not have been assessed further for price and BEE scoring.

Impact of the finding

- Non- compliance with Preferential Procurement Regulation 2017, paragraph 4(2).
- Non- compliance with paragraph 38(1(a)(i) and (38(1)(c)(ii) of the Public Finance Management Act
- Irregular expenditure of R 9 486 211,44 .

Internal control deficiency

Financial and Performance Management

Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management.

During the competitive bid evaluation process, management adjusted the functionality criteria in a manner that advantaged the winning bidder Hawksvale.

Recommendation

- It is recommended that management should enhance compliance procedures to ensure compliance with the applicable laws and regulations relating to supply chain management to ensure consistency in how all the bidders are assessed.
- Management should disclose the Irregular Expenditure.

Management response:

I do not agree with the finding due to the following reasons:

ISSUE 1

PA-11 (Declaration of interest form)

According to the guidance from Legal Services, the PA 11 is not an element of fraudulent misrepresentation and therefore disqualification is not good in law. See attached legal opinion, **Annexure A**

Evaluation criteria

1. **Company Experience:** The procurement strategy stipulates that company experience of similar projects to the minimum value of R500 000 were required. All projects below R500 000 were then consolidated in order to reach minimum criteria as per approved strategy. On the DPW09 Hawksvale listed four (4) completed projects which amounted to R585 520.77. The department requires that the service provider must portray they have done projects to the minimum of R500 000 regardless of the value of each project.
2. The Department did not request per project taking into consideration the business opportunities in the Security Industry is very limited and the majority of bidders are still new. The company also listed the current projects which amounted to R399 520, 77 which constitutes 60% completion. This indicates that a bidder has tangible and relevant experience in executing the current service.
3. **Infrastructure requirement:** The infrastructure was divided into three (3) categories, namely control-room, fire-arm and road worthy vehicles and the weight was 10% for each category.

For the control room, the bidders submitted only one colour picture of control room, lease agreement signed by both lessee and lessor as well as ICASA certificate from I.R.POPE & SONS which qualified for 1 (one) point. In light of the above-mentioned, the BEC members were satisfied with these documents. As a further control, the site inspection was conducted to confirm the existence of the control room. The bidder would receive zero marks if no tangible proof was provided at all, in this instance it was fair to consider what was furnished. In the scale of 10, the bidder was required to submit 3 colour pictures and only submitted 1 which then qualified as 3.33.

The bidder submitted certified 1 **fire-arm licenced** registered under the Director of the company (Mr. A. K Mpate), and the average of the three (3) categories amounted to 3 points. This complied with the requirements as articulated in the functionality criteria. The requirement was for the bidder to submit proof of owning two licensed fire-arms however the bidder provided 1 which qualified for 5 points. Therefore we are not in agreement that the bidder should be scored zero.

4. **Supervisor Experience:** According to PSIRA, grades C & B are considered as supervisors. See attached guide from PSIRA, **(Annexure B)** In addition to this, Mr Louw has security experience of 9 years and, Mr Mdaka 7 yrs and both have Grade B certificates. The CV's submitted are in line with credible relevant experience and correct Grading at the level of supervisory. In this instance bidders were allocated full score

Auditor's conclusion

Management's response is noted.

Issue 01

(PA11 - Declaration of interest form)

The legal opinion as per annexure A is noted. Our response on the matter is currently reserved while we consult our legal to assess the opinion and determine if we arrive to the same conclusion as management.

Issue 02

We have noted management's response. As per our inspection of the response and the clarity, which was provided by PSIRA, we agree with management on the matter relating to the PSIRA supervisor experience.

However, we still disagree on the point's allocation for the winning bidder specifically in relation to the following Categories: Company Experience and Infrastructure as noted in our Assessment above. Thus, the winning bidder would still not meet the minimum functionality criteria.

Therefore based on the above, the finding remains.

SECOND ISSUE

Audit finding

During the audit of competitive bids, we noted that Tender no. CPTSC 26/20 was advertised for provision of security services: Hope Street Parking for a period of 24 months from the date of order.

Issue 1- Incorrect application of functionality scoring

Through inspection of the functionality scoring sheets, we confirmed the following:

The following bids were deemed responsive and evaluated for functionality:

- Papamike Protection Services (68%)
- Jungephaphi Construction and Projects (80%)
- Mokato Security Services & Projects (80%)
- Striving mind trading 519 CC (88%)

Inspected the PA-04" Invitation to bid" and confirmed that the functionality threshold was set at 50% and thus the above bidders were considered correctly to be functional and evaluated further for price and BBEE.

We further inspected the PA -21 (dated 07/06/2021) and confirmed that the bidders that were initially deemed functional were eventually excluded from the bidding process for the following reasons:

- Striving Mind - Document for vehicle registration not originally certified
- Papamike- Document for vehicle registration not originally certified
- Jungephaphi (No price for part B and G, Incorrect calculations for part C, D, E, F and G)

Further inspected the second 20.7 scoring model for price and BBEE and confirmed that only Mokato was deemed functional post further evaluation by the BEC:

- Mokato Security Services & Projects (R2 960 829.20) -BEE (20) + Price (80) = 100 (Total points)

Auditors' assessment:

The SCM functionality process was thus incorrectly applied. The BEC should not have excluded Striving Mind, Papamike and Jungephaphi based on the above but rather should have re-scored the bidders for functionality and determined their new functionality scores

Mitigating factor: Mokato Security Services would have still been the winning bidder, but we raise an internal control deficiency as the SCM process was not adequately followed.

Impact

- Non-compliance with the paragraph 38(1) (a)(iii) and (c)(ii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
- Non-compliance with the PPR 2017 functionality scoring

Internal control deficiency

Financial and Performance management

Management did not review and monitor compliance with applicable legislation.

Furthermore, management did not ensure proper application of the SCM process pertaining to the functionality assessment of the bidders.

Recommendation

Management should evaluate tenders based on the evaluation criteria stipulated on the bid invitation document.

Management should ensure compliance with PPR 2017.

Management response:

I do not agree with the finding due to the following reasons:

It must be noted that all the above mentioned bidders were evaluated both on administrative and functionality criteria and they were duly scored. The BEC submitted their recommendation to the RBAC on 25 May 2021. The RBAC noted some discrepancies with regards to PSIRA rates as well as infrastructure requirements and referred the recommendation back for review.

During the review, BEC noted the following discrepancies as highlighted by AGSA:

- Striving Mind - Document for vehicle registration not originally certified
- Papamike- Document for vehicle registration not originally certified
- Jungephaphi (No price for part B and G, Incorrect calculations for part C, D, E, F and G)

Due to these discrepancies, the bidders were then disqualified. It must be mentioned that the procurement strategy stipulates that the bidders must score in all areas hence these bidders were disqualified. See attached minutes from the BEC, **Annexure D**

Auditor's conclusion

In light of the newly provided supporting documents (Annexure D – “minutes of the BEC dated 25 May 2021), we were able to obtain evidence of the BEC's rectification of the incorrect application of the functionality assessment criteria. The minutes provides evidence that the SCM process was appropriately followed.

Therefore, we find the audit evidence provided appropriate enough to clear the audit finding.

DURBAN REGION

FIRST ISSUE

Nature

During the audit of tender no: BDN21/01/01 for KZN Group3 (Melmoth, Mahlabathii, Babanango, Paul Pietersburg, Nquthu, Madadeni Magistrates Court) for installation of emergency Water Tanks and Booster Pumps, the following was noted:

The PA-04: Notice and invitation to tender stated that functionality will be applied and a minimum functionality score to qualify for further evaluation was 50%. The following criterion (extract) were applicable:

Functionality criteria	Weighting factor
------------------------	------------------

Completed projects work Experience: Contractor to provide a list of all previous projects undertaken and completed in the last 5 year of similar nature (installation of steel water tanks) accompanied by final completion certificates must be signed by the Principal Agent, Client or PM as proof of the following values: R4 000 001 – R5 000 000 = 30 points R3 000 001 – R4 000 000 = 25 points R2 000 001 – R3 000 000 = 20 points R1 000 001 – R2 000 000 = 15 points	30%
Work force: Contractor to provide proof of work force. Certified copies of identity documents, not older than 3 months from date of advertisement, certified certificates or approved qualifications must be submitted as proof, if certificates are not provided you get 0: a) Brick Layers 4 = 15 points 3 = 10 points 2 = 8 points 1 = 6 points	15%

Based on the auditor's assessment conducted to validate the functionality points for MKF Trading and Projects, the following was noted:

Auditee's Calculation			Auditors Assessment			
Criteria's	Points	Total functionality	Points	Total Functionality	Difference	Auditors comments
Completed projects works experience	1	15%	0	0%	15%	<p>The audit team received an original file that was compiled by the bidder, included in it was all returnable documents.</p> <p>Upon inspection on the list for similar projects, one project was identified with a value range R1 000 001 – R2 000 000 = 15 points</p> <p>However, the original completed certificates that was part of the original returnable documents was not signed by principal agent, PM or client hence no points were awarded.</p>
Work force (Brick Layers)	4	15%	2	8%	7%	Only 2 Brick Layers with certificates were provided hence the bidder was awarded 2 points.
					22%	

Based on the auditor's recalculation of functionality we noted that, MKF should have been awarded 36 points whereas the Bid Evaluation Committee awarded them 58 points, the difference of 22 points has been explained on the table above.

Therefore, the bidder should have not been considered for further evaluation for price as they didn't meet the minimum functionality score.

No	Bid No	Service Description	Contract Amount (R)	Expenditure to date (R)
1	BDN21/01/01	Installation of emergency Water Tanks and Booster Pumps	3 226 542,00	846 653,06

Impact

The above may result in the following:

- Non-compliance with section 38 of PFMA
- Non-compliance with PPR regulations
- Irregular expenditure of all payments made to date R 846 653.06

Internal control deficiency

Financial and performance management

Management did not review and monitor compliance with applicable laws and regulations.

The Bid Evaluation Committee did not adequately rate the bidder in line with the functionality requirements stipulated in the PA-04: Notice and invitation to tender.

Recommendation

It is recommended that:

- Management should review tenders that are awarded and ensure that there are in line with National Treasury Regulations.
- Management should perform further investigation to determine the extent of the non-compliance as well as the other instances where this non-compliance may have occurred.
- The accounting officer should also investigate the reasons for the irregular expenditure and confirm if it was deliberate. The expenditure should be included in the irregular expenditure register.

Management response:

Finding 1

I am not in agreement with the finding as indicated during the discussion with the AG, the contractor submitted together with their bid, a company profile which contained some of the information used for functionality evaluation, a project valued at R1,5 million (*Sanitation relief – Installation of septic tank-Edumbe taxi rank*) was considered for allocation of points, subsequently a risk assessment was done on the same project, as per the risk information on file and also verified by AG. A completion letter is attached as supporting evidence to this argument.

Therefore the 15 points allocated to the awarded bidder is justified and remains.

Finding 2

Management is in agreement with a finding which was a result of the duplicated points as two employees were submitted by the bidder as both Plumbers and Bricklayers and have qualifications for both.

The region agree with a misallocation of 2 points however with bidder still qualifies with a total points of 51.

Auditor's conclusion

Auditor's conclusion

Management's comments are noted, however the finding remains based on the following:

Finding 1:

Based on the inspection and verification of the original tender documents, we noted that all the returnable documents (e.g. PA09, 11, 16, supporting certificates for functionality etc) together with the BOQ was bundled under one project file with no separate company file supporting the submitted project file.

Upon further verification of the list of completed projects submitted by the bidder in the latter's original file, one project of a similar nature was identified with a value range R1 000 001 – R2 000 000. However, the original completed certificate pertaining to the completed project was not signed by principal agent, PM or client therefore no points should have been awarded.

A signed completion certificate relating to the stated bid was submitted by management in response to the identified issue mentioned above which referenced an amount of R 1 710 000 as per the list of previous projects. However, through further discussions with management submitted another signed completion certificate where the the project name on the heading differed from the project mentioned in the content of the practical certificate to address the finding (Refer to attached Annexure A).

Furthermore, the certificate that was subsequently submitted to support management's response indicated an amount of R1 500 000, which contradicts the amount stated as per the list of previous projects.

The projects that management is responding with was not included in the returnable documents PA 09 attached.

It should be noted that both certificates detail the same project, consultant, completion date and the start and end of construction. However, inconsistencies were identified between the two certificates that was submitted to support management's response to the unsigned certificate identified in the bidder's returnable documents that was used for evaluation, such as the amount, the consultant's signature and the title of the project.

Therefore, this raises concerns on the validity of the certificates provided by management and which certificate was actually used for evaluation of the functionality criteria.

Management to further provide the risk assessment that was performed on the project.

Finding 2:

Management is in agreement with the finding related to the work force criteria.

SECOND ISSUE

Nature

During the audit of procurement and contract management for tender no. DBN21/02/01 for Port Shepstone Court: Construction of a new building: Completion Contract, the following was noted.

The PA-04: Notice and invitation to tender stated that functionality will be applied and a minimum functionality score to qualify for further evaluation was 65%. The following criterion (extract) were applicable:

Functionality criteria	Weighting factor
Financial Standing and Rating	15%

<p>- Three letters of credit reference confirming available credit limits from key material suppliers -</p> <p>Three letters of credit references confirming remaining available credit limits from key material suppliers as defined in the scope of works and bills of quantities and specifications. Letter must not be older than 2 calendar months from date of closing. Current status of tenderers account with the supplier must be stated.</p>	
<p>Competency, Experience, Resource capacity</p> <p>Schedule of projects completed within the past 5 years.</p> <p>- Exceeding R50million and not exceeding R100 million – 5 points - Exceeding R100 million and not exceeding R150 million – 10 points - R150 million and above -15 points</p> <p>* 1 project – 15 * 2 projects – 30</p>	30%

Based on the auditor's assessment conducted to validate the functionality points for Musan Trading Enterprise, the following was noted:

Auditee's Calculation			Auditors Assessment			
Criteria	Points	Total functionality	Points	Total Functionality	Difference	Auditors comments
<p>Financial Standing and Rating</p> <p>Three letters of credit references confirming remaining available credit limits from key material suppliers as defined in the scope of works and bills of quantities and specifications. Letter must not be older than 2 calendar months from date of closing. Current status of tenderers account with the supplier must be stated.</p>	12	12%	7	7%	5%	<p>The winning bidder submitted three letters of credit reference however, the third letter was not dated which results in an uncertainty surrounding whether the letter was older than two months or not.</p> <p>This would then also bring an issue to whether the status of the account with the supplier is the most recent status or not as at the date of closing of the tender as the objective is to ensure that the tenderer has the sufficient resources and capacity to fulfil the requirements of the contract.</p>
<p>Competency, Experience, Resource capacity</p>	5	5%	0	0%	5%	<p>The winning bidder submitted a project that was awarded on 30 August 2013 with a value of R62m by Statistics South Africa. The project was for a period of 24 months.</p> <p>The completion certificate submitted does not have a date of completion and the closing date of the tender was on 31 March 2021.</p> <p>There is insufficient information as a result to determine whether the project was completed after 31 March 2015 which is the beginning of the 5 years period before</p>

						<p>closing date as required by the functionality requirement or completed prior to that which shouldn't have been taken into account.</p> <p>Furthermore, the risk assessment conducted excluded this project so no alternative evidence we obtained to ascertain if the project falls within the required 5 years.</p>
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Based on the auditor's recalculation Musan Trading Enterprise should have been awarded 61,8 points, instead of 71,8 points awarded by the Bid Evaluation Committee. The difference of 10 points has been explained on the table above.

Therefore the bidder (Musan Trading Enterprise) failed to obtain the minimum qualifying score for functionality of 65%, thus should have not been further evaluated for price and BBEE. The next bidder with the highest points in terms of price and BBEE should have been appointed.

No	Bid No	Service Description	Contract Amount (R)	Expenditure to date (R)
1	BDN21/02/01	Port Shepstone Court: Construction of a new building: Completion Contract	95 467 633.65	11 833 089,38

Impact

The above may result in the following:

- Non-compliance with section 38 of PFMA
- Non-compliance with PPR regulations
- Irregular expenditure of all payments made to date R11 833 089

Internal control deficiency

Financial and performance management

Management did not review and monitor compliance with applicable laws and regulations.

The Bid Evaluation Committee did not adequately rate the bidder in line with the functionality requirements stipulated in the PA-04: Notice and invitation to tender.

Recommendation

It is recommended that:

- Management should review tenders that are awarded and ensure that there are in line with National Treasury Regulations.
- Management should perform further investigation to determine the extent of the non-compliance as well as the other instances where this non-compliance may have occurred.
- The accounting officer should also investigate the reasons for the irregular expenditure and confirm if it was deliberate. The expenditure should be included in the irregular expenditure register.

Management response:

I am not in agreement with the finding for the following reasons [as per the supporting evidence attached]:

Finding 1

- I am not in agreement with the finding because whilst the credit reference letter submitted by the bidders was not dated, it was accompanied by the proof of communication between Musan Trading Enterprise and their supplier Koedoespoort Reinforcing Steel, hence a period could be confirmed from this communication. Since the communication was within one month, allocated points are therefore justified. **(see attached POE)**

Finding 2

Management notes the AG finding, with the following reservations;

- It is factually correct that the bidder submitted a completion certificate for a project of a value of R62million which was done and successfully completed for Statistic South Africa.
- It is unfortunate that the author of the completion certificate did not date the certificate.
- It is also common in government infrastructure projects for delays to be encountered, resulting in projects being completed late.
- Whilst the date issue might have been an oversight at time of evaluation, technically the weight in this criteria is with the type and value of the project successfully completed.

