## SECTION 10: 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 | Misstatements in annual performance report | Non-compliance with legislation | Internal control deficiency | Service delivery | Matters affecting the auditor’s report | Other important matters | Administrative matters |
|  | PLK COFF 01 - Winning bidder did not comply with the stipulated qualifying criteria. |  |  | X |  |  | X |  |  |  | In progress |
|  | PLK COFF 02 - Losing bidder not awarded the correct functionality points. |  |  | X |  |  | X |  |  |  | In progress |
|  | PLK COFF 03 - Deviation not justified |  |  | X |  |  | X |  |  |  | In progress |
|  | CPT COFF 01 - Winning bidder did not meet the minimum qualifying criteria. |  |  | X |  |  | X |  |  |  | In progress |
|  | CPT COFF 02 - Winning bidder did not meet the minimum functionality score and evaluation criteria differed from the bid document. |  |  | X |  |  | X |  |  |  | In progress |
|  | CPT COFF 03 - Splitting of quotations. |  |  | X |  |  | X |  |  |  | In progress |
|  | JHB COFF 01 - Deviation not justified. |  |  | X |  |  | X |  |  |  | In progress |
|  | MMB COFF 01 - Misrepresentations on PA-11 by the winning bidder. |  |  | X |  |  | X |  |  |  | In progress |
|  | MMB COFF 02 - Winning bidder did not submit all the returnable documents. |  |  | X |  |  | X |  |  |  | In progress |
|  | GQB COFF 01 - Misrepresentations by the winning bidder. |  |  | X |  |  | X |  |  |  | In progress |
|  | GQB COFF 02 - Winning bidder did not meet the minimum qualification criteria. |  |  | X |  |  | X |  |  |  | In progress |
|  | DBN COFF 01 - The allocation and calculation of preference points was not correctly done in accordance with the requirements of the PPPF Act and PPR 2017. |  |  | X |  |  | X |  |  |  | In progress |
|  | DBN COFF 02 - Local content procurement not in accordance with the National Treasury Designated Sector Instruction notes. |  |  | X | X |  | X |  |  |  | In progress |
|  | MTH COFF 01 - Limitation of scope. |  |  | X |  |  | X |  |  |  | In progress |
|  | MTH COFF 02 – Non-compliance with PPR 2017 |  |  | X |  |  | X |  |  |  | In progress |
|  | MTH COFF 02 – Procurment as an emegerceny not justifiable |  |  | X |  |  | X |  |  |  | In progress |
|  | MTH COFF 02 – Tender number MTH682018 |  |  | X |  |  | X |  |  |  | In progress |
|  | MTH COFF 02 – Tender number MTH352018 |  |  | X |  |  | X |  |  |  | In progress |
|  | MTH COFF 02 – Awards made to suppliers with non-compliant tax status |  |  | X |  |  | X |  |  |  | In progress |

## DETAILED AUDIT FINDINGS: ANNEXURES A TO C

|  |
| --- |
| ANNEXURE A: MATTERS AFFECTING THE AUDITOR’S REPORT |

#### Procurement and contract Management

**DETAILED AUDIT FINDING**

**1. Procurement of Quotations which did not comply with the stipulated qualifying criteria.**

**Audit finding**

Laws, rules and Regulations:

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*

1. *Effective, efficient and transparent systems of financial and risk management and internal control;*
2. *(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 Regulation 4(2) statesthat *“A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.”*

**Nature**

During the audit of supply chain management for quotations, we noted that the winning bidder did not comply with one of the responsiveness criteria:

“Specification to be completed accordingly and fully.”

*Issue:*

The winning bidder did not complete the specification document in full. We also found that one of the losing bidders, Red Ants Trading and Projects, were deemed non-responsive for the same requirement. We further noted that management extended the contract for a further one month resulting in additional expenditure on the contract.

The detail of the award are as follows:

| **No** | **Tender number** | **Project Description** | **Supplier Name** | **Total amount incurred** |
| --- | --- | --- | --- | --- |
| 1 | PLKQ19/43 | PLKQ19/43: Rendering of cleaning services for a period of 12 months at the Mankweng Magistrate Office | Mahlodi Lerato General Trading and Projects(Pty) Ltd | R532 684.36 |

**Impact of the finding**

* The department did not comply with the Preferential Procurement Regulation 4(2) Act.
* Irregular Expenditure of R532 684.36

**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 policy.

During the quotation evaluation, management did not compile a checklist to assist with identifying that the specification is not fully complete.

**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 any matters which the compiler might have missed will be detected by the reviewer.

Management should disclose the Irregular Expenditure of R532 684.36.

**Management response**

Management disagree with the finding due to the following:

The template of the specification in question was fully completed with all other required documents, however the part or page that was not completed is not mandatory to form part of the specification.

Red Ants Trading and Projects, is non-responsive for not completing rates or quantity template which is mandatory to calculate the total contract amount

Furthermore the extension of the contract was approved by the delegated authority within the prescribed prescripts and evidence was provided to Auditor Generalduring the audit

**Auditors response**

Management comments are noted, however management can not specify that the document has to be completed accordingly and fully, and then decide that only certain sections of the document are mandatory while other sections are not. A fully completed document means that all pages should be completed. Therefore the auditors disagree with management, the finding remains.

**2. Bidder not awarded the correct functionality points**

**Audit finding**

Laws, rules and Regulations:

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*

1. *Effective, efficient and transparent systems of financial and risk management and internal control;*
2. *(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 Regulation,2017 paragraph 5 statesthat :

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

*(3)The tender documents must specify-*

*(a) the evaluation criteria for measuring functionality;*

*(b) the points for each criteria and ,if any,each sub-criteria;and*

*( c)the minimum qualifying score for functionality”*

**Nature**

During the audit of competitive bids for tender number PE19/2019, we noted that one of the functionality criteria stipulated that points would be awarded in the following manner:

“Tenders ability to provide a Letter of Intent for the provision of a guarantee:

* A letter from a registered financial institution confirming the intent to provide a guarantee or cash deposit equivalent to 10% of the Bidders price on Form offer = 5 points
* Should the bidder opt for any other options on DPW 07 other than the 10% payment reduction, will receive = 4 points”

***Issue:***

One of the losing bidders, Xiluva Xa Mina Projects CC, submitted a letter of intent to provide a guarantee or cash deposit equivalent to 10% of the Bidders price on Form offer. We further noted that the bidder did not opt for any other options on DPW 07 other than the 10% payment reduction. This bidder was awarded 4 points.

We also noted that the winning bidder, Bongekile contractors CC,submitted a similar document in terms of the letter of intent and did not opt for any other options on DPW 07 other than the 10% payment reduction.Bongekile contractors was awarded 5 points for this criteria.

Therefore, we find that the evaluation committee was not consistent in awarding points to the bidders. We also find that Xiluva Xa Mina Projects CC should have been awarded 5 points because they have fully complied with the said criteria.

Furthermore, should Xiluva Xa Mina CC have been awarded the appropriate points, they would have been the winning bidder.

**The detail of the functionality calculation are as follows: *(Minimum functionality score required= 75%)***

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **#1Xiluva Xa Mina Projects CC** | | | **Members of the Bid evaluation committee** | | | | |  | **Auditors evaluation** | | |
| **No.** | **Evaluation Criteria** | **Weighting factor(%)** | **F Tsidavhu** | **T Chake** | **D Mojapelo** | **L Papo** | **G Ntlatlane** | **Average score** | **Scoring** | **Weighed score** | **Difference** |
| 1 | Workforce | 15% | 3 | 3 | 3 | 3 | 3 | 0,5 | 3 | 0,5 | 0,00 |
| 2 | Management 1 | 30% | 2 | 2 | 2 | 2 | 2 | 0,6 | 2 | 0,6 | 0,00 |
| 3 | Management 2 | 25% | 5 | 5 | 5 | 5 | 5 | 1,3 | 5 | 1,3 | 0,00 |
| 4 | Letter of Intent | 15% | 4 | 4 | 4 | 4 | 4 | 0,6 | 5 | 0,8 | -0,15 |
| 5 | Financial Credibility | 15% | 5 | 5 | 5 | 5 | 5 | 0,8 | 5 | 0,8 | 0,00 |
|  | Total | 100% |  |  |  |  |  | 3,7 |  | 3,8 | -0,15 |
|  | Functionality score |  |  |  |  |  |  | 73% |  | 76% | 0,03 |

**Impact of the finding**

The trading entity did not comply with the Preferential Procurement Regulation of 2017.

The expenditure to date (R11 454 641,53) on the contract is irregular expenditure.

Financial loss of R 1 478 795,54.

**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 evaluation committee did not adequately award points for functionality criteria relating to the letter of intent.

**Recommendation**

It is recommended that management should enhance compliance procedures to ensure compliance with all prescribed laws and regulations.

Management should disclose the Irregular Expenditure of R11 454 641,53.

**Management response**

The finding was as a result of an oversight from the value chain within the department including probity audit done by OMA Chartered Accountants Inc. which provided quality assurance that the functionality points were correctly calculated and allocated and this is not final respond as Regional office is currently examining the documents and will update AGSA Final respond.

**Auditors response**

Management’s comments are noted. The finding remain.

**3. Deviation not justified**

**Requirements**

Section 38(1) (a) (i) of the Public Finance Management Act (PFMA) states that *“the accounting officer for department, trading entity or constitutional institution:*

1. *must ensure that the department, trading entity or constitutional institution has and maintains*

*(ii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective;”*

Treasury Regulation 16A6.4 requires that *“If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.”*

In terms of National Treasury Instruction no. 3, paragraph 8 of 2016/17 *“Deviations from normal bidding process”*:

*“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.*

*8.3 Sole source procurement may occur when there is evidence that only one supplier possesses the unique and singularly available capacity to meet the requirements of the institution.*

*8.4 The Accounting Officer/Accounting Authority must invite as many suppliers as possible and select the preferred supplier using the competitive bid committee system.*

*8.5 Any other deviation will be allowed in exceptional cases subject to the prior written approval from the relevant treasury.”*

National Treasury regulation 16A3.2 states that “*A supply chain management system must: be fair, equitable, transparent, competitive and cost effective*”

**Nature**

During the audit of supply chain management (SCM), we noted that management deviated from the normal procurement processes and procured a steel water tank on an emergency basis. According to our assessment, the reasons provided for the deviation was not sufficient to support deviating from normal procurement processes.

Details of the contract are set out below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Supplier Name** | **Ref. Number** | **Description** | **Priority** | **Amount (R)** |
| ATIM Holdings | 9247 | Repair leaking water tank | Urgent | R 353 950,68 |

**Reason for deviation**

On 24 December 2019, the Waterpoort Police Station reported a leaking tank that required repairs. According to the job card, the matter was first responded to on 03 March 2020, which is two (2) months after the emergency was reported. Upon performing an inspection of the damage, the project manager approved that the entire tank should be replaced with a new tank. The process to order a new tank and replace the old tank was completed on 25 August 2020 which is 6(six) months after the matter was first attended to.

**Auditor’s assessment**

Based on the time it took for the matter to be attended to (2 Months) and the time it took to construct and complete the tank (6months), we determined that it was not impractical to invite bidders. Upon discovering that the tank cannot be repaired and a new tank will be required, taking into account how long it takes to construct a new tank (6 months); management ought to have noted that the change scope of work requires significant time to complete and thus a normal procurement process should be followed.

