

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION
IN THE APPOINTMENT OF SERVICE PROVIDERS AND EMPLOYEES BY THE
STATE INFORMATION TECHNOLOGY AGENCY (SITA).**

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Executive Summary

- (i) This is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- (ii) The report communicates the findings and appropriate remedial action taken by the Public Protector in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of maladministration in the appointment of service providers and employees by the State Information Technology Agency (SITA).
- (iii) The complaint was lodged by Mr Ratsie Ismael Kgatle (the Complainant) at the Head Office of the Public Protector South Africa during 2018.
- (iv) In the main, the Complainant requested an investigation of the following allegations concerning the conduct of SITA: -
- (v) The contracts irregularly awarded to Forensic Data Analysts (Pty) Ltd; Core Focus (Pty) Ltd; Accenture (Pty) Ltd; Fidelity Security Services (Pty) Ltd; Parahelic CC and Jika Africa Advisory Services (Pty) Ltd.
- (vi) The contracts irregularly awarded to the firm of attorneys of Bowmans; Hewu Attorneys and Cyanre Digital Forensic Lab; and
- (vii) The irregular appointment of Mr Sithembele Senti as an Executive in the Chief Executive Officer's office; and Mr Kenneth Wienand as a Consultant in the office of the Chief Financial Officer.
- (viii) In essence, the Complainant contended that SITA's conduct regarding the foregoing allegations was unlawful, improper and constitutes maladministration.

(i) ISSUES IDENTIFIED AND INVESTIGATED

- (ix) Based on the analysis of the complaint, the following issues were identified for investigation.
- (a) Whether the appointment of Forensic Data Analysts (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
 - (b) Whether the appointment of Core Focus (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
 - (c) Whether the appointment of Accenture (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
 - (d) Whether the appointment of Fidelity Security Services (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
 - (e) Whether the appointment of Parahelic CC by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
 - (f) Whether the appointment of Jika Africa Advisory Services (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
 - (g) Whether the appointment of Bowmans Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.

- (h) Whether the appointment of Hewu Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- (i) Whether the appointment of Cyanre Digital Forensic Lab by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- (j) Whether the recruitment of Mr Sithembele Senti as an Executive in the Chief Executive Officer's office by SITA was not consistent with applicable prescripts regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration.
- (k) Whether the recruitment of Mr Kenneth Wienand in the office of the Chief Financial Officer by SITA was not consistent with applicable prescripts regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration.
- (x) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. The investigation process included the exchange of correspondence with SITA and the South African Police Services (SAPS), interviews with SITA officials, the evaluation and consideration of documents submitted by SITA and consideration and application of relevant laws and legal prescripts.
- (xi) Notices issued in terms of section 7(9) of the Public Protector Act were served on implicated officials during November 2021 to afford them the opportunity to respond.
- (xii) Responses were received during December 2021 and January to February 2022. These responses have been considered in this report.

- (xiii) The key laws and policies taken into account to determine if there was maladministration or improper conduct by SITA were the following: -
- (a) Constitution of the Republic of South Africa, 1996 (Constitution);
 - (b) Public Protector Act, 1994 (Public Protector Act);
 - (c) Public Finance Management Act, 1999 (PFMA);
 - (d) State Information Technology Agency Act, 1998 (SITA Act);
 - (e) The National Archives and Records Service of South Africa Act, 1996 and Regulation;
 - (f) Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities, issued in terms of the Public Finance Management Act, 1999 in March 2005 (Treasury Regulations);
 - (g) SITA Supply Chain Management Policies, dated 01 April 2015 (2015 SCM Policy) and 17 July 2017 (2017 SCM Policy);
 - (h) Delegations of Authority document approved by the Chief Executive Officer of SITA on 07 August 2015 (2015 DoA);
 - (i) Delegations of Authority document approved by the Chairperson of the Board of SITA on 16 May 2017 (2017 DoA);
 - (j) National Treasury Instruction Note 3 of 2016/2017 on preventing and combating abuse in the supply chain management system (Instruction Note 3 of 2016);

- (k) SITA Recruitment, Selection and Placement Policy and Procedures, dated 01 April 2012 (2012 Recruitment Policy or the Policy)
- (xiv) Having considered the evidence and information obtained during the investigation, the Public Protector makes the following findings: -

(a) Whether the appointment of Forensic Data Analysts (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration: -

- (aa) The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Forensic Data Analysts (Pty) Ltd is substantiated.
- (bb) SITA deviated from inviting competitive bids to appoint FDA. The deviation is however deemed to be irregular as it did not comply with applicable supply chain management prescripts.
- (cc) The deviated was not fair, equitable, transparent, competitive or cost-effective, as contemplated by section 217 of the Constitution and section 51 of the Public Finance Management Act, 1999 (PFMA).
- (dd) SITA's conduct was improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

(b) Whether the appointment of Core Focus (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration: -

- (aa) The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Core Focus (Pty) Ltd is substantiated.
- (bb) SITA appointed Corefocus even though it did not meet the minimum mandatory requirements as per the bid documents for the tender.
- (cc) SITA proceeded to extend/vary the contract awarded to Corefocus during June 2017 without following the prescribed supply chain management prescripts. The procurement and subsequent extension or variation of the contract are accordingly deemed to be irregular.
- (dd) The procurement and extension/variation of the contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.
- (ee) SITA's conduct was improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

(c) Whether the appointment of Accenture (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration: -

- (aa) The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Accenture (Pty) Ltd is substantiated.
- (bb) SITA procured the services of Accenture and proceeded to extend/vary the contract without following the prescribed supply chain management prescripts and is deemed to be irregular. SITA conceded in its response

to the allegations during the investigation that it incurred irregular expenditure as a result of the contract awarded to Accenture.

(cc) The procurement and extension/variation of the contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.

(dd) SITA's conduct was improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

(d) Whether the appointment of Fidelity Security Services (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration: -

(aa) The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Fidelity Security Services (Pty) Ltd is substantiated.

(bb) SITA did not dispute in its response to the allegations that the appointment of Fidelity was not in line with procurement processes and is considered to be irregular.

(cc) SITA also stated that it incurred irregular expenditure and fruitless and wasteful expenditure as a result of the contract.

(dd) The appointment of Fidelity was not fair, equitable, transparent, competitive or cost-effective, as is required by section 217 of the Constitution.

(ee) SITA's conduct was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

(e) Whether the appointment of Parahelic CC by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration: -

(aa) The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Parahelic CC is substantiated.

(bb) SITA deviated from inviting competitive bids and utilised a single source procurement strategy to appoint Parahelic. The reasons provided by SITA for the appointment did not however fall within the exceptional circumstances envisioned for single source procurement as is required by SITA's supply chain management prescripts.

(cc) SITA proceeded to extend/vary the contract awarded to Parahelic without following the prescribed supply chain management prescripts. The procurement and subsequent extension or variation of the contract are accordingly irregular.

(dd) The procurement and extension/variation of the contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.

(ee) SITA's conduct was improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

(f) Whether the appointment of Jika Africa Advisory Services (Pty) Ltd by SITA was not consistent with applicable supply-chain

management prescripts and whether such conduct constitutes improper conduct or maladministration: -

- (aa) There is insufficient information to draw a conclusion on the allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Jika Africa Advisory Services (Pty) Ltd.
 - (bb) SITA did not provide documentation relating to the procurement of Jika, including how the contract was budgeted for and approved.
 - (cc) Despite requests to provide the required documents, SITA did not do so.
 - (dd) No conclusion can be drawn on the allegation that SITA incurred irregular expenditure by exceeding the approved budget for the contract, without obtaining prior approval from National Treasury.
 - (ee) Under the circumstances, SITA did not ensure that it maintained appropriate records relating to the procurement of Jika and that such records received appropriate physical care.
 - (ff) SITA's conduct relating to the maintenance of records for the procurement of Jika was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.
- (e) Whether the appointment of Bowmans Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration: -**

- (aa) The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Bowmans Attorneys is substantiated.
- (bb) SITA conceded in its response to the allegation that the appointment of Bowmans was not in line with procurement prescripts.
- (cc) SITA proceeded to extend/vary the contract awarded to Bowmans without following the prescribed supply chain management prescripts. The procurement and subsequent extension or variation of the contract is accordingly deemed to be irregular.
- (dd) The procurement and extension/variation of the contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.
- (ee) SITA's conduct was improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.
- (f) Whether the appointment of Hewu Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration: -**
 - (aa) There is insufficient information to draw a conclusion on the allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Hewu Attorneys for the provision of legal service.
 - (bb) SITA did not provide complete documentation relating to the procurement of Hewu, including how the contract was budgeted for and approved.

- (cc) Despite requests to provide the required documents, SITA did not do so.
 - (dd) Under the circumstances, SITA did not ensure that it maintained appropriate records relating to the procurement of Hewu and that such records received appropriate physical care.
 - (ee) It was noted during the investigation that SITA made payments to Hewu for invoices submitted for work done after the contract between the two entities had come to an end.
 - (ff) The Public Protector accepts SITA's explanation as reasonable under the circumstances. The invoices related to instructions given to Hewu during the contract validity period which had not been completed.
 - (gg) It would not have been practical for SITA to appoint new attorneys through a competitive bidding process as this would have created further delays and SITA incurring expenditure resulting from a fresh bidding process and to brief new attorneys on documents and processes initiated by Hewu.
 - (hh) SITA is however cautioned to account for such variables in its procurement planning going forward.
 - (ii) SITA's conduct relating to the maintenance of records for the procurement of Hewu was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.
- (g) Whether the appointment of Cyanre Digital Forensic Lab by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration: -**

- (aa) The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Cyanre Digital Forensic Lab is substantiated.
- (bb) The evidence indicates that SITA deviated from inviting competitive bids to appoint Cyanre. The deviation is however deemed to be irregular as it did not comply with applicable supply chain management prescripts.
- (cc) The contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.
- (dd) SITA's conduct was improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

(h) Whether the recruitment of Mr Sithembele Senti as an Executive in the Chief Executive Officer's office by SITA was not consistent with applicable prescripts regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration: -

- (aa) The allegation that the recruitment of Mr Sithembele Senti as an Executive in the Chief Executive Officer's office by SITA was not in accordance with applicable prescripts regulating the recruitment and selection of employees of SITA is substantiated.
- (bb) The process followed by SITA in the recruitment of Mr Senti to the position of Executive in the CEO's office was not in compliance with prescripts regulating the recruitment and selection of employees of SITA and was therefore irregular.

- (cc) There is no indication from the evidence that the recruitment of Mr Senti was the result of a process of selection which included advertising, shortlisting, panel interviews, recommendations and approvals as is required by SITA's recruitment policy.
- (dd) Mr Senti's contract of employment was extended through memoranda (memos) even though the Board had approved the recruitment of an Executive: Multi-Stakeholder Management for a period of 12 months.
- (ee) The process followed in the recruitment of Mr Senti was not justifiable, equitable, transparent and fair as is required by the recruitment policy as other candidates were not given an opportunity to contest for the position.
- (ff) The deviation from the provisions of the recruitment policy in recruiting Mr Senti was also not in the best interests of SITA as is required by the policy as it unjustifiably prevented a fair and competitive recruitment process from taking place.
- (gg) SITA's conduct in recruiting Mr Senti therefore was improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.
- (i) Whether the recruitment of Mr Kenneth Wienand in the office of the Chief Financial Officer by SITA was not consistent with applicable prescripts regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration: -**
 - (aa) The allegation that the recruitment of Mr Kenneth Wienand in the Chief Financial Officer's office by SITA was not in accordance with applicable prescripts regulating the recruitment and selection of employees of SITA is substantiated.

- (bb) Similar to the appointment of Mr Senti, the process followed by SITA in the recruitment of Mr Wienand in the CFO's office was not in compliance with the prescripts regulating the recruitment and selection of employees of SITA and is deemed to be irregular.
 - (cc) Mr Wienand was appointed by SITA without any process of advertising, shortlisting, panel interviews, recommendations and approvals as is required by the recruitment policy.
 - (dd) The process followed in the recruitment of Mr Wienand was not justifiable, equitable, transparent and fair as is required by the recruitment policy as other candidates were not given an opportunity to contest for the position.
 - (ee) The deviation from the provisions of the policy in recruiting Mr Wienand was also not in the best interests of SITA as is required by the policy as it unjustifiably prevented a fair and competitive recruitment process.
 - (ff) SITA's conduct in recruiting Mr Wienand was improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.
- (xv) The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following: -
- (a) **The Accounting Authority of SITA: -**
 - (aa) Ensures that SITA's SCM Management frequently monitors compliance in line with section 57(a) – (c) of the Public Finance Management Act, 1999 (PFMA), to ensure that deviations from inviting competitive bids are done in terms of Treasury Regulation 16A6.4.

- (bb) Ensures strict compliance by employees with the prescripts and policies regulating the SCM environment; the recruitment, selection and appointment of employees and record and document management at SITA in line with section 57(a) – (e) of the Public Finance Management Act, 1999, on a quarterly basis.
- (cc) Ensures regular training, mentoring and/or coaching of employees on policies and procedures relevant and applicable within their area of responsibility in line with applicable policies regulating the training of employees.
- (dd) In terms of paragraphs 1.2.3 and 1.12.3 of Annexure C: Code of Ethics of the 2017 SCM Policy, and in consultation with SITA's legal advisor(s), consider investigating and where appropriate, taking corrective action against any other individuals implicated in any further wrongdoing in the SCM and HCM environment identified in this report **within one hundred and twenty (120) working days** where this did not occur.
- (ee) In terms of paragraph 1.12.1 of Annexure C: Code of Ethics of the 2017 SCM Policy and in consultation with SITA's legal advisor(s), consider SITA's duty to report any irregular expenditure, (including any expenditure which may have arisen as a result of the irregularities identified in this report), to the Auditor General and National Treasury **within one hundred and twenty (120) working days** where this did not occur.
- (ff) In terms of paragraph 1.12.2 of Annexure C: Code of Ethics of the 2017 SCM Policy and in consultation with SITA's legal advisor(s), consider SITA's duty to record any irregular expenditure (including any expenditure which may have arisen as a result of the irregularities identified in this report) in SITA's irregular expenditure register **within one hundred and twenty (120) working days** where this did not occur.

(b) **The Auditor General of South Africa: -**

(aa) Takes note of the findings relating to the improper conduct and/or maladministration by SITA reported herein.

(bb) Within its own discretion consider the findings and remedial action in this report and consider taking any action deemed appropriate under the circumstances in terms of any applicable legislation.

(c) **The Minister of Communications and Digital Technologies: -**

(aa) To take cognisance of the findings of maladministration and improper conduct by SITA.