Based on the aforementioned reasons the region still maintains that the allocated points were justified and the allocation of 71.8 points remain.

Auditor's conclusion

Management's response is noted. However, the finding remains based on the following:

Finding 1

Through verification of the original bidder's returnable documents, attachments on file and enquiries which were held with management during the regional audit, there was no evidence of the email correspondence of the bidder and their supplier Koedoespoort Reinforcing Steel.

It cannot be reasonable assured that the email correspondence was available upon evaluation of the bid.

Finding 2

Management agrees that there is insufficient information to conclude whether the project was completed within the 5 years period before closing date as required by the functionality requirement. Therefore, there was no objective evidence available to assume the project meet the stipulated criteria.

Management making use of assumptions in determining the date of completion is not in line with what was communicated on PA04 to prospective bidders as such the evaluation and adjudication criteria indicated in the bid documentations was not followed and the bidder should have been disqualified.

Auditors' conclusion

Management's response is noted. However, the finding remains based on the following:

Finding 1

Through verification of the original bidder's returnable documents, attachments on file and enquiries which were held with management during the regional audit, there was no evidence of the email correspondence of the bidder and their supplier Koedoespoort Reinforcing Steel.

It cannot be reasonable assured that the email correspondence was available upon evaluation of the bid as there was no evidence of the latter in the project file that was submitted for audit nor in the discussions that were had with management with regards to the matter.

Finding 2

Management agrees that there is insufficient information to conclude whether the project was completed within the 5 years period before closing date as required by the functionality requirement. Therefore, there was no objective evidence available to assume the project meet the stipulated criteria.

Management making use of assumptions in determining the date of completion is not in line with what was communicated on PA04 to prospective bidders as such the evaluation and adjudication criteria indicated in the bid documentations was not followed and the bidder should have been disqualified.

10. Local Content and Production (designated sectors)

Requirement

The Public Finance Management Act, 1999 (Act No. 1 of 1999) paragraph 38(1) states that *“the accounting officer for a department, trading entity or constitutional institution —*

- (a) must ensure that that department, trading entity or constitutional institution has and maintains—*
 - (iii) an appropriate procurement and provisioning system, which is fair, equitable, transparent, competitive and cost-effective;*
- (c) must take effective and appropriate steps to—*
 - (ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct;”*

The preferential procurement regulations, paragraph 8(2) state that *“An organ of state must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.”*

National Treasury Designated Sector Circular number 3 of 2017/18 Pumps, medium voltage motors states that *“The stipulated minimum threshold percentages for local content and production for Pumps, medium voltage motors sector is 70%.”*

National Treasury Designated Sector Circular number 11 of 2016/2017 valve products states the following *“The stipulated minimum threshold percentages for local content and production for valve products sector is 70%.”*

National Treasury Designated Sector Circular number 1 of 2019/2020 plastic pipes states that *“The stipulated minimum threshold percentages for local content and production for plastic pipes sector is 100%.”*

National Treasury Designated Sector Circular number 10 of 2019/20 Electrical cables states the following *“The stipulated minimum threshold percentages for local content and production for electrical cable sector is 90%.”*

National Treasury Designated Sector Instruction Notes paragraph 7.1 states that *“Once bids are awarded, the DTI must be notified of all the successful bidders and the value of the contracts; and provided with copies of the contracts, the SBD/MBD 6.2 Certificates together with the declaration C submitted by the winning bidder.”*

JOHANNESBURG REGION

Audit finding

Issue 1

During the audit of competitive bids, we noted that tender no. JHB20/06 was advertised for maintenance, service, repairs, and replacement of fire automatic sprinkler systems to all clients within the jurisdiction of the JHB regional office for a period of 24 months.

Through the inspection of the invitation to bid document (PA-04), we noted that local content was applicable on the bid and the local content declaration (PA-36 and annex C) were listed on the PA-04 as part of the prequalification criteria used to assess bid responsiveness.

We further confirmed that the invitation to bid document (PA-04) stipulated that prospective bidding suppliers are required to provide fully signed and fully completed bid documents as part of the prequalification criteria used to assess bid responsiveness.

We further confirm that the invitation to bid document (PA-04) stipulated that prospective bidding suppliers that do not adhere to the requirements listed on the prequalification criteria will be deemed non-responsive and will not be evaluated further.

Through inspection of the awarded bidder's local content declaration (PA-36 and annex C), we noted that although Annexure C was signed, the awarded bidder did not declare the itemised purchase list of their local content procurement (i.e., Annexure C was only signed and left blank). Therefore, the bidder did not submit fully complete bid documents as required by the prequalification criteria stipulated in the invitation to bid document (PA-04).

Furthermore, through inspection of the awarded bidder's local content declaration (PA-36 and annex C), we noted that the bid document did not stipulate the required thresholds of the applicable local content designated sectors as required by the National Treasury and the DTI.

Further upon inspection of the winning bidder's itemised bill of quantities, we noted that the following designated sectors were applicable as per the DTI's list of designated sectors:

- Plastic Pipes and Fittings - 100%
- Valves -70%
- Steel products and components for construction- 100%.

Therefore, the invitation to tender did not specify the minimum thresholds applicable for local content production as prescribed in the relevant National Treasury Instruction Notes guided by the DTI's list of designated sectors.

Issue 2

During the audit of contract competitive bids, we noted that tender no. JHB20/09 was advertised for Service, maintenance, repairs and replacement of gas boilers, geysers, incinerators, heat pumps and laundry equipment for 24 months.

Through the inspection of the invitation to bid document (PA-04), we noted that local content was applicable on the bid and the local content declaration (PA-36 and annex C) were listed on the PA-04 as part of the prequalification criteria used to assess bid responsiveness.

We further confirmed that the invitation to bid document (PA-04) stipulated that prospective bidding suppliers are required to provide fully signed and fully completed bid documents as part of the prequalification criteria used to assess bid responsiveness.

We further confirm that the invitation to bid document (PA-04) stipulated that prospective bidding suppliers that do not adhere to the requirements listed on the prequalification criteria will be deemed non-responsive and will not be evaluated further.

We noted on inspection of the bid document file that the PA36 - Declaration for local content and production did not indicate the percentage of the local content to be supplied by the winning bidder.

Further upon inspection of the winning bidder's itemised bill of quantities, we noted that the following designated sectors were applicable as per the DTI's list of designated sectors:

- Electrical cables -90%
- Pumps and medium voltage motors -70%
- Valves -70%
- Plastic pipes – 100%
- Steel products (Joining/connecting components and steel pipes) – 100%

Therefore, the invitation to tender did not specify the minimum thresholds applicable for local content production as prescribed in the relevant National Treasury Instruction Notes guided by the DTI's list of designated sectors.

Furthermore, we noted that the winning bidder did not complete the declaration properly: the bidder did not indicate what percentages of the materials he would be using is locally produced. We noted that the bidder simply stated that "Musan Trading will comply with the required minimum threshold for local content". Therefore, the bidder did not submit fully complete bid documents as required by the prequalification criteria stipulated in the invitation to bid document (PA-04).

Issue 3

It was further noted that for both procurements listed above, there is no evidence that that the Department of Trade and Industry (DTI) was notified of the successful bidders and the value of the contract.

Impact

- Non-compliance with the paragraph 38(1) (a)(iii) and (c)(ii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
- Non-compliance with the Instruction Notes on Designated Sectors

Internal control deficiency

Financial and Performance management

Management did not review and monitor compliance with applicable legislation.

Management did not adequately review bidding documents, in order to ensure that PA- 36: local and production requirements as prescribed by national treasury are adhered to.

Furthermore, management was not consistent when it comes to disqualifying bidders who did not "fully complete" the PA 36: LOCAL Content and production declaration.

Recommendation

Due diligence should be performed on bidding documents prior to advertisement to ensure that they comply with local content rules and regulations.

Management should ensure that the procurement for local content and production complies with the National Treasury Designated Sector Instruction Notes.

Management should provide evidence that the DTI was notified of the successful bidder and the value of the contract for local content

Management response

Management Response:

Issue 1

We are not in agreement with the statement that the local content and production (PA-36 and Annexure C) for tender no. JHB20/06 was required in this tender due to the following reasons:

- The awarded bidder did not have to declare their bid's local content because our bid did not have the stipulated minimum thresholds for local content and production which they have to be filled on Annexure C.
- The products that are mentioned on the BOQ are for overhauling and servicing the existing valves and pumps, which are not the items that are produced locally. These products have to be imported and the names of the products which are on our site are Viking products and Tyco products.
- When these products are overhauled and serviced you have to replace their spare parts with the product of the manufacturers. This means that the products have to be imported in order for the system to work properly.
- We have attached a BOQ as a supporting document which was showing what was expected from the bidder. On column number 2 of the BOQ, it shows the items that the bidder has to overhaul and service the sprinkler system with. It also further guide the bidder that should they be awarded this tender they have to overhaul the valves as per manufactures' guideline, check the attachment on page 31 under item 63.
- South Africa have no main controlling valves which can drive the sprinkler system.
- We have attached the PA 21 which is the *Tender Evaluation Report to the Bid Adjudication Committee*. This form shows that the bidders were not disqualified as a result of (PA 36 & Annexure C). This form overrule the pre-screening evaluation check list which was done by SCM just before the BEC sat.

So, the Term-Contract is for day-to-day was for maintenance, service, repair and replacement of component for the existing machine equipment and plant. The local content from DTI is for new installation of those equipment. (See attached ANNEXURE A & B which are to serve as Proof of Evidence).

Auditor's Conclusion

Based on the management response and provided supporting documents, our audit response is as follows:

- The awarded bidder did not have to declare their bid's local content because our bid did not have the stipulated minimum thresholds for local content and production which they have to be filled on Annexure C.
- We have attached the PA 21 which is the Tender Evaluation Report to the Bid Adjudication Committee. This form shows that the bidders were not disqualified as a result of (PA 36 & Annexure C). This form overrule the pre-screening evaluation check list which was done by SCM just before the BEC sat.

Based on the inspection of the provided BOQ, the Auditor General maintains that local content and production was applicable on the bid as the tender was for:

- (i) Servicing existing equipment
- (ii) Overhauling of existing equipment and
- (iii) Replacement of damaged existing equipment

The replacement component of the tender requires that the supplier install a new component in instances of irreparable damage. As per inspection of the BOQ, the main components of the fire sprinkler system that needed to be serviced, overhauled and or replaced were:

- (i) Sprinkler head (Valve product)
- (ii) Pipes & Fittings, hangers, braces and supports

Based on the BOQ we can conclude that the following designated sectors and thresholds were applicable:

- Pumps and medium voltage motors -70%
- Valves -70%
- Plastic pipes – 100%
- Steel products (Joining/connecting components and steel pipes) – 100%

Therefore, the Auditor General maintains that local content was applicable.

- The products that are mentioned on the BOQ are for overhauling and servicing the existing valves and pumps, which are not the items that are produced locally. These products have to be imported and the names of the products which are on our site are Viking products and Tyco products.
- We have attached a BOQ as a supporting document which was showing what was expected from the bidder. On column number 2 of the BOQ, it shows the items that the bidder has to overhaul and service the sprinkler system with. It also further guide the bidder that should they be awarded this tender they have to overhaul the valves as per manufactures' guideline, check the attachment on page 31 under item 63.
- South Africa have no main controlling valves which can drive the sprinkler system.
- When these products are overhauled and serviced you have to replace their spare parts with the product of the manufacturers. This means that the products have to be imported in order for the system to work properly.

Post enquiry with various market suppliers of fire sprinkler systems in South Africa, we confirmed the sprinkler head valves are imported products and do not get manufactured in South Africa. We therefore concede that the Valve component may not have local content as it would be impossible for the bidders to comply with the threshold.

As per inspection of the BOQ, the main components of the fire sprinkler system that needed to be serviced, overhauled and or replaced were:

- (i) Sprinkler head (Valve product)
- (ii) Pipes & Fittings, hangers, braces and supports

During our enquiry with various market suppliers of fire sprinkler systems in South Africa, we confirmed that the supporting structures (Pipes & Fittings, hangers, braces and supports) are manufactured locally and can be sourced from various suppliers in the country.

We therefore conclude the following:

- Local content and production was applicable.
- Local content and product declarations should have been a prequalifying condition. The local content declaration (PA-36) should have been on the list of returnable documents.
- The local content declaration (PA-36) should have stipulated the designated sectors and applicable thresholds.
- DTI reporting on the winning bidder's contract value was also applicable.

Issue 2

During the audit of contract competitive bids, we noted that tender no. JHB20/09 was advertised for Service, maintenance, repairs and replacement of gas boilers, geysers, incinerators, heat pumps and laundry equipment for 24 months.

Through the inspection of the invitation to bid document (PA-04), we noted that local content was applicable on the bid and the local content declaration (PA-36 and annex C) were listed on the PA-04 as part of the prequalification criteria used to assess bid responsiveness.

We further confirmed that the invitation to bid document (PA-04) stipulated that prospective bidding suppliers are required to provide fully signed and fully completed bid documents as part of the prequalification criteria used to assess bid responsiveness.

We further confirm that the invitation to bid document (PA-04) stipulated that prospective bidding suppliers that do not adhere to the requirements listed on the prequalification criteria will be deemed non-responsive and will not be evaluated further.

We noted on inspection of the bid document file that the PA36 - Declaration for local content and production did not indicate the percentage of the local content to be supplied by the winning bidder.

Further upon inspection of the winning bidder's itemised bill of quantities, we noted that the following designated sectors were applicable as per the DTI's list of designated sectors:

- Electrical cables -90%
- Pumps and medium voltage motors -70%
- Valves -70%

Therefore, the invitation to tender did not specify the minimum thresholds applicable for local content production as prescribed in the relevant National Treasury Instruction Notes guided by the DTI's list of designated sectors.

Furthermore, we noted that the winning bidder did not complete the declaration properly: the bidder did not indicate what percentages of the materials he would be using is locally produced. We noted that the bidder simply stated that "Musam Trading will comply with the required minimum threshold for local content". Therefore, the bidder did not submit fully complete bid documents as required by the prequalification criteria stipulated in the invitation to bid document (PA-04).

Management Response:

Issue 2

We are not in agreement with the statement that the local content and production (PA-36 and Annexure C) for tender no. JHB20/09 was required in this tender due to the following reasons:

- The awarded bidder did not have to declare their bid's local content and production because our bid did not have the stipulated minimum thresholds for local content and production which they have to be filled on Annexure C
- The products that are mentioned on the BOQ are for overhauling and servicing the existing parts of old equipment, replace their spare parts with the product of the manufacturers.
- Term-Contract for day-to-day was for maintenance, service, repair and replacement of component for the existing machine equipment and plant. The local content from DTI is for new installation of those equipment.

Auditor's Conclusion

Based on the management response and provided supporting documents, our audit response is as follows:

- The awarded bidder did not have to declare their bid's local content and production because our bid did not have the stipulated minimum thresholds for local content and production which they have to be filled on Annexure C
- The products that are mentioned on the BOQ are for overhauling and servicing the existing parts of old equipment, replace their spare parts with the product of the manufacturers.
- Term-Contract for day-to-day was for maintenance, service, repair and replacement of component for the existing machine equipment and plant. The local content from DTI is for new installation of those equipment.

Based on the inspection of the winning bidder's itemised bill of quantities, we confirmed that the following designated sectors were applicable as per the DTI's list of designated sectors:

- Electrical cables -90%
- Pumps and medium voltage motors -70%
- Valves -70%

We therefore conclude the following:

- Local content and production was applicable.
- Local content and product declarations should have been a prequalifying condition. The local content declaration (PA-36) should have been on the list of returnable documents.
- The local content declaration (PA-36) should have stipulated the designated sectors and applicable thresholds.
- DTI reporting on the winning bidder's contract value was also applicable.

Issue 3

It was further noted that for both procurements listed above, there is no evidence that the Department of Trade and Industry (DTI) was notified of the successful bidders and the value of the contract.

Management Response

Issue 3

The local content and production was not applicable on the two term-contracts for tender nos. JHB20/06 and JHB20/09. As such, there was no need for Management to notify DTI of the successful bidder and the value of the contract for local content and production.

- Management complied with the Preferential Procurement Regulations, paragraph 8(2).
- Management did review and monitor compliance with applicable legislation.
- Management did adequately review bidding documents, in order to ensure that PA- 36: local and production requirements as prescribed by national treasury are adhered to.
- Furthermore, Management was consistent in applying the PA 36: Local Content and production declaration.

Auditor's Conclusion

Based on the above responses on issue 1 and issue 2. We conclude that local content was applicable and thus DTI reporting was applicable.