Therefore, it is our assessment that the sequence of events does not meet the definition of an emergency procurement. Therefore, the emergency procurement is not justified.

**Impact of the finding**

* Non-compliance with the PFMA section 38 and National treasury instruction note 3 of 2016/2017.
* The amount paid of R 353 950, 68 on the above deviations will result in 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 policy.

Upon discovering that the scope of work has changed, management did not assess if the procurement is still within the ambit of emergency procurement.

**Recommendation**

It is recommended that management should enhance compliance procedures to ensure compliance with all prescribed laws and regulations.

Management should disclose the Irregular Expenditure of R 353 950, 68.

**Management response**

**Auditor’s response**

No management response received.Finding remains.

**4. Tender evaluation – Bid awarded to the supplier who was supposed to be disqualified**

**Requirements**

Section 38(1)(a)(i) of the Public Finance Management Act states that: *“The accounting officer for a trading entity must ensure that the trading entity has and maintains 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 01(i) Definitions of the Preferential Procurement Policy Framework Act 2000 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*…

Section 16A6.3(a)(i) of the treasury regulations states that “*The accounting officer must ensure that bid documentation and the general conditions of a contract are in accordance with the instructions of the National Treasury…”*

National Treasury Practice Note 7 of 2009/10 dated 02 October 2009 par 4.1.2 states that “*With effect from the date on which this practice note takes effect, accounting officers and accounting authorities are required to utilize the attached revised SBD 4 when inviting price quotations, advertised competitive bids, limited bids or proposals. This SBD 4 should be used with minimum changes that are necessary to address contract and project-specific issues*…”

Section 01 Definitions of the Preferential Procurement Regulations, 2017 states that “*Proof of B-BBEE status level of contributor” means*

*(a) the B-BBEE status level certificate issued by an authorised body or person;*

*(b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or*

*(c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act…”*

Section 4(2) of the Preferential Procurement Regulations, 2017 states that “*A tender that fails to meet the pre-qualifying criteria stipulated in the tender documents is an unacceptable tender…”*

**Nature**

During the audit of tender # CPTL82/19 (Procurement of new office accommodation for Home Affairs-Refugee reception center: Cape Town for 5 years, we noted the following:

**Issue 01**

PA-04 (LS): Notice and Invitation to Bid stipulated conditions that will make a tender to be acceptable/responsive. Such conditions included the following:

* A tender offer must be properly received on the tender closing date and time specified on the invitation, fully completed and signed in ink (All as per Standard Conditions of Tender)
* The (DPW-08 (LS)): Bid offer must be completed by the bidder, with clear specification of the financial offer in terms of rental and tenant installation allowance offered by bidder and the bid documents should be duly signed in ink, by the bidder. The offer should be submitted as per the bid questionnaire which forms part of the bid documents
* Submission of PA-11: Declaration of Interest and Bidder’s Past Supply Chain Management Practices
* Submission of PA-29: Certificate of Independence Bid Determination

PA-10 (LS): Important conditions of bid paragraph 13 stated that “*Additional offers may be made but only on photocopies of the original documents or on other forms requisitioned. Additional offers are regarded as a separate bids and must be treated as such by the bidder. The inclusion of various offers as part of a single submission in one envelope is not allowed. Additional offers must be submitted under separate cover…”*

**We noted the following: -**

* The bidder **[Invested Property Fund PTY (LTD)]** submitted two offers with different buildings and the contract value was the same (R33 603 777,94). As stipulated in the important conditions of the bid, such offers were regarded as separate bids, however the winning bid did not meet all the pre-qualifying criteria as stipulated in the tender documents even though the losing bid met all the pre-qualifying criteria.
* The Director of the winning bidder, Invested Property Fund **did not sign in ink** the **PA-29** (Certificate of Independence Bid Determination) and **DPW-08** (LS) (Bid-Offer – office accommodation).
* The **PA-11(**Declaration of Interest and Bidder’s Past Supply Chain Management Practices**)** was not included in the returnable documents submitted by the winning bidder.

However, the bidder **[Invested Property Fund PTY (LTD)]**, was considered as a responsive/acceptable tender even though the bidder didn’t comply with the responsive criteria and should have been disqualified.

**Issue 02**

A sworn affidavit was submitted by the bidder; however, upon inspection, we noted that the sworn affidavit was a copy and the bidder was allocated points that shouldn’t have. It was further noted with concern that the sworn affidavits submitted by the bidder on all bid documents were stamped by the same Commissioner of Oaths, however, the signatures on the documents are different.

Table A

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Bid Number** | **Service Description** | **Contract Value Awarded** | **Amount paid to date** |
| 1 | CPTL82/19 | Procurement of new office accommodation for Home Affairs -Refugee reception centre: Cape Town for 5 years | R33 603 777,94 | - |

The bid was, therefore, awarded to a service provider that did not score the highest points. 

**Impact of the finding**

The above may result in the following:

* Non-compliance with section 38 of the PFMA
* Non – compliance with Treasury Regulation 16A6.3(a)(i).
* Non – compliance with Preferential Procurement Policy Framework Act 2000
* Non – compliance with National Treasury Practice Note 7 of 2009/10 dated 02 October 2009 par 4.1.2
* Possible irregular expenditure of all future payments

**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 a 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 that bid evaluation committee members are equipped with the knowledge required to evaluate tenders.
* Management should perform a 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 [see reasons below]:

The PA 29 form serves as a standard bidding document and as a certificate of declaration that would be used by the Department to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid rigging.

“*The scope of the declaration of interest in the SBD 4 issued on 5 December 2003 is limited only to a declaration if the bidder has a relationship with a person employed by the principal. The principal refers to the institution that invited the bid. In other words, if an employee of an institution is a director, shareholder or member of a company or close corporation and that company or close corporation conducts business with an institution other than the one at which he or she is employed, there is no obligation to disclose his or her own or his or her spouse’s interest in the company or close corporation. The word “principal” should, therefore, be replaced with the word “state” so that declaration of any interest is broadened to all state institutions.”*

As stated by the AG that the bidder submitted two bids (for two different buildings) with the same offer. It should be noted that PA 29 and PA 11 forms on the other bids were signed, initialed in full in all areas. The BEC on evaluation crossed referenced the information on PA 29 and PA 11 against the other bid submitted because the information in question was at the disposal of the Department, and it had closed on the same day as it was for the same bid. It must be taken into consideration that where the Department is already in possession of the same information regarding the bidder in question, that information is legally binding and valid.

In relation to DPW-08 (form of offer) the form was fully completed, initialed in all pages, therefore, all technical and material information required in the form were provided. Furthermore, fully initialing of a document is tantamount to signature. The Bid Evaluation Committee noted that the bidder omitted to append signature on the space provided for in the form. The Bid Evaluation Committee then resolved to seek a legal opinion, and it was received **see attached marked A**.

The legal opinion in the main placed its reliance on the Millennium Waste Management v Chairperson Tender Board (2007) as decided by the Supreme Court of Appeal **see attached marked B**. The case as decided in 2008 concerned the award of a tender by the Department of Health and Social Development. The appellant was an unsuccessful bidder and claimed that its tender should not have been disqualified simply because it never signed a certain document that had to be submitted with its tender. The document that needed signature was a "declaration of interest" form and required bidders to indicate whether they had any links to the procuring entity (the second respondent). The appellant had initialed each page of the form, but failed to put its signature on the last page. There are two grounds upon which the tender committee disqualified the appellant's tender: (1) it believed that it did not have authority to condone the appellant's non-compliance with the tender conditions; and (2) it was of the view that the appellant's tender was not an "acceptable" one within the meaning of the PPPFA. The court rejected both grounds.

In the present case, the court held that condoning the appellant's failure to sign the form would have served the public interest because it would have facilitated competition among the bidders. The condonation would have promoted the values of fairness, competitiveness and cost-effectiveness in section 217(1) of the *Constitution.*

The court also referred to the *JFE Sapela Electronics*case, where Scott JA noted that the definition of an "acceptable tender" in the PPPFA must be interpreted against the values laid down in section 217(1) of the *Constitution.*The court then held that in this context the definition of [acceptable] tender cannot be given its wide literal meaning. It certainly cannot mean that a tender must comply with conditions which are immaterial, unreasonable or unconstitutional. The defect relied on by the tender committee in this case is the appellant's failure to sign a duly completed form, in circumstances where it is clear that the failure was occasioned by an oversight.

The original file was kept in the office to circumvent loss of files, AG has a right to request the original files to validate and authenticate information. The original certified copy of the BEE certificate is available however is was not requested before the exit meeting, during the audit or before the finding was raised. The certificate was in the other file of the bidder, see attached the original certified copy **marked C**.

**Auditor’s conclusion**

**ISSUE 01**

PA 11, PA 29 and DPW-08

Management comments are noted and they agree with auditors on the following:

* PA 11 was not submitted on the bid and this was a returnable document
* PA 29 and DPW-08 were not fully completed and signed in ink on the bid as required in in the tender document.

Based on the above it is evident that the bid should have been considered as a non-responsive tender as it did not comply with the responsive criteria and should have been disqualified.

BEC on evaluation crossed referenced the information on PA 29 and PA 11 against the other bid submitted because the information in question was at the disposal of the Department, and it had closed on the same day as it was for the same bid. It must be taken into consideration that where the Department is already in possession of the same information regarding the bidder in question, that information is legally binding and valid.

The above statement contradicts the PA-10 (LS): Important conditions of bid paragraph 13 as additional offers should have been regarded as a separate bid and treated as such on evaluation. It is evident that management didn’t follow the conditions of the bid and should have disqualified the bid.

The audit team note the legal opinion submitted, however inconsistences have been identified within the region as other suppliers who didn’t sign the offer letter were disqualified. Technical opinion will be sought by the audit team, but this will not change the status of the finding as the bid should have been considered as non-responsive as they didn’t submit PA-11 (Returnable document).

**Issue 2**

Management’s response is noted and the BBBEE certificate marked C was included on file, however such certificate was a copy of sworn affidavit and the bidder shouldn’t have been allocated points. It was further noted with concern that the sworn affidavits submitted by the bidder on all bid documents were stamped by the same Commissioner of Oaths, however, the signatures on the documents are different.

**Conclusion**

Based upon the responses above the finding remains.