(bb) Include in the oversight role over SITA, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of the powers conferred under section 182(2)(c) of the Constitution.

(d) **The Speaker of the National Assembly: -**

(aa) To ensure that the report is tabled before the Communications Portfolio Committee for deliberation regarding: -

(bb) Investigations conducted into allegations of financial misconduct committed by members of the Accounting Authority in terms of Treasury Regulation 33.1.3.

(cc) The investigation of instances of irregular, fruitless and wasteful expenditure to determine if disciplinary action needs to be taken against implicated officials.

- (dd) Disciplinary steps have been taken against any officials who made or permitted the irregular expenditure based on the outcome of the investigation in terms of section 51(1)(e)(iii) of the PFMA.
- (e) **The Directorate of Priority Crimes Investigation: -**
- (aa) Consider this report and establish if any acts of impropriety identified herein amount to acts of a criminal conduct in line with the Prevention and Combating of Corrupt Activities Act, 2004 and if so, pursue criminal investigations against the perpetrators.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION IN THE APPOINTMENT OF SERVICE PROVIDERS AND EMPLOYEES BY THE STATE INFORMATION TECHNOLOGY AGENCY (SITA).

1. INTRODUCTION

1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and published in terms of section 8(1) of the Public Protector Act 23 of 1994 (Public Protector Act).

1.2 The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act, to the following recipients to note the outcome of investigation: -

1.2.1 The Minister of Communications and Digital Technologies;

1.2.2 The Accounting Authority of SITA;

1.2.3 The Auditor General of South Africa;

1.2.4 The Speaker of the National Assembly;

1.2.5 The Directorate of Priority Crimes Investigation;

1.2.6 Forensic Data Analysts (Pty) Ltd, Core Focus (Pty) Ltd, Accenture (Pty) Ltd, Fidelity Security Services (Pty) Ltd, Parahelic CC and Jika Africa Advisory Services (Pty) Ltd, Bowmans and Hewu Attorneys, Cyanre Digital Forensic Lab, Mr Sithembele Senti and Mr Kenneth Wienand; and

1.2.7 Mr Ratsie Ismael Kgatle (the Complainant) to inform him of the investigation outcome.

2. THE COMPLAINT

- 2.1. The complaint was lodged at the Head Office of the Public Protector South Africa during 2018.
- 2.2. In the main, the Complainant has requested an investigation of the following allegations concerning SITA: -
 - 2.2.1. The contracts irregularly awarded to Forensic Data Analysts (Pty) Ltd; Core Focus (Pty) Ltd; Accenture (Pty) Ltd; Fidelity Security Services (Pty) Ltd; Parahelic CC and Jika Africa Advisory Services (Pty) Ltd;
 - 2.2.2. The contracts irregularly awarded to the firm of attorneys of Bowmans and Hewu Attorneys and Cyanre Digital Forensic Lab; and
 - 2.2.3. The irregular appointment of Mr Sithembele Senti as an Executive in the Chief Executive Officer's office; and Mr Kenneth Wienand as a Consultant in the office of the Chief Financial Officer.
 - 2.2.4. In essence, the Complainant contended that SITA's conduct regarding the foregoing allegations is unlawful, improper and constitutes maladministration.

3. ISSUES IDENTIFIED FOR INVESTIGATION

- 3.1 Based on the analysis of the complaint, the following issues were considered to inform and focus the investigation: -
 - 3.1.1 Whether the appointment of Forensic Data Analysts (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.

- 3.1.2 Whether the appointment of Core Focus (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- 3.1.3 Whether the appointment of Accenture (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- 3.1.4 Whether the appointment of Fidelity Security Services (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- 3.1.5 Whether the appointment of Parahelic CC by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- 3.1.6 Whether the appointment of Jika Africa Advisory Services (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- 3.1.7 Whether the appointment of Bowmans Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- 3.1.8 Whether the appointment of Hewu Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- 3.1.9 Whether the appointment of Cyanre Digital Forensic Lab by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.
- 3.1.10 Whether the recruitment of Mr Sithembele Senti as an Executive in the Chief Executive Officer's office by SITA was not consistent with applicable prescripts

regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration.

Whether the recruitment of Mr Kenneth Wienand in the office of the Chief Financial Officer by SITA was not consistent with applicable prescripts regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration.

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

4.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

4.2. Section 182(1) of the Constitution provides that: "*The Public Protector has the power, as regulated by national legislation:*

(a) *To investigate any conduct in state affairs, or in the Public Administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*

(b) *To report on that conduct; and*

(c) *To take appropriate remedial action*".

4.3. Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by national legislation.

4.4. The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given the powers to resolve disputes through mediation, conciliation, negotiation or any other appropriate alternative dispute resolution mechanism.

4.5. In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.¹ The Constitutional Court further held that:

*“When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”*²

4.6. In the above-mentioned constitutional matter, Mogoeng CJ, stated amongst other things the following, when confirming the powers of the Public Protector:

4.6.1. Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

4.6.2. An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the *Constitution* cannot properly be upheld or enhanced (paragraph 67);

4.6.3. Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

² *Supra* at para [73].

- 4.6.4. The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);
- 4.6.5. Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);
- 4.6.6. The Public Protector's power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);
- 4.6.7. Implicit in the words "*take action*" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a));
- 4.6.8. She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d); and
- 4.6.9. "*Appropriate*" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).
- 4.6.10. In the matter of the *President of the Republic of South Africa vs Office of the Public Protector and Others* (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December

2017)³, the court held as follows, when confirming the powers of the Public Protector:

- 4.6.11. The constitutional power is curtailed in the circumstances wherein there is conflict with obligations under the constitution (para 71);
- 4.6.12. The Public Protector has power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question (para 82);
- 4.6.13. Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (para 100 and 101):
 - a) Conduct an investigation;
 - b) Report on that conduct and
 - c) To take remedial action;
- 4.6.14. The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings (para 104);
- 4.6.15. The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para 105);
- 4.6.16. The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (para 107 and 108); and

³ (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP).

- 4.6.17. *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (para 112).
- 4.6.18. SITA is an organ of state and its conduct relates to state affairs, this matter therefore falls within the ambit of the Public Protector's mandate. SITA did not dispute the jurisdiction of the Public Protector to investigate this matter.
- 4.6.19. Section 6(9) of the Public Protector Act provides that a complaint lodged after two years of the date of the occurrence of the incident concerned, shall not be entertained by the Public Protector unless there are special circumstances and the Public Protector exercises her discretion in favour of permitting the lodging of such complaint.
- 4.6.20. Under the circumstances some of the allegations in the complaint related to incidences which allegedly occurred more than two years from the date that the complaint was lodged, these incidents related to the awarding of contracts to, Parahelic CC, Bowmans Attorneys and Fidelity Security Services (Pty) Ltd.
- 4.6.21. Preliminary investigations indicated that Parahelic CC was awarded a contract by SITA in February 2016. This contract would be extended on two occasions, in August 2016 and April 2017, respectively. Bowmans Attorneys was awarded in February 2016 and Fidelity Security Services (Pty) Ltd during March 2014.
- 4.6.22. The Complainant on the other hand lodged the complaint in March 2018 which would have been more than two years after the alleged improper conduct as it relates to the above-mentioned service providers. The Public Protector thus considered it fit to consider whether there were any special circumstances to warrant the inclusion of these particular contracts as part of this investigation.
- 4.6.23. In making this determination, the Public Protector took into consideration the following: -
- 4.6.23.1. The complaint was lodged by a former employee of SITA who was also a shop steward and representative of employees of the entity. He had direct

knowledge and evidence which indicated possible systemic problems in the procurement of goods and services by SITA. The Public Protector considered the seriousness of the allegations and formulated the reasonable view that procurement done in contravention of applicable supply chain management prescripts have a direct and negative impact, not only on good public administration but on public funds which must be dispensed fairly, equitably and transparently.

- 4.6.23.2. The Complainant indicated during consultations with him that there was sufficient records available within SITA for the Public Protector to investigate and make findings on the matter with a view to correcting those systemic problems.
- 4.6.23.3. The Complainant also stated that the contracts referred to in the complaint still subsisted when it was lodged with the Public Protector. The alleged impropriety was therefore still continuing and required the Public Protector's intervention.
- 4.6.23.4. Save for the Fidelity contract which was awarded in March 2014, the other two contracts fell short of the two year period by a matter of weeks and in both respects, the contracts were subsequently extended in 2017. The Public Protector was therefore of the view that the information pertaining to these two awards would in all likelihood still be available and that the investigation of these matters would not produce any unreasonable prejudice to SITA or the investigation itself. To exclude these contracts may have had an adverse impact on the completeness of the investigation.
- 4.6.23.5. The above views were, during the course of the investigation process expressed to SITA whom have, as at the date of this report, raised no objection and have been tremendously cooperative and transparent during this process.

4.6.23.6. The Public Protector thus exercised her discretion in terms of section 6(9) of the Public Protector Act in favour of permitting the inclusion of these contracts as part of the investigation of this particular complaint.

5 THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation was conducted in terms of sections 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

5.2 Approach to the investigation

5.2.1 The investigation was approached using an enquiry process that seeks to find out:

5.2.1.1 What happened?

5.2.1.2 What should have happened?

5.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?

5.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong and what action should be taken?

- 5.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation.
- 5.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the organs of state and officials involved to prevent improper conduct and/or maladministration.
- 5.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration, where possible and appropriate.

5.3 **The Key Sources of information**

5.3.1 **Documents sent and received: -**

- 5.3.1.1 The written complaint lodged by the Complainant, dated 19 March 2018;
- 5.3.1.2 Email correspondence to SITA regarding a preliminary investigation and requesting a meeting to discuss the allegations, dated 06 June 2018;
- 5.3.1.3 Letter addressed to the then Chairperson of the Board of SITA, Mr Zukile Nomvete, requesting a response to the allegations and supporting evidence, dated 01 August 2018;
- 5.3.1.4 Formal response in the form of a letter (attaching an Annexure) from Mr Nomvete, dated 13 August 2018;
- 5.3.1.5 All documents hand delivered by Mr Dave Boucher of SITA during August 2018 and June 2020 relating to: -
 - 5.3.1.5.1 The process followed in the awarding of the contract under tender reference number SS-1039-SK-2016 to Forensic Data Analysts (Pty) Ltd (FDA) for the provision of maintenance and technical support of the FPS

to SAPS, including approved Business Cases, approval for bid publication, bid invitation, FDA's proposal in response to the invitation, evaluation of bids by the Evaluation Committee, undated Submission to the Executive Procurement Committee, Memorandum of Agreement between SITA and FDA;

5.3.1.5.2 The process followed in the extension of the contract awarded to FDA under tender reference number SS-1691-2017 to FDA for the maintenance and technical support of the FPS to SAPS for a period of 3 years; payment documents, Payment History Report, statements and invoices between FDA, SITA and SAPS;

5.3.1.5.3 The process followed in the appointment of Core focus (Pty) Ltd (Corefocus) and the extension of the awarded contract under tender reference number RFB 1421/2016, including internal Business Cases and approvals, bids submitted by interested bidders, Correspondence with the successful bidder and National Treasury;

5.3.1.5.4 The process followed in the appointment of Accenture (Pty) Ltd (Accenture) under tender reference number RFB 1362/2015, including internal Business Cases and various approvals, bids submitted by interested bidders, Correspondence with the successful bidder and National Treasury;

5.3.1.5.5 The process followed in the appointment of Fidelity Security Services (Pty) Ltd (Fidelity), including internal Business Cases and approvals, correspondence with Fidelity and agreement with SITA, SITA Internal Audit Report titled "*Investigation into the procurement process followed to appoint Fidelity Security Services (Pty) Ltd*";

5.3.1.5.6 The process followed in the appointment of Parahelic CC (Parahelic), including internal Business Cases and approvals, correspondence with successful bidder and National Treasury, Memorandum of agreement

between SITA and Parahelic dated February 2016 and August 2016 respectively and Audit findings of the Auditor General South Africa;

- 5.3.1.5.7 The process followed in the appointment of Jika Africa Advisory Services (Pty) Ltd (Jika), including internal Business Cases and approvals, bids submitted by Intenda, correspondence with National Treasury, contract between SITA and Intenda, contract between SITA and Jika and invoices submitted to SITA for payment by Jika;
- 5.3.1.5.8 The process followed in the appointment of Bowmans Attorneys (Bowmans) under tender reference number RFQ 649 – BA – NT029 – 2015, including correspondence with National Treasury and extensions of the contract awarded to Bowmans and payment documents, Payment History Report, statements and invoices between SITA and Bowmans;
- 5.3.1.5.9 The process followed in the appointment of Hewu Attorneys (Hewu) under tender reference number RFB 1200/2015, Payment documents, Payment History Report, statements and invoices between SITA and Hewu;
- 5.3.1.5.10 The process followed in the appointment of Cyanre Digital Forensic Lab (Cyanre), including approvals, proposals submitted to SITA by Cyanre, statements and invoices submitted between SITA and Cyanre;
- 5.3.1.5.11 The process followed in the recruitment of Mr Sithembile Senti, including minutes of a meeting of the Board of Directors of SITA approving the appointment of an Executive: Multi-Stakeholder Management dated 16 February 2016, including the resolution of the Board of Directors of SITA, Notice of termination of employment dated 24 May 2019, Pre-employment vetting report dated 18 April 2016 and contract of employment between SITA and Mr Senti as well as subsequent contract extensions; and
- 5.3.1.5.12 The process followed in the recruitment of Mr Kenneth Wienand, Pre-employment vetting report, dated 18 August 2015, contract of employment and Notice of termination of employment dated 30 September 2019.