KIMBERLY REGION

Nature

During the audit of procurement and contract management, we noted that the PA36 Declaration for local content and production for tender no KIM 01/2021- Kimberly Justice High Court including masters office: Installation of air conditioners indicated the percentages of the local content to be supplied by the bidders as follows:

- Cabling- 90%
- Primary Steel products- 100%
- Instrument transformers -90%
- Busbars-100%
- Housing-100%
- Switching devices-70%

- Casting or Frame Fabrication-100%
- Accessories-100%
- Assembly and testing of the fully built unit-100%
- Steel Value-added Products-100%
- Electrical and telecom cables-90%
- Low voltage (LV) associated accessories-70%

Further, through inspection of the tender file of the winning bidder, noted that the PA36 - Declaration for local content and production completed by Ephraim P. Maourisa, member of Ngaatendwe Trading CC on 12/04/2021 did not comply with the minimum thresholds as documented in the PA36 as the bidder stated the following:

- The bid price (excluding VAT)- R12 973 210
- Imported content- R6 378 000
- Stipulated minimum threshold for local content- R6 595 210
- Local content- 49.16%

The winning bidder did not correctly complete the form as they did not indicate the breakdown of what percentages of local content they will supply as stipulated in PA36. Furthermore, It is not clear whether the winning bidder had the required percentages of local content as they did not indicate the breakdown as required in PA 36 through Annexure C.

Impact

- This results in the irregular expenditure of R10 703 746 as the procurement did not comply with the requirements of the National Treasury Designated Sector Instructions.
- Non-compliance with PFMA 40 and Preferential Procurement Regulations,

Internal control deficiency

Financial and Performance management

Management did not review and monitor compliance with applicable legislation.

Management did not ensure that all bidders comply with the required stipulated local content percentages as per the invitation to bid specified minimum thresholds for local production and content, which is not less than the threshold prescribed in the relevant NT Instruction Notes.

Recommendation

Management to ensure that the winning bidders comply with the stipulated local content and production thresholds as per PA

Management to ensure that the procurement for local content and production complies with the National Treasury Designated Sector Instruction Notes.

Management response

I am not in agreement with the finding for the following reasons:

PA36 for local content and production was completed and the declaration signed by the recommended bidder, there was misalignment in the percentage calculation by the bidder which is due to the different interpretations of what should be on that portion of the form itself. However, the bidder did declare to comply with the provisions of PA36 in total based on the BOQ, the compliant sum is above the indicated minimum threshold which agrees with the declaration that the bidder will fully comply with the indicated minimum thresholds as indicated in PA36. Please refer to Line 1172-1182 where the figures have been broken down.

The finding, albeit not agreed to, is noted, steps have been taken by the Region to remedy the compliance with Local Content and Production. An email sent to the DTIC is submitted as POE to attest to the fact that training had taken place for all Regional Bid Committee members, all officials have been recently trained and the 2nd part of the request for a roadshow to service providers is still in the process of being arranged to fully train the service providers on the completion and requirements to comply with Local Content and Production. This will mitigate future non-compliance issues.

Auditor's conclusions

Management response has been noted however, the finding stands based on the following: The PA 36 stipulated the percentages of the local content to be supplied by the bidders as follows:

- Cabling- 90%
- Primary Steel products- 100%
- Instrument transformers -90%
- Busbars-100%
- Housing-100%
- Switching devices-70%
- Casting or Frame Fabrication-100%
- Accessories-100%
- Assembly and testing of the fully built unit-100%
- Steel Value-added Products-100%
- Electrical and telecom cables-90%
- Low voltage (LV) associated accessories-70%

However, according to the PA36 local content and production declaration submitted by the winning supplier, Ngaatendwe, 49.16% was declared as the local content implied by the bidder based on declared amount of R6 378 000 over the total bid amount of R12 973 210, excluding VAT. As stated above, there was no evidence of Annexure C that supports the PA36 declaration of local content.

To support management's response to the communication of finding, an excel BOQ was submitted by the auditee that states only the following calculated percentages for the stated designated sections:

- Steel,
- Low voltage cable,
- uPVC pipe,
- Paint and pumps and not all the % as stipulated in PA 36

However, these do not address all the stipulated designated sectors that applied in the tender. Furthermore, the amount of R6 361 960 as per the BOQ schedule submitted for local content does not agree to the amounts of R6 378 000 as per PA 36 declaration signed by the bidder.

The BOQ submitted by management in response to the finding was an excel document that was not signed by the bidder and therefore cannot obtain assurance whether this document is the one that was initially submitted by the tender or not as the documents which were inspected during the regional audit was a tender file and the BOQ was a PDF document.

Based on the above, the supporting documents submitted does not provide evidence that the bidder complied with the stated minimum thresholds for the designated sectors that applied in the tender. Therefore, the bidder did not meet the stipulated minimum thresholds as stipulated in PA 36 and therefore should have not been awarded the tender.

11. Advertisement of tender and publication of awards

Requirement

Public Finance Management Act paragraph 38(1) (a)(i) and 38(1)(a)(iii) states that “The accounting officer for a the department must ensure that the trading entity has and maintains

- (i) Effective, efficient and transparent systems of financial and risk management and internal control;*
- (iii) An appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective;”*

Public Finance Management Act paragraph 38 (1)(c)(ii) states that “The accounting officer for the department must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct”

Treasury Regulation 16A6.3c states that “The accounting officer or accounting authority must ensure that bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine;”

National treasury SCM Instruction Note 3 of 2016/17 - Preventing and combating Abuse in the supply chain management system states that;

8.1 “accounting officers must only deviate from inviting competitive bids in cases of emergency and sole supplier status”.

8.2 “emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids”.

CAPE TOWN REGION

Background

Annual maintenance need to be performed at the South African Scientific Research Bases on all the Islands in the South Atlantic (Gough Island and Marison Island) as well as in Antarctica. It is the Departments’ responsibility and mandate to maintain all the research facilities.

To prevent unnecessary breakdown of essential operational systems and the loss of valuable scientific data from different Institutions such as the S.A Weather Service, Universities , Colleges , to name but a few, that may result in the closure of the relevant bases . The Department strives to procure all materials, tools and equipment needed to ensure a safe working base thus preventing costly Emergency Voyages, unnecessary damage to state property or loss of lives in the event of Power loss.

Audit finding

During the audit of supply chain management for competitive bids, we noted that PA-04 (EC): Notice and Invitation for tender number CPTSC 21/21 for Purchase, Installation, programming, commissioning and signing off of four times 250 kVA complete Marine type generators was advertised for 7 days. The date of advert was 14 October 2021 and the closing date was 21 October 2021.

Issue

Though discussion with management we identified that the generators relates to the ship that is more than 4000 kilometers away in the Island and the only time to service the ship is during November each year.

On PA-01 (GS) - request for approval of procurement strategy par.7, Bid advertisement period, it is stated that the advertisement will be for 7 days due to the urgency of the project. Further noted that the generators need to be delivered by 22/11/2021 as the ship leaves on 30/11/2021 and still needs to go for cargo clearance.

We noted on the risk analysis report that replacement of the generators cannot be postponed on this voyage, it had to happen. The existing generators have not been overhauled since its installation in 2016/2017 voyage; as a result, the above risk is extremely high.

Upon follow up on the status of this procurement, we noted that only one (1) out of the four (4) generators have been delivered. This calls in to question the urgency of the matter, as the specifications were not followed through.

It was also noted that the highest scoring bidder (Excellent electrical projects) was not awarded the tender due to the following reasons:

Bidders were asked that, should they win, will they be able to meet the deliverables taking into account the sensitivity of the timeframe. Excellent responded as follow –

>The engines, which they initially intended to buy from the manufacturer, have been procured by another customer.

>Secondly, it would not be able to procure and assemble the engines within the confines of the special dates given.

Therefore, the supplier withdrew from the bid, as they did not want to fail the state.

Auditor's assessment

Based on the above we conclude that the urgency does not meet the definition of an emergency. This is due to the situation not being unexpected as it is known that the ship would sail in November and key components should be optimally functional. Furthermore, management had since January to plan and initiate the procurement.

Impact of the finding

- Non- compliance with Treasury Regulation, paragraph 16A6 3(c).
- Non- compliance with paragraph 38(1)(a)(i) and (38(1)(c)(ii) of the Public Finance Management Act
- Irregular expenditure on date of payment.

Internal control deficiency

Financial and Performance Management

Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management.

Management did not initiate the procurement of generators in a timely manner.

Recommendation

- It is recommended that management should enhance compliance procedures to ensure compliance with the applicable laws and regulations relating to supply chain management.
- Management should perform a service check when the ship comes back from Antarctica in order to ensure that any maintenance that is required is procured on time.
- Management should monitor the payment made and disclose as Irregular Expenditure at year-end.

Management response:

I do not agree with the finding due to the following reasons:

The project manager requested the approval from Regional Manager to advertise the bid for a shorter period less than 21 days, which was subsequently approved. **(See attached Annexure A)** Then the Regional Bid Adjudication Committee approved the procurement strategy. The voyage for Sanae was due to leave on the first week of December. This meant that advertising for 21 days from October would have affected the delivery date which was going to fall outside the voyage dates.

The bidder who scored the highest number of points declined, due to the fact it was no longer possible to deliver the stock and the second highest tenderer was appointed and agreed to deliver, other technicalities for non-delivery of the 3 Generators were beyond the Department. When the bidder requested to deliver those three Generators it was no longer possible since the time for departing of the Cargo Ship was closed. It was a high risk to transport components for generators to be tested its functionality taking into consideration cost implication involved for the Island. It can also be mentioned that on delivery, generators must be assembled, tested then commissioned for installation and that requires time which was a constraint.

Auditor's conclusion

Management response has been noted however, the finding stands based on the following

The department during SANAE voyage in December 2020/March 2021 it was found that the 2 CAT Generators were in dire need of Major Service and this service can only be done in South Africa. The department had enough time between December 2020 until October 2021 to follow procurement process for the ship as the ship yearly comes to South Africa and each service can only be done in November each year.

Furthermore, we noted from the Department of Forest, Fishery and the Environment Antarctica and southern oceans islands | Department of Environmental Affairs (dffe.gov.za) that *"Antarctica is about 4000km away from South Africa. It takes 10-15 days to travel there by ship, the time depending on how much ice there is along the way. It can only be reached between November/December and April/May. The SA Agulhas (and now the new SA Agulhas II is the Department of Environmental Affairs' research and supply ship. The vessel transports people and cargo to its three bases in Antarctica and on Marion and Gough Islands. The ship is therefore also a scientific platform allowing for research to be conducted, weather observations to be made and weather to be released as it sails."*

Treasury Regulation 16A6.3c states that "The accounting officer or accounting authority must ensure that bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine;"

National treasury SCM Instruction Note 3 of 2016/17 - Preventing and combating Abuse in the supply chain management system states that; 8.2 emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids”.

Procurement of the generators does not meet the definition of emergency as the department had enough time between December 2020 until November to ensure that the procurement process was followed for generators and therefore the advert should have been 21 days according to treasury regulation 16A6.3c as the services were not urgent

CONTRACT MANAGEMENT

12. Extension of time

Requirements

Public Finance Management Act paragraph 38(1)(a)(i) and 38(1)(a)(ii) states that *“The accounting officer for a trading entity must ensure that the department has and maintains effective, efficient and transparent systems of financial and risk management and internal control and an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective...”*

Public Finance Management Act paragraph 1 defines *“fruitless and wasteful expenditure”* as *“expenditure which was made in vain and would have been avoided had reasonable care been exercised”*

Public Finance Management Act paragraph 38 (1)(c)(ii) states that *“The accounting officer for a, trading entity must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct”*

Public Finance Management Act paragraph 38 (1)(g) states that: *“The accounting officer must on discovery of fruitless and wasteful expenditure, immediately report, in writing, particulars of the expenditure to the relevant treasury;”*

Public Finance Management Act paragraph 38 (1)(h) states that: *“The accounting officer must take effective and appropriate disciplinary steps against any official in the service of the department or constitutional institution who makes or permits fruitless and wasteful expenditure”*

Public Finance Management Act paragraph 40 (3)(b) states that: *“The annual report and audited financial statements must include particulars of fruitless and wasteful expenditure that occurred during the financial year and any disciplinary steps taken as a result of such fruitless and wasteful expenditure.”*

Treasury Regulation 8.1.1 state that *“The accounting officer of the institution must ensure that Internal procedures and internal control measures were in place for the approval and processing of payments. These controls provided reasonable assurance that all expenditure is necessary, is appropriate, is paid promptly and is adequately recorded and reported on.”*

Treasury Regulation 8.2.1 states that *“An official of an institution may not spend or commit public money except with the approval (Either in writing or duly authorised electronic means) of the accounting officer or a properly delegated or authorised officer.”*

Treasury Regulation 8.2.2 states that *“Before approving expenditure or incurring a commitment to spend, the delegated or authorised official must ensure compliance with any limitations or condition attached to the delegation or authorisation.”*

Treasury Regulation 9.1.1 state that *“The accounting officer of a trading entity must exercise all reasonable care to prevent and detect fruitless and wasteful expenditure and must, for this purpose, implement effective, efficient and transparent processes of financial and risk management.”*

CAPE TOWN REGION

Nature

WCS: 052456

Background

During the Interim audit of the contract management, we audited Project WCS No: 052456 : *Overberg : Upgrading ,Repair and Renovation of Building ,Mechanical ,Electrical and Civil Structure at Bredasdorp Air force Base in Western Cape*. The project had a commencement date of 06 December 2016 and a completion date of 05 December 2019 .The contract value was set at R249 880 000.

Through the inspection of the internal memorandums and the application for extension of contract period (PRM 040), the following issues were identified:

The contractor charges the entity an amount of R 46 447, 17 per day on the approved extensions of time. We have inspected the request for extensions and the internal memorandums prepared by the entity, which detail the reasons for the delays. Memorandums included the number of days requested by the contractor and the financial impact expected from the extension.

Issue 1 - Extension of Time 2

Failure to issue a work permit on time to the contractor by the Department of Labour.

The Department of Labour - Government Notice (dated July 2015) states that, *"a client who intends to have construction work carried out must at least within 30 days before that work is to be carried out apply to the Provincial director in writing for a construction work permit, if the intended construction works starts after 7th of August 2015, and the works contract is of a value exceeding one hundred and thirty million rand or CIDB grading level 9"*

We noted on the Progress meeting Number 1 (meeting dated 20/01/2017) - Annexure B , Par 15 that the permit application to the Department of Labour was still to be submitted due to contractor outstanding information. The application was only submitted to the Department on 26 January 2017.

Through inspection of the application of Extension of Time, we noted that the Contractor received the Permit on 21 February 2017, as the permit had been erroneously sent to an incorrect recipient. This led to the Contractor applying for an Extension of Time with costs as Construction works had been set to commence on 2 February 2017. To this end, the contractor was granted an extension of time with costs amounting to R975 390, 57 for the 21 calendar days. The claim was awarded on the 17 of July 2017.

The contractor`s claim relied on the :JBCC 2005, Clause 29,3 - *"Further circumstances for which the contractor is entitled to a revision of the date for practical completion are delays caused by any other cause beyond the contractor`s reasonable control that could have reasonably anticipated and provided for"*

Upon inspection of the contract file, we discovered that the Contractor did not submit the application within 30 days. We further noted that the Construction Permit was finalised on the

31 January 2017. When calculating the number of days from the 2nd to 21 February 2017, we noted 20 days and not 21 days.

Based on our assessment this expenditure could have been avoided had proper planning been done (timeous submission). We have further noted that the fact that the permit was sent to an incorrect recipient (as stated in the application) has resulted in a financial loss of R975 390,57. This expenditure was made in vain and could have been avoided

Issue 2 -Extension of Time 4

Raubex Joint Venture states that Construction work of the structural installation in the pump house stopped when the contractor found out that adequate depth for the floor fixing bolts could not be achieved according to the structural engineer's design. This issue was identified on the 12 May 2017.

The structural engineer's design from the sketch plan stage involved spanning between the existing reinforced concrete columns and possibly additional steel columns to lighten the load on existing foundations if the need arises. The issue that came up was the inadequate depth for the bolts to go into the existing reinforced column. (12 May 2017)

1. The Structural engineer then revised their design and re- issued drawings on 26 May 2017.
2. The Principal Agent then pointed out a design issue to the engineer on 29 May 2017.
3. The Structural engineer re-designed the structure design and issued revised drawings on 07 June 2017. Again, the Principal agent (ACA) pointed out design issues on the drawings 14 June 2017.
4. The Structural engineers revised the drawings and issued a final set on the 20th of June 2017.
5. Raubex then procured the structural steel, manufactured and transported in to Bredasdorp (12 July 2017) and the delay ceased.

On the Basis of Clause 29.6.2 -Failure to issue construction information timeously, the contractor then claimed an extension of time for 37 days which were recommended with cost adjustment resulting in a cost of R1 718 545.

Upon inspection of the contract file, we discovered that three (3) structural designs were revised in addition to the original design resulting in a financial loss of R1 718 545. Based on our assessment, it is concerning that there were three structural design issues relating to the structural installation in the pump house which resulted in penalties being charged by the contractor. It is clear that this expenditure was made in vain and resulted in a financial loss for the entity. This expenditure could have been avoided had proper structural designing been done.

Issue 3 -Extension of Time 5

Construction defect on the Tiles

We noted that, when the houses (12) under repairs were completed, and ready to be handed back to the user client, many of the tiles sounded hollow when tapped with a rod. The hollow sound was detected on some of the tiles, which then led to the service deemed unacceptable, and the Principal agent issued an instruction for the tiles to be removed in order to rectify the

hollow sound because the quality of the workmanship was poor on the original existing building.