**5. Procurement and Contract Management – Bid awarded to supplier who didn’t meet the minimum functionality score and evaluation criteria differed from the bid document**

**Requirements**

Section 38(1)(a)(i) of the Public Finance Management Act states that: *“The accounting officer for a trading entity must ensure that the trading entity has and maintains 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 Public Finance Management Act 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…”*

Section 5(6) of the Preferential Procurement Regulation 2017 states that: “*A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender…”*

Section 5(7) of the Preferential Procurement Regulation 2017 states that: “*Each tender that obtained the minimum qualifying score for functionality must be evaluated in terms of price and preference point system and any objective criteria envisaged in regulation 11…”*

Section 01(i) Definitions of the Preferential Procurement Policy Framework Act 2000 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*…”

Section 16A6.3(b) of the treasury regulations states that *“The accounting officer must ensure that bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the PPPFA, 2000 and BBBEE Act, 2003...”*

**Nature**

During the audit of tender # CPT1009/19 Mossel Bay: Magistrate Office: Repairs and Renovations, we noted the following:

**Issue 01**

The PA-04: Notice and Invitation to Bid stated that functionality will be applied as a pre-qualification criterion and minimum functionality score to qualify for further evaluation is **50%.** The following criterion were applicable

| **Functionality criteria** | **Weighting factor** |
| --- | --- |
| **Experience**  Experience on previous projects: The bidder must provide a descriptive list of all comparable projects in progress or completed in the last five years (DPW 09 EC). Engineering projects to the value of 10 million or higher.  Scoring: 1 – 5 points | **35%** |
| **Quality**  References listed on the DPW-09 (EC) will be used to obtain the quality of work. Bidders must provide contactable references with the person's name and contact details. The bidder must forward the standard template to the references to complete and must attached to tender documents when submitting on closing date.  Scoring: 1 – 5 points | **35%** |
| **Resources**  Construction Manager / Site Agent: Provide a detailed CV of the Construction Manager and Site Agent who will be employed on this contract with **a list of similar** or **greater nature**, **scope**, **complexity** and **value** in **progress or completed** projects in the last **5 years**.  Scoring: 1 – 5 points | **30%** |

Based on the auditor’s assessment conducted on validating correctness of the functionality for MWC Global (PTY) LTD the following was noted

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Client calculations - Members of the BEC | | | Auditors assessment | | | Auditors Comments |
| **Criteria’s** | **Points** | **Total functionality** | **Points** | **Total functionality** | **Diff** |  |
| Experience | 5 | 35% | 5 | 35% | **-** | *Points were awarded correctly as comparable projects (with value >= R10 million) in progress or completed in the last 5 years were attached* |
| Quality | - | - | - | - | **-** | *Points were awarded correctly as standard template completed by references for quality of work were not submitted by the bidder.* |
| Resources | 5 | 30% | - | - | **(30)** | *A CV of the CM/SA was attached on the returnable documents and it* *indicates relevant experience (In terms of years). However, projects included on the CV were not of* ***similar*** *or* ***greater nature****,* ***scope*** *and* ***complexity.***  *Furthermore, these projects didn’t indicate a value (i.e. >= R10 million) and whether they are in progress or completed in the last 5 years.* |
|  | | **65%** |  | **35%** | **(30)** |  |

Based on the above, the bidder should not have been considered to be evaluated further as they didn’t meet the minimum threshold of **50%** and the next supplier with highest points in terms of price and BBBEEE should have been appointed.

*Table A*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Bid Number** | **Service Description** | **Contract Value Awarded** | **Amount paid to date** |
| 1 | CPT1009/19 | Mossel Bay Magistrates Office: Repairs and Renovations | R25 605 321.76 | - |

**Issue 02**

We noted that that the functionality criteria (*Quality*) applied by management in evaluating the bidders in the procurement of **Mossel Bay** differed from what was prescribed in the tender invitation.

The tender invitation indicated that the following criteria would be applied when evaluating functionality: -

|  |  |
| --- | --- |
| **Functionality criteria** | **Weighting factor** |
| **Quality**  References listed on the DPW-09 (EC) will be used to obtain the quality of work. Bidders must provide contactable references with the person's name and contact details. The bidder must forward the standard template to the references to complete and must attached to tender documents when submitting on closing date.  Scoring: 1 – 5 points | **35%** |

We noted that management allocated points for quality based on the DPW-09 (EC) completed by references and the ratings *(Excellent, Good, Fair, Poor and Very Poor***)** indicated in the form were used to award points. It was not evident from the evaluation minutes that these references were contacted for obtaining feedback on quality.

This is evident as management sampled the bidders after awarding points for the price as well as the BBBEE and performed a risk assessment i.e. requesting information from the contactable references about quality of work, the value of past projects which further reflected that the bidders would not have met the 50% minimum qualifying score had the correct criteria been used for evaluation of functionality and as such management decided to disqualify some of the bidders based on the outcomes of the risk assessment report.

The outcomes of the risk assessment on quality disqualified the following bidders after they met the minimum functionality score: -

* La Natura /Intercon
* Mathew & Sons Construction
* Ro Swika Projects

It is evident that the evaluation criteria applied in evaluating quality and resources for the bids differed from what was prescribed on the original bid documents. The winning bidder won based on the amended evaluation criteria and therefore, the bid was not acceptable, as the bid did not comply with the specifications and conditions of the tender.

**Impact of the finding**

The above may result in the following:

* Non-compliance with section 38 of the PFMA
* Non-compliance with PPR regulations
* Possible irregular expenditure of all future payments

**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 a 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 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:**

**Background**

The scope for the project in Mossel Bay Magistrate Court entails general building repairs, painting, replacements of floor coverings, electrical light fittings and plugs and general external work, paving and services.

**Issue 01**

* **Contracts Manager**: The bidder provided a CV of a Contracts Manager who is a professionally registered Civil Engineer with **14 years’ experience**, and has worked on more complex projects than the project in question. **The list of projects has been supplied on the CV**. The BEC felt that the number **of years (14) are more than the number of years required (10)** and level of expertise is also much more sophisticated than what is required for this project. The criteria on the strategy did **not stipulate the actual value of projects**, but it required that the resource must have adequate experience in similar projects. Bearing the above in mind, the value of projects for the Contracts Manager does not have to match the value for the company. With the Contracts Manager, the CV did not indicate the period to reflect that the projects were completed in the last 5 years to match the requirements.
* **Site Agent**: The requirement was either for a Contracts Manager **or** a Site Agent. The bidder provided a CV of a Site Agent who is a candidate Civil Engineering Technician with **15 years’ experience**. The Site Agent has higher qualifications and experience than what was required. His experience is also for much more complex projects. The **projects listed were completed in 2014, 2015 and 2017 respectively**. This CV matches the requirements and also exceeded in terms of the number of years **(15 years vs 10 years).**
* **Site Foreman**: the bidder attached a CV of a Site Foreman who is a professionally registered Project Manager with Quantity Surveying qualification and with **14 years’ experience**. The number of projects in terms of value, complexity and period far exceed the requirements. **The projects listed for this resource were completed between 2015 and 2020.**

The BEC did not change the criteria but scored each one according to the information submitted by the bidder. The BEC considered the requirements and the resources supplied which were over and above the requirements and decided to award the points in full.

**Issue 02**

|  |  |
| --- | --- |
| **Quality**  **References listed on the DPW-09 (EC) will be used to obtain the quality of work. Bidders must provide contactable references with the person's name and contact details**. The bidder must forward the standard template to the references to complete and must attached to tender documents when submitting on closing date.  Scoring: 1 – 5 points | **35%** |

The bidders were scored according to the criteria above. The risk assessment report from the Project Manager and Consultants give the full details of how this project was evaluated. The requirement for quality scores help to give the necessary points to the bidders based on what the referees indicate. However the BEC is required to conduct due diligence on the information supplied both from the appointed Consultants and internal professionals. In this case when the Consultants were verifying the information given on the letters there were anomalies on the details from the letters and what the referees were saying to the Consultants. The Department then requested the Departmental Professionals in Port Elizabeth Regional Office and Nelspruit Regional Office to go to sites and confirm the projects, quality of work and the information that was supplied. The reports given indicated that the three bidders did not give accurate information and some of the Clients were not satisfied with the bidder’s performance. It is against this background that the BEC measured the risk of recommending the bidders in terms of quality, previous performance and commercial then moved to recommend the next highest scoring bidder. There was no reason to go back and rescore functionality but the risk report covered the areas sufficiently for these bidders not to be considered.

Management therefore does not agree with this finding. Management feels this project was evaluated and adjudicated according to the criteria that was set. Due diligence was performed and the correct recommendation and award was done in line with the PPR Regulation and PFMA.

**Auditor’s conclusion**

Management’s response is noted. However, the finding remains.

**Issue 1**

Management comments are noted and the audit team respond as such, the value of project was stipulated on the functionality which was R10 million or higher and this was read with experience criteria. Within the resource criteria, it clearly stipulated that “A *list of similar**or greater nature, scope, complexity and value in progress or completed projects in the last 5 years”.* The CVs provided did not provide all the details as stipulated in the functionality criteria in order to award points.

Based on management response, it is clear that all other criteria’s (Value, completion in the past 5 years etc.) were overlooked and only experience was considered for awarding of points. The audit team have noted that where management intend to award points only on experience as per CV, do specify such on functionality such as tender number CPT 1001/20. Based on the above it is evident that the BEC changed the evaluation criteria.

**Issue 2**

Management comments are noted and should have clearly stated that risk assessments would be undertaken due to the anomalies noted during the evaluation process.

**6. Procurement and Contract Management - Possible splitting of quotations**

**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…”*

Treasury regulation 16A6.1 states that: *“Procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury…”*

Practice Note 8 of 2007/08 paragraph 3.5 states that: *“Goods, works or services may not deliberately be split into parts or items of lesser value merely for the sake of procuring the goods, works or services otherwise than through the prescribed procurement process. When determining transaction values, a requirement for goods, works or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction…”*

**Nature**

During the audit of procurement and contract management the following issues were noted:

1. We noted that the department procured security contracts for the areas/properties mentioned in the table below which were for 2-month periods during the current financial year using a nominated procedure (deviation process), and in some instances awarded to the same service provider. Due to the nature of service, it is reasonable that the department is able to go on tender to obtain security services for a longer period as there it has no intentions to vacate the premises in the near future. In our assessment, the combined quoted amounts for the procurement of similar nature of services for the same area/property came in above the R500 000 competitive bidding, which indicates the possibility of deliberate splitting into parts of a lesser value merely to avoid following the competitive bidding process.

Based on this evidence and nature of the service, the department is able to make an assessment of how long they will require the security services in each respective property and as a result, be able to acquire the service through competitive bidding instead of following the quotation process.

The table represents the security contracts awarded, indicating the total amount spent for each area/property.

| **No** | **Short Description of Services** | **Service provider** | **Amount (R)** |
| --- | --- | --- | --- |
| 4 | 24 Hr Security: Rondebosch Fernwood | BC Security Solutions | 43 558,32 |
| 5 | 24 Hr Security: Fernwood | Jugephaphi Construction | 480 792,00 |
| 6 | 24 Hr Security: Fernwood | Striving Mind Trading 519 | 414 111,30 |
|  |  |  |  |
|  |  | **TOTAL** | **938 461.62** |

1. That the department procured waste removal services for Robben Island from the different suppliers mentioned in the table below which due to the nature of service, the department is able to go on tender to obtain the services for a longer due to the continuity of services. In our assessment, the combined quoted amounts for the procurement of similar nature of services for Robben Island came in above the R500 000 competitive bidding threshold, which indicates the possibility of deliberate splitting into parts of a lesser value merely to avoid following the competitive bidding process.