5.3.1.6 Notice issued in terms of section 7(9) of the Public Protector Act (notice) to the following recipients affording them an opportunity to respond to the provisional findings: -

5.3.1.6.1 The Executive Caretaker of SITA, Mr Luvuyo Keyise on 05 November 2021;

5.3.1.6.2 Current and prior officials of SITA who could be located, during October and November 2021;

5.3.1.6.3 Mr Keith Keating of FDA, Core-focus, Mr Klaas Motlhabane Accenture, Fidelity, Cyanre, General KJ Sithole of the South African Police Service all on 05 November 2021;

5.3.1.6.4 Ms Ashleigh Graham of Bowmans on 08 November 2021; and

5.3.1.6.5 Messrs Sithembele Senti and Kenneth Wienand both on 11 November 2021.

5.3.1.7 Responses to the notice were received from: -

5.3.1.7.1 The Executive Caretaker of SITA, Mr Luvuyo Keyise on 11 January 2021. It is to be noted that Mr Vincent Mphaphuli (HOD: Legal Services) indicated that SITA would consult with its employees (both previous and current) and furnish a consolidated response representing the view of SITA regarding the evidence;

5.3.1.7.2 Ms Ashleigh Graham of Bowmans Attorneys on 08 November 2021;

5.3.1.7.3 Ms Lungile Wolf (former employee of SITA) on 08 November 2021; and

5.3.1.7.4 Mr Keith Keating of FDA on 11 November 2021.

5.3.2 **Meetings / Interviews**

5.3.2.1 Meeting held between the PPSA investigation team and officials of SITA on 22 June 2018;

5.3.2.2 Meeting with Mr Vincent Mphaphuli and Mr Freddie Mitchell on 17 August 2020;

5.3.2.3 Interviewed Mr William Masango on 31 August 2020;

5.3.2.4 Interviewed Mr Alex Setumu on 03 September 2020;

5.3.2.5 Meeting with Mr Vincent Mphaphuli, Mr Freddie Mitchell and Mr Dave Boucher on 18 February 2022;

5.3.3 **Legislation and other legal prescripts**

5.3.3.1 Constitution of the Republic of South Africa, 1996 (Constitution);

5.3.3.2 Public Protector Act, 1994 (Public Protector Act);

5.3.3.3 Public Finance Management Act, 1999 (PFMA);

5.3.3.4 State Information Technology Agency Act, 1998 (SITA Act);

5.3.3.5 The National Archives and Records Service of South Africa Act, 1996 and Regulation;

5.3.3.6 Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities, issued in terms of the Public Finance Management Act, 1999 in March 2005 (Treasury Regulations);

5.3.3.7 SITA Supply Chain Management Policies, dated 01 April 2015 (2015 SCM Policy) and 17 July 2017 (2017 SCM Policy);

- 5.3.3.8 Delegations of Authority document approved by the Chief Executive Officer of SITA on 07 August 2015 (2015 DoA);
- 5.3.3.9 Delegations of Authority document approved by the Chairperson of the Board of SITA on 16 May 2017 (2017 DoA);
- 5.3.3.10 National Treasury Instruction Note 3 of 2016/2017 on preventing and combating abuse in the supply chain management system (Instruction Note 3 of 2016);
- 5.3.3.11 SITA Recruitment, Selection and Placement Policy and Procedures, dated 01 April 2012 (2012 Recruitment Policy or the Policy);

6 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS.

6.1 Whether the appointment of Forensic Data Analysts (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.

Common cause or undisputed facts

- 5.1.1. It is not in dispute that SITA awarded a contract to Forensic Data Analysts (Pty) Ltd (FDA) for the maintenance and technical support of the Firearms Permit System (FPS) for the South African Police Service (SAPS) during 2016.

Issues in dispute

- 5.1.2. The issue for determination is whether the award of the contract to FDA was not in compliance with SITA's supply-chain management prescripts.

- 5.1.3. The Complainant contends that SITA appointed FDA to provide maintenance and technical support for the FPS on behalf of SAPS without regular procurement processes.
- 5.1.4. The Complainant also contends that the contract awarded to FDA amounted to fruitless and/or wasteful expenditure due to the fact that SITA did not receive value for money from the contract.
- 5.1.5. The following documents and prescripts were reviewed -
- 5.1.5.1. SITA Supply-Chain Management Policy (2015 SCM Policy) approved by the Board of Directors of SITA and effective from 01 April 2015 and the SITA Supply Chain Management Policy approved by Mr ZD Nomvete: then Chairman of the Board on 17 July 2017 (2017 SCM Policy);
- 5.1.5.2. SITA's Delegation of Authority Policy approved by Dr Mohapi: the then Chief Executive Officer of SITA on 07 August 2015;
- 5.1.5.3. Available documents relating to the process followed in the awarding of the contract under tender reference number SS-1039-SK-2016 to FDA for the provision of maintenance and technical support of the FPS to SAPS, including approved Business Cases, approval for bid publication, bid invitation, FDA's proposal in response to the invitation, evaluation of bids by the Evaluation Committee, undated Submission to the Executive Procurement Committee, Memorandum of Agreement between SITA and FDA;
- 5.1.5.4. Available documents relating to the process followed in the extension of the contract under tender reference number SS-1691-2017 to FDA for the maintenance and technical support of the FPS to SAPS for a period of 3 years;
- 5.1.5.5. Payment documents, Payment History Report, statements and invoices between FDA, SITA and SAPS; and

- 5.1.5.6. Responses received from notices issued in terms of section 7(9) of the Public Protector Act.

Background between SAPS and FDA

- 5.1.6. It is emphasised that the focus of this investigation is on the process followed by SITA in procuring the FPS service directly from FDA at the request of SAPS during 2016.
- 5.1.7. It is nevertheless important to provide a background of the relationship between FDA and SAPS relating to the provision of the FPS system.
- 5.1.8. It should be noted that no findings are made against SAPS on the procurement of the FPS system directly from FDA as that matter did not fall squarely within the allegations contained in the complaint as it related only to SITA and it was lodged by a former employee of SITA relating to the affairs of that institution. Furthermore, having been allegedly awarded by SAPS in 2005, to include this issue in the investigation may have been unreasonably onerous on all the parties concerned in relation to this specific investigation. Finally, this matter is in any event currently under investigation by the Independent Police Investigative Directorate (IPID).
- 5.1.9. IPID initiated its investigation during November 2017, prior to the receipt of the complaint by the Public Protector.
- 5.1.10. According to the documents reviewed, the Firearms Control Act, 2000 (FCA) provides that employees in the service of SAPS may not be in possession of a firearm under the control of SAPS without a permit issued in terms of chapter 11 of the Act.
- 5.1.11. The FCA provides for the creation of a central database by SAPS to enable the tracking of the history of firearms owned by SAPS and private individuals

and to also monitor and manage the issuing of firearms, magazines, ammunition and permits in South Africa.

- 5.1.12. The FPS is a computer software system which was developed to be implemented by SAPS to comply with the requirements of the FCA.
- 5.1.13. FDA is the intellectual property owner of the FPS.
- 5.1.14. FDA had granted Waymark Infotech (Pty) Ltd (Waymark) the right to license and resell the FPS software to SAPS.
- 5.1.15. The evidence indicates that prior to SITA's involvement with SAPS and FDA on the FPS, SAPS and FDA had a relationship dating back to around September 2005.
- 5.1.16. A brief analysis of the relationship indicates that in September 2005, SAPS had contracted directly with Waymark for the procurement of a computer platform known as the Firearm Control System (FCS) for a period of one year.
- 5.1.17. The FCS contract was extended by SAPS to include specifications for firearm permits to be issued to officials in the employ of SAPS.
- 5.1.18. Around September 2005, Waymark appointed FDA as a subcontractor for the supply of the FPS to SAPS.
- 5.1.19. The contract between SAPS and Waymark would be perpetually extended until 30 August 2012 when SAPS terminated the contract, but it could not be established from the letter of termination what the reasons were for the termination.
- 5.1.20. Even though the contract with Waymark had been terminated (including the maintenance and support of the FPS which was subcontracted to FDA), SAPS continued to have a relationship with FDA between September 2012 and June 2015 for licensing fees associated with the FPS.

5.1.21. Due to the fact that there was no contract between SAPS and Waymark or FDA, SAPS initiated two parallel procurement processes: -

5.1.21.1. The first was to appoint a service provider for the support and maintenance of the FPS on a month-to-month basis (main contract); and

5.1.21.2. A second emergency procurement process for services related to the FPS due to problems experienced with the system during that time, such as the generation of barcodes, IBIS testing of firearms and generation of competency declarations and firearm permits (emergency contract).

The emergency contract

5.1.22. On 23 April 2013, SAPS requested a quote for the procurement of services for the correction of the Barcode generation on the Firearm Permit System from Mr Keith Keating of FDA via e-mail (emergency contract).

5.1.23. The e-mail which was authored by Ms Juanita Geldenhuys, then Colonel: Technology Management Services: Firearms Control Systems (Ms Geldenhuys) stated that:-

“Legal Services and SCM recommended that an emergency application is submitted by Division: TMS for consideration as an interim measure to address the problem that is currently experienced with the FPS until such time that resources are appointed for the maintenance and support of the FPS.

Attached please find the request for a quotation which includes the scope of the investigation and corrections that are required regarding the problem experienced with the FPS.”

5.1.24. FDA submitted a quote on 24 April 2013 and a revised quote on 16 July 2013 for the emergency contract.

- 5.1.25. FDA was appointed for the correction of the Barcode generation on the Firearm Permit System (emergency contract).
- 5.1.26. On 25 July 2013, FDA invoiced SAPS for services rendered on the emergency contract for the amount of R177 825. 60.

The main contract

- 5.1.27. On 06 March 2013 SAPS sent requests for quotations (RFQ) via e-mail to the following entities: Exponent, FDA and Faranani (main contract).
- 5.1.28. The request was titled "*Request for Quote No 002/2012-2013 Appointment of 1 Senior Software Programmer and 1 Software Programmer to be utilized for the Support and Maintenance of the Firearms Permit System for the South African Police Service in terms of Bid No. 19/1/9/94TP (11): Provision of Contracting Consultancy Services in the form of Human Resource Skills: Information Systems and Information Communication Technology (IS/ICT): Technology Management Services.*"
- 5.1.29. The purpose of the document was to obtain quotations for the appointment of 1 Senior Software programmer and 1 Software Programmer to be utilised for the support and maintenance of the FPS for the SAPS.
- 5.1.30. Responses from Exponent and Faranani were not provided to the Public Protector for consideration.
- 5.1.31. FDA was the only supplier who submitted a quotation to SAPS. It is however unclear when the quotation was submitted by FDA.
- 5.1.32. A dispute between SAPS, FDA and Waymark arose around October/ November 2013 regarding the payment of license fees pursuant to a FPS License Agreement between SAPS and Waymark for the 2013/2014 and 2014/2015 financial years.

- 5.1.33. This dispute seems to have arisen around the time of the above RFQ which had the effect of suspending the conclusion of this procurement process.
- 5.1.34. On 24 June 2015 Ms Geldenhuys sent an e-mail to Mr Keating requesting a quotation for the maintenance and support of the FPS on a month-to-month basis.
- 5.1.35. Ms Geldenhuys sent a further e-mail to Mr Keating on the same day requesting him to submit *“the following mandatory documents for the ITC file...SBD4, SBD 8, SBD 9, PQ Annexure A, BBBEE Certificate, Tax Clearance Certificate.”*
- 5.1.36. It is noted from the quotation dated 24 June 2015 provided to the Public Protector for review that not all the documents requested by Ms Geldenhuys are attached.
- 5.1.37. The following pricing schedule is noted from the quotation submitted by FDA:

| Nr. | Service Element | Price (Excl. VAT) | Price (Incl. VAT) |
|-----|--|-------------------|-------------------|
| 1 | Maintenance, Technical Support of Firearms Permit System on a Month to Month basis. | R741,891.37 | R845,756.16 |
| 2 | Annual Enterprise Software License Fee for Firearm Permit System for the 2015/2016 Financial Year. | R7,350,250.00 | R7,350,250.00 |
| 3 | Annual Enterprise Software License Fee for Firearm Permit System for the 2014/2015 Financial Year. | R6,909,235.00 | R7,876,527.90 |
| 4 | Annual Enterprise Software License Fee for Firearm Permit | R6,494,680.90 | R7,403,936.23 |

| | | | |
|---|--|---------------|---------------|
| | System for the 2013/2014 Financial Year. | | |
| 5 | Annual Enterprise Software License Fee for Firearm Permit System for the 2012/2013 Financial Year. | R6,105,000.05 | R6,959,700.06 |

5.1.38. On 25 June 2015, Ms Geldenhuys sent an e-mail to Mr Keating stating that:

*“Kindly note that this office only requires a quotation for **2 x technical support resources** on a month to month basis and not functional support resources as included in your quotation. Functional Support is rendered by SAPS. Also take note that the 7th Year Annual Licence Fee for 2012/2013 was previously paid to Waymark in terms of the FCS Contract and must be excluded from the quotation and must be resolved between yourselves (main contractor and sub-contractor) as previously communicated. Urgently provide this office with an updated quotation with the exclusion of functional support and the 2012/2013 Annual maintenance Fee please.”*

5.1.39. Mr Keating responded on the same day stating: -

“Please take note that those rates were for JUST a fixed short term assignment to assist SAPS.

Unfortunately on a fixed contract we also need to take into account all the support services and overheads of FDA.

I will submit my amended quotation as I know we will negotiate prices with the powers that be.

The license fee has been adjusted according to the growth and scope of the system. What SAPS originally purchased and what FDA now needs to maintain are completely different.

As SAPS have not maintained the system for nearly 3 years, I believe that costs are justified.”

5.1.40. Mr Keating, also on the same day, submitted a price quotation reflecting the following price schedule:-

| Nr | Service Element | Price (Excl. VAT) | Price (Incl. VAT) |
|----|--|-------------------|-------------------|
| 1 | Maintenance, Technical Support of Firearms Permit System on a Month to Month basis. | R741,891.37 | R845,756.16 |
| 2 | Annual Enterprise Software License Fee for Firearm Permit System for the 2015/2016 Financial Year. | R7,350,250.00 | R8,379,285.00 |
| 3 | Annual Enterprise Software License Fee for Firearm Permit System for the 2014/2015 Financial Year. | R6,909,235.00 | R7,876,527.90 |
| 4 | Annual Enterprise Software License Fee for Firearm Permit System for the 2013/2014 Financial Year. | R6,494,680.90 | R7,403,936.23 |

5.1.41. It is noted from the updated price schedule that the license fees for 2012/2014 were excluded.

5.1.42. The price increase between the two price increases contained in the respective schedules was addressed in an e-mail dated 03 July 2015 from Mr Musa Buthelezi the then Major General and Head: Systems Infrastructure and Technology Development to Ms AL Shezi, the then Divisional Commissioner: Technology Management Services.

5.1.43. The e-mail contained a *FDA Firearms Management System – Change Log* giving details of what informed the price increase.