To this end, the contractor claimed an extension of time for the delay caused by the demolitions to the surface beds and screeds on various houses. The claim was based on Clause 29.2.3 of the JBCC 2005 - Contract instruction not occasioned by the contractor, where the contractor is fairly entitled to a revision to the date of Practical Completion and adjustment to the contract value.

Based on our assessment of the reasons for delays provided, and the supporting documentation provided, we noted that the purpose of the project was the Upgrading, Repair and Renovation of Building, Mechanical, Electrical and Civil Structure at the Bredasdorp Air force base. It is reasonably anticipated that a site inspection, needs assessment, and a feasibility study should have detected amongst other things the defective floor slabbing which was not the case. Instead tiling work was performed on a defective floor, which subsequently led to an instruction for the removal of the tiles.

We noted that in addition to the cost of re-tiling, the Department has had to incur an amount of R4 503 920 for an additional 97 days which is an expenditure in vain. Had proper planning and monitoring been in place, this expenditure could reasonably have been mitigated.

Issue 4 -Extension of Time 8

On 29 January 2019, ACA (Principal agent) issued an instruction for the installation of a raised timber platform to the control room (Fire Department) and to tint the windows. Closer to refurbishing of the Fire Department, the user Department noted that the scope of works excluded the raised platform to the control room.

Due to the ergonomics of the space, the user department, nevertheless now required a platform that was not considered an essential element during the planning phase of the project. An extension of time with costs for an extension of 15 calendar days were approved with cost adjustments based on JBCC Clause 29.7 and Clause 29.2.3 - Contract Instruction not occasioned by the default of the contractor.

We further note that the nature of this claim indicates that this was a variation order, which should be approved by the VO committee. However, we noted that only the chairperson of the VO committee approved it under the application of extension of time claim.

Based on our assessment, we noted that if the raised platform timber that was not considered an essential element during the planning phase of the project was now required by the user Department.

We therefore concluded that the expenditure incurred in the installation of a raised timber platform was an irregular expenditure, as this service was never identified in the planning phase of the project. This claim resulted in an additional cost of R 696 707 for a 15 day calendar delay.

Issue 5 - Extension of Time 9

Late Handover of Accommodation buildings: Block D

The contractor required access to block D on the 28th of March 2019. However logistics determined that it would be more suitable to the user Department if block C is handed over instead as the two blocks were identical.

However, the User Department's actual handover of substitute Block C only transpired on 14 May 2019 and not 28th of March 2019 as scheduled. Therefore, 33 working days after it was agreed to be handed over. The Principal Agent's opinion was that flight tests prevented the user Department to hand over Block C on the agreed date, 28 March 2019.

Based on the fact that site hand over was done on the 19th of December 2016, it is clear that construction work had already commenced at the Air force base of which the User Department and all affected parties would have been expected to be aware of / be in possession of a programme plan. The 35 delay in Block D resulting in an extension of time with costs resulted in an expenditure in vain for an amount of R1 625 650,95 .

Through our assessment of the reasons for delays provided and the supporting documentation provided, the penalties charged by the contractor have resulted in a financial loss for the entity, as the entity did not get any value from the expenditure incurred. In addition, this expenditure could have been avoided had adequate planning been done.

Issue 6 - Extension of Time 11

Issue 6.1

Extension of time due to the National lockdown from 27 March 2020 to 2 June 2020.

The World Health Organisation declared COVID-19 a pandemic and several countries including South Africa announced National lockdowns to slow the spread of the virus. The South African government, declared a state of national disaster , on 15 March 2020, giving the national executive certain powers to implement regulations in an effort to curtail the spread of the virus which included regulations relating to the protection of property, protection of the public and for the purpose of "dealing with the destructive and other effects of the disaster", as set out in the GN313 of 2020

Following the compulsory national lockdown that was promulgated in terms of the Disaster Management Act 2002, The President of the Republic of South Africa announced the National lockdown from the 26th of March 2020 till 2nd of June 2020. This lockdown resulted in South Africans not being able to leave their homes. Although certain categories of people were exempt from the National Lockdown, such categories did not include the Construction industry. Due to the inability to continue with construction activities the contractor then applied for an extension of time for a period of 89 calendar days.

The contractor's claim relies upon clause 29.3 - A Cause beyond the contractor's reasonable conduct that could not have reasonably been anticipated and provided for and not clause 29.1.4 (Vis Major, riot, strike or lockout):

The following was stated by the contractor: *"The National lockdown was not an act of God by a third party, but an act by a contracting party. The contracting party is the state and the state is equal to the Department of Public works. It is therefore important to rule out Clause 29.1.4(Vis major) as the cause for the hard lockdown was a direct result of the State which is equal to the Department of Public Works".*

The Claim was approved the 16 November 2020 without any cost adjustments based on the recommendations of the construction project manager and the Principal Agent.

Based on our Assessment, the following was noted –

The term force majeure is of French origin and refers to an event or occurrence, which renders contractual performance impossible. The term force majeure is synonymous with vis maior or casus fortuitus. Force majeure clauses are often found in commercial contracts. These clauses allow a contracting party to escape the normal consequences of non-performance or late performance of contractual obligations because of an unavoidable and unforeseeable event.

Force majeure may include acts of God, acts of government, natural disasters, epidemics, pandemics and even war and terrorism. The invocation of a force majeure clause will suspend a party's obligation to fulfil their performance for the duration of which the force majeure event occurs. The term act of government in a force majeure clause could be applied where the government has closed its borders, imposed quarantine or isolation, banned or restricted travel and/or announced a lockdown."

Investopedia defines Vis Major "as an irresistible natural occurrence that causes damage or disruption and that is neither caused by nor preventable by humans even when exercising the utmost skill, care, diligence or prudence and will exclude one or both parties from liability and fulfilling their obligations when events beyond their control occurs"

Conclusion:

During alert level 5, the contract was force majeure i.e. neither the department nor contractor could fulfill their obligations towards the contract.

The Government/State in ordering businesses to close, public transport to stop running made the performance of obligations under a commercial contract impossible, this would be deemed an "Act of State" and would fall under our common law understanding of force majeure. To constitute a vis maior the occurrence must be uncontrollable and unforeseen. The Covid-19 was a global pandemic whose rapid spread was uncontrollable and its devastating effects unforeseeable.

Through an assessment of the JBCC contract assessment, clause 29.1 it was noted that contract state that "The circumstances for which the contractor is entitled to a revised of the date for practical completion and for which revision the principal agent shall not adjust the contract value in terms of 32.12 are delays to practical completion caused by

29.1.1 Increment weather

29.1.4 Vis major, civil commotion, riot, strike or lockout"

It is noted that even though the closure of the economy was because of the decision by the state to close the economy, it is imperative to consider the underlying causes that led to such decision to be taken which was the outbreak of Covid-19 .Neither the State nor the Contractor caused the delay. The fact that the Outbreak of Covid-19 was spreading fast and needed to be contained as such was an Act of God which we feel the extension of time should have been granted without costs as was recommended by the Principal agent.

We then discovered through inspection of the financial report that this extension of time was granted with costs, which was not in line with what had been approved. We therefore came to the conclusion that this constituted wasteful and fruitless expenditure which could have been

avoided .The expenditure has resulted in a financial loss for the Department of R4 133 752, 74 (R46 447, 17* 89 calendar days)

Issue 6.2

Incorrect calculation of calendar days resulting from the delay due to Covid-19 lockdown:

We noted a claim relating to an extension of time because of the compulsory national lockdown promulgated in terms of the Disaster Management Act 2002, on which the contractor claimed 89 calendar days with financial Implications. We further discovered that the number of days affected, amounted to 67 days and not 89 days as follows:

Level 5(hard lockdown) - 27 March to 30 April 2020 = 35 calendar days lost during and;
Level 4 lockdown - 1 May to 2 June 2020 = 32 calendar days

We recalculated the calendar days under this extension of time and noted that, the principal Agent and the Department incorrectly approved 89 Calendar days when in fact the calendar days amounted to 67 days.

Based on our assessment, we concluded that the number of days for this extension of time were incorrectly determined and affected the practical completion date by an additional 22 days and total cost of R 1 021 837.

Issue 6 - Extension of Time 12

We noted that the contractor claimed 41 calendar days relating to delays on covid-19 Health and Safety Legislation compliance requirements, daily covid-19 screening and the phased in labour totaling 41 calendar days.

The claim was a result of the contractor not being able to work at full capacity because of the Initial hard lockdown and the extended lockdown 4 and 3. It was further noted that the claim relied upon Clause 29.3 and not 29.1.4 (Vis Major, riot, strike or lockout) - cause beyond the contractor's reasonable conduct that could not have reasonably been anticipated and provided for.

The following was stated by the contractor: "The National lockdown was not an act of God by a third party, But an act by a contracting party "The contracting party is the state and the state is equal to the Department of Public works."

Investopedia defines Vis Major "as an irresistible natural occurrence that causes damage or disruption and that is neither caused by nor preventable by humans even when exercising the utmost skill, care, diligence or prudence and will exclude one or both parties from liability and fulfilling their obligations when events beyond their control occurs"

The term force majeure is of French origin and refers to an event or occurrence, which renders contractual performance impossible. Force majeure clauses are often found in commercial contracts. These clauses allow a contracting party to escape the normal consequences of non-performance or late performance of contractual obligations because of an unavoidable and unforeseeable event. Force majeure may include acts of God, acts of government, natural disasters, epidemics, pandemics and even war and terrorism. The invocation of a force majeure clause will suspend a party's obligation to fulfil their performance for the duration of which the force majeure event occurs. The term act of government in a force majeure clause could be applied where the government has closed its borders, imposed quarantine or isolation, banned or restricted travel and/or announced a lockdown."

The World Health Organisation declared the COVID-19 virus and several countries including South Africa declared National lockdowns to slow the spread of the virus. The South African government declared a state of national disaster on 15 March 2020, giving the national executive certain powers to implement regulations in an effort to curtail the spread of the virus which included regulations relating to the protection of property, protection of the public and for the purpose of “dealing with the destructive and other effects of the disaster”, as set out in the GN313 of 2020

The Government/State in ordering businesses to close, public transport to stop running made the performance of obligations under a commercial contract impossible, this would be deemed an “Act of State” and would fall under our common law understanding of force majeure. To constitute a vis major the occurrence must be uncontrollable and unforeseen. The Covid-19 was a global pandemic whose rapid spread was uncontrollable and its devastating effects unforeseeable.

JBCC contract assessment

Through inspection of the JBCC Agreement clause 29.1, It was noted that “The circumstances for which the contractor is entitled to a revised date for practical completion and for which revision, the principal agent shall not adjust the contract value in terms of 32.12 are delays to practical completion caused by -

29.1.1 Inclement weather

29.1.4 Vis major, civil commotion, riot, strike or lockout”

Based on the JBCC contract, it is evident that the delays due to a National Lockdown are vis major and should not have a financial impact. Based on the approved claim dated 16/11/2020 it was noted that this extension has a financial impact where the contract value was adjusted. The adjustment amount of R1 904 334 was not in line with JBCC contract clause 29.1.

It is therefore concluded that the extension of time was incorrectly awarded with costs as the underlying cause to have Screening and phased in labour force was as a result of the pandemic which neither party had control over and the contractor should have claimed extension of time without cost adjustments. This cost is seen as wasteful and fruitless.

Impact

- Non – compliance with Treasury Regulation paragraph 8.1.1, 8.2.1 and 8.2.2.
- The expenditure paid in vain which could have been avoided will result in fruitless and wasteful expenditure.
- Irregular expenditure of R 696 707.
- A possible financial loss of R14 863 094 resulting from the expenditure incurred due to the extension of time which had a financial impact.

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Financial and Performance Management

Reviewing and monitoring of compliance with applicable laws and regulations is insufficient and not properly monitored.

All the necessary information required to execute the projects were not always submitted on time to the contractor to avoid delays which will results in the financial loss for the entity.

Approvals for extension of time with cost where the result of the delay was due to Vis major.

Management has not taken the proactive steps to recover the financial loss from the responsible person where the penalty was paid to the contractor resulting from the delays.

Recommendation

It is recommended that management should ensure the entity complies with all applicable laws and regulations.

It is recommended that management should ensure:

- All projects are monitored regularly and all the necessary information and documents are provided to the supplier timeously to avoid delays.
- The consultants work should be monitored by the project managers and all the reports/ drawings prepared by consultants should be checked for accuracy and be delivered to the contractor timeously.
- Access to the construction sites should be organized before the construction commence.

It is recommended that management should assess the reasons for the delays against the JBCC 2000 PRINCIPAL BUILDING AGREEMENT in order to avoid making unnecessary payments were the delays are covered under JBCC contract clause 29.1.

Where the financial loss results from the consultant not performing as per the contract or any other party e.g. user department, the fruitless and wasteful amount should be recovered from them. If the PMTE officials cause the financial loss, the disciplinary processes should be followed to ensure that the money is recovered from the implicated individual.

Management response:

Management takes note of the audit finding and is in disagreement and comment as follows:

Issue 1 - Extension of Time 2

Considering that the site was handed over during the **annual builders holiday the permit request was lodged (by the employer's H&S Agent, not the contractor) within 9 working days of the 2017 construction calendar opening (traditionally around the 15th of January)** . We deem this time period as acceptable.

Should the Department of Labour have been more supportive in confirming the approval of the permit on the 31 January 2017, the unforeseen circumstances would have been avoided. Furthermore it was stated that the permit was emailed to the incorrect email on the 22 February 2017, however the QS did forward the email to the correct address on the same date. Since the contractor only received the permit on the 22 February 2017, work could only commence the next day.

Please see on-line day calculator shows the quantity of 21 days as correct:

How many days, months, and years are there between two dates?

Count Days Add Days Workdays Add Workdays Weekday Week No

Start Date
Day: Month: Year: Date:

2

 /

2

 /

2017

Today

End Date
Day: Month: Year: Date:

22

 /

2

 /

2017

Today

☒ Include end date in calculation (1 day is added)

[Add time fields](#) [Add time zone conversion](#) [Count only workdays](#)

Calculate Duration

From and including: **Thursday, 2 February 2017**
To and including: **Wednesday, 22 February 2017**

Result: 21 days
It is 21 days from the start date to the end date, end date included.

Alternative time units
21 days can be converted to one of these units:

- 1,814,400 seconds
- 30,240 minutes
- 504 hours

Issue 2 -Extension of Time 4

It is important to point out that EOT 4 relates to a decanting facility which only came into consideration when the logistics of the User Department to handover the spaces earmarked for renovation were subjected to unforeseen operational circumstances on their part, subsequently affecting the programming of the works. The fast tracked design development of the complex structural design solution to install temporary office accommodation over among other a mechanical plant during a critical path of the program, is in fact an effort to be commended.

Issue 3 -Extension of Time 5

The original surface beds were not constructed according to standards that resulted in the delamination of the existing screed that could not have been foreseen and/or picked up at any stage during construction. Only after the new tiles were laid was the issue picked up.

Issue 4 -Extension of Time 8

The Fire Department must be operational at all times to protect high value aircraft and human lives. Hence, during construction the User Department requested that the raised platform that was removed from the control room during the refurbishment of the Fire Department Building be reinstalled as a critical element of the fire station building. Accordingly, budgetary allowance was made in the BOQ for additional joinery at the fire station building.


Issue 5 - Extension of Time 9

This claim relates to the late handover of one of the accommodation buildings by the user Department as test flight training at Bredasdorp AFB is often at the mercy of the weather, international events, pilot availability, sickness etc. Hence, delays as a result of such eventualities can only be mitigated within the parameters available at the time which, in this case, did not provide feasible solutions.

Issue 6 - Extension of Time 11

The approved EOT 11 did not award the claim with costs. However the PQS has since corrected the oversight of allocating costs on the financial report. Furthermore, practical completion has still not been taken and any discrepancies are corrected during the final account before final payment is done.

In terms of the day's allocated, kindly note that the approved PRM 040/1 clarifies the discrepancy as per the below extract from the PRM 040/1 that included builders holiday.

RECOMMENDATION: (See attached report for complete motivation including PRM040/2)	
ACA RECOMMENDS THE GRANTING OF 43 WORKING DAYS WITH COST. (NOTE: 43 WORKING DAYS INCORPORATING THE 2020/2021 BUILDERS HOLIDAY = 89 CALENDAR DAYS)	
Submitted by:	28 SEPT. 2020 DATE
 PRINCIPAL AGENT / PROJECT MANAGER	

Start Date Day: 10 / Month: 12 / Year: 2020 Today	End Date Day: 9 / Month: 3 / Year: 2021 Today
<input type="checkbox"/> Include end date in calculation (1 day is added)	
Add time fields Add time zone conversion	Count only workdays
Calculate Duration	
From and including: Thursday, 10 December 2020 To, but not including Tuesday, 9 March 2021	
Result: 89 days It is 89 days from the start date to the end date, but not including the end date. Or 2 months, 27 days excluding the end date.	
Alternative time units 89 days can be converted to one of these units: <ul style="list-style-type: none"> • 7,689,600 seconds • 128,160 minutes • 2136 hours 	

Issue 6 - Extension of Time 12

This claim deals with the impact of COVID-19 Health and Safety legislation had on progress after resumption of works on 2 June 2020. Therefore, the post-COVID start-up requirements (not the COVID-19 global pandemic) is the immediate event causing the contractor's delay and losses.