Based on discussions with management, the department was in a position to assess the challenges it has in relation to the particular contract and rather procure the service following the tender process.

| **No** | **Short Description of Services** | **Service provider** | **Amount (R)** |
| --- | --- | --- | --- |
| 1 | Waste Removal: Robben Island | Averda SA | 372 779,60 |
| 2 | Robben Island: Waste Removal & skips | Sela waste Management | 417 800 |
|  |  |  |  |
| **TOTAL** | | | **790 579.60** |

**Impact of the finding**

**The above may result in the following:**

* Possible misstatement of irregular expenditure with amounts of R2 508 093,55 and R790 579,60
* Non-compliance with section 38 of the PFMA
* Non-compliance with TR 16A6.1
* Non-compliance with PN 08 of 2007/08

**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 contracts of services with a similar nature and of a continued need for the operations of the department are in place 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 a timely 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.

RFQs should be reviewed regularly to identify goods/services of the same nature required on the monthly basis. The assessment should be made to determine the possibility of procuring goods/service through the competitive bidding instead of quotation process merely to avoid going on tender.

Timely monitoring and procurement process of contracts that are due to end should be implemented.

Management should perform further investigation to determine the extent of the non-compliance as well as the financial impact had the contract was entered with the service provider to provide services for longer period instead of shorter periods

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:**

Management takes note of the audit findings and is not in agreement due to the following reasons:

1. **24 Hr Security: Rondebosch Fernwood**

The service relates to security services rendered at Rondebosch Fernwood for the period starting from 1 May until 31 May 2020. The service provider was appointed on emergency delegation due to the fact that the President address to the Nation on the National Lockdown Level 5 from the 26th March 2020 until the 16th April 2020, whereby staff members in the department were affected and could not attend to work at full capacity as were to curb the spread of Covid-19. The security services contracted onsite had to lapse on the 30th April 2020. We therefore requested an emergency delegation to ensure that the State properties are protected against vandalism, illicit activities and they do not pose any security risk within the public and surrounding areas.

Currently this project, security services at Fernwood is in the 2021/22 Procurement Plan.

**2. Waste removal services**

The Department had a contract in place which resorted under Facility Management and expired on 30 September 2020. The Waste Management tender was on the procurement plan of 2020/21 however the project was going to be piloted by the Head Office due to the complexity and technical nature of the specifications.

It was not feasible for the Region Office not to have an interim measure in place given the fact that Robben Island is one of the Heritage sites which the department is responsible for. As of 3 May 2021, the department has advertised a three year term contract.

**Auditor’s conclusion**

Management’s comments are noted.We are currently evaluating the response.

**7. Deviation not justifiable**

**Requirements**

Section 38(1) (a) (i) of the Public Finance Management Act (PFMA) states that *“the accounting officer for department, trading entity or constitutional institution:*

1. *must ensure that the department, trading entity or constitutional institution has and maintains*

*(ii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective;”*

Treasury Regulation 16A6.4 requires that *“If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.”*

In terms of National Treasury Instruction no. 3, paragraph 8 of 2016/17 *“Deviations from normal bidding process”*:

*“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.*

*8.3 Sole source procurement may occur when there is evidence that only one supplier possesses the unique and singularly available capacity to meet the requirements of the institution.*

*8.4 The Accounting Officer/Accounting Authority must invite as many suppliers as possible and select the preferred supplier using the competitive bid committee system.*

*8.5 Any other deviation will be allowed in exceptional cases subject to the prior written approval from the relevant treasury.”*

National Treasury regulation 16A3.2 states that “*A supply chain management system must: be fair, equitable, transparent, competitive and cost effective*”

**Nature**

During the audit of supply chain management (SCM), we noted that a six (6) months contract was awarded for the repairs, service and maintenance of lifts for various buildings around Johannesburg. An emergency procurement process was followed to appoint the service provider. The supporting memorandums provided were inspected to ascertain the reasons for deviation. According to our assessment, the reasons provided are not sufficient to support the deviations.

The table below show the supplier and the reasons provided in the memo.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Supplier Name** | **Ref. Number** | **Date Memo prepared** | **Date Memo approved and the official** | **Amount (R)** |
| Musan Trading enterprise | JHB 20/075 | 24 June 2020 | 24 June 2020 , M Mudau ( Acting Regional Manager) | 587 275 |
| Musan Trading enterprise | JHB 20/075 | 24 June 2020 | 24 June 2020 , M Mudau ( Acting Regional Manager) | 521 288 |
| Musan Trading enterprise | JHB 20/075 | 24 June 2020 | 24 June 2020 , M Mudau ( Acting Regional Manager) | 844 513 |
| Musan Trading enterprise | JHB 20/075 | 24 June 2020 | 24 June 2020 , M Mudau ( Acting Regional Manager) | 720 414 |
| **Total** |  | | | **2 673 492** |

**Summary of background provided for the deviation by Management**

JHB Regional office Jurisdiction to appoint a single service provider to attend emergency call outs service, annexures and repairs for the lifts for (6) months for all client departments:”

1. The emergency contract for the repairs, service and maintenance of lifts expired on 22/06/2020. The quotation tender process could not be done through RBAC due to quotation threshold limit from R 500 000 as the lifts require more funds by its own nature of service. As per legislation cannot be operated or used if a service contract is not in place.

**2.** The Logic Elevators (PTY) Ltd (JHB 15/03) was appointed on 28/10/2015 for the period from 29/10/2015 to 28/10/2017 to render the services, repairs and maintenance contract for lifts and stairs for paraplegics to all government buildings within JHB jurisdiction. When the contract ended, it was extended for a duration of three months.

**3.** After Logic Elevators (PTY) Ltd extension, Mowa Elevators was working as an emergency contract,

**4.** Lifts the contract was advertised around August 2017 for all lifts within JHB jurisdiction and regional manager requested the project leader to cancel the tender due to approval for deviation from competitive bidding process. The Head of PMTE recommended the deviation on the 06/04/2017 and the reason for deviation is that the manufacturer is the one that draws up the maintenance plan and the one that draws up the equipment can be properly tested, verified and validated by the manufacturer.

**5.** The deviation from the competitive bidding for negotiated lift strategy and the competitive bidding process: appointment of the Kone, Schindler and Otis was approved. Due to the cancellation of the tender, the negotiations process started for Schindler and Otis while the emergency contracts was being place while negotiating is underway. It was identified that other lifts do not belong to Schindler and Otis. The lifts brand were Mitsubishi and other various brands.

6. The contract will cover the client departments with 50 Mitsubishi and 20 no name brand lifts.

**Auditor’s assessment**

Based on the reasons provided, we do not agree that the emergency procurement was justified.

Management is aware that lifts by law require monthly checkups, which is done by an appointed service provider. This is to ensure that the building complies with the occupational health and safety standards. Upon the previous contract ending, management had sufficient time to plan for and appoint a service provider to succeed the repairs and maintenance of lifts. Although the situation at the date when the new service provider was appointed posed a threat to life, it was expected. Seeing that the situation should have been foreseen and prevented, we are of the opinion that an emergency procurement as per the national treasury instruction notes was not justified.

**Impact of the finding**

* Non-compliance with the PFMA section 38 and National treasury instruction note 3 of 2016/2017.
* The amount paid of R 2 673 492 on the above deviations will result in irregular expenditure.

**Internal control deficiency**

*Financial and performance management*

Management did not review and monitor compliance with applicable laws and regulations in relation to the procurement process.

Management did not use the normal procurement process in obtaining a service provider for repairs and maintenance of lifts.

**Recommendation**

It is recommended that management should:

* Monitor all contracts with service providers and ensure that the SCM process is initiated timely for all contracts that are ending.
* Disclose the irregular expenditure

**Management Response**

**Auditors Conclusion**

No management response obtained as at the date of this report.Finding remains.

**8.** **Winning Supplier Incorrectly Declared Interest – Procurement and Contract Management**

**Requirements**

Treasury regulations 16A08.4 states that” *It is required that the Bidder or his/her authorized representative, declare his/her position in relation to the evaluating/adjudicating authority where:*

*i) The Bidder is employed by the State; and/or*

*ii) Whether the bidder, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid”*

**Nature**

The winning bidders incorrectly stated that they had not conducted business with the State (PMTE) in the previous 12 months when submitting their PA 11 which is the declaration of interest and bidder’s past supply chain management practices, however upon inspection of the prior year quotation and tender registers it was noted that the supplier had conducted business with the state in the previous 12 months.

Refer below for the details of the suppliers:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Service provider:** | **Description of contract:** | **Batch no:** | **Amount:** |
| 1 | Electricivil Trading | Repair of Roof Blown Away | 7572 | R320 626.04 |
| 2 | Letlotlo Gardening, Cleaning and Construction | Reconnecting Pipes and Disludge of Septic Tank | 7327 | R480 857.14 |
| 3 | Active Boiler Energy | Repairs of Faulty Boiler | 7312 | R489 417.04 |
| **Total** | | | | **R1 290 900.22** |

**Impact**

* Non-compliance with Treasury reg.16A8.4
* Irregular expenditure of R1 290 900.22

**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 a 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 response**

**Auditor’s conclusion**

No management response obtained as at the date of this report.Finding remains.

**9. Local content PA 36 (Annexure C) not included as part of documentsthe returnable documents**

**Requirements:**

Public Finance Management Act paragraph 38(1)(a) of (i) and (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 40 of (1) (a) states that *“The accounting officer for a trading entity must keep full and proper records of the financial affairs of the trading entity in accordance with any prescribed norms and standards”*

Preferential Procurement Regulation, 2011 paragraph 9 of (1) states that *“An organ of state must, in the case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with a specific tendering condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.”*

Preferential Procurement Regulations 2017 paragraph 8 (2) states that *“An organ of state must, in the case of designated sectors, 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.”*

Preferential Procurement Regulation, 2017 paragraph 8 of (5) states that *“A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.”*

National Treasury Designated Sectors Instruction Number 15 of 2016-2017 in paragraph 5.1.1.1 states that “*Bids must be evaluated in terms of the minimum threshold stipulated in the bid documents. Further in 5.1.1.2 it states that the “The declaration made by the bidder in the Declaration Certificate for Local Content SBD 6.2 and Annexure C (Local content Declaration: Summary Schedule) must be used for this purpose.”*

National Treasury Designated Sectors Instruction Number 15 of 2016-2017 in paragraph 4.5, for purposes of complying with paragraph 4.1, 4.2 and 4.3 of the instruction notice, *“the local production and content SBD 6.2 must form part of the bid documentation. The SBD 6.2 is for use by all National, provincial departments, constitutional institutions and public entities listed in schedules 2, 3, 3A, 3B, 3C and 3D of the Public Finance Management Act.”*

Section 01(i) Definitions of the Preferential Procurement Policy Framework Act 2000 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.”*

**Nature**

During the audit of supply chain management, we noted the following:

The bid specifications document indicated as compulsory in terms of responsive criterion for the suppliers to submit Annexure C for local content d as part of the returnable documents.

Upon inspection of the tender documents, it was noted that for the below suppliers, such document was not completed

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Tender No** | **Descriptions** | **Supplier Name** | **Amount**  **(R)** |
| 1 | MMB 2019/084 EC | Rooigront Prison: Condition based maintenance of electrical and mechanical | Lindokuhle & FV Trading JV | 24 323 342,34 |
| 2 | MMB 2019/084 EC | Rooigrond prison repair maintenance and operation of water sewer | FV trading enterprise (PTY) LTD | 36 457 188,78 |
| **Total** |  |  |  | **60 780 531,12** |

**Impact**

* Non-compliance with the Preferential Procurement Regulations 2017 paragraph 8 (2) and the section 38 of the PFMA
* Irregular expenditure limited to the actual amount paid

**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 a 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 should ensure that bid evaluation committees members are equipped with the knowledge required to evaluate tenders.
* 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:**

**Auditor’s conclusion:**

No management response obtained as at the date of this report.Finding remains.