- 5.1.44. On 25 June 2015, Ms Geldenhuys addressed a memorandum to the Divisional Commissioner; Technology Management Services titled *“Approval for the Support and Maintenance of the Firearms Permit System for the South African Service on a Month to Month Basis.”*
- 5.1.45. The purpose of the memo was to request approval of funds to enable maintenance and support of the FPS on a month-to-month basis to the sole provider, FDA.
- 5.1.46. According to the submission, the request would be on a month-to-month basis to allow SAPS the opportunity to conclude the bid process and appoint the service provider (presumably FDA) for future FPS maintenance and support.
- 5.1.47. The total amount budgeted for this contract was R 28 734 286.09.
- 5.1.48. The submission had the following signatories: -

| Name | Position | Date signed |
|--------------|---|--------------|
| J Geldenhuys | System Manager: Firearms Control Systems | 25 June 2015 |
| PP Mosoeu | Section Head: Crime Systems and Infrastructure Management | 26 June 2015 |
| MT Buthelezi | Head: Systems Infrastructure and Technology Development | 01 July 2015 |
| AL Shezi | Divisional Commissioner: Technology Management Services | 03 July 2015 |

- 5.1.49. On 03 July 2015, Ms Shezi addressed a memorandum to the Divisional Commissioner: Supply Chain Management titled *“Approval for the Maintenance and Technical Support of the Firearms Permit System for the*

South African Police Service on a Month to Month Basis: ITC 19924 / N 6853.”

- 5.1.50. The purpose of the memorandum was to request approval to issue an order form for the maintenance and technical support of the FPS on a month-to-month basis to the “*Sole Service Provider*” FDA.
- 5.1.51. The submission from Ms Shezi also provided that “*There is a significant increase on the FPS Annual Licence Fee compared to the agreed amount in the previous FPS License Agreement between the main contractor and SAPS. The vendor attributes the increase to the fact that the Annual License Fee has been adjusted according to the growth and scope of the system and the fact that SAPS have not maintained the system for nearly 3 years.*”
- 5.1.52. On 24 July 2015, AA Botha: Acting Section Head: Demand and Asset Management: MGP and Services addressed a letter to the Section Head: Acquisition Management titled “*Quotation Number: 133/2015: Application for Procurement Authorization: Approval for the Maintenance and Technical Support of the Firearms Permit System for the South African Police Service on a Month to Month Basis: ITC 1924 / N6853.*”
- 5.1.53. A review of this letter indicates that there was financial authorisation to the amount of R 28 734 286.09 for this contract.
- 5.1.54. On 07 August 2015, GJ Kruser: Divisional Commissioner: Supply Chain Management addressed a letter to the Divisional Head: Technology Management Services titled “*Application: Approval for Procurement of Maintenance and Technical Support of the Firearms Permit System (FPS) from Sole Suppliers on a Month to Month Basis: ITC 19924 / N6853: Division: Technology Management Services.*”
- 5.1.55. The letter stated that “*A submission was placed before the Bid Adjudication Committee via memo 185 dated 2015-08-03 for approval and was approved as follows: 2.1 Approval was granted for Maintenance and Technical Support*

on a month to month basis as well as license fees for the 2015/2016 financial year; 2.2 Annual Enterprise Software Licence Fee for Firearm Permit System for 2013/2014 and 2014/2015 Financial Year was not approved with an instruction that a separate application be made to Division: Supply Chain Management which will then be forwarded to Legal Services for an opinion.”

- 5.1.56. On 09 October 2015, Mr Kruser addressed a letter to the Divisional Commissioner: Technology Management Services titled *“Application: Procurement of Maintenance and Technical Support of the Firearms Permit System (FPS) from Sole Suppliers on a Month to Month Basis: Division: Technology Management Services.”*
- 5.1.57. The letter stated the following *“A submission was approved by the Bid Adjudication Committee via memo 185 dated 2015-08-03 and ratified by the National Commissioner on 2015-10-07 for a period of twelve (12) months, namely 1st July 2015 to 30th June 2016. 3. The requirement cost breakdown is as follows: 3.1 Twelve (12) months technical support to the value of R10 149 073.92. 3.2 Annual Enterprise Software license fee for FPS 2015/2016 R8 379 285.00. 4. An order form can be placed with the service provider.”*
- 5.1.58. A SAPS Electronic Order number A000P3366 dated 05 November 2015 reflecting FDA as the supplier was reviewed. The amounts reflected on the order correspond with the letter dated 09 October 2015 from Mr Kruser.
- 5.1.59. On 04 November 2015, Ms Geldenhuys sent an e-mail to Mr Keating informing him of the electronic order from Division: TMS for the maintenance and support of the FPS on a monthly basis.
- 5.1.60. FDA began invoicing SAPS during November 2015 for the support and maintenance of the FPS.

5.1.61. On 11 November 2015 Ms Shezi requested a legal opinion regarding the payment of FPS annual license fees for the 2013/2014 and 2014/2015 financial years to FDA.

5.1.62. In a legal opinion dated 18 December 2015, JT Molefe the then Lieutenant General: Divisional Commissioner: Legal and Policy Services recommended that: -

“Accordingly, on account of what has been indicated in paragraph 5 above, as well as the BAC’s comment (as per Annexure “E”), it is recommended that the Division: TMS submit an application, together with a detailed motivation to the BAC for consideration of the payment of the annual license fees to FDA for the 2013/2014 and 2014/2015 financial years.”

5.1.63. On 09 February 2016, Ms Shezi accordingly addressed a letter to the Acting Divisional Commissioner: Supply Chain Management requesting approval of the payment of the FPS Annual Enterprise License Fees for the 2013/2014 and 2014/2015 financial years to FDA.

5.1.64. An undated letter signed on behalf of RJ Mokwena the then Lieutenant General: Divisional Commissioner; Supply Chain Management and addressed to Ms Shezi stated the following: -

“Please take note that the Bid Adjudication Committee (BAC) did not approve the application for the payment but the following guidance was given:-

- Technology Management Services, based on the legal opinion and their motivation, continue with the payment for 2013/2014 and 2014/2015 financial years;*
- After the payment has been made, it must be reported as irregular expenditure to Division SCM.”*

- 5.1.65. On 17 May 2017, Ms Geldenhuys addressed a letter to Ms Shezi requesting approval for the payment of the FPS Annual Enterprise License Fees for the 2013/2014 and 2014/2015 financial years, amounting to R15 280 464, 13.
- 5.1.66. The request was approved by Ms Shezi on 24 May 2016.
- 5.1.67. SITA did not provide any further documentation to the Public Protector for review relating to the relationship between SAPS and FDA pursuant to this month-to-month contract or when it came to an end.

Procurement of FPS services by SITA directly from FDA

- 5.1.68. On 10 December 2015, Major General RS Pillay on behalf of Mr Kruser: Divisional Commissioner: Supply Chain Management addressed a letter to the Chief Executive Officer (CEO) of SITA titled "*Application: Request to Advertise a Close Bid through State Information Technology Agency (SITA): Maintenance and Technical Support of the Firearms Permit System for the South African Police Service on a once off Basis with an Option to Renew: Division: Technology Management Services.*"
- 5.1.69. The letter (Tasking letter) was stamped as received by the office of the CEO of SITA on 14 December 2015.
- 5.1.70. It is noted from the letter that SAPS had requested a Closed Bid procurement process which is regulated by paragraph 23.13 of the 2015 SCM Policy. The evidence however indicates that SITA opted for a Sole Source procurement strategy which is regulated by paragraph 23.14 of the Policy.
- 5.1.71. The letter stated in paragraph 2 that "*This application is made in terms of National Treasury Practice note no.5 of 2009/2010 which states that Departments are required to acquire ICT related goods and services through SITA. If SITA is unable to provide the services itself then it will act as procurement agent to acquire such service on behalf of the Department.*"

- 5.1.72. It is unclear from the evidence what precipitated SAPS to take this approach particularly when it had been procuring the FPS service directly from FDA for a number of years prior to approaching SITA.
- 5.1.73. Attached to the letter to SITA is a Functional, Financial and Procurement Approval document indicating that a total budget of R19 031, 116.00 (about R19 million) was available for the project, a letter from Mr Keating indicating that FDA is the sole supplier of the FPS dated 24 June 2015 and the Invitation for Bid documents compiled by SAPS.
- 5.1.74. Mr William Masango: Senior Manager: Applications Management at SITA stated during an interview held on 31 August 2020 that it is a requirement of SITA that these types of requests must be sent to the office of the CEO. This was confirmed by Mr Alex Setumu: Systems Manager at SITA in an interview held on 03 September 2020.
- 5.1.75. They both confirmed in their respective interviews that the Tasking letter and its attachments were forwarded to the SCM Department. The Tasking letter was received by Demand Management office.
- 5.1.76. On 08 January 2016, Ms Maryann Graham: SITA: Demand Management (Ms Graham) addressed an e-mail to Ms Susan Meyer: Senior Manager, Justice and Crime Cluster (Ms Meyer), Mr Kobus Malan: Lead Consultant, Client Relationship Management (Mr Malan) and Ms Jabulile Tlhako: Chief Procurement Officer (Ms Tlhako) all of SITA.
- 5.1.77. The e-mail had the following subject line *“Closed Bid for Maintenance and Support for Firearm Permit System.”*
- 5.1.78. The e-mail stated amongst other things that *“On 04 January 2016, SCM received the above request (91 pages) directly from SAPS (no CRM involved). I was advised that the request is quite urgent however it could not be processed based on the following:*

- *The request is a deviation from the normal competitive procurement process to procure from a Sole Supplier – Forensic Data Analyst (FDA).*
- *There is no approval by the Accounting Officer / delegated Authority to deviate as required by paragraph 16A6. 3(e) and 16A6.4 of the National Treasury Regulations.*
- *Non mandatory requirements, as well as demonstration have been outlined as part of the evaluation criteria, however the specific requirements have not been listed.*
- *The request is not registered on ITSM7, thus not INC Ref number and ITSM 7 Certificate issued by BAS.”*

5.1.79. It could not be established from the evidence whether the concerns raised by Ms Graham were addressed.

5.1.80. On 12 January 2016, Mr Malan registered the request on Business Assessment Services (BAS). The request was allocated reference number INC000006765010 by BAS.

5.1.81. On 14 January 2016, Mr Paul Moeng and Mr Werner Haasbroek of BAS addressed an internal memorandum (memo) with the subject *“Business Case: RFB for Maintenance and Technical support of Firearms permit system for SAPS on a once off basis with an option to renew.”*

5.1.82. The memo stated that *“the business case was assessed and reviewed by BAS and completed on 13 January 2016.”* Further that *“BAS assessment process is herewith completed and recommends that Supply Chain Management proceed with processing the SITA Business Case according to the established SCM RFQ processes.”*

5.1.83. It could not be established from the submission which SITA Business Case was being referred to in the memo as the evidence indicates that the earliest Business Case in this process was the request for approval for deviation from normal procurement processes which was only initiated during April 2016.

5.1.84. In an interview held on 03 September 2020 with Mr Setumu, he stated the following in respect of the process that should have been followed: -

“The process is that it is supposed to start with the LOB (Lines of Business), who produce a Business Case which indicates the request received from the client/SAPS.

There are 14 teams working under me and each of those teams has a technical manager. On the FPS system there was Monty Mollentze.

The request is supposed to come through Monty Mollentze and come to me. I gather information and compile a Business Case. After that, the Business Case will go through the lines of approval (finance to establish if there is a budget, the Head Of Department, the Chief Financial Officer and approved by the CEO.

After approval of the Business Case, the Lines of Business (LOB) are still the owners of the Business Case. They will then take the approved Business Case to BAS (Business Assessment Services) who will assess and evaluate it and then register the request and assign it an incident number.

In this case, BAS had done their assessment even before there was an approved Business Case. It went to BAS even before it had been received by the LOB or before the LOB had compiled a Business Case. This was irregular.

BAS had assessed the matter even before the LOB had gotten involved with the request from the client.

I received the tasking letter from SAPS on 20 January 2016 and by that time there was a lot of work that was done. BAS had already done their assessment and there is a certificate issued by BAS dated 14 January 2016.

The matter could not proceed to Demand Management without an approved Business Case.

That is hence why Maryann Graham was raising some of the concerns she had in her e-mail to Susan Meyer and Kobus Malan dated 08 January 2016.”

5.1.85. However in an interview held with Mr Masango on 31 August 2020 he indicated that the correct process was that: -

“When requests come to SITA, CRM (Customer Relations Management) is responsible for allocating them to the Lines of Business (LOB). CRM assists all the LOB.

Kobus Malan and Wollie Wolmarans worked within the CRM environment at SITA and they were liaising with the client/SAPS.

The process is that the request is supposed to be allocated an incident number first. It was supposed to go from the CEOs office to Business Assessment Services (BAS) where it was supposed to be allocated an incident number.

BAS then allocates it to a CRM person who interacts with SAPS. The incident number is so that the process can be tracked. But this time it reached Supply Chain Management (SCM) before this process could take place. It had not been allocated an incident number first.

Once it is registered and an incident number is allocated then it will come to you. You then received a tasking from CRM.”

5.1.86. It was noted from a comparison of the evidence given by Mr Setumu on the one hand and Mr Masango on the other that there are inconsistencies with regard to the process that should have been followed after the Tasking letter

was received by the CEO of SITA. Greater care should be taken by SITA to train and develop its employees on SCM processes and procedures.

- 5.1.87. Mr Setumu, representing the Line of Business received the SAPS request from Mr Malan on 21 January 2016. It is noted that when he received the request, the process had already gone from BAS to Demand Management.
- 5.1.88. According to the evidence of Mr Setumu during interviews, the correct process is that the Lines of Business should initiate the SCM process by preparing a Business Case for approval by the relevant officials as per SITA's Delegation of Authority.
- 5.1.89. Once the Business Case is approved, only then does it proceed to BAS for assessment and allocation of an incident number and then to Demand Management to initiate the procurement process.
- 5.1.90. After receiving the SAPS request, Mr Setumu stated in interviews that he needed information and a background on the FPS in order to prepare a Business Case.
- 5.1.91. Mr Setumu stated further that Mr Monty Mollentze: Advanced Specialist, Applications (Mr Mollentze) was the one who provided him with most of the information including a background of the FPS system to compile the Business Case. He also received assistance from Mr Masango.
- 5.1.92. Mr Mollentze was working at SAPS but contracted by SITA as a fixed term contractor in the firearms systems department and was at the time based at SAPS. He was working on the FPS system (firearms of SAPS officials only) and the EFRS (firearms of the general public).
- 5.1.93. To prepare the Business Case, Mr Setumu requested a price quotation from Mr Keating which he provided in an e-mail dated 07 March 2016 titled "*RFQ: Maintenance, Technical and Functional Support of Firearm Permit System on a Month to Month basis*".