Auditor's conclusion

Issue 1 - Extension of Time 2

Management response has been noted. Based on our assessment and the information at our disposal we disagree with management based on the following:

- As per the letter from Siyakhathala Safety dated 19 June 2017, signed by Anton Els (Construction Health and Safety Manager) point no.19 we confirmed that the permit was distributed to Raubex Joint Venture on 21 January 2017. The extension of time days that should have been applied for was 20 days and not 21 days.

- The employer's H&S Agent, only applied for the work permit on 26 January 2017 (due to delays by the contractor in submitting the supporting documentation) not applied for within the minimum 30 days prior to construction date of 02 February 2017. The extension of Time should therefore been without cost adjustments as the delays were from the contractor hence the amount paid of R975 390.57 is fruitless and wasteful expenditure.

The finding remains and will be included in the management and audit report.

Issue 2 - Extension of Time 4

Management assessment has been noted. We disagree with management assessment on the following:

- Based on the Principal Agent's Adjudication letter dated 25 April 2017 of Extension of Time No 4, this claim relates to the construction work stoppage due to inadequate depth for the floor fixing bolts could not be achieved according to the structural engineer's design and not decanting the facilities. This finding resulted in a wasteful and fruitless expenditure of R1 718 545.
- This finding remains and will be included in the management report.

Issue 3 - Extension of Time 5

Management response has been noted. This finding remains on the basis that, the purpose of the project was the Upgrading, Repair and Renovation of Building, Mechanical, Electrical and Civil Structure at the Bredasdorp Air force base. It is reasonably anticipated that a site inspection, needs assessment, and a feasibility study should have detected amongst other things the existing defective floor slabbing which was not the case. Instead, tiling work was performed on a defective floor, which subsequently led to an instruction for the removal of the tiles. This resulted in the department incurring R4 503 920, 00 which is an expenditure in vain.

This finding remains and will be included in the management report.

Issue four - Extension of Time 8

Management response has been noted. In the management response, we noted that during construction the User Department requested that the raised platform that was removed from the control room during the refurbishment of the Fire Department Building be reinstalled as a critical element of the fire station building. We therefore conclude that the raised platform was included in the budget and scopes of work and thus should not resulted in an extension of time with cost adjustments.

This finding remains and will be included in the management report.

Issue 5 - Extension of time 9

Management response has been noted. Based on the Principal Agent report we noted that flight tests prevented the user Department to hand over Block C on the agreed date, 28 March 2019, an indication of inadequate planning on project management. If the weather was a contributing factor the extension of time, should resulted in an extension of time without cost adjustments.

This finding remains and will be included in the management report.

Issue 6 - Extension of Time 11

Issue 6.1

Management response has been noted. We noted that the period of management assessment differs from the period under review which is 27 March 2020 to 2 June 2020. We therefore disagree with management and this finding remains and will be included in the management report.

Issue 6.2

Management's response has been noted, however this finding remains and will be included in the management report as the payments made to the contractor during the phased -in Labour return to work and Covid screening processes does not negate the fact that the expense was wasteful and in vain.

MMABATHO REGION

Nature

Project number **WCS 043964** was awarded to La-Natura (Pty) Ltd as at 18 October 2019 (Date of letter of Acceptance) for the Taung District office - Construction of new accommodation. The original contract period was for 18 months and the project expected date of completion being 18 April 2021 for a total contract value of R 22 764 708,75 (Incl. VAT).

In accordance with clause 42.2.6 of the JBCC 2000 Agreement Principal Building Agreement: Edition 4.1 of March 2005, possession of the site was to be given to the contractor within 10 working days from the commencement (award) date. Consequently, possession should have been given to the contractor by 04 November 2019, however the site was only handed over to the contractor on 20 January 2020.

Refer reasons for the delays as per the memorandums have been included on the table below:

Claim No.	Reason for the delay as per the request for extension and Memos.	No of days	Financial impact
1	<u>Claim 1 – Situation</u>	35 days	R 31 979.95
	Late approval of safety file – The contractor sent the file on 05 December 2019 and confirmation of receipt was on 10 December 2019 and subsequently approved 15 January 2020. As a result 37 days is claimed with cost.		
	Delays were experienced in handing over the site to the contractor even though the safety file was approved on the date stated. 5 days was claimed with cost		
	The offer and acceptance letter was dated 18 November 2019 and issued to the contractor on the 25 November 2019. 07 days was claimed with cost for sending the letter of acceptance		
	However only 35 days was approved by head of projects.		
	<u>Auditors comment:</u>		

Claim No.	Reason for the delay as per the request for extension and Memos.	No of days	Financial impact
	<p>In accordance to the JBCC:</p> <p>29.2 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall adjust the contract value in terms of 32.12 are delays to practical completion caused by:</p> <p>29.2.1 Failure to give possession of the site to the contractor in terms of 15.2.1.</p> <p>Based on assessment of the reasons given for this claim, we have noted that the contractor was within their rights to make a claim for extension of time with costs as a result of late site handover.</p> <p>However with regards to:</p> <p>*Late approval of safety file - 15.1.4 Add 15.1.4 of the JBCC states as follows: An acceptable health and safety plan, required in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), within twenty-one (21) calendar days of commencement date. It is of the above view that PMTE was not supposed to pay the extension of time with cost</p> <p>*Offer and acceptance letter: Even though the date of the acceptance letter and the delivery date are different, it is not evident what the client paid for as the work wouldn't have commenced in 5 days.</p>		
2	<p><u>Claim 2</u></p> <p>Delays were experienced as a result of Covid 19 National lockdown period based on demobilization days 5 Days (23 March 2020 to 26 March 2020), 42 days (27 March 2020 to 01 June 2020, 10 days (01 June 2020 to 18 June 2020) and re-establishment and mobilizations for 10 days (19 June 2020 to 05 July 2020).</p> <p>To this effect, the contractor has successfully made claim for extension of time, which equate to a total of 53 days.</p> <p><u>Auditors comment:</u></p> <p>29.1 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall not adjust the contract value in terms of 32.12 are delays to practical completion caused by:</p> <p>29.1.4 Vis major, civil commotion, riot, strike or lockout.</p> <p>Based on the JBCC Principal Agreement, any delays resulting from lockout does not attract the contract price adjustments with cost. Therefore, the extension with cost was not in line with the Building agreement as a result PMTE paid for no value.</p>	53 Days	R 55 690.63
3	<p><u>Claim 3</u></p> <p>Delays were experienced due to community disturbances on site from 25 January 2021 to 07 March 2021 as a result contractor could not access the site.</p> <p><u>Auditors comment:</u></p> <p>29.1 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision</p>	30	R31 523.00

Claim No.	Reason for the delay as per the request for extension and Memos.	No of days	Financial impact
	<p>the principal agent shall not adjust the contract value in terms of 32.12 are delays to practical completion caused by:</p> <p>29.1.4 Vis major, civil commotion, riot, strike or lockout.</p> <p>Based on the JBCC Principal Agreement, any delays resulting from lockout does not attract the contract price adjustments with cost. Therefore, the extension with cost was not in line with the Building agreement as a result PMTE paid for no value.</p>		
	TOTAL DELAYS	115	R 119 193.48

Impact of the finding

- Non-compliance with the PFMA sections 40(1)
- Fruitless and wasteful expenditure to the amount of **R119 193.48**
- The expenditure paid in vain which could have been avoided will result in fruitless and wasteful expenditure.

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Financial and Performance Management

Reviewing and monitoring of compliance with applicable laws and regulations is insufficient and not properly monitored.

All the necessary information required to execute the projects when not always submitted on time to the contractor to avoid delays, which will results in the financial loss for the entity.

Management has not taken the proactive steps to recover the financial loss from the responsible person where the penalty was paid to the contractor resulting from the delays.

Recommendation

It is recommended that management should ensure the entity complies with all applicable laws and regulations.

It is recommended that management should ensure:

- All projects are monitored regularly and all the necessary information and documents are provided to the supplier timeously to avoid delays.
- Access to the construction sites should be organized before the construction commence.

It is recommended that management should assess the reasons for the delays against the JBCC principal building agreement in order to avoid making unnecessary payments where the delays are covered under JBCC contract clause 29.1.

It is recommended that management should conduct an investigation on all significantly delayed projects to determine the reasons for the delay as well as the financial loss incurred by the entity. The fruitless and wasteful expenditure assessment should be conducted to identify expenditures that could have been avoided by the entity.

Management response:

The Project Manager acknowledges late approval of safety file and late site hand over of the project. Safety file was received by Project Manager on the 10th December 2019 from the Contractor which was submitted to NDPW-OHS on the 11th December 2019. Approval was granted by OHS Officer on the 15th January 2020 reason was due to work over load and Project Manager handed over site on the 20th January 2020. Contractually site cannot be handed over unless the safety file is approve.

Extention 2

Response: National lockdown for COVID-19 pandemic was a new thing in South Africa. The contractor was requested to comply with the following before re-establishment of site:

- Adherence to COVID-19 regulations.
- Preparation of site to comply with COVID-19 prior to workforce being allowed on site.
- COVID-19 Occupational Health and Safety plans to be submitted to DPWI for approval.

All the above items were not included in the original scope of work accepted by the Department and this resulted to additional cost to the contractor.

Extention 3

Project Manager acknowledges and accept the finding. A letter will be written to the consultants to recover the said amount from the contractor

Auditor's conclusion

Management's comments has been noted and the finding will be reported in the management report.

DURBAN REGION

Nature

Project number **WCS 050034** was awarded to Xiluva Xa Mina Projects cc as at 10 May 2018 (Date of Site Hand Over) for the Rehabilitation of Old Bulwer Prison: Dartnell Street. The original contract period was for 25 months and the project expected date of completion being 10 June 2020 for a total contract value of R 47 718 7332,40 (Incl. VAT).

The JBCC 2000 Principal Building Agreement (Edition 4.1 of March 2005), approved by the Construction Industry Development Board is applicable to this contract as such all extension of time are governed by section 29. Extension of time were noted during the duration of the contract and were assessed by the audit team as indicated below.

Delays were experienced by the Contractor due to the site being closed by the local community as a result of demanding to be part of the 30% sub-contracting. Strikes / lockout happened on the following dates:

- 15 October 2018 – 22 October 2018 (6 working days)
- 15 January 2019 – 12 February 2019 (20 working days)

The above extension of time was approved with cost (P&Gs) to the amount of **R160 244.65**

Auditor's comment:

29.1 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall not adjust the contract value in terms of 32.12 are delays to practical completion caused by:

29.1.4 Vis major, civil commotion, riot, strike or lockout.

Based on the JBCC Principal Agreement, any delays resulting from lockout does not attract the contract price adjustments with cost. Therefore, the extension with cost was **not** in line with JBCC as a result PMTE paid for no value. However, we have noted that management has commenced with the recovery process by notifying the contractor but at the date of this report, the amount has not been withheld on any progress payment certificate as the contractor is on negative payments.

Impact of the finding

- Non-compliance with the PFMA sections 40(1)
- Fruitless and wasteful expenditure to the amount of **R160 244,65**
- The expenditure paid in vain which could have been avoided will result in fruitless and wasteful expenditure.

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial, performance reporting, compliance, and related internal controls.

Financial and Performance Management

Reviewing and monitoring of compliance with applicable laws and regulations is insufficient and not properly monitored.

Management has taken the proactive steps to recover the financial loss from the contractor.

Recommendation

It is recommended that management should ensure the entity complies with all applicable laws and regulations.

It is recommended that management should conduct an investigation on all significantly delayed projects to determine the reasons for the delay as well as the financial loss incurred by the entity. The fruitless and wasteful expenditure assessment should be conducted to identify expenditures that could have been avoided by the entity.

Management response:

I am not in agreement with the finding of *Fruitless and Wasteful expenditure* as this was an oversight which was discovered before AG identified it. The matter was raised with the professional team and the principal agent was instructed to recover the amount on a recovery statement. However due to the contractor being on penalties the amount could not yet be

recovered. It is intended for the amount to be recovered in future payment certificates or in the final account as the project is still ongoing.

Auditors' conclusion

Management is in agreement that the payment made with regards to the extension of time claimed by the contractor was not according to the JBCC Principal Agreement para. 29.14, furthermore management indicated that this was as a result of lack of oversight with regards to what the contractor can claim against.

The amount is yet to be recovered from the contractor, upon recovery shall the client obtain approval to condone the amount to be recognised as fruitless and wasteful expenditure.

Based on the above, the finding remains and will be reported in the management report.

JOHANNESBURG REGION

FIRST ISSUE

Nature

During the audit of contract management, we noted that GVK Siya Zama Zidlaphi & Associates JV (contractor) was awarded tender no.JHB19/20 for the Rehabilitation and Construction of the new Office Block at 85 Anderson Street (WCS 049343). The letter of acceptance was issued on 03 March 2020; however, the site handover only took place on the 11th of June 2020. To this end, the contract was granted an extension of time amounting to 65 days.

According to Contract Data: JBCC 2000 Principal Building Agreement (Edition 4.1 of March 2005): dpw-04(EC) the following conditions were agreed to:

“15.1.4 Add 15.1.4 as follows:

An acceptable health and safety plan, required in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), within twenty-one (21) calendar days of commencement date

15.2.1 Under 41: Amend to read as follows:

Give the contractor possession of the site within ten (10) working days of the contractor complying with the terms 15.1.4”

29.0 REVISION OF DATE FOR PRACTICAL COMPLETION

29.1 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall not adjust the contract value in terms of 32.12 are delays to practical completion caused by:

29.1.4 Vis major, civil commotion, riot, strike or lockout.

29.2 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall adjust the contract value in terms of 32.12 are delays to practical completion caused by:

29.2.1 Failure to give possession of the site to the contractor in terms of 15.2.1.

29.3 Further circumstances for which the contractor is entitled to a revision of the date for practical completion are delays to practical completion caused by any other cause beyond the contractor's reasonable control that could not have reasonably been anticipated and provided for."

Issue 1

The contractor was granted a total extension of time of 51 working days In terms of Clause 29.2.1 of the JBCC Principal Building Agreement (PBA), the delay was caused by failure to give possession of the site by the client.

Two events have resulted in a delay to the date for practical completion of the project.

- The National lockdown declared by the President of the Republic of South Africa (Level 5)
- The delay in the contractor being given site possession where the President announced that South Africans may not leave their homes from the 26th of March 2020 till 30th of April 2020. Although certain categories of people were exempt from the National Lockdown ,such categories did not include the Construction industry.(level 4)

The contractor claimed 26 working days (22 days under level 5 plus 4 days for late handover) without costs. The claim was based on an understanding that during alert level 5, the contract was force majeure i.e. neither the department nor contractor could fulfill their obligations towards the contract. In addition, the contractor claimed 4 days when the President moved the country to alert level 4 in order to cater for the time, which the employer was expected to arrange for site handover as per clause 15.2.1 of the contract.

On 23 April 2020, the President announced changes to the lockdown restrictions. These changes included the re-commencement of construction and was effective from 1 May 2020. Although the contractor did acknowledge that the president's announcement regarding construction was ambiguous, they were of the opinion that they should be granted site and commence with construction. To this end, the contractor claimed 25 working days with costs for the delay in site handover by the employer. The period claimed was from May 2020 up to date of site handover, 11 June 2020.

During our discussions with management, we noted that the Department of Public Works had not instituted a resumption of work for the employees under the Projects units. A memo was circulated to employees that work can resume under alert level 3 from 01 June 2020. The project manager was only then able to commence the planning to hand the site over to the contractor.

The total time preliminaries is R44 714 854, 49 divided by 702 working days =P&G Rate of R63 696, 37 per working day. Thus, the contractor was granted R3 248 514, 87 for delay in site handover.

Auditors comment:

Through inspection of the reasons given for this claim, we have noted that the contractor was within their rights to make a claim for extension of time due to late handover of site. The initial 22 days under level 5 was which were claimed without cost in accordance with clause 29.1,4 were due to vis major and the additional 4 days under level 4 was as per clause 15.2.1 which allowed the employer 10 days to handover the site.

However, under alert level 4 the contractor expected site handover, which was not granted by the employer. In accordance with clause 29.2.1, the contractor claimed 25 working days with

costs for late handover. The delay was due to Department of Public Works had not instituted a resumption of work for the employees under the Projects units. The approval of the claim for extension of time with costs is indicative that the department is in agreement with the contractor that they were supposed to handover site on alert level 4 however only handed it over under alert level 3.

Issue 2

The contractor made an additional extension of time claim with costs. The extension was as a result of the delay in receiving the Construction work permit. A total of 14 working days was claimed in this regard. The delay occurred from 06/24/2020 to 07/14/2020. Claim 02 was in line with clauses 29.2, 29.3, 29.4 and 29.5 of the JBCC contract March, Edition 4.1. The claim amount was equal to 14days *R63 696, 37per day = R891 749, 18.

Auditors comment:

Through inspection of the reasons given for this claim, we have noted that the contractor was within their rights to make a claim for extension of time with costs due. It is the responsibility of the employer to ensure that the construction permit is granted in order to allow the contractor to commence operation. However, the employer did not obtain the construction permit timely that resulted in the contractor not being able to work.