**10. Misrepresentations by the winning bidder .**

**Audit finding**

Laws, rules and Regulations:

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

1. Effective, efficient and transparent systems of financial and risk management and internal control;
2. (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, department must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct”

Practice Note 7 of 2009/10 par 4.1.2 – Pre-qualification criteria for preferential procurement states that “A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.”

Treasury reg.16A6.3 (a) states that:

“The accounting officer or accounting authority must ensure that –

1. bid documentation and the general conditions of a contract are in accordance with

– (i) the instructions of the National Treasury”

**Nature**

During the audit of competitive bidding, we noted that PA-04: Notice and Invitation to tender for tender number PET15/2019 stipulated amongst others, the following responsiveness criteria:

1. “Submission of (PA-11): Declaration of interest and Tender’s Past Supply Chain Management Practices.

2. Compliance to Local Production and Content requirements as per PA36 and Annexure C.”

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Tender number** | **Project Description** | **Supplier Name** | **Award Contract Value** |
| 1 | PET15/2019 | Queenstown and surrounding areas : Term contract : Electrical repairs for the period of 24 Months | 4RGA electrical | R 5 650 000 |

The tender was advertised on 13 September 2019 and the closing date was 08 October 2019.

***Issue 1:***

*We noted on the winning bidder’s PA-11* submission, paragraph 3.8: the director declared that neither the company, his spouse nor any of the company’s directors/trustees/shareholders/members or their spouses has conducted business with the state in the previous twelve (12) months.

*However, during the audit of his bid submission we noted that he has listed at least two projects, which he has done for the Department of Public works and Infrastructure in the past 12 months:*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **No** | **Tender number** | **Project Description** | **Duration**  **(Months)** | **Year completed** | **Contract value** |
| 1 | C195 | DPW – EL Maintenance Project | 24 | 2018 | R 8 500 000 |
| 2 | C196 | DPW – QTN Maintenance Project | 24 | 2018 | R 7 800 000 |

*Therefore, the bidder has made a false declaration about his past business dealings.*

***Issue 2:***

*We inspected the bidder’s PA-36: declaration certificate for local production and content for designated sector and noted that the bidder indicated no when asked if “any portion of the goods or services offered have any imported content”.*

*However, we noted that the bidder declared on the same form that only 90% of the goods offered will be locally produced and the remainder will be imported. We further noted that the bidder did not complete annexure D for imported content declaration.*

Therefore, the bidder has not adequately and fully completed PA - 36 as per the requirement of the responsiveness criteria.

**Impact of the finding**

The trading entity did not comply with the *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 response: Management disagree with the finding:**

**a)** PA 11 declaration of interest: 3.7 it reads as follows: *Are you or any person connected with the bidder presently employed by the state?* The response was **No**

Based on this the evaluation committee and adjudication committee have no grounds to suspect a possible conflict of interest with the prospective bidder. The disclosure demonstrates that no one in the SCM committees would have known the bidder or have had a relationship which will constitute a conflict of interest.

PA 11 declaration of interest: 3.8 it reads as follows:  *Did you or your spouse or any of the company’s directors /trustees/shareholders/members or their spouses conduct business with the in the previous twelve months*? Based on the question stipulated above, the evaluation committee and adjudication committee assessed the entity that is bidding vs individual shareholders/directors and came to conclusion that there is no conflict of interest that could be established. As a result the bidder was further evaluated based on the outcome of the assessment.

**b)** The bidder has declared 100% and 90% minimum threshold for local production and content respectively as required by Regulation 8 of Preferential Procurement Regulation, 2017. Therefore the bidder met this requirement for consideration for further evaluation.

The **PA 36** declaration for local production and content fordesignated sectors refers**. The bidder declared** that the entity will not be importing any portion of the goods or services offered. In addition the bidder did not populate any information on annexure D which is meant to provide information on imports. Secondly the bidder has populated the information on annexure E which represents the items which are locally produced. However, the committees have taken note of the error in relation to the information populated in Annexure C which contradicts the PA 36 declaration. However information provided in annexure D and E is deemed to be the source information for annexure C and in addition the declaration mentioned that no material will be imported. The committees have therefore concluded that the bidder is clearly committed to procure 100% locally and went over and above the minimum threshold of 90%. The approach of the contractor to procure 100% of the material locally is viewed as commendable.

**Auditor’s response**

Management’s comments are noted.

We disagree with management based on the following reasons:

Firstly we wish to highlight that the person who completed the declaration,is the sole director of the company and also accepted the responsibility to be the reprersentative of the company as per PA 15.1.

The declaration of interest and bidder’s past supply chain practices is a document completed on behalf of the bidder ,by the elected representative.In this case,the representative of the bidder indicated that the bidder has not done business with the state in the previous 12 months which was found to be false.

**11. Winning bidder is not responsive .**

**Requirment**

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

1. Effective, efficient and transparent systems of financial and risk management and internal control;
2. (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, department must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct”

Practice Note 7 of 2009/10 par 4.1.2 – Pre-qualification criteria for preferential procurement states that “A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.”

Treasury reg.16A6.3 (a) states that:

“The accounting officer or accounting authority must ensure that –

1. bid documentation and the general conditions of a contract are in accordance with

– (i) the instructions of the National Treasury”

**Nature**

During the audit of competitive bidding, we noted that PA-04: Notice and Invitation to tender for tender number PE19/2019 stipulated amongst others, the following responsiveness criteria:

1. “Bidders to sub-contract a minimum of 30% of contract value to EME/QSE

2. returnable documents should be SMME final target and Details SMME fully completed with names of the selected SMME's.”

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Tender number** | **Project Description** | **Supplier Name** | **Award Contract Value** |
| 1 | PE19/2019 | Port Elizabeth: Service Products: Dept. of Labour: Employment Factory: Complete Repairs and Renovations | HBC | R 44 438 423,43 |

***Issue:***

During our audit, we noted that the bidder submitted two SMME documents, which were not fully completed:

1. Document 01 did not have "names of the selected SMME"

2. Document 02 did not have "SMME final target"

We also noted that other bidders were disqualified for not complying with the criteria as set out above. Therefore, the winning bidder (HBC) was supposed to be regarded as not responsive and disqualified.

**Impact of the finding**

The trading entity did not comply with the *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 response: Management disagreed with the finding.**

The purpose of form one (SMME form 1) is to provide guidelines to prospective bidders by simply showing the different CIDB grades that exist on the system of (CIDB) within the local area wherein the actual project will be executed. It should be noted that the form one document is not a prescribed requirement and information captured on this form is not binding and enforceable. Therefore prospective bidders may consider these grades for the purpose of sub-contracting when they are preparing their tender offers.

In form two (SMME form 2) prospective bidders need to populate individual potential sub-contractors and the details as outlined in the tender document i.e. EME or QSE, CSD requirements, the value attached on each subcontractor and the sum of all sub-contractors that must be equivalent to 30% of the value of the project or more. Once the sum of all sub-contractors is below 30% of the tender value, the prospective bidder will be disqualified for not meeting the 30% sub-contracting tender condition of the project. In essence there is no core relation, or reconciling requirement between form one and form two when the 30% sub-contracting requirement is adjudicated. In this instance the the contractor clearly met (and exceeded) the 30% sub-contracting requirement.

**Auditor’s response**

Management’s comments are noted.

However we disagree with management because the SMME participation targerts document was required as part of the responsiveness criteria.The winning bidder failed to submit a fully completed SMME declaration form and was therefore non-responsive.

**12. The allocation and calculation of preference points was not correctly done in accordance with the requirements of the PPPF Act and PPR 2017**

**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…”*

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…”*

Treasury Regulation 16A6.3 state that “The accounting officer must ensure that the bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000.

Preferential Procurement Regulations 2017 paragraph 6.1states that *“The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes...”*

Preferential Procurement Regulation 2017 paragraph 6 (4) states that *“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 may only score points out of 80 for price; and scores 0 out of 20 for B-BBEE.”*

**Nature**

**Issue 1**

During the audit of procurement management, we noted that the 90/10 scoring model was used to evaluate the quotations listed below instead of the 80/20 scoring model as stated in the request for quotations. Therefore, this indicates that the evaluation criteria applied in evaluating the quotations are not the same as those indicated in the original request for quotations:

| **Supplier** | **Description of services** | **Amount (R)** |
| --- | --- | --- |
| Wezisizwe Building And Supply (Pty) Ltd | Operation and Maintenance of coal fired boilers | 488 832 |
| Qhamkile Projects (Pty) Ltd | Operation of sewer plant | 398 000 |

**Issue 2**

During the audit of procurement management, we noted that the bidder who tendered the lowest price (Seldicta Trading cc - R318 811,05) was disqualified for not complying with the pre-qualification criteria, however their price was used a base in calculating the points for price. This is in contravention of PPR 2017 as the price submitted by the lowest acceptable tender was not used in calculating the points for price. This would not have changed the outcome of the award as the contract was still awarded to Vusuthobile Trading (R410 646,33) who scored the highest points based on recalculations performed by the auditors:

| **Description** | | | **Points for price** | | | **Total points (Price + BEE)** | | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **No** | **Bidder** | **Price tendered** | **Auditors** | **Management** | **Differences** | **Management** | **Auditors** | **Differences** |
| 1 | Impumelelo Yamazilikazi  general | 471 699,90 | 68,11 | 41,64 | 26,47 | 61,64 | 88,11 | 26,47 |
| 2 | Nokwazisbu Trading | 414 955,07 | 79,16 | 55,87 | 23,29 | 75,87 | 99,16 | 23,29 |
| 3 | Seldicta Trading cc | 318 811,05 | - | 80,00 | (80,00) | No points were awarded | | |
| 4 | Macaphuna Kusale Trading | 443 360,00 | 73,63 | 48,75 | 24,88 | 68,75 | 93,63 | 24,88 |
| 5 | Manzini Trading (Pty) Ltd | 439 633,50 | 74,35 | 49,68 | 24,67 | 69,68 | 94,35 | 24,67 |
| 6 | Slungisa Trading (Pty) Ltd | 450 000,00 | 72,33 | 47,08 | 25,25 | 67,08 | 92,33 | 25,25 |
| 7 | Gebelihle (Pty) Ltd | 440 900,00 | 74,11 | 49,36 | 24,75 | 69,36 | 94,11 | 24,75 |
| 9 | Abasegudu (Pty) LTD | 489 274,05 | 64,68 | 37,23 | 27,45 | 57,23 | 84,68 | 27,45 |
| 10 | Thembihlase (Pty) Ltd | 48 000,00 | 72,72 | 47,58 | 25,14 | 67,58 | 92,72 | 25,14 |
| 11 | Vusuthobile Trading | 410 646,33 | 80,00 | 56,96 | 23,04 | 76,96 | 100,00 | 23,04 |

**Issue 3**

During the audit of quotations, we noted that the supplier listed in the table was awarded 20 points for BBBEE however the proof of BBBEE status level of contributor was not provided to support the points awarded. Through further assessment we have noted that this wouldn’t have changed the outcome since the winning bidder did provide their BBEE certificate and points were awarded correctly.