5.1.94. Mr Keating submitted the following price quotation: -

| Service Element | Price (Excl. VAT) (R) | Price (Incl. VAT) (R) |
|---|-----------------------|-----------------------|
| Maintenance, technical support of FPS on a month-to-month basis | 808 661.59 | 921 874.22 |
| Annual enterprise software license fee for FPS for 2016/17 | 8 011 772.50 | 9 133 420.65 |

5.1.95. It was noted from the price quotation submitted by Mr Keating that the price would be fixed until 31 March 2017.

5.1.96. According to SITA's 2015 Delegation of Authority Policy approved by Dr Mohapi: on 07 August 2015, the CEO must approve all Business Cases where normal procurement processes are not followed, including deviations.

5.1.97. The finalised Business Case titled *“Deviation from normal procurement procedure for the maintenance and technical support of the Firearms Permit System for the South African Police Service on a once-off basis with the option to review”* had an estimated budget of R21 609 625.50 and was signed by the following officials: -

| Name | Position | Role | Date signed |
|-----------|---------------------------------|-----------------|---------------|
| V Dee | Management Accountant | Budget verified | 05 April 2016 |
| S Mayer | HOD: Crime and Justice (Acting) | Recommender | 06 April 2016 |
| P Coertze | Executive Operations (Acting) | Recommender | 21 April 2016 |
| P Munyai | CTO | Recommender | 09 May 2016 |

| | | | |
|-------------|-------------------------------------|-------------|-------------|
| M Ndlangisa | Deputy CEO: ICT Service Delivery | Recommender | 09 May 2016 |
| S Mohapi | Chief Executive Officer | Approver | 09 May 2016 |

5.1.98. According to the Business Case, approval was requested for a deviation from normal procurement processes to appoint FDA as a sole service provider for the provision of maintenance and technical support of the FPS for SAPS.

5.1.99. The following features were noted in the Business Case: -

“4. Project scope

The Firearms Permit System (FPS) provides the means to manage the issuing of competency declarations and firearm permits to SAPS members. The maintenance and technical support of Firearms Permit System will be managed by SITA Cluster 2 Crime prevention environment.

The maintenance and technical support of Firearms Permit System will start on the 1st of September 2016 and end on the 31st of August 2019.

The maintenance and technical support of Firearms Permit System (FPS) will result in adding a new business to SITA.

5. Value proposition

SITA Enhanced Firearms Register System (EFRS) Team will be trained and skilled to support the Firearms Permit System (FPS) by the Service provider. The current Enhanced Firearms Register System (EFRS) will be integrated with Firearms Permit System (FPS) to avoid duplication of functionality between the two systems.

6. Capacity

SITA does not have skills and infrastructure to Support Firearms Permit System (FPS).

SITA Firearms team will have an opportunity to learn and get necessarily skills and knowledge to support the Firearms Permit System (FPS) from Forensic Data Analysts (FDA).

The payment of the maintenance and support fees will ensure that the current users of these products will receive upgrades or new releases of the Firearms Permit System and that support can be obtained when System issues are experienced.”

5.1.100. As per the Business Case, the costing model for the FPS contract was as follows: -

| Description | Quantity | FDA cost (R) | SITA cost (R) + 7% | SITA 7% profit (R) |
|---|----------|---------------|--------------------|--------------------|
| Maintenance, technical support of FPS on a month-to-month basis | 1 | 9 703 939.08 | 10 383 214.84 | 697 275.74 |
| Annual enterprise software license fee for FPS for 2016/17 | 1 | 8 011 772.50 | 8 572 597.00 | 560 824.50 |
| Total | | 17 715 711.58 | 18 955 811.84 | 1 240 100.24 |
| Plus VAT | | 2 480 199.62 | 2 653 813.66 | 173 614.04 |
| Total Price (VAT incl.) | | 20 195 911.20 | 21 609 625.50 | 1 413 714.27 |

- 5.1.101. According to the Business Case *“After approval of this business case, SITA will await the invoice from the supplier. As soon as SITA has received the invoice from the sole supplier, the client, SAPS, will be invoiced for the full amount of the invoice and a copy of the invoice from the supplier will be attached to the SITA to SAPS as proof that the transaction between SITA and the supplier has been finalised.”*
- 5.1.102. Paragraph 5 of the Business Case provided that *“SITA Enhanced Firearms Register System (EFRS) Team will be trained and skilled to support the Firearms Permit System (FPS) by the Service provider.”*
- 5.1.103. Paragraph 10 of the Business Case further stated that *“All the maintenance and technical support of the FPS costs are fully recoverable from the client, SAPS, thus there will be no financial impact on SITA. The recovery of the cost will be done via the 2016/2017 SITA SAPS Managed Application Maintenance SLA. SITA has added 7% to the cost as part of executing the request.”*
- 5.1.104. No evidence was however provided by SITA indicating that the training and skills transfer ever took place. This was confirmed during interviews with both Mr Masango and Mr Setumu in interviews held on 31 August 2020 and 03 September 2020, respectively.
- 5.1.105. Paragraph 5 of the Business Case also provided that *“The current Enhanced Firearms Register System (EFRS) will be integrated with Firearms Permit System (FPS) to avoid duplication of functionality between the two systems.”*
- 5.1.106. No evidence was provided by SITA indicating that there was an attempt to integrate the two systems. This was also confirmed during interviews conducted with both Mr Masango and Mr Setumu.

5.1.107. Both Mr Masango and Mr Setumu indicated that it would not have been possible to adapt the EFRS system to render the same service to SAPS that FDA was rendering with the FPS system.

5.1.108. During his interview, Mr Masango stated the following regarding the issue of training: -

“The training and skills transfer that was indicated in the Business Case never occurred. SITA never allocated resources to the client (SAPS) for them to be trained. The only person who was working on the FPS from the SAPS side was Monty Mollentze. SITA never allocated resources to FDA to train because they were sitting at the client which is SAPS. At the time, there was a lot of work being done on the EFRS system and at the time SITA also did not have the resources to allocate to FDA on a full time basis for them to be trained.”

5.1.109. During his interview, Mr Setumu stated the following: -

“As per the Business Case there was no skills transfer because of how the Service Level Agreement with SAPS was structured. It was resource based, you are contracted for a specific amount of hours and that you cannot do anything else outside what you are contracted to do so the skills transfer never occurred because there was no agreement between SAPS and SITA to that effect.”

5.1.110. Paragraphs 8 of (the costing model) and 10 of the Business Case provided for a 7% profit margin to SITA as part of executing the request. No evidence was obtained from SITA indicating that the proposed 7% profit margin was recovered from SAPS. This was confirmed during interviews with both Mr Masango and Mr Setumu in their respective interviews. They both stated in interviews that SAPS did not accept this condition.

5.1.111. It is also noted that there is a discrepancy between the approved budget as per the Business Case amounting to R20 195 911.20 (inclusive of VAT but

excluding the 7% profit proposed by SITA) on the one hand and the available budget in the amount of R19 031, 116.00 which was allocated to the project as per the Functional, Financial and Procurement Approval document which was attached to the Tasking Letter from SAPS to SITA dated 10 December 2015 on the other.

- 5.1.112. Both Mr Masango and Mr Setumu conceded in their respective interviews that the Business Case was to a large extent determined by the Tasking letter that was received from SAPS as well as the documentation attached thereto, which included the approved budget and the letter from FDA confirming that it was a sole source supplier of the FPS software.
- 5.1.113. Mr Masango stated that they had received an email from Ms Susan Meyer indicating that if they received a request from SAPS, it could not be changed. So they were required to adhere to that Tasking letter and the Tasking letter was clear, asking for a closed bid.
- 5.1.114. After the Business Case was approved, Mr Setumu took it, together with the supporting documentation and gave it to Mr Stephen Khesa: the then Sourcing Analyst at SITA (Mr Khesa) on 31 May 2016.
- 5.1.115. According to SITA's 2015 Delegation of Authority Policy (Annexure E), the Chief Procurement Officer (CPO) has authority to grant pre-approval for a deviation where a single or sole source procurement strategy is used. According to the Policy, this must occur after a Business Case has been approved by the CEO.
- 5.1.116. Mr Khesa then proceeded to draft a letter titled "*Request for Pre-approval for the deviation from the normal procurement process*" which was signed by the following officials: -

| Name | Position | Role | Date signed |
|-------------------------|--|-------------|----------------|
| Stephen Khesa | Sourcing Analyst | Compiler | 27 July 2016 |
| Juanita Wagner | Manager: Commodity Sourcing | Reviewer | 27 July 2016 |
| Marvin Sebela | HOD: Strategic Sourcing (Acting) | Recommender | 29 July 2016 |
| (PP) Jabulile Tlhako | Chief Procurement Officer (Acting) | Approver | 04 August 2016 |

- 5.1.117. As per the letter, the Chief Procurement Officer (CPO) was requested in terms of the SITA SCM Policy and Delegations of Authority to grant pre-approval for deviation from the normal procurement process with respect to sole source procurement, for the appointment of FDA for the maintenance and technical support of the FPS for the SAPS.
- 5.1.118. The letter stated that in terms of the SITA SCM Policy effective from 1 April 2015, the CPO has the delegation of authority to grant pre-approval to engage a supplier for sole source procurement through a written motivation submission with substantiating reasons for considering sole source instead of an open bid process.
- 5.1.119. The letter also stated that SITA conducted market research to determine if there is any other company offering the FPS. The outcome of the research was that FDA was the only service provider providing the service nationally as *“per attached letter.”*
- 5.1.120. Two annexures were enclosed with the letter, the aforementioned Business Case which was approved by Dr Mohapi in his capacity as Chief Executive Officer on 09 May 2016 (Annexure A) and a letter addressed to SITA from Mr

Keating, the Chief Executive Officer of FDA, dated 2 June 2016 and titled “FPS Sole Supplier – Firearm Permit System” (Annexure B).

5.1.121. The letter from Mr Keating provided that *“we hereby confirm that FDA is the Sole Owner and Only Supplier of FPS and that there is nobody (Nationally or internationally) that can lay claim on the Intellectual Property of FPS. FDA holds the Source Code and Intellectual Property Rights for FPS.”*

5.1.122. No evidence was provided by SITA indicating that any market research was conducted by the Lines of Business or by Demand Management to establish if FDA is indeed the sole service provider in the market as is stated in the letter approved on behalf of Jabulile Tihako on 04 August 2020.

5.1.123. This was confirmed by both Mr Masango and Mr Setumu during their respective interviews held on 31 August 2020 and 03 September 2020.

5.1.124. Mr Masango stated the following during his interview: -

“There was no indication from SAPS that they wanted us to do any market research. The tasking letter we received from SAPS was clear that SITA must go on a closed bid. The Business Case was answering that. That’s why the Business Case specifically indicated that this was a deviation which indicated that this was not a normal procurement process.”

5.1.125. Mr Setumu stated the following during his interview: -

“No market research was done to confirm that FDA was the only player in the market as contained in the Business Case. It was not part of my scope to determine if FDA was the sole player in the market because FDA had already been managing the FPS system for SAPS for a very long time.”

5.1.126. A Procurement Project Plan was compiled by Mr Khesa, recommended by Ms Juanita Wagner: Commodity Sourcing (Ms Wagner) and approved by Mr Setumu on 04 August 2016.

- 5.1.127. On 05 August 2016, Ms Wagner granted approval for bid publication of bid number SS-1039-SK-2016 on a *“Request to appoint Forensic Data Analyst (FDA) for the maintenance and technical support of the Firearms Permit System for the South African Police Service.”*
- 5.1.128. According to the Approval for Bid Publication dated 05 August 2016, the bid closing date was 12 August 2016.
- 5.1.129. On 05 August 2016, Mr Khesa sent the approved bid invitation via e-mail to Mr Keating.
- 5.1.130. According to the e-mail dated 05 August 2016, Mr Keating was requested to provide a response to SITA by 12 August 2016 at 11h00. Mr Keating was also requested to provide an original Tax Clearance Certificate and also attach a certified B-BBEE Certificate.
- 5.1.131. On 08 August 2016, Mr Kobus Rossouw of FDA (Mr Rossouw) e-mailed the signed SBD4, SBD8 and SBD 9 documents to Mr Khesa.
- 5.1.132. It could not be established from a review of the bid proposal submitted by FDA that a valid Tax Clearance Certificate was attached.
- 5.1.133. Mr Khesa was appointed as the Chairperson of the BEC for the FPS tender (SS-1039-SK-2016). He accepted the appointment on 16 August 2016.
- 5.1.134. On 16 August 2016, Mr Rossouw submitted a costing model via e-mail to Mr Khesa with a total bid price of R20 297 345.03 (incl. VAT). The following is recorded on the costing model: -

| Description | Quantity | FDA cost (R) |
|---|----------|--------------|
| Maintenance, technical support of FPS on a month-to-month basis | 1 | 9 792 966.12 |

| | | |
|--|---|---------------|
| Annual enterprise software license fee for FPS for 2016/17 | 1 | 8 011 772.50 |
| Total | | 17 804 688.62 |
| Plus VAT | | 2 492 656.41 |
| Total Price (VAT incl.) | | 20 297 345.03 |

5.1.135. It is noted that there is a discrepancy between the pricing schedule provided by Mr Keating on 07 March 2016 and the price schedule provided by Mr Rossouw on 16 August 2016 for the maintenance, technical support of the FPS on a month-to-month basis as follows: -

| Description | 07 March 2016 | 16 August 2016 |
|---|---------------|----------------|
| Maintenance, technical support of FPS on a month-to-month basis | 816 080.51 | 808 661.59 |

5.1.136. There was an increase in price in the amount of R7418.92 between the quote submitted by FDA on 07 March 2016 and the quoted submitted on 16 August 2016 notwithstanding that the 07 March 2016 quote specifically stated that the prices would be fixed until 31 March 2017.

5.1.137. A Pre-bid Adjudication Review Checklist was signed off by the following officials: -

| Name | Role | Date signed |
|----------------|-----------|----------------|
| Stephen Khesa | Verified | 18 August 2016 |
| Juanita Wagner | Supporter | 24 August 2016 |
| Marvin Sebela | Approver | Undetermined |

5.1.138. According to SITA's 2015 Delegation of Authority Policy (Annexure E), the Management Procurement Committee (MPC) has authority for the final award of a sole source procurement where the contract amount is greater or equal to R10 million but does not exceed R30 million.