Impact

- Non-compliance with PMFA 45(a) and treasury regulation 8.1.1.
- Non-compliance with treasury regulation 9.1.1
- The expenditure paid in vain which could have been avoided will result in fruitless and wasteful expenditure of R4 140 264,05

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Financial and Performance Management

Reviewing and monitoring of compliance with applicable laws and regulations is insufficient and not properly monitored.

All the necessary information required to execute the projects when not always submitted on time to the contractor to avoid delays, which will results in the financial loss for the entity.

Management has not taken the proactive steps to recover the financial loss from the responsible person where the penalty was paid to the contractor resulting from the delays.

Recommendation

It is recommended that management should ensure the entity complies with all applicable laws and regulations.

It is recommended that management should ensure:

- All projects are monitored regularly and all the necessary information and documents are provided to the supplier timeously to avoid delays.
- Access to the construction sites should be organized before the construction commence.

It is recommended that management should assess the reasons for the delays against the JBCC principal building agreement in order to avoid making unnecessary payments where the delays are covered under JBCC contract clause 29.1.

It is recommended that management should conduct an investigation on all significantly delayed projects to determine the reasons for the delay as well as the financial loss incurred by the entity. The fruitless and wasteful expenditure assessment should be conducted to identify expenditures that could have been avoided by the entity.

Management Response:

I am not in agreement with the finding because of the following reasons:

Issue 1

1. We dispute the view that the Department of Public Works and Infrastructure (DPWI) could have avoided these circumstances. The Covid-19 pandemic and its resultant regulations were beyond any individual's or department's control. DPWI was subject to National Government regulations (e.g. National Disaster Act). When these regulations were distributed, state organs had to first deliberate on the interpretation of those regulations, and how best to implement them. This exercise took three months before approvals could be granted to implement and action. The implementation by respective line managers and project managers also took time. This was further impacted by the pandemic as the emphasis (even under Level 4) from government was the safety of personnel from contracting the virus.

Issue 2

2. With respect to the Construction Permit, the Department was at the mercy of the Department of Labour, who themselves were struggling due to the effects of the pandemic and regulations. As a consequence the permit was issued late. It is incorrect to imply that the Department did not apply for the contract in a timely manner. The Department applied for the permit as soon as the contractor was appointed. It should be noted also that it is an inaccurate assumption that the permit could have been applied for before the appointment of the contractor because according to construction regulations (2014) clause 5(b) (ii), before the permit can be issued the Department of labour must vet the contractor and check their registration and good standing and this can only be done after the contractor has been appointed.
3. The Management of the Department of Public Works and Infrastructure (DPWI) does not subscribe to the Auditors notion that the cost incurred under the period of Level 5 and 4 of the COVID-19 pandemic as promulgated under the applicable Disaster Management Act should be regarded as Fruitless and Wasteful Expenditure under the books of DPWI because the reason for the delay was caused by the Department of Labour, unless the Auditors may come up with the reasonably practical example of the cause of action that DPWI Management would have done to cause the Department of Labour to expedite the issuing of the Permit on time within the confines of the JBCC.
4. Under normal circumstances delays of this nature can be mitigated. Unfortunately, the Department was dealing with these delays under extraordinary circumstance of the Covid-19 Pandemic.
5. In case the Auditors still insist that this expenditure is to be regarded as Fruitless and Wasteful Expenditure, then such reporting should be attributable to the books of the

Department of Labour, where AGSA should then liaise with its counterpart who are auditing the books of the Department of Labour to audit this transaction from there.

Auditor's conclusion

Issue 1

Management's response noted, however we are in disagreement based on the following reasons.

Management has indicated the following key circumstances, which resulted in the delay:

1. Covid-19 pandemic and its resultant regulations were beyond any individual's or department's control.
2. The emphasis (even under Level 4) from government was the safety of personnel from contracting the virus.
3. The exercise to deliberate on the interpretation of those regulations and how best to implement them took three months before approvals could be granted to implement and action.
4. The implementation by respective line managers and project managers also took time.

Firstly, we should rule out point number 1 and 2. This is because both reasons relate to Vis major/ Force majeure, which include acts of God, acts of government, natural disasters, epidemics, pandemics and even war and terrorism. Any extension of time claim under these circumstances should be without cost as per JBCC 29.1.4.

Secondly, it is not arithmetically correct that it took three months before approvals could be granted to implement and action. This is because the president announced changes to the regulations on 23 April 2020 and management only granted approval for returning back to work on 1 June 2020. This was less than the three months indicated. The delay in issuing the return to work policy by a month resulted in the Department losing R3 248 514.

Issue 02

In response to issue number 2, it is imperative to highlight key dates:

- Award date - 03 March 2020
- Contractor submission of OHS – 24 March 2020
- Expected date to hand over site – 07 April 2020
- Date which construction permit is expected – 07 April 2020
- Date of actual delivery of permit – 14 July 2020

Therefore, it took management more than 3 months to apply and obtain a permit. Even taking into account the impact of Covid, the extent of time was excessive. Furthermore, management has not been able to demonstrate when the application was sent to Department of Labour (DOL) in order to attribute the delay to DOL.

It is also important to note that Government Notice (dated July 2015) states that, *"a client who intends to have construction work carried out must at least within 30 days before that work is to be carried out apply to the Provincial director in writing for a construction work permit, if the intended construction works starts after 7th of August 2015, and the works contract is of a value exceeding one hundred and thirty million rand or CIDB grading level 9"*

SECOND ISSUE

Nature

During the audit of contract management, we noted that Temi Construction (contractor) was awarded tender no.JHB 18/28 for the complete repairs and renovations of Randfontein military base on 13 February 2020. The contract period was set for 18 months, with anticipated completion date of 25 August 2021.

We noted that the contractor submitted extension of time claim no.1 for 83 days due to “Delay in issuing of the construction permit by the department of labour”.

In assessing this application, the project manager recommended 83 working days from the day the contractor was handed site, 25 February 2020 to 26 June 2020, with costs.

The days were recommended for approval as the contractor has complied with the conditions of Contract JBCC Clause 29.4.3, which requires extension of contract period claims to be submitted in writing within 20 days of the cause of the delay and the reason for the delay was beyond the contractors control.

As a result, the department incurred costs to the contractor to the value of R 1 827 308.91 for the delays.

Auditor’s assessment

Prior to entering the construction contract, the department was aware that a construction permit was required as per the OHS Act. Upon awarding of the contract, the department was supposed to arrange for a construction permit in a timely manner. Furthermore, on the date of site handover, it was the responsibility of the department to ensure that all relevant permits are in place to allow the contractor to carry out their tasks as per contract.

Therefore, the department ended up paying R 1 827 308 to the constructor while no construction was taking place i.e fruitless expenditure.

Impact

- Non-compliance with PMFA 45(a) and treasury regulation 8.1.1.
- Non-compliance with treasury regulation 9.1.1
- The expenditure paid in vain which could have been avoided will result in fruitless and wasteful expenditure of R 1 827 308.91

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Financial and Performance Management

Reviewing and monitoring of compliance with applicable laws and regulations is insufficient and not properly monitored.

All the necessary permits required to execute the project were not submitted on time to the contractor to avoid delays, which will results in the financial loss for the entity.

Management has not taken the proactive steps to recover the financial loss from the responsible person where the penalty was paid to the contractor resulting from the delays.

Recommendation

It is recommended that management should ensure the entity complies with all applicable laws and regulations.

It is recommended that management should ensure:

- All projects are monitored regularly and all the necessary information and documents are provided to the supplier timeously to avoid delays.
- Access to the construction sites should be organized before the construction commence.

It is recommended that management should assess the reasons for the delays against the JBCC principal building agreement in order to avoid making unnecessary payments where the delays are covered under JBCC contract clause 29.1.

It is recommended that management should conduct an investigation on all significantly delayed projects to determine the reasons for the delay as well as the financial loss incurred by the entity. The fruitless and wasteful expenditure assessment should be conducted to identify expenditures that could have been avoided by the entity.

Management response:

I am not in agreement with the finding because of the following reasons:

6. We dispute the view that DPWI could have avoided these circumstances for the following reasons;
 - With regards to the Construction Permit, It is incorrect to imply that the Department did not apply for the contract in a timely manner. The Department applied for the permit as soon as the contractor was appointed. It should be noted also that it is an inaccurate assumption that the permit could have been applied for before the appointment of the contractor because according to construction regulations (2014) clause 5(b) (ii) before the permit can be issued the Department of Labour must vet the contractor and check their registration and good standing and this can only be done after the contractor has been appointed.
 - It can also be noted that the Department did all it could and applied oversight on the whole application i.e., the Department did the application on 06/03/2022 and the Department of Labour only approved the submission on 23/06/2020. (See attached)
 - The Covid-19 pandemic and its resultant regulations were beyond any individual's or department's control. DPWI was subject to National Government regulations (e.g. National Disaster Act). When these regulations were distributed, state organs had to first deliberate on the interpretation of those regulations, and how best to implement them. This exercise took three months before approvals could be granted to implement and action. The time taken by the respective Line Managers

and Project Managers to implement the project needed some logistical arrangement to be made and was also impacted by the pandemic as the emphasis (even under Level 4) from government was the safety of personnel from contracting the virus.

- The Management of the Department of Public Works and Infrastructure (DPWI) does not subscribe to the Auditors notion that the cost incurred under the period of Level 5 and 4 of the COVID-19 pandemic as promulgated under the applicable Disaster Management Act should be regarded as Fruitless and Wasteful Expenditure under the books of DPWI because the reason for the delay was caused by the Department of Labour, unless the Auditors may come up with the reasonably practical example of the cause of action that DPWI Management would have done to cause the Department of Labour to expedite the issuing of the Permit on time within the confines of the JBCC.
- Under normal circumstances delays of this nature can be mitigated. Unfortunately, the Department was dealing with these delays under extraordinary circumstance of the Covid-19 Pandemic.
- In case the Auditors still insist that this expenditure is to be regarded as Fruitless and Wasteful Expenditure, then such reporting should be attributable to the books of the Department of Labour, where AGSA should then liaise with its counterpart who are auditing the books of the Department of Labour to audit this transaction from there.

Auditor's conclusion

Management's response noted.

We wish to first highlight that within this 83 days which were granted with costs, there is a period where the country was under hard lockdown (33 calendar days). During this period, all contracts would have been force majeure /vis major. Under such conditions, the JBCC does not allow extension of time with cost, however management did grant the extension with cost.

Furthermore, from the evidence provided, it is noted that the Department of Labour indicated that they only received your application on the 11 June 2020, which is materially in contradiction to your assertion that the application was made on 06/03/2022.

Therefore the finding will remain

HEAD OFFICE REGION

FIRST ISSUE

Project number WSC no: 039808

Nature

Project number WSC no: 039808 was awarded to Maseno General Trade (Pty) Ltd at 25 July 2017. (Date of letter of Acceptance) for the Ibolobedu Police Station :Repair & renovation ,conversion and construction of additional accommodation. The original contract period was 24 months and the project expected date of completion being 24 July 2019 for a total contract value of R92 970 095,46.

Refer the table below:

Supplier: Maseno General Trade (Pty) Ltd WCS: 039808			
5	<u>Claim 5</u>	16 Day	R102 216,16
	The contractor requested for sixteen (16) working days, of which the Principal Agent has adjudicated and has recommended 16 working days based on the opinion that the circumstances were beyond the contractor's control. Extensions of time was a results of PMTE experienced a delay in issuing information to the contractor(Two and three bedroom houses as a temporary police station) compiled by project manager: Mr M. Mncwango, recommended by principle agent Mr Marius Swanepoel and approved by Director Projects: Mrs J. Masango as at 05/11/2020		
	<u>Clause 29.2.4 of the JBCC 2000 Agreement Principal Building Agreement</u>		
	Based on clause 29.2 of JBCC 2000 Agreement Principal Building Agreement: Edition 4.1 of March 2005 " <i>The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall adjust the contract value</i> "		
	29.2.4 Failure to issue or late issue of a contract instruction following a request from the contractor		
6	<u>Auditors comment:</u>	4 Days	R25 554,04
	Based on auditors assessment the extensions of time was as a results of late submission of the information for the contractor and the extensions of time should be with cost, however cost should have been avoided.		
	<u>Claim 6</u>		
	The contractor requested for four (4) working days, of which the Principal Agent has adjudicated and has recommended 4 working days based on the opinion that the circumstances were beyond the contractor's control. Extensions of time was a results of rain preventing external site works due to muddy conditions compiled by project manager: Mr M. Mncwango, recommended by principle agent Mr Marius Swanepoel and approved by Director Projects: Mrs J. Masango as at 05/11/2020		
	<u>Clause 29.1.4 of the JBCC 2000 Agreement Principal Building Agreement</u>		
6	Based on clause 29.0 of JBCC 2000 Agreement Principal Building Agreement: Edition 4.1 of March 2005 " <i>The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall not adjust the contract value</i> "	4 Days	R25 554,04
	29.1.4 Inclement weather		
	<u>Auditors comment:</u>		
6	Based on auditors assessment the extensions of time was as a results of heavy rainfalls and the extensions of time should be without cost.	4 Days	R25 554,04
TOTAL DELAYS		20 Days	R127 770,20

Impact of the finding

- Non-compliance with the PFMA sections 40(1)
- Possible fruitless and wasteful expenditure to the amount of R127 770.20
- The expenditure paid in vain which could have been avoided will result in fruitless and wasteful expenditure.

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Financial and Performance Management

Reviewing and monitoring of compliance with applicable laws and regulations is insufficient and not properly monitored.

Recommendation

It is recommended that management should ensure the entity complies with all applicable laws and regulations.

It is recommended that management should ensure:

- All projects are monitored regularly and all the necessary information and documents are provided to the supplier timeously to avoid delays.

It is recommended that management should assess the reasons for the delays against the JBCC contract in order to avoid making unnecessary payments were the delays are covered under JBCC contract clause 29.1.

It is recommended that management should conduct an investigation on all significantly delayed projects to determine the reasons for the delay as well as the financial loss incurred by the entity. The fruitless and wasteful expenditure assessment should be conducted to identify expenditures that could have been avoided by the entity.

It is recommended that management should assess the reasons for the delays against the JBCC contract in order to avoid making unnecessary payments were the delays are covered under JBCC contract clause 29.1.

Management response:

I do not agree with the finding.

The delay in the issuing of the information was as a result of the omission of the temporary police station from the original project scope, which was then done as a VO. Due to site conditions (the initial plan was to move the user client around the site to the sides where the contractor would not be working and demolish and build partially in stages. However having assessed the site and workability it was decided that there would not be sufficient space to accommodate the user client, also, the health and safety of the occupants and the public would be at risk because of heavy machinery that is needed to demolish and do deep excavation), there were consultations with the user client, the space previously allocation as a temporary police station was not sufficient due to the fact that at the time the plan was based on the fact that the two houses, which were later converted to the temporary police station, were utilized as housing by the client. It was at the beginning of the contract that this option was available as there were no occupants at the time. and a new temporary police station was allocated under a VO. Please see VO motivation report attached, Annexure A – COFF 03

The extension was granted following unworkable site conditions caused by the rain, not the days when it was raining. Therefore this extension was for unfavorable site conditions and under clause 29.3, herein annexure C, as the extension was not for inclement weather but for

site conditions. The wet conditions had a ripple effect that made the contractor unable to work in the days succeeding the rainy days.

Auditor's conclusion

Claim 5

Managements responses has been acknowledged, however management was expected to have put measures in place to avoid extensions of time, based on the internal letter from the principal agent the extension of time was adjudicated with the reason of PMTE experienced a delay in issuing information to the contractor(Two and three bedroom houses as a temporary police station)

Claim 6

Managements responses has been acknowledged and based on the internal memorandum from the principal agent, the reasons for adjudications of extensions of time was due unworkable site conditions caused by the rain(Muddy consitions), therefore muddy conditions was as a result of weather conditions(Rain), in terms of JBCC 2000 Agreement Principal Building Agreement sub para 29.1.4 the extensions of time should with no cost

Overall conclusions

Bases on auditor's assessment communication of audit finding remains and the amount of fruitless and wasteful expenditures must be disclosed accordingly, misstatement will be reported in the management report.

SECOND ISSUE

Nature

Project number WSC no: 047104 was awarded to Vorster & Brandt Inc at 18 March 2019. (Date of letter of Acceptance) for the Justice college, Upgrading and refurbishment The original contract period was 24 months and the project expected date of completion being 17 March 2021 for a total contract value of R 225 897 855,80.