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Description** | **Supplier** | **Amount (R)** |
|  | SANDAF Mtubatuba: Replace a burst geyser and repair damaged wall | Cruzzie Projects and Engineering | 115 350 |

**Impact of the finding**

This results in non-compliance with the Preferential Procurement Regulations 2017.

**Internal control deficiency**

*Financial and Performance Management*

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

Lack of review of the evaluation reports and bid documents to;

* ensure that the scoring model and the price submitted by the lowest acceptable tender used is in accordance with the preference point system
* ensure that the points awarded to bidders are supported by evidence.

**Recommendation**

It is recommended that management review the evaluation records to ensure that the scoring model and the price submitted by the lowest acceptable tender used is in accordance with the preference point system included in the Preferential Procurement Regulations

It is recommended that management perform adequate review of the evaluation reports along with the supporting documents to ensure that the points awarded to bidders are supported by evidence included in the bidding documents.

**Management response**

**Issue No 1**

I am in agreement with the finding for the following reasons.

* That an incorrect scoring model template was used to calculate points which was an error. The advert was sent out with a clear indication that evaluation will be based on the 80/20 principle however and evaluation done as such, however during capturing of points and BBBEE levels an incorrect template was used. It was also proven by the Auditor General that if the 80/20 principle is applied the appointed contractor Wezisizwe Building and Supply Pty Ltd will score a 100 points also it was tested by the Auditor General that if you apply the 80/20 principle Wezisizwe Building and Supply Pty Ltd will still score a 100 points. Furthermore the Auditor General also indicated that the oversight would not have changed the outcome of the award as the contract was still awarded to Wezisizwe Building and Supply Pty Ltd.

**Issue No 2**

I am in agreement with the finding for the following reasons

* According to the evaluation report Seldicta was disqualified for not submitting a BBBEE certificate and for not meeting the responsiveness criteria, however they were recorded as responsive and allocated BBBEE points which was an error. During the evaluation of quotations received it was discovered that Seldicta did not submit the BBBEE certificate and they were non-responsive. Further to that the evaluation report clearly indicated that Seldicta is non-responsive, however the scoring model was not aligned to the evaluation report to exclude Seldicta from being evaluated further on Price and the BEE. Due to this error Seldicta was listed as the highest point scoring bidder even though the award was correctly made to Vusuthobile Trading. However this would not have changed the outcome of the award as the contract was still awarded to Vusuthobile Trading.

**Issue No 3**

I am in agreement with the finding for the following reasons

* Cruzzie Projects and Engineering was awarded BBEE points in error since they did not submit a valid BBBEE certificate. However it must be noted that this service was correctly awarded to Osiphayo Services (Pty) Ltd.

**Auditor’s conclusion**

Management agrees with the all the findings. Therefore, the findings are valid and the non-compliances will be evaluated and reported accordingly.

The implementation of the corrective actions and consequence management will be followed up during the final audit.

**13. Local content procurement not in accordance with the National Treasury Designated Sector Instruction notes**

**Requirements**

Public Finance Management Act section 40(1)(a)(i) state that: *“The accounting officer for a department must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards;*

National Treasury Designated Sector Instruction Notes Paragraph 3.1 and 4.1 for textile, clothing, leather and footwear states the following “*The stipulated minimum threshold percentages for local content and production for the textiles, clothing, leather and footwear sector is 100%.* *Bids in respect of textile, clothing, leather and footwear must contain a specific bidding condition that only locally produced or locally manufactured textile, clothing, leather and footwear from local raw materials or input will be considered.”*

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.”*

Preferential Procurement Regulation 2011 paragraph 9(1) states the following state that *“An organ of state must, in the case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with a specific tendering condition that only locally produced goods, service or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.”*

Preferential Procurement Regulation 2017 paragraph 8 (2) and 8(5) states the following “*An organ of the state must, in case of designated sector, advertise the invitation to tender in 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.* *A tender that fails to meet the minimum threshold for local production and content is an unacceptable tender.”*

**Nature**

**Issue 1**

During the audit of procurement management, we noted 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. The form was not correctly completed by the winning bidder. There is no indication of what percentage of local content they will supply.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Tender/RFQ number** | **Supplier Name** | **Description Of Goods Or Services** | **Amount** |
| 1 | N/A | Danira Enterprise | Protective clothing | 74 960 |

**Issue 2**

During the audit of procurement management, we couldn’t obtain evidence that DTI (Department of Trade and Industry) was notified of the successful bidders and the value of the contract. Furthermore, we could obtain evidence that DTI was provided with copies of the contracts and the bidder's SBD 6.2 certificate. The contracts listed below had the local content as the requirement:

| **No** | **Tender/RFQ number** | **Supplier Name** | **Description Of Goods Or Services** | **Amount (R)** |
| --- | --- | --- | --- | --- |
| 1 | N/A | Danira Enterprise | Protective clothing | 74 960 |
| 2 | N/A | Black Brain Investments | Protective clothing (Conti suits) | 27 010 |
| 3 | DBN144/2019 | Shazinjomane Trading Enterprises (pty) Ltd | Protective clothing | 1 512 000 |
| 4 | DBN977/2019 | Coldpoint Aircon Services cc | Protective clothing | 2 274 345 |
| 5 | DBN 964/2019 | Boiler Engineers Themihlase JV | Protective clothing | 3 900 110 |
| 6 | DBN121/2019 | Mapumulo SM Trading Enterprise | Protective clothing | 6 252 381 |
| 7 | DBN 965/2019 | Cold Point Aircon Services | Protective clothing | 2 558 044 |
| 8 | DBN950/2019 | Umzulu Trading Enterprise cc | Steel Products and Components  Power and telecoms Cabling  Valve Products & Actuators  Fire Protection Installation  Gas Suppression Installation | 39 978 976 |
| 9 | DBN20/11/01 | Musani Trading Enterprise (Pty) Ltd | Protective clothing | 13 815 427 |

**Impact**

* Issue 1: This results in an irregular expenditure of R74 960 as the procurement for item 1 did not comply with the requirements of the National Treasury Designated Sector Instructions
* Issue 2: This also results in a limitation of scope as no evidence was provided that the DTI was notified of the successful bidder and the value of the contract for local content.

**Internal control deficiency**

*Financial and Performance management*

Management did not review and monitor compliance with applicable legislation.

Lack of review of the bidding documents by senior officials before the bidding documents are sent to potential bidders. Furthermore, management didn’t ensure that complete information is available for audit purposes.

**Recommendation**

Bidding documents should be reviewed by senior officials before the bidding documents are sent to potential bidders

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

Management should provide evidence within 3 working days that the DTI was notified of the successful bidder and the value of the contract for local content

**Management response**

**Issue 1**

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

The omission of stipulating minimum threshold for Local Content and Production on PA 36 paragraph 2 for the textile and clothing industry is oversight.

However this oversight does not give rise to irregular expenditure as annexure “C” of the same document, fully completed and signed by the service provider, clearly stipulates the 100% local content in line with the Local content and production for textile and clothing industry. The evaluation was done based on the same requirement, i.e. 100% local content. The award was also reported as such to Department of Trade and Industry see attached proof of email.

**Issue 2**

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

This service was awarded to on 31 March 2021 to Black Brain Investments and the order was issued on 31 March 2021, however on 08 April 2021 the contractor confirmed in writing that they won’t able to deliver due to unseen circumstances. A letter dated 8 April 2021 is attached.

Danira Enterprises Pty Ltd at an amount of R 74 960.00 was report to the Department of Trade and Industry see attached proof of email.

Proof of reporting to DTI for DBN977/2019, DBN964/2019, DBN144/2019, DBN121/2019, DBN965/2019, DBN950/2019, and DBN20/11/01 has been retrieved from the emails that were sent. See attached supporting documents. This is the first time the department has become aware of this finding as it was never raised and presented by Auditor General at the exit meeting. Had this been raised for the above bids, proof would have been provided to avoid limitation of scope.

**Auditor’s conclusion**

**Issue 1**

Management responses did not address the issue raised that the bidder did not appropriately complete the form and also did not calculate and write the percentage of the local content to be supplied. The impact of the finding is determined at firm level to encourage organ of states to comply with the regulations and instructions notes for local content. Therefore, this finding is considered valid and will be evaluated and reported accordingly.

**Issue 2**

Management responses noted. However, the attachments management is referring to were not attached in the email. Therefore, the finding is considered valid and will be evaluated and reported accordingly.

**14. Requested information not provided**

**Requirements**

Section 41 of the PFMA requires that *‘An accounting officer for a department, trading entity or constitutional institution 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.'*

*The Engagement letter paragraph 68 states that “Requests for information will be submitted via email to the relevant person responsible, as assigned by the Accounting Officer for distribution and a carbon-copy (CC) will be forwarded to the CFO and the Accounting Officer (management):*

* *Management has* ***3 working days*** *to submit the information requested from the date the request was made.*
* *Failure to submit the information requested within the agreed timeframe will result in an audit finding and if material, individually or in aggregate, will impact the audit opinion.”*

**Nature**

During the interim audit of Property Management Trading Entity (PMTE) in the Mthatha region, the following requested information was not submitted to the auditors within the required timeframe and is to date still outstanding:

|  |  |  |  |
| --- | --- | --- | --- |
| **RFI no.** | **RFI issue date** | **RFI due date** | **Information outstanding** |
| PMTE RFI 01 - SCM - Mthatha | 20-Apr-21 | 22-Apr-21 | * **Annexure A – Tenders:** * MTH35/2018 (Bidding documents for New Boss Construction). * MTH68/2018 (Bidding documents of BHS Building Construction and Pearlokuhle JV Bayanda). * Annexure C – Contract management   WCS051777 (All information is still outstanding. Only completion certificate was provided). |

**Impact of the finding**

This results in a limitation of scope.

Furthermore, inefficiencies are noted in the audit due to the fact that additional time has to be spent following up on outstanding information that is overdue, thus impacting on the budget of the audit.

**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.

The above is due to:

A lack of appropriate internal controls regarding proper filling and record keeping to ensure that documentation is easily and readily available for audit purposes;

Not all officials understanding the audit process and the importance of submitting the requested documentation within the required timeframe.

**Recommendation**

Management should ensure that:

Appropriate internal controls regarding proper filling and record keeping are in place to ensure that documentation is easily and readily available;

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

Procedures are put in place to enforce compliance with internal controls regarding submission of information as requested by the AGSA within the agreed upon timeframe as per the engagement letter;

Priority is given to the outstanding information as indicated above and that such information is submitted without further delay.