- 5.1.139. In this case, even though the contract value was R20 297 345.03, the request was made to the Executive Procurement Committee (EPC) as opposed to the MPC. It is also noted that the Procurement Project Plan that was approved by Mr Setumu on 04 August 2016 also stated that the request for the final award of the contract would be made to the MPC.
- 5.1.140. It is unclear why there was a deviation from the approved Delegation of Authority or the Procurement Project Plan.
- 5.1.141. Mr Khesa compiled a submission to the Executive Procurement Committee (EPC) titled “*SSP-1039-SK-2016: Request to appoint of Forensic Data Analysts (FDA) for the maintenance and technical support of the Firearms Permit System for the South African Police Service*” (sic) was signed by the following officials: -

| Name | Position | Role | Date signed |
|----------------|---|-------------|-------------------|
| Stephen Khesa | Sourcing Analyst: Commodity Sourcing | Compiler | 26 September 2016 |
| Juanita Wagner | Senior Manager: Commodity Sourcing (Acting) | Recommender | 26 September 2016 |
| Marvin Sebela | HOD: Strategic Sourcing (Acting) | Recommender | 26 September 2016 |

- 5.1.142. According to the submission, the EPC was requested to award the sole source procurement of SSP-1039-SK-2016 to appoint FDA for the maintenance and technical support of the FPS at a total bid amount of R20 297 35.03.

5.1.143. The following was noted in the submission *“due to the urgency of this matter, the sourcing strategy and technique used for this requirement was to utilise a sole source approach wherein a request for proposal was issued to Forensic Data Analysts (Pty) Ltd.*

A sole source was deemed appropriate to address these requirements because Forensic Data Analysts (Pty) Ltd has been involved in the maintenance and technical support of the Firearm Permit System for the South African Police Service since its inception in 2009.”

5.1.144. As already stated elsewhere above, no evidence was provided by SITA indicating that market research was done to confirm that FDA was indeed the only service provider in the market that could provide this service to SAPS.

5.1.145. It was also noted from the submission that the available budget as per the Business Case that was approved by Dr Mohapi on 09 May 2016 was R20 195 911.20 for a period of one year maintenance and technical support of the FPS.

5.1.146. The submission to the EPC however reflected an amended recommended bidder amount of R20 297 345.03 resulting in a budget deficit of R101 433.83.

| Approved budget amount as per the Business Case (R) | Recommended Bidders amount as per submission to the EPC (R) |
|---|---|
| 20 195 911.20 (VAT Incl.) | 20 297 345.03 (VAT Incl.) |

5.1.147. According to the submission to the EPC, budget confirmation was sought from SAPS, and thereafter confirmation was received that funds would be available.

5.1.148. The Public Protector was not provided with a copy of the budget confirmation from SAPS for consideration.

5.1.149. According to the minutes of the meeting of the EPC which took place on 28 September 2016, the following officials were in attendance: -

| No | Name and Designation |
|-----|--|
| 1. | Andre Pretorius (Acting Chairperson) |
| 2. | Pieter Coertze (Member) |
| 3. | Cathy Magodi (Attending obo CPO) |
| 4. | Mzikayise Dondolo (Risk Advisor) |
| 5. | Marvin Sebela (Acting HOD: Strategic Sourcing) |
| 6. | Lungi Wolf (Manager: Physical Infrastructure) |
| 7. | Mbuyi Mokgoro (Committee Secretariat) |
| 8. | Mboneli Ndlangisa (Member) |
| 9. | Sihle Mthethwa (Alternate Member) |
| 10. | Pandelani Munyai (Member) |
| 11. | Dave Boucher (Internal Audit Advisor) |
| 12. | Juanita Wagner (Acting Senior Manager Commodity) |
| 13. | Maphefo Mojapelo (Manager: Commodity Sourcing) |

5.1.150. The following was observed from the minutes of the meeting regarding tender SSP-1039-SK-2016: -

“Comments:

- *The request is for sole source procurement and not urgent procurement.*
- *The supplier owns the source code and changing the system will mean that the system must be developed from scratch.*
- *SCM to obtain the original contract from SAPS in preparation for negotiations.*

Recommendation:

1. *To approve the award of sole source to appoint Forensic Data Analyst (FDA) for the maintenance and technical support of the firearms permit*

system for the South African Police Service to Forensic Data Analyst (Pty) Ltd at R 20 297 345.03 (VAT Incl.).” (sic)

- 5.1.151. On 28 September 2016, the EPC resolved to approve the award of sole source procurement in tender SSP-1039-SK-2016 to FDA. The letter was signed by Mr Andre Pretorius, the Acting Chairperson of the EPC.
- 5.1.152. According to SITA’s 2015 Delegation of Authority Policy (Annexure E), the CPO has authority to sign the award letter where the contract amount does not exceed R30 million.
- 5.1.153. On 17 October 2016, Mr Khesa prepared an internal memo titled “*SSP-1039-SK-2016: Request to appoint of Forensic Data Analyst (FDA) for the Maintenance and Technical Support of the Firearms Permit System for the South African Police Service*” (sic) to Ms Tlhako (Acting CPO) requesting her to sign the letter of award to FDA. Ms Tlhako signed the letter on 18 October 2016.
- 5.1.154. It is unclear from the documentation provided by SITA when the letter of award was sent to FDA.
- 5.1.155. On 01 December 2016, Mr Keating signed the Memorandum of Agreement and Service Level Agreement on behalf of FDA.
- 5.1.156. According to SITA’s 2015 Delegation of Authority Policy (Annexure E), the SCM: HOD has authority to sign contracts and addendum/extensions where the contract amount does not exceed R30 million.
- 5.1.157. On 06 December 2016, Mr Marvin Sebela: HOD: Strategic Sourcing (Acting) signed the Memorandum of Agreement on behalf of SITA for the provision of maintenance and technical support of the PFS for a period of 1 year, commencing on 18 October 2016 and terminating on 31 October 2017.

- 5.1.158. According to the agreement, the awarded costs associated with the services were R20 297 345. 03.
- 5.1.159. According to SITA's 2015 Delegation of Authority Policy (Annexure E), an Executive has authority to sign all Service Level Agreements.
- 5.1.160. The Service Level Agreement was signed on 02 December 2016 on behalf of SITA but it could not be established by whom or whether that official had the requisite authority to do so.
- 5.1.161. FDA invoiced SITA 13 times from 30 November 2016 to 31 October 2017 in the total amount of R20 297 345.01.
- 5.1.162. The following invoices were provided by SITA: -

| No | Invoice Number | Amount Paid (VAT Incl. |
|-------|----------------|------------------------|
| 1. | INV17059 | R930 331,78 |
| 2. | INV17060 | R9 133 420,65 |
| 3. | INV17065 | R930 331,78 |
| 4. | INV17076 | R930 331,78 |
| 5. | INV17091A | R930 331,78 |
| 6. | INV17099 | R930 331,78 |
| 7. | INV17125 | R930 331,78 |
| 8. | INV17137 | R930 331,78 |
| 9. | INV17151 | R930 331,78 |
| 10. | INV17164 | R930 331,78 |
| 11. | INV18005 | R930 331,78 |
| 12. | INV18040 | R930 331,78 |
| 13. | INV18059 | R930 274.78 |
| TOTAL | | R20 297 345,01 |

5.1.163. It is noted that the total amount invoiced was within the agreed upon budget for the service.

5.1.164. SITA was requested to provide confirmation that it recovered from SAPS the amounts paid to FDA.

5.1.165. On 08 and 21 September 2020, respectively, Mr Ernie Matolo provided its “Debtors – Accounts Receivable” reflecting payments received from SAPS for the FPS. The following payments were noted: -

| Document No | Description | Amount Paid (VAT Incl.) (R) |
|-------------|---|-----------------------------|
| 4022863 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR NOVEMBER 2016 | 930 331,78 |
| 4022864 | SP038 FIREARM PERMIT SYSTEM (FPS) SYSTEM | 9 133 420,65 |
| 4024538 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR DECEMBER 2016 | 930,331.78 |
| 4024539 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR JANUARY 2017 | 930,331.78 |
| 4023141 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR FEBRUARY 2017 | 930,331.78 |
| 4023203 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR MARCH 2017 | 930,331.78 |
| 4024706 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAM SERVICES FOR APRIL 2017 | 930,331.78 |
| 4024707 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR MAY 2017 | 930,331.78 |
| 4024710 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR JUNE 2017 | 930,331.78 |
| 4024711 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR JULY 2017 | 930,331.78 |

| | | |
|---------|--|---------------|
| 4024712 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR AUGUST 2017 | 930,331.78 |
| 4024713 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR SEPTEMBER 2017 | 930,331.78 |
| 4024714 | SP037 FIREARM PERMIT SYSTEM (FPS) EXTERNAL SERVICES FOR OCTOBER 2017 | 930,274.78 |
| TOTAL | | 20 297 345,01 |

5.1.166. A comparison of the invoices FDA submitted to SITA on the one hand *vis-a-vie* what SITA invoiced SAPS on the other indicates that SITA recovered from SAPS all amounts it paid to FDA for the FPS.

Extension of the FPS contract between SITA and SAPS

5.1.167. On 04 April 2017, Mr Khesa sent an e-mail to Mr Setumu reminding him that the contract with FDA was set to expire on 31 October 2017. He enquired if the contract would be replaced once it expires.

5.1.168. Mr Setumu replied on the same day stating that the agreement with SAPS is that the contract with FDA would be renewed for a further 3 years. In the same e-mail, he requested Mr Mollentze to obtain a letter from SAPS confirming the request.

5.1.169. On 19 June 2017, Mr Mollentze e-mailed the second Tasking letter from SAPS dated 14 June 2017 directly to Mr Setumu.

5.1.170. The second Tasking letter, signed by RJ Mokwena the Divisional Commissioner: Supply Chain Management of SAPS stated that *“kindly take note that Bid Adjudication Committee (BAC) granted approval for SITA to continue with negotiations for the renewal of the maintenance contract with the Service Provider of the Firearm Permit System for a period of three (3) years”*.

- 5.1.171. SITA did not provide evidence that the second Tasking letter was submitted to the office of the CEO as was the case with the first Tasking letter.
- 5.1.172. Mr Setumu and Mr Masango had stated during their respective interviews that the correct process is that the request should have come through the office of the CEO before it reached the Lines of Business.
- 5.1.173. Mr Setumu drafted a Business Case titled “*extension of Firearms permit System contract (SS-1039-SK-2016) for the South African Police Services for a period of three (3) years*” which was signed by the following officials: -

| Name | Position | Role | Date signed |
|--------------|---|-----------------|----------------------|
| KA Setumu | Lead Consultant: Applications | Requestor | 23 August 2017 |
| W Masango | Senior Manager: Justice and Crime | Recommender | 23 August 2017 |
| V Dee | Management Accountant | Budget verified | 25 August 2017 |
| M Sethusa | Senior Manager: Management Accountant | Recommender | 28 August 2017 |
| V John | Acting HOD: Transversal Solutions Cluster | Recommender | 28 August 2017 |
| R Rasikhinya | Chief Financial Officer | Recommender | 08 September 2017 |
| S Mohapi | Chief Executive Officer | Approver | 12 September 2017 |

- 5.1.174. According to the Business Case, approval was sought for the extension of the FPS contract for a period of three years, including the licenses, and support services (software upgrades and direct resource support).

5.1.175. According to the Business Case, the costing model for the extended FPS contract was as follows: -

| Description | 2017/2018 (R) | 2018/2019 (R) | 2019/2020 (R) |
|---|---------------|---------------|---------------|
| Maintenance, technical support of FPS on a month-to-month basis | 10 480 254.24 | 11 423 763.96 | 12 451 590.12 |
| Annual enterprise software license fee for FPS | 8 652 714.30 | 9 431 458.59 | 10 280 289.86 |
| Total (VAT Excl) | 19 132 968.54 | 20 855 222.55 | 22 731 879.98 |
| Total (VAT Incl) | 21 811 584.14 | 23 774 953.71 | 25 914 343.18 |

5.1.176. Mr Masango confirmed during interviews that the Business Case for the contract extension was drafted by Mr Setumu, with the assistance of himself and Mr Vernon John: the then Acting HOD: Transversal Solutions Cluster 1 and 2 (Mr John).

5.1.177. Mr Masango also stated that the Business Case was aligned closely with the Tasking letter received from SAPS. He also stated that the Business Case had been approved without an incident number (as per SITA practice) because there was a rush to finalise the matter as quickly as possible before the contract with FDA expires on 31 October 2017.

5.1.178. On 13 September 2017, Mr Setumu informed Mr Khesa, Mr Mollentze and Mr John via e-mail that the Business Case had been approved. He requested them to process it.

5.1.179. On 15 September 2017, Mr Setumu sent an e-mail to SITA's BAS: Internal Business Cases and SITASC with the following request *"Can you please log*

and incident for us for the extension of Firearms Permit System Maintenance and technical support and assign it to BAS.” This is an extremely Urgent request which has to be processed very soon because the current contract is coming to an end.”

- 5.1.180. On the same day, Mr Setumu also signed a “*Procurement Business Case Screening Form*”. It is noted from the document that under “*Types of Procurement*” Mr Setumu recorded “*Sole Source, Urgent Procurement and Extension of a Contract*”.
- 5.1.181. The contract extension was allocated Incident Number INC18539420 by Ms Malebo More on 15 September 2017.
- 5.1.182. SITA’s 2017 SCM Policy provides at paragraph 10.2.4 (*Certification of ICT goods and services by SITA*) that prior to issuing a bid, the responsible SITA procurement manager must ensure that certification of the goods or services by the responsible SITA division has occurred.
- 5.1.183. A “*MIOS Certification: Letter of Non-Applicability*” for the supply of “*Extension of Firearms Permit System contract (SS-1039-SK-2016) for the South African Police Service for a period of three (3) years*” dated 18 September 2017 was noted.
- 5.1.184. It appears from e-mail correspondence between 20 and 29 September 2017 that the Business Case was submitted to the Supply Chain Management Unit for processing.
- 5.1.185. It also appears from e-mail correspondence that Ms Suleman Kihisha of Accenture (another SITA service provider) was roped in to assist with the SCM processes which included preparation of the Project Plan and the bid documents for the contract extension.
- 5.1.186. SITA did not provide evidence indicating how the matter was reviewed and assessed by BAS.

5.1.187. A Project Plan was signed by the following officials:-

| Name | Position | Role | Date signed |
|-----------------|---|-------------|-------------------|
| Kihisha Suleman | Consultant: Sourcing Specialist | Compiler | 27 September 2017 |
| Malefa Mpitso | Manager: Strategic Sourcing (Acting) | Recommender | 27 September 2017 |
| KA Setumu | Lead Consultant: Applications | Acceptor | 27 September 2017 |

5.1.188. On 29 September 2017, Ms Suleman sent an e-mail to Mr Setumu and Mr Masango requesting them to approve the RFB (bid) documents that she had prepared for publishing.

5.1.189. On 29 September 2017, Mr Setumu returned the approved documents via e-mail with each page of the bid documents initialled.

5.1.190. On 29 September 2017, Mogogodi Dioka, Head of Department: Tactical Sourcing (Ms Dioka) addressed a letter to National Treasury.