Supplier : VORSTER & BRANDT INC WCS: 047104			
<u>Claim 2</u>			
Application for extension of contract period memo was compiled and supported by Project Manager Mr Musawenkosi Mncwango, verified and approved by D: Construction Management : T Mabaso 2021/09/01 with reason for extension is due to the delay in variation orders approval.			
<u>Clause 29.2.10 of the JBCC 2000 Agreement Principal Building Agreement</u>			
Based on clause 29.0 of JBCC 2000 Agreement Principal Building Agreement: Edition 4.1 of March 2005 " <i>The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall adjust the contract value</i> "			
29.2.2 Due execution of additional work for which the quality included in the bill of quantities is not sufficiently accurate.			
	7 Days	R221 184,43	

	<u>Auditors comment:</u>		
	Based on the reason for extension it is therefore PMTEs fault to have not approved the variation order on time, contractor was not going to work without guarantee of payments. This is an expenditure paid in vain and should have been avoided.		
3	<u>Claim 3</u> The contractor requested for fifteen (15) working days, of which the Principal Agent has adjudicated and has recommended 15 working days based on the opinion that the circumstances were beyond the contractor's control. Extensions of time was a results that the contractor was instructed to stop the construction in order to address the community unrest compiled and supported by Project Manager Mr Musawenkosi Mncwango, verified and approved by D: Construction Management : T Mabaso 2021/09/01 <u>Clause 29.1.4 of the JBCC 2000 Agreement Principal Building Agreement</u> Based on clause 29.0 of JBCC 2000 Agreement Principal Building Agreement: Edition 4.1 of March 2005 " <i>The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall not adjust the contract value</i> " 29.1.4 Vis Major, Civil commotion, riot, strike or lockout <u>Auditors comment:</u> Based on auditors assessment the extensions of time was as a results of community unrest "strike" and the extensions of time should be without cost.	15 Days	R380 885,88
4	<u>Claim 4</u> The contractor requested for twenty-two (22) working days, of which the Principal Agent has adjudicated and has recommended 22 working days based on the opinion that the circumstances were beyond the contractor's control. Extensions of time was a results of Contractors sub contractors prevented to access the site by the community, compiled and supported by Project Manager Mr Musawenkosi Mncwango, verified and approved by D: Construction Management : T Mabaso 2021/09/01 <u>Clause 29.1.4 of the JBCC 2000 Agreement Principal Building Agreement</u> Based on clause 29.0 of JBCC 2000 Agreement Principal Building Agreement: Edition 4.1 of March 2005 " <i>The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall not adjust the contract value</i> " 29.1.4 Vis Major, Civil commotion, riot, strike or lockout <u>Auditors comment:</u> Based on auditors assessment the extensions of time was as a results of community unrest "strike" and the extensions of time should be without cost.	22 Days	R698 290,78
	TOTAL DELAYS	37 Day	R1 300 361.09

Impact of the finding

- Non-compliance with PMFA 45(a) and treasury regulation 8.1.1.
- Non-compliance with treasury regulation 9.1.1
- The expenditure paid in vain which could have been avoided will result in fruitless and wasteful expenditure of R1 300 361.09

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Financial and Performance Management

Reviewing and monitoring of compliance with applicable laws and regulations is insufficient and not properly monitored.

Recommendation

It is recommended that management should ensure the entity complies with all applicable laws and regulations.

It is recommended that management should ensure:

- All projects are monitored regularly and all the necessary information and documents are provided to the supplier timeously to avoid delays.

It is recommended that management should conduct an investigation on all significantly delayed projects to determine the reasons for the delay as well as the financial loss incurred by the entity. The fruitless and wasteful expenditure assessment should be conducted to identify expenditures that could have been avoided by the entity.

It is recommended that management should assess the reasons for the delays against the JBCC contract in order to avoid making unnecessary payments were the delays are covered under JBCC contract clause 29.1.

Management response:

I do not agree with the finding.

There were delays in the approval of VO1: Fencing. However the change in the scope of the fence as a result of VO1 pushed out the schedule as per the recommended number of days, 7 working days. The VO1 could not have been anticipated or avoided as the necessity to upgrade the type of security was necessitated by the site conditions evaluated at the time of site handover.

The community unrest mentioned in the EoT application is not a strike but is a result of the requirement of 30% community participation goal which has been an issue all over the country. In order to avoid violence, the contractor was issued an instruction to stop the work on site while the consultations with the community and its leadership were on going. The stoppage was as a result of an instruction by the PA/Client, so the clause applicable in this instance was 29.2.3

As mentioned above these conditions of community unrest are not catered and classified under 29.1.4, The contractor was granted extension with cost due to the fact there was cost implications as the contractor was already on site and the work was disrupted, unlike a strike or lockout where no cost is incurred as the site is closed completely or locked. In this case the site daily cost were still incurred as the contractor's internal stuff and other subcontractors were still working, however the lockout of other contractors affected the construction schedule while the site daily cost were still incurred as it was not a total shut down of the site as it would be the case in a strike. The clause applicable in this instance was 29.3, herein annexure C, which caters for conditions other than the ones stipulated.

Please see adjudication report attached. Annexure A – COFF 04

Auditor's conclusion

Claim 2

Managements Responses has been acknowledged, However auditors are of the view that prior to hand over certificates risk assessment should have been performed to eliminate further expenses to the contract as a results of extensions of time.

Claim 3 and 4

Managements Responses has been acknowledged, however auditors are of the view that community unrest is strike, as defined does not relates to 30% community participations hence the contractor was instructed to stop operations, the community unrest is closely related to the extensions of time that was adjudicated by the principal agent.

Overall conclusions

Bases on auditor's assessment communication of audit finding remains and the amount of fruitless and wasteful expenditures must be disclosed accordingly, misstatement will be reported in the management report.

13. Variation Order

Requirements:

a) The Public Finance Management Act (PFMA) section 1 defines "fruitless and wasteful expenditure" as expenditure which was made in vain and would have been avoided had reasonable care been exercised..."

b) The Public Finance Management Act (PFMA) section 76 (4) (c) state that: *"The accounting officer for a trading entity must ensure that the department has and maintains effective, efficient and transparent systems of financial and risk management and internal control and an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective..."*

c) Public Finance Management Act (PFMA) section 38(1) (b) states that: *"The accounting officer for a trading entity is responsible for the effective, efficient, economical and transparent use of the resources of the trading entity..."*

d) Public Finance Management Act section 38 (1) (c) (ii) states that *"The accounting officer for a trading entity must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct"*

e) Public Finance Management Act section 38 (1) (g) states that: *"The accounting officer must on discovery of fruitless and wasteful expenditure, immediately report, in writing, particulars of the expenditure to the relevant treasury..."*

f) Public Finance Management Act section 38 (1)(h) states that: *"The accounting officer must take effective and appropriate disciplinary steps against any official in the service of the department or constitutional institution who makes or permits fruitless and wasteful expenditure..."*

g) Public Finance Management Act section 40 (3)(b) states that: *"The annual report and audited financial statements must include particulars of fruitless and wasteful expenditure that occurred during the financial year and any disciplinary steps taken as a result of such fruitless and wasteful expenditure..."*

h) Treasury Regulation 8.1.1 state, *"The accounting officer of the institution must ensure that internal procedures and internal control measures were in place for the approval and processing of payments. These controls provided reasonable assurance that all expenditure is necessary, is appropriate, is paid promptly and is adequately recorded and reported on..."*

i) Treasury Regulation 9.1.1 state that *"The accounting officer of a trading entity must exercise all reasonable care to prevent and detect fruitless and wasteful expenditure and must, for this purpose, implement effective, efficient and transparent processes of financial and risk management..."*

POLOKWANE REGION

Nature

WCS: 039789

During the audit of the contract management for project with WCS No 039789, It was noted that two contractors were appointed to perform works on the Project 5 Star: Upgrading of police station and construction of additional offices (tender no: PLK 11/61).

The following contractors were appointed:

- Contractor 01: Dwelling Innovation – Appointed on 9 November 2011 and withdrew on 07 August 2013.
- Contractor 02: MUMS Business Enterprise was appointed on 24 February 2015, to complete the works of contractor 01.

The following approved variation order details were noted:

Variation order No	Details	Amount
No 2	<p>This was to approve works to be redone contractor 02 for works performed by contractor 01.</p> <ul style="list-style-type: none">• The reason for the variation was that concrete slab for the three story single quarters building were cast by Contractor 01: Dwelling Innovation• No electrical connection boxes were visible during electrical engineer re-measuring work for re-tendering by contractor 02: MUMS Business Enterprise.• Additionally with start of work by Mums Business Enterprise, it was discovered that the electrical connection boxes for the lights were not positioned in the middle of the rooms according to the consultant's drawing.	R118 753.80

Auditors assessment:

Based on the above variation:

- Management failed to hold consultants and project manager accountable for approving work that was unsatisfactorily / not of quality standards and not in accordance with the drawings of the consultants.
- This amount is fruitless and wasteful expenditure as reasonable care was not exercised and this expenditure could have been avoided had reasonable care and project management principles applied.

Cause

- Inadequate and timely project management principles not implemented.

- Consultants did not act in the best interests of the Department, as there were approving payment certificates whilst being aware that the work completed is not of required standard not in accordance with the drawings.

Impact

- Non-compliance with PFMA Section 38 and 44
- Non- compliance with Treasury Regulation 8.1.1
- Fruitless and wasteful expenditure amounting to R118 753.80.

Internal control deficiency

Leadership

Management did not exercise oversight responsibility regarding financial, performance reporting and compliance and related internal controls.

Financial and Performance Management

Reviewing and monitoring of compliance with applicable laws and regulations is insufficient and not properly monitored.

Management has not taken the proactive steps to recover the financial loss from the first contractor.

Recommendation

It is recommended that:

- The accounting officer should commission an investigation into the above mentioned project to determine the full extent of fruitless and wasteful expenditure incurred.
- Appropriate legal action should be taken against the first contractor to recover the amount paid for work not performed satisfactorily.
- Consequence management actions to be instituted against project managers that had to monitor deliverables of contractor in terms of the contract and that approved payment to the contractor for unsatisfactorily performance
- The roles of the consultants in failing to mitigate this risk should be investigated with a view to recover losses, where professional negligence is detected.
- Management must determine the total financial losses which were suffered by the department as a result of the above-mentioned irregularities. The workings must be submitted to the AGSA.
- Management should include the second contractor (MUMS Business Enterprise) and consultants to the list of non-performing suppliers.

Management response

Management disagrees with the finding due the following reasons:

1. The variation order mentioned fall under the remedial work's expenditure that was to be recovered from contractor 01.
2. The final account for contract 02 is completed, therefore it gives us an idea of how much is to be recovered from the first contractor.
3. The process to recover will start unfolding, firstly the final account will be submitted to departmental Chief Quantity Surveyor to be audited in checking accuracy of the close-up report.
4. When the CQS is done with auditing, is then close-up report will be taken to Legal section for recovery processes to unfold.
5. The legal services will advise in terms of the processes.

Auditor's conclusion

Management comments noted. Management disagrees with the finding.

Auditors' assessment and conclusion

- Although management asserts that the variation order mentioned falls under the remedial work expenditure that is to be recovered from contractor 01: *Dwellings Innovations CC*,
 - However to date management has not performed a feasibility assessment to determine the likelihood of recovery of expenditure incurred is recoverable.
- Additionally as per the definition of Fruitless expenditure, the expenditure incurred was in vain as reasonable care had not been taken to avoid the fruitless expenditure.
 - This was noted as the Consultants together with the Project Manager continued approving payment certificates whilst being aware that the work completed is not of required standard not in accordance with the initial drawings.

In conclusion, as per the above auditors assessment, it is evident that the Entity incurred fruitless and wasteful expenditure that could have been avoided had reasonable care been applied prior to approving any payments to supplier.

Therefore the audit finding remains, and will be reported in management report.

14. Limitation of scope – Contract management

Requirements

Section 41 of the Public Finance Management Act (PFMA) states that; *“an accounting officer of a department must submit to the relevant Treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the relevant Treasury or the Auditor-General may require”*.

Paragraph 15 of the Public Auditing Act states that the Auditor-General has at all reasonable times full unrestricted access to -

“(a) Any document, book or written or electronic record or information of the auditee or which reflects or may elucidate the business, financial results, financial position or performance of the auditee;

(b) Any of the assets of or under the control of the auditee; or

(c) Any staff member or representative of the auditee”

Section 40(1)(a) of the Public Finance Management Act (PFMA) states that; *“the accounting officer for a department must keep full and proper records of the financial affairs of the department in accordance with any prescribed norms and standards.”*

Section 9(1) and 9(2) of the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017 states that;

9.(1) *“If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups”*

9.(2) *“If an organ of state applies subcontracting as contemplated in subregulation (1), the organ of state must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-”*

Section 12(3) of the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017 states that; *“A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless*

the contract is subcontracted to an EME that has the capability and ability to execute the subcontract”

EMERGING FINDINGS

15. Pre-qualification Criteria

Requirements:

Section 38(1)(a)(i) of the Public Finance Management Act states that: *“The accounting officer for a department, trading entity or constitutional institution must maintain –effective, efficient and transparent systems of financial and risk management and internal control...”*

Section 38(1)(a)(iii) of the Public Finance Management Act states that: *“The accounting officer for a trading entity has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective...”*

Section 38 (1) (c) (ii) of the PFMA states that: *“The accounting officer for a trading entity must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct”*

Preferential Procurement Regulation 01 definitions states that *“Acceptable tender means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document”*

Preferential Procurement Regulation 4(2) states: *“A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.”*

Section 5(6) of the Implementation guide: Preferential Procurement Regulations 2017 states that,

“Tenderers that do not meet the pre-qualification criteria stipulated in the tender document should be disqualified from further evaluation”

Section 5 (10) of the Implementation guide: Preferential Procurement Regulations 2017 states that,

“Where no tenderer meets prequalification criteria, the institution must cancel the tender; and must investigate the reasons for tenderers failing to meet prequalification criteria.”

BLOEMFONTEIN REGION

Issue 01

Audit finding

During the audit of supply chain management for competitive bids, we noted that PA-04 (EC) : Notice and Invitation for tender number BL21/014 for the rendering of security services for 36 months period was advertised with the following pre-qualification criteria amongst other requirements:

- Submission of (PA -11) : Declaration of interest and Bidder's Past Supply Chain Management Practices

We noted that the winning bidder was not transparent in responding to the question on PA – 11 paragraph 3.11 - “Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?”.

The winning bidder responded with a “No” on the question, however through inspection of the CSD report downloaded by the evaluation committee, we noted that the sole director of the company has interest in 5 other companies, of which some are involved in the security industry.

We further noted that the evaluation committee had flagged this bidder as non-responsive due to “false declaration” on PA-11, for not declaring all the other companies they have interest therein.

Based on the above, the winning bidder was supposed to be disqualified during the pre-qualification screening phase for not meeting the stipulated pre-qualifying criteria as per PA-04 (EC): Notice and Invitation and considered unacceptable tender.”

Below is the details of the awarded bidder:

No	Tender number	Project description	Supplier Name	Total value of the contract	Expenditure to date
1	BL21-014	Rendering of Security Services for 36 months period	Odieli Molelo Trading 822 CC	R6 463 764	R897 745

Impact of the finding

- Non- compliance with Preferential Procurement Regulation 2017, paragraph 4(2).
- Non- compliance with paragraph 38(1)(a)(i) and (38(1)(c)(ii) of the Public Finance Management Act
- Irregular expenditure of R897 745 to date.

Internal control deficiency

Financial and Performance Management

Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management.

During the competitive bid evaluation process, management did identify that the bidder has made a "false declaration" however this non-compliance was ignored because management were of the understanding that the bidders should only disclose "other related companies" who are providing a similar service/good.

Recommendation

- It is recommended that management should enhance compliance procedures to ensure compliance with the applicable laws and regulations relating to supply chain management to ensure consistency in how all the bidders are assessed.
- Management should disclose the Irregular Expenditure limited to the amount paid

Management response:

I do not agree with the finding...

The 1st evaluation report, dated 5 July 2021, was submitted to the RBAC and adjudicated on 17 August 2021. This submission was returned for corrections by the RBAC and thus not awarded as per PA12 dated 17 August 2021. One of the areas that had to be reviewed by the BEC as per RBAC instruction was that there must be "communicate with bidders especially because of the discrepancy between PA11 3.8 and DPW09. (Annexure B)

The BEC actioned this instruction from the RBAC, through the issue of a letter to the specific bidder (as indicated by the AGSA) being Odieile Molelo Trading 822 cc. The letter requested clarity regarding "tick" on the PA11 item 3.11 and was dated 19 August 2021. A response was received the same day where the bidder responded to request indicating the "tick" was incorrectly marked and the other company's details were provided. (Annexure C). This process was done in line with SCM Directive no 5: Communication with Service Providers during an Evaluation Process, with specific reference to items 2.2.2 and 2.2.3. (Annexure D)

The BEC submitted a new evaluation report dated 1 September 2021 to the RBAC and the RBAC adjudicated this report on 21 September 2021. An award letter was issued on 23 September 2021. (Annexure E)

The above is further supported by advise received from National Treasury dated 24 March 2021 reading as follow; " The intent of the bid document is to assist the accounting officer prevent the abuse of the supply chain system through the identification and management of

any potential conflicts of interest that may arise. There is no conclusive answer that can be given because each disclose must be evaluated on its merits and on its impact on the procurement process at hand.” (Ann F)

Although this office does not agree with the finding, it should be noted by the AGSA that SCM cir 185 of 2021 was issued addressing administrative matters. This will allow the department to correct some “Administrative compliance issues. Please refer to item 3.1.3 of the attached circular. Item 3.1.5 explains the criteria for a responsive tender in detail. This administrative error by the bidder would thus not impact on the responsiveness. (Annexure A)

Auditor’s conclusion

Management’s response is noted.

However, we are in disagreement with the process that was followed by the BEC in seeking clarity.

The bidder clearly indicated by ticking “No” on question 3.11 that he has no interests in other companies .His position on the matter was further validated by leaving blank the subsequent question(3.11.1) which stated that “If so, furnish particulars:”.