**Management response**

**Auditor’s conclusion**

Awaiting management response

**BBF Safety Group Pty (Ltd) – Supply and delivery of Masks and Gloves**

**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…”*

National Treasury Designated Sector Instruction Notes Paragraph 3.1 and 4.1 for textile, clothing, leather and footwear states the following “*The stipulated minimum threshold percentages for local content and production for the textiles, clothing, leather and footwear sector is 100%.* *Bids in respect of textile, clothing, leather and footwear must contain a specific bidding condition that only locally produced or locally manufactured textile, clothing, leather and footwear from local raw materials or input will be considered.”*

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.”*

Preferential Procurement Regulation 2017 paragraph 8 (2) and 8(5) states the following “*An organ of the state must, in case of designated sector, advertise the invitation to tender in 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.* *A tender that fails to meet the minimum threshold for local production and content is an unacceptable tender.”*

Treasury Regulation 16A6.3 state that “The accounting officer must ensure that the bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000.

Preferential Procurement Regulations 2017 paragraph 6.1states that *“The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes...”*

Preferential Procurement Regulations 2017 paragraph 6.8states that “.... the contract must be awarded to the tenderer that scoring the highest points”

1. Section 8.5 in Table 3 of the Standard Operating Procedures for the SCM Acquisition of goods and services states that *“evaluate quote (A minimum of three (3) quotes is required for competitiveness):*

* *If the quote is < R30 000 consider the lowest acceptable offer*
* *If the quote is > R30 000 consider price, preference and award to highest scoring tenderer; and*
* *If less than three (3) quotes received and it is impossible to obtain more quotations, prepare a motivation to the delegated authority to deviate from standard SCM processes”.*

**Nature**

**Issue 01**

During the audit of quotation process, we noted the following issues on the preferential points calculation:

BBF Safety Group Pty (Ltd)

The suppliers were invited to quote for the supply and deliver of masks and gloves for the Mthatha regional office and four (4) quotations were received on 06 November 2020. However, these quotations were not evaluated in term of the preference point system as required by the Preferential Procurement Regulations 2017. Management selected the winning bidder based on the supplier that quoted the lowest price without calculating the points for price and BEE.

Zwelibuzwe Landscaping Pty (Ltd)

The suppliers were invited to quote for the supply and delivery of cleaning material at Mthatha Magistrate Offices and five (5) quotations were received on 15 December 2020. However, these quotations were not evaluated in term of the preference point system as required by the Preferential Procurement Regulations 2017. Management selected the winning bidder based on the supplier that quoted the lowest price without calculating the points for price and BEE.

Based on the auditor’s recalculation of both quotations using the Preferential Procurement Regulations 2017, we noted that the quotation would have still been awarded to BBF Safety Group Pty (Ltd) and Zwelibuzwe Landscaping as both of these suppliers scored the highest point. The non-compliance will however still be reported.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Tender/RFQ number** | **Supplier Name** | **Description Of Goods Or Services** | **Amount (R)** |
| 1 | N/A | BBF Safety Group Pty (Ltd) | Masks and Gloves | 1. 714 |
| 2 | N/A | Zwelibuzwe Landscaping | Supply and deliver cleaning material for  Mthatha Magistrate Offices | 359 255 |
| **Total** | | | | **461 969** |

**Issue 02**

The quotations documents for the supply and delivery of masks and gloves did not specify the minimum threshold for local production and content required. The winning bidder, BBF Safety Group Pty (Ltd), did not submit the declaration on local production and content (PA-36).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Tender/RFQ number** | **Supplier Name** | **Description Of Goods Or Services** | **Amount (R)** |
| 1 | N/A | BBF Safety Group Pty (Ltd) | Masks and Gloves | 1. 714 |

**Impact**

This results in non-compliance with Preferential Procurement Regulations 2017 as the outcome of the evaluation would not have changed the winning bidder.

This results in an irregular expenditure of R102 714 as the procurement did not comply with the requirements of the National Treasury Designated Sector Instructions

**Internal control deficiency**

*Financial and Performance management*

Management did not review and monitor compliance with applicable legislation.

The above is due to;

Lack of review of the bidding documents by senior officials before the bidding documents are sent to potential bidders.

A lack of appropriate internal controls regarding the enforcement of standard operating procedures as per the SCM policy and applicable laws and regulations.

Lack of understanding of SCM regulations and policies by officials involved in the procurement processes.

Lack of consequence management resulting in staff not adhering to SCM regulations and policies as well as strict procurement management procedures.

**Recommendation**

Bidding documents should be reviewed by senior officials before the bidding documents are sent to potential bidders

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

Management should ensure that training on the SCM regulations and policies is provided to all officials involved in the procurement processes.

Management should ensure that consequence management processes are instituted against employees for non-adherence to the standard operating procedures.

**Management response**

**Auditor’s conclusion**

Awaiting management’s response

**Classification of procurement as an emergency is not justifiable**

**Requirements**

Section 38 (1)(a)(iii) of the PFMA requires that ‘The accounting officer for a department, trading entity or constitutional institution must ensure that the department, trading entity or constitutional institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.'

Treasury Regulation 16A6.4 requires that *“If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.”*

In terms of National Treasury Instruction no. 3, paragraph 8 of 2016/17 *“DEVIATIONS FROM NORMAL BIDDING PROCESS”* “*The Accounting Officer/Accounting Authority must only deviate from inviting competitive bids in cases of emergency and sole supplier status.**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. Sole source procurement may occur when there is evidence that only one supplier possesses the unique and singularly available capacity to meet the requirements of the institution.**The Accounting Officer/Accounting Authority must invite as many suppliers as possible and select the preferred supplier using the competitive bid committee system.**Any other deviation will be allowed in exceptional cases subject to the prior written approval from the relevant treasury.”*

National Treasury regulation 16A3.2 states that “*A supply chain management system must: be fair, equitable, transparent, competitive and cost effective*”

Section 1 of the standard operating procedures for the procurement of goods and services defines ‘*emergency’ as “a serious, unforeseen or unexpected situation defect that poses an immediate risk to health, life, property or environment, which calls for an immediate action to avoid such a dangerous or perilous condition*.”

Section 7.1 of the standard operating procedures for the procurement of goods and services through quotations further states “*Request Approval to obtain the use/nomination of the single source, Prepare SCM bid documentation to the extent applicable, PA32, PA10, PA11, PA29, PA16 (for transactions above R30 000), PA03 and Specification/ TOR, (PA36 if applicable). Single Source quote applies where a specific service provider is approached other than the competitive process for various reasons, which must be justifiable and approved by the delegated authority (RM at the Region or CD: SCM in Head Office).*

**Nature**

**Issue 1**

During the audit of quotation for Daltech Trading (Pty) Ltd for the Repair a generator that is not working at Lusikisiki New SAPS amounting to R55 926, we noted the following:

* The fault of the generator was reported on 04 April 2020
* Isivungu vungu Civils was appointed on 07 April 2020 to repair the generator however the deviation to procure the supplier on an emergency was approved on 21 April 2020. However, the Isivungu vungu Civils declined the appointment as they didn’t have the materials to repair the generator at that time.
* Daltech Trading (Pty) Ltd was only appointed on 26 November 2020 to repair the generator which was 7 months after the deviation was approved.
* The generator was only repaired on 17 December 2020 as indicated on the job cards.
* Therefore, the reasons for the deviation are not justifiable due to the time taken from deviation approval to repairing the generator. This indicate that the repair of the generator was not urgent and there was sufficient time to follow the normal procurement processes.

**Issue 2**

During the audit of quotations at Mthatha region, we noted that Vembani James Construction (Pty) Ltd was appointed on emergency basis to Move the park homes from sever ponds yard to prison at Mqanduli prison for an amount of R31 956, however the reasons this was an emergency were not stated. Therefore, we could not determine whether it was justifiable to deviate from the quotation process.

**Impact of the finding**

Non-compliance with the PFMA section 38 and National treasury instruction note 3 of 2016/2017.

The amount paid of R87 882 (55 926 + 31 956) on the above deviations will result in irregular expenditure.

**Internal control deficiency**

Financial and performance management

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

The above is due to:

A lack of appropriate internal controls regarding the enforcement of standard operating procedures as per the SCM policy and applicable laws and regulations.

Lack of understanding of SCM regulations by officials involved in the procurement processes.

Lack of consequence management resulting in staff not adhering to SCM regulations and policies as well as strict procurement management procedures.

**Recommendation**

Management should ensure that:

Appropriate internal controls are in place to ensure quotations are evaluated based on applicable laws and regulations ensuring that these transactions do not result in irregular expenditure;

Training on the SCM regulations and policies is provided to all officials involved in the procurement processes.

Consequence management processes are instituted against employees for non-adherence to the standard operating procedures.

**Management response**

**Auditor’s response**

Awaiting management’s response

**Tender number: MTH68/2018 - Coffee Bay SAPS: Installation of septic tank, generator set and supply electrical upgrade (Purple Pansy 101 CC - R1 763 571,00)**

**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…”*

Preferential Procurement Regulations 2017 regulations paragraph 1 states that “Proof of B-BBEE status level of contributor means; (a) the B-BBEE level certificate issued by an authorised body or person, (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice”

Preferential Procurement Regulations 2017 regulations paragraph 6.3 states that “a tenderer must submit proof of its B-BBEE status level of contributor”

Preferential Procurement Regulation 2017 paragraph 6(4) states that *“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 may only score points out of 80 for price; and scores 0 out of 20 for B-BBEE.”*

Treasury regulation 16A6.3 (d) states that *“awards are published in the Government Tender Bulletin and other media by which the bids were advertised.”*

National Treasury Instruction No 1 of 2015/16 paragraph 4.1 and 4.2 states that:

* *“4.1 The Accounting Officers of PFMA compliant institutions must through the relevant treasury publish the awards of all advertised competitive bids on the eTender Publication Portal by taking cognisance of the requirements in paragraph 4.2”*

National Treasury Instruction No4A of 2016/17 paragraph 4.3 states that “Proof of registration, certification or accreditation with any industry or board not provided by the CSD must be verified through the submission of physical documentation and verified through manual procedures”

**Nature**

**Issue 1 – Non-responsive tenders not disqualified**

During the audit of tender number: MTH68/2018 at Mthatha region, we noted the following:

* The tender invitation required bidders to submit completed and signed PA 36: Declaration for Local content and production.
* However, none of the bidders submitted the PA36 – Declaration for local content and production.
* Therefore, all the bidders should have been considered non-responsive and disqualified.
* However, management did not disqualify the bidders and instead evaluated the bids further on preference point system.

**Issue 2: Valid proof of BBBEE status levels not submitted by bidders**

During the audit of tenders, we noted that the winning bidder (Purple Pansy 101 CC) was awarded 20 points for BBBEE based on the BBBEE level stated on the CSD report. The BBBEE certificate provided during the audit was issued long after the award was made.