5.1.191. The purpose of the letter to National Treasury was to request approval for the extension of the FPS licenses and support services to SAPS between FDA and SITA for a period of three years, from 1 November 2017 to 31 October 2020 in the amount of R71 500 881.03 (approximately R71 million).

5.1.192. According to the letter, *“the extension will result in accumulative increase of 352% to date, against the original contract value and thus exceeds the 15% threshold as per the National Treasury Instruction Note No 32 paragraph 3.9.3.”*

- 5.1.193. On 10 October 2017, Mr Solly Tshitangano, Chief Director: SCM Governance, Monitoring and Compliance (Mr Tshitangano) from National Treasury responded to the letter dated 29 September 2017.
- 5.1.194. The response stated amongst other things that *“the reasons provided for this extension is that SITA directly contracted Forensic Data Analysts for the annual enterprise software license and support service as the original software manufacturer, furthermore Forensic Data Analysts are the sole supplier and holder of the intellectual property rights. The reasons provided for this extension are justifiable.”* National treasury support the reason for extension on condition that the reasonableness of the price is assessed...*Please be advised that this award must be published on the e-tender portal.”*
- 5.1.195. SITA did not provide evidence indicating that the award was published on the e-tender portal as per the instruction from National Treasury.
- 5.1.196. Paragraph 21.10(c) *“direct negotiations”* of the 2017 SCM Policy provides that for negotiations for bids above R10 million, a written negotiation strategy should be submitted by the identified negotiation team and approved by the Chief Procurement Officer (CPO).
- 5.1.197. Malefa Mpitso: Strategic Sourcing Manager (Acting) prepared a submission to the Executive: Supply Chain Management (Executive: SCM) dated October 2017 titled *“Request for permission to conduct direct negotiations with the sole supplier and the original software manufacturer for SS 1691/2017: Procurement of Firearms Permits Systems for the South African Police Services for a period of three (3) years.”* it was signed by the following officials:-

| Name | Position | Role | Date signed |
|---------------|--------------------|----------|-----------------|
| Malefa Mpitso | Strategic Sourcing | Compiler | 18 October 2017 |

| | | | |
|---------------------|--|-------------|--------------------|
| | Manager (Acting) | | |
| Wendy Ditshetelo | Senior Manager: Strategic Sourcing | Recommender | 18 October 2017 |
| Mogogodi Dioka | Head of Department: Tactical Sourcing | Recommender | 18 October 2017 |
| Jabulile Tlhako | Executive: SCM | Approver | 19 October 2017 |

5.1.198. The submission stated that: -

5.1.198.1. National Treasury approval was obtained to extend the contract on condition that the reasonableness of the prices was assessed.

5.1.198.2. The new contract was for a period of three years from 1 November 2017 to 31 October 2020 for an amount of R71 500 881.03 9 (VAT Incl.).

5.1.198.3. Negotiations were required to meet that condition with the aim of obtaining a breakdown of the price and negotiate discount rates.

5.1.199. According to the submission, the following officials would form part of the SITA negotiation team: -

| Name | Designation |
|-----------------|---|
| Malefa Mpitso | Strategic Sourcing Manager (Acting) |
| Alex Setumu | Lead Consultant: Applications |
| William Masango | Senior Manager: Cluster 2, Justice and Crime Prevention |
| Kihisha Suleman | Strategic Sourcing – Consultant (Accenture) |

| | |
|--------------|---|
| Joel Motaung | Senior Manager: Strategic Sourcing (Accenture) |
|--------------|---|

- 5.1.200. Malefa Mpitso compiled an undated negotiation strategy document which was approved by Ms Tlhako.
- 5.1.201. On 18 October 2017, Ms Suleman sent a meeting invite to the SITA team and Mr Keating. The negotiation meeting was scheduled for 19 October 2017.
- 5.1.202. The e-mail contained the bid documents for the contract extension. The e-mail stated that *“FDA is required to submit a quotation for the Licenses and Support Services for extension of contract 1039-SK-2016 of Three (3) years and also complete the attached documents then send back to me.”*
- 5.1.203. It was noted that the closing date on the bid documents was 18 October 2017 at 16h00. SITA provided the Bid document submitted by Mr Keating but it could not be established when the documents were submitted to SITA.
- 5.1.204. On 19 October 2017, Mr Keating attended a price negotiation meeting with the SITA negotiating team.
- 5.1.205. According to the attendance register for the meeting, the following officials were in attendance: Mr Ken Wienand: Professional: Budgeting and Reporting, Mr Keating: Chief Executive Officer (FDA), Mr Joel Motaung, Ms Suleman, Mr Masango, Malefa Mpitso and Reuben Motsinoni: Consultant: Contract Management.
- 5.1.206. During the meeting, Mr Keating provided SITA with a quotation dated 18 October 2017, with a total contract amount of R71 500 881.02.
- 5.1.207. The final negotiation price accepted by all the parties following the negotiations was R69 500 000.00. On the same day, Mr Keating sent a revised price quotation to SITA via e-mail. The price quotation is as follows:

| Description | 2017/2018 (R) | 2018/2019 (R) | 2019/2020 (R) |
|---|---------------|---------------|---------------|
| Maintenance, Technical Support of FPS on a month-to-month basis | 11 176 900.52 | 11 176 900.52 | 11 176 900.52 |
| Annual Enterprise Software License fee for FPS | 9144 736.85 | 9144 736.85 | 9144 736.85 |
| Sub-Total VAT (Excl.) | 20 321 637.37 | 20 321 637.37 | 20 321 637.37 |
| VAT @ 14% | 2 845 029.23 | 2 845 029.23 | 2 845 029.23 |
| Total Per year (VAT Incl.) | 23 166 666.60 | 23 166 666.60 | 23 166 666.60 |
| Bid Total | | | 69 499 999.81 |

5.1.208. Attached to the e-mail is a letter signed by Mr Keating titled “Annexure A.7 – Document #1” and dated 18 October 2017.

5.1.209. The letter stated the following “1. *We hereby confirm that FDA is the Original Software Manufacturer (OSM) and Only Supplier of FPS and that there is nobody (Nationally or internationally) that can lay claim on the Intellectual Property of FPS.*

2. FDA holds the Source Code and Intellectual Property Rights for FPS.

3. We further confirm that this Solution was developed for SAPS and therefore it is not deployed at any other Government Entity at this time.

4. As per Section 7.2 (1) on pg 15 of Bid Document, we confirm that FDA as the OSM, have 2 Full Time On-Site resources, 4 Full Time Off-Site Resources

and 4 Part Time Off-Site Resources employed and Authorised by FDA to render the required services.”

5. The Annual Enterprise Software License Fee for FPS is payable on 1 November 2017, 1 November 2018 and 1 November 2019.”

5.1.210. The bid documents submitted by Mr Keating contained the following: -

- 5.1.210.1. Annexure 1: Technical and Pricing Requirements;
- 5.1.210.2. FDA Letter “Sole Supplier Status – FPS”;
- 5.1.210.3. FDA Letter “OSM and Sole Supplier – FPS”;
- 5.1.210.4. SBD 4 – Declaration of Interest;
- 5.1.210.5. SBD 8 – Declaration of Bidders past SCM practices;
- 5.1.210.6. SBD 9 – Certification of Independent Bid Determination.

5.1.211. Paragraph 25.10(c) “Quotation / bid documentation pack” of the 2017 SCM Policy provides that the standard bid documents that should be included, as a minimum, but are not limited to the following: -

- “(i) Invitation to bid that is the bidders’ consent to enter into a contract under the conditions specified in the bid documents, should the offer be accepted;*
- (ii) Tax clearance requirement (bidder can only be disqualified if failed to provide valid tax clearance certificate during award stage);*
- (iii) Relevant pricing schedule;*
- (iv) Declaration of interest;*
- (v) Declaration of bidder’s past SCM practices;*
- (vi) Certificate of independent bid determination;*
- (vii) Specifications/TORs;*
- (vii) General terms and conditions of contract;*
- (ix) Special contract conditions;*
- (x) Copy of the formal contract or SLA, where applicable;*
- (xi) Where functionality will be evaluated the following must be clearly specified in the invitation to quote/bid:*

- (1) Evaluation criteria for measuring functionality;
- (2) Weight of each criterion; and
- (3) Applicable minimum threshold or qualifying score for functionality;

(d) Exco has a delegation to review the information to be included in the quotation/bid document mentioned above.”

5.1.212. It is noted that some of the standard bid documents required by paragraph 25.10 of the 2017 SCM Policy did not form part of the bid submitted by Mr Keating on behalf of FDA.

5.1.213. It is however also noted that the 2017 SCM Policy does not indicate whether paragraph 25.10 is also applicable to sole source procurement.

5.1.214. According to “Annexure E: Procurement Functional Delegation” of SITA’s Delegation of Authority Policy approved on 16 May 2017 by the then Chairman of the Board of Directors, Mr Z Nomvete, the Executive Procurement Committee (EPC) has authority to make recommendations to the Board Procurement Committee (BPC) for the awarding of a tender that exceeds the contract value of R30 million.

5.1.215. Ms Suleman accordingly prepared a submission to the Executive Procurement Committee (EPC) dated October 2017 titled “SS 1691-2017: Request to extend the current contract for Licences and Support Service for the Firearm Permit Systems for the South African Police Services (SAPS) for a period of three (03) years.” The submission was signed by the following officials: -

| Name | Position | Role | Date signed |
|---------|---------------|----------|-------------|
| Kihisha | Supply Chain: | Compiler | 20 October |
| Suleman | Consultant | | 2017 |

| | | | |
|----------------|--|-------------|--------------------|
| Malefa Mpitso | Manager: Strategic Sourcing | Reviewer | 20 October 2017 |
| Joel Motaung | Strategic Sourcing: Senior Manager (Acting) | Supporter | 20 October 2017 |
| Mogogodi Dioka | Head of Department: Tactical Sourcing | Recommender | 20 October 2017 |

5.1.216. As per the submission, the EPC was requested to adjudicate and recommend to the BPC to approve SS 1691-2017 for the extension of contract SS 1039-SK-2016 for the supply of licences and support services for the FPS for the SAPS for a period of three years, commencing from 01 November 2017 on the terms of the revised price quotation submitted by Keith Keating on 19 October 2017.

5.1.217. According to the minutes of a meeting of the EPC dated 23 October 2017, it was resolved as follows: -

1. *“To recommend to the Board Procurement Committee the approval of the extension of contract SS1039-SK-2016 for the supply of licences and support services for the Firearm Permit System for the South African Police Service for a period of three (03) years, with review of scope and price for the third (03) year before the end of the 2nd year.*

2. *Lines of Business is requested to provide the following information:*

2.1. *A high level project plan with the assistance of the HOD: Application Development; the plan should include the review of two the (02) interns*

versus the current ten (10) resources as proposed by the service provider;

2.2. A detailed breakdown on the cost implications; and

2.3. A feasibility study on cost effectiveness.

3. Supply Chain Management was requested to do the following:

3.1. Update the background information to reflect the Waymark Infotech issue;

3.2. Breakdown of ten (10) resources to be utilised for maintenance and technical support cost of R11 176 600.52 for year (01) in terms of disciplines (i.e. programmer, senior analyst, etc.), hours to be worked and rate per hour;

3.3. Update the paragraph on the submission that deals with the reasonableness of the price to address National Treasury and Audit's concerns;

3.4. Provide confirmation of the budget based on the SLA with SAPS; and

3.5. Provide confirmation of the FDA BEE certificate.”

5.1.218. An undated FPS High level Project Plan dated 23 October 2017 in response to the EPC request was provided for review.

5.1.219. On 24 October 2017, Malefa Mpitso e-mailed a letter to Mr Keating as per the resolution of the EPC, requesting the following: -

“(1) Breakdown of ten (10) resources to be utilised for maintenance and technical support cost of R11 176 600.52 for year (01) in terms of disciplines (i.e. programmer, senior analyst, etc).

(2) Hours to be worked and rate per hour.

(3) Provide FDA BBB-EE Certificate.”

- 5.1.220. On 25 October 2017, Mr Keating provided SITA with a BBBEE Certificate for EOH Holdings and Subsidiaries via e-mail.
- 5.1.221. On 26 October 2017, Mr Rossouw provided SITA with an updated breakdown schedule of FDA resources, hourly rates and number of hours for the FPS project.
- 5.1.222. SITA did not provide evidence indicating that a feasibility study on cost effectiveness was done as per the resolution of the EPC.
- 5.1.223. It is also noted that in the submission to the EPC, an amount of R23 166 666.60 for the first year of the contract (2017/2018) was recommended to the BPC.
- 5.1.224. The Business Case that was approved by Dr Mohapi on 12 September 2017 contained an amount of R21 811 584.14 for the 2017/2018 financial year. This indicates an increase of R1 355 082. 46 in budget for the first year of the contract.
- 5.1.225. SITA did not provide evidence to account for this discrepancy, nor was any evidence provided indicating that the additional R1 355 082.46 was budgeted for.
- 5.1.226. According to *“Annexure E: Procurement Functional Delegation”* of SITA’s Delegation of Authority Policy approved on 16 May 2017, the Board Procurement Committee (BPC) has the authority to approve final awards for sole source procurement where the tender contract value is greater or equal to R50 million but does not exceed R100 million.
- 5.1.227. Malefa Mpitso accordingly prepared a submission to the BPC dated October 2017 titled *“SS 1691-2017: Request to extend the current contract for Licences and Support Service for the Firearm Permit Systems for the South*

African Police Services (SAPS) for a period of three (03) years.” The submission was signed by the officials below: -

| Name | Position | Role | Date signed |
|------------------------|--|-------------|--------------------|
| Obo Jabulile Tlhako | Executive: Supply Chain Management | Supporter | 25 October 2017 |
| Rudzani Rasikhinya | Chief Financial Officer | Supporter | 25 October 2017 |
| Dr Setumo Mohapi | Chief Executive Officer | Recommender | unsigned |

- 5.1.228. The submission to the BPC was not signed by Dr Mohapi even though his name was recorded on the submission as a Recommender.
- 5.1.229. According to the submission, the BPC was requested to approve SS 1691-2017 for the extension of contract SS 1039-SK-2016 for the supply of licences and support services for the FPS for the SAPS for a period of three years commencing from 01 November 2017, on the terms of the revised price quotation submitted by Mr Keating on 19 October 2017.
- 5.1.230. In a special meeting held on 27 October 2017, the BPC resolved to approve the award of SS 1691-2017 to FDA as an extension of contract SS 1039-SK-2016, for the supply of licences and support services for the FPS for the SAPS for a period of three years commencing from 01 November 2017 on the terms of the revised price quotation submitted by Keith Keating on 19 October 2017.
- 5.1.231. It was also resolved by the BPC that the contract value would be fixed and there would be no annual price adjustments applicable for the duration of the three year contract period.