Although national treasury does allow the auditee to communicate with bidders during the evaluation state for seeking clarity, the changes that occurred after communication was held with the bidder are significant and unjustified.

We therefore maintain our position on the matter and thus disagree with management.

Issue 02

Audit finding

During the audit of supply chain management for quotation number G21/020; rendering of garden Maintenance services for a period of 36 months, we noted that the winning bidder was not transparent in declaring “other related companies” as per PA -11, paragraph 3.11. Based on inspection of the CSD report, it was noted that the bidder has 3 other companies he is involved in, which he did not disclose on PA -11.

Based on above, the bidder should have been disqualified for not being responsive.

Below is details of the winning bidder:

No	Tender number	Project description	Supplier Name	Contract value
1	Q21/020	Tseseng Magistrate Office: 36 months garden maintenance services	Phakela Industries	R 469 062

Impact of the finding

- Non- compliance with Preferential Procurement Regulation 2017, paragraph 4(2).
- Non- compliance with paragraph 38(1)(a)(i) and (38(1)(c)(ii) of the Public Finance Management Act

- Irregular expenditure

Internal control deficiency

Financial and Performance Management

Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management.

During the evaluation of quotations submitted, management did not cross-reference PA – 11 declarations to the CSD report in order to identify undisclosed interests.

Recommendation

- It is recommended that management should enhance compliance procedures to ensure compliance with the applicable laws and regulations relating to supply chain management to ensure consistency in how all the bidders are assessed.
- Management should include the checking of CSD reports in their SCM compliance checklist to ensure that the supplier has been transparent in declaring other related companies.

Management response:

I do not agree with the finding.

This office does not agree with the claim that no cross reference of the PA11 Item 3.11 was done regarding Quote (Q21/020). The CSD report at the time of evaluation did indicate the other entities, however on assessment it was noted that three provided services in the Accommodation and Food services, (not related to the required service, being Gardening services) and the other (Recommended bidder) related to construction. (Annexure A). The purpose of the declaration is to validate if there could potentially be conflict of interest from the bidder, where multiple offers is submitted under different names, resulting in limited competition in the market. In this case NONE of the other entities were invited to submit offers for this services and thus there was no conflict.

The above is further supported by advise received from National Treasury dated 24 March 2021 reading as follow; " The intent of the bid document is to assist the accounting officer prevent the abuse of the supply chain system through the identification and management of any potential conflicts of interest that may arise. There is no conclusive answer that can be given because each disclose must be evaluated on its merits and on its impact on the procurement process at hand." (Ann B)

The procurement process followed in this case was a normal quotation process, where 7 offers were received. This was after a list of possible suppliers were obtained from CSD in line with the current policy and business processes. The other bidders (6 out of 7) were non responsive due to issues related to the PA36 (Local Content) and the PA32 (Form of Offer), resulting in only the one bidder being responsive. (Ann C) As already indicated above the intent of this declaration is to identify possible misuse of the SCM system. As this was a "closed" quotation process (invitation only) the evaluation could identify that the other companies did not quotes for this service, nor were they part of the nomination list. (Ann D)

Although this office does not agree with the finding, it should be noted by the AGSA that SCM cir 185 of 2021 was issued addressing administrative matters. This will allow the department to correct some “Administrative compliance issues. Please refer to item 3.1.3 of the attached circular. Item 3.1.5 explains the criteria for a responsive tender in detail. This administrative error by the bidder would thus not impact on the responsiveness. (Annexure E)

Auditor’s conclusion

Management’s response is noted.

Based our assessment, we are in disagreement. The reason for the disagreement is that the question as stated on paragraph 3.8 of the PA -11-declaration form does not specify that bidders should only declare companies, which are doing the same business as the bidding company.

DURBAN REGION

Background and Nature

Nature

During the audit of tender no: BDN21/01/01 for KZN Group3 (Melmoth, Mahlabathii, Babanango, Paul Pietersburg, Nquthu, Madadeni Magistrates Court) for installation of emergency Water Tanks and Booster Pumps, the following was noted:

The PA-04: Notice and invitation to tender stated that functionality will be applied and a minimum functionality score to qualify for further evaluation was 50%. The following criterion (extract) were applicable:

Functionality criteria	Weighting factor
<p>Completed projects work Experience: Contractor to provide a list of all previous projects undertaken and completed in the last 5 year of similar nature (installation of steel water tanks) accompanied by final completion certificates must be signed by the Principal Agent, Client or PM as proof of the following values:</p> <p>R4 000 001 – R5 000 000 = 30 points R3 000 001 – R4 000 000 = 25 points R2 000 001 – R3 000 000 = 20 points R1 000 001 – R2 000 000 = 15 points</p>	30%
<p>Work force: Contractor to provide proof of work force.</p> <p>Certified copies of identity documents, not older than 3 months from date of advertisement, certified certificates or approved qualifications must be submitted as proof, if certificates are not provided you get 0:</p> <p>a) Brick Layers</p> <p>4 = 15 points 3 = 10 points 2 = 8 points 1 = 6 points</p>	15%

Based on the auditor's assessment conducted to validate the functionality points for MKF Trading and Projects, the following was noted:

Auditee's Calculation			Auditors Assessment			
Criteria's	Points	Total functionality	Points	Total Functionality	Difference	Auditors comments
Completed projects works experience	1	15%	0	0%	15%	<p>The audit team received an original file that was compiled by the bidder, included in it was all returnable documents.</p> <p>Upon inspection on the list for similar projects, one project was identified with a value range R1 000 001 – R2 000 000 = 15 points</p> <p>However, the original completed certificates that was part of the original returnable documents was not signed by principal agent, PM or client hence no points were awarded.</p>
Work force (Brick Layers)	4	15%	2	8%	7%	Only 2 Brick Layers with certificates were provided hence the bidder was awarded 2 points.
					22%	

Based on the auditor's recalculation of functionality we noted that, MKF should have been awarded 36 points whereas the Bid Evaluation Committee awarded them 58 points, the difference of 22 points has been explained on the table above.

Therefore, the bidder should have not been considered for further evaluation for price as they didn't meet the minimum functionality score.

No	Bid No	Service Description	Contract Amount (R)	Expenditure to date (R)
1	BDN21/01/01	Installation of emergency Water Tanks and Booster Pumps	3 226 542,00	846 653,06

Impact

The above may result in the following:

- Non-compliance with section 38 of PFMA
- Non-compliance with PPR regulations
- Irregular expenditure of all payments made to date R 846 653.06

Internal control deficiency

Financial and performance management

Management did not review and monitor compliance with applicable laws and regulations.

The Bid Evaluation Committee did not adequately rate the bidder in line with the functionality requirements stipulated in the PA-04: Notice and invitation to tender.

Recommendation

It is recommended that:

- Management should review tenders that are awarded and ensure that there are in line with National Treasury Regulations.
- Management should perform further investigation to determine the extent of the non-compliance as well as the other instances where this non-compliance may have occurred.
- The accounting officer should also investigate the reasons for the irregular expenditure and confirm if it was deliberate. The expenditure should be included in the irregular expenditure register.

Management response:

Finding 1

I am not in agreement with the finding as indicated during the discussion with the AG, the contractor submitted together with their bid, a company profile which contained some of the information used for functionality evaluation, a project valued at R1,5 million (*Sanitation relief – Installation of septic tank- Edumbe taxi rank*) was considered for allocation of points, subsequently a risk assessment was done on the same project, as per the risk information on file and also verified by AG. A completion letter is attached as supporting evidence to this argument.

Therefore the 15 points allocated to the awarded bidder is justified and remains.

Finding 2

Management is in agreement with a finding which was a result of the duplicated points as two employees were submitted by the bidder as both Plumbers and Bricklayers and have qualifications for both.

The region agree with a misallocation of 2 points however with bidder still qualifies with a total points of 51.

Auditor's conclusion

Management's comments are noted, however the finding remains based on the following:

Finding 1:

Based on the inspection and verification of the original tender documents, we noted that all the returnable documents (e.g. PA09, 11, 16, supporting certificates for functionality etc) together with the BOQ was bundled under one project file with no separate company file supporting the submitted project file.

Upon further verification of the list of completed projects submitted by the bidder in the latter's original file, one project of a similar nature was identified with a value range R1 000 001 – R2 000 000. However, the original completed certificate pertaining to the completed project was not signed by principal agent, PM or client therefore no points should have been awarded.

A signed completion certificate relating to the stated bid was submitted by management in response to the identified issue mentioned above which referenced an amount of R 1 710 000 as per the list of previous projects. However, through further discussions with management submitted another signed completion certificate where the the project name on the heading differed from the project mentioned in the content of the practical certificate to address the finding (Refer to attached Annexure A).

Furthermore, the certificate that was subsequently submitted to support management's response indicated an amount of R1 500 000, which contradicts the amount stated as per the list of previous projects.

The projects that management is responding with was not included in the returnable documents PA 09 attached.

It should be noted that both certificates detail the same project, consultant, completion date and the start and end of construction. However, inconsistencies were identified between the two certificates that was submitted to support management's response to the unsigned certificate identified in the bidder's returnable documents that was used for evaluation, such as the amount, the consultant's signature and the title of the project.

Therefore, this raises concerns on the validity of the certificates provided by management and which certificate was actually used for evaluation of the functionality criteria.

Management to further provide the risk assessment that was performed on the project.

Finding 2:

Management is in agreement with the finding related to the work force criteria.

JOHANNESBURG REGION

Nature

During the audit of tender number JHB 20/11 for the procurement of alternative office accommodation for the department of Mineral Resources in Johannesburg CBD, the following issues were noted, on the evaluation of the winning bidder:

Issue 1

We inspected PA – 04: Notice and Invitation to bid and noted that one of the responsiveness criteria is that "Bidders to score at least 50% on each functionality criteria"

We further inspected the two BEC minutes on the administration file and noted that the committee scored the bidder 0/5(0%) on functionality for not submitting their grading certificate.

Therefore, the bidder should have been disqualified for not being responsive.

Issue 2

We further noted that the following responsiveness criteria was included:

“Submission of applicable (PA -15.1, PA -15.2 , PA – 15.3) : Resolution by the Legal Entity, or consortium/ joint venture, authorizing a dedicated person(s) to sign documents on behalf of the firm/ consortium/ joint venture”

During the evaluation of the bidder’s PA 15.1, we noted the following matters:

1. The PA15.1 is not fully complete.
2. Paragraph 2, which requires the nominated authorized personnel to sign, was not completed.
3. Throughout the bid documents e.g. PA-11; we noted that both the authorized personnel as per PA 15.1 and the CFO of the company were completing the bid documents interchangeably.

Furthermore, it was noted that some bidders were disqualified for not submitting a fully complete PA 15.1. Therefore, the winning bidder was supposed to be disqualified as non-responsive.

Issue 3

We noted that the bidder submitted two letters on which they declared the following people are authorized to sign the bid/tender and complete all other documents relating to the bid/tender:

Tebogo Mogashoa – Director
Henk Kopper - CFO

During the evaluation of the bidder’s sworn affidavit - BEE certificate, we noted that the two authorized individuals acted as deponent and commissioner of oaths respectively.

According to the commissioner of oath guidelines:

“A Commissioner of Oaths is not allowed to administer an oath or affirmation relating to a matter in which he or she has an interest. The reason is that a person attesting an affidavit should be unbiased and impartial in relation to the matter contained in the affidavit for the deponent to be free from any influence on the subject matter of the affidavit.”

Therefore, the commissioner of oaths being the authorized person to complete the bid documents and the CFO of the company had a material conflict of interest. Thus rendering the sworn affidavit invalid and the bidder non-responsive.

Issue 4

We noted that PA – 04: Notice and Invitation included the following responsiveness criteria:

“Submission of (PA-11): Declaration of interest and Bidder’s Past Supply Chain Management Practices”

During the evaluation of the bidder’s PA 11, we noted the following matters:

1. Not all directors are declared on the form.
2. On the question 3.11 where the directors are asked to disclose all business we noted that only 2 companies are disclosed .However based on our inspection of the CSD report and bizhub portal we noted that the are a lot of other companies not disclosed. See attachments.
3. The form also specifically stated that “Failure to complete this form in full and signed by the duly authorized person, as indicated on PA-15.1 shall render the tender non-responsive and will be removed from any further contention” :
 - 3.1 Upon inspection of the bidders PA -11 we noted that it was not authorized person, as indicated on PA-15.1 (Tebogo Mogashoa)

Furthermore, it was noted that some bidders were disqualified for not submitting a fully complete PA 11. Therefore, the winning bidder was supposed to be disqualified as non-responsive.

Impact

- Non-compliance with PFMA 38(1) (a) (iii) and paragraph 38 (1) (c) (ii).
- Non-compliance with *Practice Note 7 of 2009/10 par 4.1.2* which would have resulted in the winning bidder being disqualified and considered non-responsive.
- The expenditure incurred to date on the contract is Irregular.

Internal control deficiency

Financial and Performance Management

Management did not adequately review and monitor compliance with applicable laws and regulations relating to supply chain management policy.

The winning bidder's submission was not sufficiently inspected to ensure it complied with all the prescribed responsiveness criteria during the evaluation stage.

Recommendation

It is recommended that management should enhance compliance procedures to ensure compliance with all prescribed laws and regulations.

Management should enhance the scm compliance checklist by ensuring that the pre-qualifying checklist is reviewed to ensure that the reviewer will detect any matters, which the compiler might have missed.

Management should disclose the irregular expenditure.

Management response:

I do not agree with the finding based on the following:

Issue No1

We are not in agreement with the finding for the following reasons:

According to the approved procurement strategy, the bidders should score at least 50% on the total functionality criteria.

Insofar as the PA 04 has one of the responsiveness criteria that says “Bidders to score at least 50% on each functionality criteria”, the Bid Evaluation Committee (BEC) fairly followed the approved procurement strategy when evaluating all the bids.

So, the BEC did not disqualify any bidder based on the criteria as reflected on PA-4 as per the BEC Evaluation Report. (See attached ANNEXURE J & K)

Issue No 2

We are not in agreement with the finding for the following reasons:

The PA 15.1 Resolution of Board of Directors page was signed by the Director. If it was not signed at all on the same page that you are enquiring then we could have agreed that it would render the Resolution as per PA-15.1 invalid. The BEC did not have such

Over and above the resolution as reflected on PA-15.1, the bidder also submitted their own Resolution as duly completed and signed by Board of Directors which is allowed on PA 15.1 Note. (See attached ANNEXURE K)

Issue No 3

We are not in agreement with the finding for the following reasons:

The duties for Bid Evaluation Committee (BEC) is only to verify the validity of the Sworn Affidavit with a view to establish whether it was signed by both the Deponent and the Commissioner of oath and that it is not more than 12 months old. The BEC does not authenticate the validity of the signatories of the Sworn Affidavit because they do not have any technical skills, which may be defended with legal authority, if brought before the court of law. The authentication process may be done in the case of any suspicion of any foul play on the submitted Sworn Affidavit, something of which the BEC did not have such during the evaluating process then. (See attached POE 1, ANNEXURE I)

Issue No 4

Par. 3.11 reads "Do you or any of the Directors/ Shareholders/ Members/ Trustees of the company have any of the interest in any other related company whether or not they are bidding for this contract" If so furnish particulars.

The bidders responded with "yes" and mentioned only 2 companies

Par. 3.11 does not mention that if so, mention all the companies the Directors are involved in. Please also take note that the CSD document that AGSA is comparing with was attached by the service provider of which we can't say they are misrepresenting. We may also assume that the bidder only provided companies which are more relevant to this contract.

Furthermore, in the case where the requested information may not have been disclosed in full in one of the tender documents, whereas the said information may have been provided and disclosed as part of the attached tender document, such information should be considered having been duly disclosed.

It should also be noted that there was no site-briefing conducted on this bid due to COVID 19 restrictions so that we as the Department could have explain to bidders what they should disclose and how they should disclose. Had there been the site briefing the Department should have-inter alia- advised them to disclose each and every company, instead of just assuming that they will know everything that is expected of them in this regard.

Therefore, in the name of fairness, for the mere fact that we did not conduct the site-briefing for the prospective bidders, it is imperative that we give bidders the benefit of the doubt on matters of this nature.

(See attached – ANNEXURE L)

Management did adequately review and monitor compliance with applicable laws and regulations relating to supply chain management policy.

Secondly, the winning bidder's submission was sufficiently inspected to ensure it complied with all the prescribed responsiveness criteria during the evaluation stage.

Auditor's conclusion

Management response is noted, however the finding remains for the following reasons:

Issue No1

The approved procurement strategy is an internal document that does not reach the bidders. Therefore, the intention management had when compiling the strategy did not accurately pull through to the PA-04 advert. This resulted in a criteria being included which management had no intention of using. However, this criteria has influenced bidders responding to the advert and furthermore, the winning bidder did not meet this criteria.

Issue No 2

We agree that the Director signed the PA 15.1 Resolution of Board of Directors page. However the is a critical part that is not completed, this renders the document not fully complete. Furthermore, we have noted that management does disqualify bidders for similar offences.

Issue No 3

We note the limitations management encountered with regards to evaluating the validity of the BEE certificate. However, this does not negate the issue at hand which leads to the certificate is not valid.

Issue No 4

We reserve our response with regards to the question on paragraph 3.11 while we await legal advice.