* We inspected the bidding documents submitted by the bidders and noted that Purple Pansy 101 CC did not submit proof of BEE status level however the bidder was awarded points for BBBEE as per the evaluation score card.
* Upon enquiry with management it was not that the points were awarded with reference to the BBBEE level stated in the CSD report submitted by the bidder.
* Upon realising that it was incorrect to award the bidder points for BBBEE with reference to the CSD report, management sourced and submitted a non-certified copy of a BBBEE certificate issued on 02 October 2020 after the award was made on 17 September 2020.
* This is not in compliance with the PPR 2017 as no points should have been awarded to the bidder due to non-submission of valid proof of BBBEE status level.
* This would have changed the outcome of the evaluation as Conquer Business Enterprise would been the second highest scoring bidder to be recommended for technical and commercial risk assessment after BHS Building Construction was eliminated (based on technical and commercial risk assessment conducted.

| **Details** | | | **Auditors recalculation** | | | **Client calculation** | | | **Difference** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **No** | **Bidder** | **Price tendered** | **Points for price** | **B-BBEE** | **Total** | **Points for price** | **B-BBEE** | **Total** |
| 1 | BHS Building Construction | 1 661 740,80 | 80,00 | 20 | 100,00 | 80,00 | 20 | 100,00 | - |
| 2 | Conquer Business Enterprise | 1 965 551,25 | 65,37 | 20 | **85,37** | 65,37 | 20 | 85,37 | - |
| 3 | Purple Pansy 101 CC | 1 763 571,00 | 75,10 | - | 75,10 | 75,10 | 20 | **95,10** | (20,00) |
| 4 | Matshathula Agencies | 1 994 340,35 | 63,99 | 20 | 83,99 | 63,99 | 20 | 83,99 | - |
| 5 | Khamina Civils | 2 021 947,25 | 62,66 | 20 | 82,66 | 62,66 | 20 | 82,66 | - |
| 6 | Twizza Civils | 2 201 616,95 | 54,01 | 20 | 74,01 | 54,01 | 20 | 74,01 | - |
| 7 | Zibele Construction | 2 761 232,80 | 27,07 | 20 | 47,07 | 27,07 | 20 | 47,07 | - |
| 8 | AMS Rhudulu Projects | 3 733 840,99 | (19,76) | 20 | 0,24 | (19,76) | 20 | 0,24 | - |

***NB:*** *BHS Building Construction was disqualified on risk assessment which is performed after the preference point system was done.*

**Issue 3 – Award not published on the** **eTender Publication Portal**

During the audit of tenders at Mthatha region, we noted that the award for the tender listed below was not published on the eTender Publication Portal:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Tender number** | **Project Description** | **Supplier Name** | **Award Contract Value** |
| 1 | MTH68/2018 | Coffee Bay SAPS: Installation of septic tank, generator set and supply electrical upgrade | Purple Pansy 101 CC | R1 763 571 |

**Impact of the finding**

This results in irregular expenditure.

Expenditure that will be incurred in future for this contract will be recorded as irregular expenditure.

**Internal control deficiency**

*Financial and Performance Management*

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

This is due to:

* A lack of appropriate internal controls regarding the enforcement of standard operating procedures as per the SCM policy and applicable laws and regulations.
* Lack of understanding of SCM regulations and policies by officials involved in the procurement processes.
* Lack of consequence management resulting in staff not adhering to SCM regulations and policies as well as strict procurement management procedures.
* Lack of review of the bidding documents by senior officials before the bidding documents are sent to potential bidders to ensure that all the relevant documentation is provided to bidders to complete and return.

**Recommendation**

Management should ensure that:

Appropriate internal controls are in place to ensure quotations are evaluated based on applicable laws and regulations ensuring that these transactions do not result in irregular expenditure;

Training on the SCM regulations and policies is provided to all officials involved in the procurement processes.

Consequence management processes are instituted against employees for non-adherence to the standard operating procedures.

Bidding documents should be reviewed by senior officials before the bidding documents are sent to potential bidders to ensure that all the relevant documentation is provided to bidders to complete and return.

**Management response**

**Auditors response**

Awaiting management response.

**Tender number: MTH35/2018 - Ngcobo Magistrate office: condition based maintenance (Mbokotho investment T/A ZM construction – R25 977 936,9)**

**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…”*

Preferential Procurement Regulations 2017 para. 6(5) and 12(3) states that “*A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.* *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 a contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.”*

National Treasury Instruction No 1 of 2015/16 paragraph 3.1 states that *“with effect from 01 May 2015, accounting officers and authorities of PFMA compliant institutions must, through the relevant treasury, advertise all bids of their respective institutions on the e-tender publication Portal”*

**Nature**

**Issue 1: Non-responsive tenders not disqualified**

During the audit of tender number: MTH35/2018 at Mthatha region, we noted the following:

* The tender invitation required bidders to comply with Local Content and production as the tender specifications included local content and production products such as: Firefighting equipment, Valves, Electric cables, Steel, Overalls etc.
* However, none of the bidders submitted the PA36 – Declaration for local content and production.
* Therefore, all the bidders should have been considered non-responsive and disqualified.
* However, management did not disqualify the bidders and instead evaluated the bids further on preference point system.
* Furthermore, the tender invitation did not specify the minimum threshold for local content and production.

**Issue 2: Highest scoring bidder was unfairly disqualified**

During the audit of tender number: MTH35/2018 at Mthatha region, we noted the following:

* The tender invitation included a requirement that the recommended bidder will be evaluated on technical and commercial risk to determine whether the risk posed is acceptable for the department.
* The New Boss Construction was evaluated on technical and commercial risk after being recommended by the BEC for scoring the highest points on preference point system.
* The risk assessment performed found that their price was low (16% lower than tender estimate) and might not be able to carry the project successfully at that price.
* The bidder was contacted by the BEC to confirm how they are going to complete the project successfully at the price and the bidder provided written response that they will obtain discounts for bulk buying materials and this will carter for under-pricing of certain items in the bill of quantities.
* However, the BEC still disqualified the bidder despite the bidder confirming that they will be able to complete the project at the tendered amount.
* Therefore, the bidder was unfairly disqualified and resulted in the contract being awarded to Mbokotho investment T/A ZM construction for an amount of R25 977 936,90 which is R5 212 079,5 more than the amount tendered by New Boss Construction of R20 765 857,40.

**Issue 3: Highest scoring bidder was unfairly disqualified**

During the audit of tender number: MTH35/2018 at Mthatha region, we noted the following:

* The tender invitation included a requirement that the recommended bidder will be evaluated on technical and commercial risk to determine whether the risk posed is acceptable for the department.
* The winning bidder (Mbokotho Investment T/A ZM construction) was evaluated on technical and commercial risk and the risk assessment found that the bidder is behind in one of the projects they are currently working on and one of the two reference contacted did not recommend the bidder for appointment.
* However, the BEC still recommended the bidder for appointment and was approved by the BAC.
* Therefore, the decision to recommend the bidder was not justifiable as there was sufficient reasons to indicate that the bidder pose an unacceptable risk to the department.

**Issue 4: Subcontracting more than 25% of the contract**

During the audit of tender number: MTH35/2018 at Mthatha region, we noted that the following:

* One of the losing bidders (Magubane Plant and Contractors) indicated on the PA16 – Preference claim form that they will subcontract 35% of the contract however they did not indicate the name and the BBBEE level of the subcontractor.
* As per paragraph 12(3) of the PPR, a bidder may not be awarded points for B-BBEE status level of contributor if they intend subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the bidder qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
* Therefore, we are unable to determine whether the bidder should have been awarded points for BEE as they did not include the BBBEE level of the bidder they intend to subcontract the contract to.

**Issue 5 – Bid not advertised on the eTender Publication Portal**

During the audit of tenders at Mthatha region, we noted that the tender listed below was not advertised on the eTender Publication Portal:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Tender number** | **Project Description** | **Supplier Name** | **Award Contract Value** |
| 1 | MTH35/2018 | Ngcobo Magistrate office: Condition based maintenance | Mbokotho Investment T/A ZM Construction | R25 977 936 |

**Impact of the finding**

This results in irregular expenditure.

Expenditure that will be incurred in future for this contract will be recorded as irregular expenditure.

**Internal control deficiency**

*Financial and Performance Management*

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

This is due to:

* A lack of appropriate internal controls regarding the enforcement of standard operating procedures as per the SCM policy and applicable laws and regulations.
* Lack of understanding of SCM regulations and policies by officials involved in the procurement processes.
* Lack of consequence management resulting in staff not adhering to SCM regulations and policies as well as strict procurement management procedures.
* Lack of review of the bidding documents by senior officials before the bidding documents are sent to potential bidders to ensure that all the relevant documentation is provided to bidders to complete and return.

**Recommendation**

Management should ensure that:

Appropriate internal controls are in place to ensure quotations are evaluated based on applicable laws and regulations ensuring that these transactions do not result in irregular expenditure;

Training on the SCM regulations and policies is provided to all officials involved in the procurement processes.

Consequence management processes are instituted against employees for non-adherence to the standard operating procedures.

Bidding documents should be reviewed by senior officials before the bidding documents are sent to potential bidders to ensure that all the relevant documentation is provided to bidders to complete and return.

**Management response**

**Auditors response**

Awaiting management’s response

**Awards made to suppliers with non-compliance tax statuses**

**Requirements**

Section 38 (1)(a)(iii) of the PFMA requires that *‘The accounting officer for a department, trading entity or constitutional institution must ensure that the department, trading entity or constitutional institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.'*

Treasury Regulations issued in terms of section 76 of the PFMA updated 15 November 2013 paragraph 16A9.1 (d) states that *“The accounting officer must reject a bid from a supplier who fails to provide written proof from South African Revenue Service that the supplier has no tax obligation or has made arrangement to meet outstanding tax obligation”*

National Treasury Instruction No. 09 of 2017/2018 paragraph 3.4 states that “*Where a bidder does not submit a tax compliance status PIN buy provides a Central Supplier Database Number, the accounting officers must utilise the Central Supplier Database Number via Central Supplier Database website to access the supplier records and to verify the bidders tax compliance status. A printed screen view at the time of verification must be attached to the supplier records for audit purposes.”*

National Treasury Instruction No. 09 of 2017/2018 paragraph 4.1 states that “*Designated employee(s) must verify the bidders tax compliance status prior to the awarding of price quotations or competitive bids.”*

National Treasury Instruction No. 09 of 2017/2018 paragraph 4.2 states that *“Where the recommended bidder is not tax compliant, the bidder must be notified in writing of the 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 with proof of tax compliance status which should be verified via Central Supplier Database or e-Filing.”*

National Treasury Instruction No. 09 of 2017/2018 paragraph 4.3 states that *“Should the recommended bidder fail to provide written proof of their tax compliance status in terms of paragraph 4.2 above, accounting officers must reject the bid submitted by the bidder.”*

**Nature**

During the audit of quotations at Mthatha region, we noted that the suppliers listed in the table below were non-compliance with tax when awards were made to them:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Supplier Name** | **Non-compliant period** | **Date of award** | **Amount (R)** |
| 1 | Makabongwe Security Services | From 17 December 2019 to 30 October 2020 | 30 September 2020 | 384 999 |
| 2 | Sikhosonke Trading and Investment (Pty) Ltd | From 05 October 2020 to 25 January 2021 | 11 November 2020 | 170 000 |

**Impact of the finding**

This results in irregular expenditure of R554 999 (R384 999 + R170 000).

**Internal control deficiency**

*Financial and performance management*

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

The above is due to:

Lack of understanding of SCM regulations and policies by officials involved in the procurement processes.

Management did not verify the tax compliance status of the suppliers prior to awards.

**Recommendation**

Management should ensure that:

Training on the SCM regulations and policies is provided to all officials involved in the procurement processes.

Management should ensure that tax compliance statuses of suppliers are verified on the CSD system prior to awards.

**Management response**

**Auditors Conclusion**

Awaiting management’s response