- 5.1.232. According to “*Annexure E: Procurement Functional Delegation*” of SITA’s Delegation of Authority Policy approved on 16 May 2017, the Chief Procurement Officer (CPO) has the authority to sign award letters where the tender contract value is greater or equal to R30 million but does not exceed R100 million.
- 5.1.233. On 31 October 2017, Ms Tlhako in her capacity as CPO, addressed a letter to Mr Keating informing him of the extension of the contract SS 1691-2017 for licenses and support services of the FPS for the SAPS for a period of three years at a total contract value of R69 499 999.81 VAT Incl. (as per the price quotation provided by Mr Keating on 19 October 2017).
- 5.1.234. On 31 October 2017, Mr Keating in his capacity as Chief Executive Officer and Director of FDA acknowledged and accepted the conditions of the content of the above-mentioned letter from SITA.
- 5.1.235. On 02 November 2017, FDA represented by Mr Keating signed the Memorandum of Agreement (the agreement) for the maintenance and support of the SAPS FPS for a period of three years commencing on 01 November 2017 and terminating on 31 October 2020.
- 5.1.236. As per the agreement, the total cost of the contract extension was R69 499 999.81 (VAT incl.).
- 5.1.237. The agreement was not signed by SITA.
- 5.1.238. In a meeting held on 17 August 2020 with Vincent Mphaphuli: Head of Department: Legal Services (Mr Mphaphuli) and Freddie Mitchell: Executive: Internal Audit (Mr Mitchell), it was confirmed that SITA never signed the agreement to extend the FPS service by FDA.
- 5.1.239. The evidence indicates that in November 2017, the Standing Committee on Public Accounts (“SCOPA”) scrutinized the relationship between SAPS and FDA.

- 5.1.240. SCOPA requested SITA and SAPS to appear and address all contracts entered into with FDA as various allegations of corruption and irregularities had emerged.
- 5.1.241. The FPS Agreement, the 2012 ROFIN contract as well as the VA-AMIS contract were submitted by SITA to SCOPA.
- 5.1.242. Pursuant to the submissions and meetings held before SCOPA in November 2017 as well as forensic investigations which had been commissioned by SITA during 2016, SITA had taken the decision to cease making any payments to FDA.
- 5.1.243. While no payments were made by SITA to FDA for the use of the FPS after 31 October 2017, FDA continued to provide maintenance and technical support services to SAPS on the FPS until 04 April 2018.
- 5.1.244. As a result of non-payment by SITA, on 03 April 2018, SAPS received an e-mail from FDA, in which FDA threatened to disable the use of various systems, including the FPS, at midnight on 04 April 2018.
- 5.1.245. On 04 April 2018, FDA carried through with its threat and disabled the systems.
- 5.1.246. Due to the critical nature of the services that FDA was rendering to SAPS, SAPS and SITA launched an urgent court application on 09 April 2018 seeking urgent relief for the restoration of SAPS use and access to the VA-AMIS, FPS and the Property Control Exhibit Management (“PCEM”) systems.
- 5.1.247. The litigation between SITA and FDA continued until September 2019 when the Constitutional Court ruled in favour of FDA.
- 5.1.248. As already stated above, the submission approved by the BPC indicated that FDA would offer two services, namely the Maintenance, Technical Support

of the FPS on a month-to-month basis and secondly, Annual Enterprise Software License Fees (license fees) for the FPS.

- 5.1.249. No evidence was provided by SITA to indicate that there was an agreement in place with FDA even though FDA continued to render the service to SAPS until FDA took the decision to disable the FPS system during April 2018. This was confirmed by Mr Mphaphuli during the meeting held on 17 August 2020.
- 5.1.250. Mr Mphaphuli also stated during the meeting that SITA continued to pay Annual Enterprise Software License fees to FDA for the FPS until April 2020.
- 5.1.251. The evidence indicates that SITA made the payments for the license fees even though there was no agreement in place with FDA.
- 5.1.252. On 09 October 2019, SITA addressed a letter to the Deputy National Commissioner of SAPS titled *“Request for Government Order – INRE: Settlement Agreement between SITA and FDA/ISS.”*
- 5.1.253. According to the letter : -

“There were a number of negotiation meetings held between SAPS, SITA and FDA to reach a settlement on payments due to FDA as a result of services contracted with FDA on behalf of SAPS. The Deputy National Commissioner is aware that SITA and FDA have in principle reached an agreement in terms of which SITA will pay FDA for services rendered and the utilisation of FDA software by SAPS until 31 October 2019.

On 03 October 2019, it was agreed that payment from SITA to FDA is subject to SAPS issuing a Government Order (GO) in favour of SITA. In order to assist SAPS in this regard, below are the figures of in-principle agreement between SITA and FDA:

2.1 Firearm Permit System (FPS)

| | <i>Start</i> | <i>End</i> | <i>Duration</i> | <i>License Fee per month</i> | <i>Total for duration</i> |
|---|------------------|------------------|-----------------|------------------------------|---------------------------|
| <i>Monthly License Fee</i> | <i>01-Nov-17</i> | <i>31-Oct-18</i> | <i>12</i> | <i>R868 425,41</i> | <i>R10 425 000,01</i> |
| <i>Monthly License Fee</i> | <i>01-Nov-18</i> | <i>30-Sep-19</i> | <i>11</i> | <i>R867 320,61</i> | <i>R9 640 076,76</i> |
| <i>Monthly License Fee</i> | <i>01-Oct-19</i> | <i>31-Oct-19</i> | <i>1</i> | <i>R867 320,61</i> | <i>R867 320,61</i> |
| <i>Services for duration</i> | <i>01-Nov-17</i> | <i>31-Mar-18</i> | <i>5</i> | <i>N/A</i> | <i>R5 309 027,75</i> |
| <i>Settlement for period 01 November 2017 – 31 October 2019 incl. vat</i> | | | | | <i>R26 250 475,13</i> |

2.1.1. FPS settlement terms:

2.1.1.1. FDA to agree that it will not execute on the judge Swanepoel's judgment dated 30 January 2019;

2.1.1.2. That the above settlement is subject to SAPS providing GO for the same amount payable to SITA and SITA obtaining approval from its Board and National Treasury (if applicable). This is a full and final settlement between the parties in respect to the Firearm Permit system.”

3. SITA hereby requests SAPS to indicate the date when SITA will receive the GO. The following will be the payment process: -

- SAPS will issue GO in favour of SITA*

- *On receipt of the GO, SITA will invoice SAPS in accordance with the GO*
- *SITA will issue a Purchase Order to FDA, who will in turn invoice SITA in line with the PO*
- *On receipt of payment from SAPS, SITA will then pay in accordance with SITA finance policies.”*

5.1.254. The letter was signed by Ntutule Tshenye: Acting Chief Executive Officer of SITA on 10 October 2019 and countersigned by General F Vuma: Deputy National Commissioner of SAPS on 31 October 2019.

5.1.255. SAPS responded to SITA in a letter signed by F Vuma dated 31 October 2019. The letter titled *“Settlement Agreement between State Information Technology Agency and the South African Police Service in Request for Government Orders: Services Rendered for Firearms Permit System, Visual Analysis ANACAPA Matric Intelligence Solution and Rofin, Spheron and Nikon Products”* stated the following: -

“Firearm Permit System (FPS)

The presented SITA settlement agreement of Firearm Permit System (FPS) maintenance and software license services consumed by SAPS is unyielding as it is calculated from an incomplete agreement between SAPS and SITA at a total figure of R26 250 475,13.

On the basis of the negotiations on FPS service consumed in the period from 01 November 2017 to 31 October 2019 as presented by SITA from an incomplete agreement of 2017/2018 between SITA and the SAPS be settled at the amount denoted by SITA.

The SAPS commits a full settlement and provisioning of a government order equal to the settlement amount of R26 250 475, 13 and pay SITA on approval from the SAPS Bid Adjudication Committee and National Treasury.”

- 5.1.256. It is noted that the settlement agreement made provision for the payment of license fees totalling R26 250 475,13, for the period of 01 November 2017 to 31 October 2019.
- 5.1.257. On 07 September 2020, Mr Ernie Matolo of SITA provided invoice number 4026412 dated 29 November 2019 reflecting that SITA invoiced SAPS for the amount of R26 250 475,13, as per the Settlement Agreement.
- 5.1.258. On 08 September 2020, Mr Matolo provided SITA's *DEBTORS - ACCOUNTS RECEIVABLE* indicating recovery of the amount of R26 250 475, 13 which was due to SITA.
- 5.1.259. Notwithstanding that the settlement agreement made provision for the payment of license fees for the period of 01 November 2017 to 31 October 2019, Mr Mphaphuli stated in the meeting held with him on 17 August 2020 that SITA only stopped paying license fees to FDA during April 2020.
- 5.1.260. To corroborate Mr Mphaphuli's evidence, the relevant license fee invoices submitted by FDA to SITA for that period were obtained. The invoices were as follows: -

| Invoice No. | Invoice date | Description | Amount total amount (VAT Incl) |
|-------------|---------------|--|--------------------------------|
| INV20015 | 03 April 2020 | FPS License Fees for the year 1 Nov 2019 till 31 Oct 2020 for the month: November 2019 | R876 370.61 |
| INV20016 | 03 April 2020 | FPS License Fees for the year 1 Nov 2019 till 31 Oct 2020 for the month: December 2019 | R876 370.61 |
| INV20017 | 03 April 2020 | FPS License Fees for the year 1 Nov 2019 till | R876 370.61 |

| | | | |
|----------|---------------|--|---------------|
| | | 31 Oct 2020 for the month: January 2020 | |
| INV20018 | 03 April 2020 | FPS License Fees for the year 1 Nov 2019 till 31 Oct 2020 for the month: February 2020 | R876 370.61 |
| INV20019 | 03 April 2020 | FPS License Fees for the year 1 Nov 2019 till 31 Oct 2020 for the month: March 2020 | R876 370.61 |
| Unknown | Unknown | FPS License Fees for the year 1 Nov 2019 till 31 Oct 2020 for the month: April 2020 | R876 370.61 |
| Total | | | R5 258 223.66 |

5.1.261. The following invoices were submitted to SAPS by SITA to recover the amounts paid to FDA: -

| Invoice No. | Invoice date | Description | Amount total amount (VAT Incl) |
|-------------|---------------|--|--------------------------------|
| 4027320 | 13 March 2020 | FPS License Fees for the year 1 Nov 2019 till 31 Oct 2020 for the month: for November 2019, December 2019, January 2020, February 2020 and February 2020 | R3 505 482.44 |

| | | | |
|---------|---------------|---|---------------|
| 4027578 | 20 April 2020 | FPS License Fees for the year 1 Nov 2019 till 31 Oct 2020 for the month: for March 2020 | R876 370.61 |
| 4027618 | 22May 2020 | FPS License Fees for the year 1 Nov 2019 till 31 Oct 2020 for the month: for April 2020 | R876 370.61 |
| Total | | | R5 258 223.66 |

5.1.262. SITA did not provide evidence that the payment of the total amount of R5 258 223.66 for licence fees for the period November 2019 to April 2020 was in terms of an agreement between SAPS, SITA and FDA.

5.1.263. The settlement agreement referred to elsewhere above only related to the period of 01 November 2017 to 31 October 2019 and not November 2019 to April 2020.

5.1.264. On 15 May 2020, Mr Luvuyo Keyise (Mr Keyise) addressed a letter to General Sithole: National Commissioner of SAPS titled *“Intellectual Property negotiations between SAPS and FDA/ISS on VA-AMIS and FPS System.”*

5.1.265. The letter recorded the following: -

“...SITA have received invoices in relation to monthly license fees on VA-AMIS and Firearm Permit Systems for the month of April 2020.

...National Treasury has been appointed by SAPS to lead negotiations on the outright purchase of the FDA/ISS intellectual property. SITA’s concern is that, no feedback has ever been provided on the current negotiations and how long it will take to conclude.

The last meeting SITA attended was on 06 April 2020 and National Treasury promised that it will be able to finalize the report before end of April 2020. SITA's fear is that, the negotiations started in December 2019 and there is no sign that it will be concluded as expected.

To protect its rights, SITA hereby ask SAPS to provide certainty as to when the negotiations will be concluded? SITA cannot continue to incur irregular expenditure on the license fees without SAPS having provided the clarity on the negotiations.”

- 5.1.266. A review of SITA's Supplier Payment History Report indicates that between the period of February 2016 and April 2020, a total amount of three hundred and fifty two million, one hundred and thirty four thousand, one hundred and thirteen Rand and forty six cents (R352 134 113.46) has been paid to FDA.
- 5.1.267. It is noted that following investigations commissioned by SITA into the FPS tender during 2016, various officials who are alleged role-players in the FPS procurement process either resigned from SITA or were dismissed following disciplinary action.
- 5.1.268. The Public Protector delivered notices issued in terms of section 7(9) of the Public Protector Act (notice) to the following recipients affording them the opportunity to respond to the evidence gathered during the investigation: -
- 5.1.268.1. On 20 October 2021 to Mr Keyise: Executive Caretaker of SITA;
- 5.1.268.2. During October 2021 to the current and former SITA officials identified as relevant to the procurement of services from FDA who could be located; and
- 5.1.268.3. On 05 November 2021 to Mr Keith Keating: CEO of FDA and General KJ Sithole: National Commissioner of the South African Police Service;

- 5.1.269. On 08 November 2021, Ms Susan Meyer submitted a response to the notice. In her response, she stated that the FPS system was a mission critical system for SAPS. That SITA was approached by SAPS because the continued maintenance and operation of the system was critical for the success of the function of SAPS.
- 5.1.270. Ms Meyer submitted that the intellectual property and source code of the FPS software were owned by FDA and therefore, FDA would have been its sole supplier. She contended further that there was no access to the Source Code to allow for competitive bidding for the required maintenance. Her position was predicated on the letter SITA received from FDA confirming its ownership of the software.
- 5.1.271. On 18 November 2021 a response was received from Mr Keating stating that he had reservations about the findings contained in the notice. He however did not provide a response with evidence contradicting the evidence obtained by the Public Protector during the investigation.
- 5.1.272. On 11 January 2022 SITA submitted a response dated 09 January 2022 to the notice through Mr Keyise. It should be noted that SITA had indicated that they would consult with all current and former officials named in the notice and provide a consolidated response factoring in all the evidence received from the consultations.
- 5.1.273. In the response SITA did not appear to dispute the evidence but wished to highlight that it did not have a choice of going out on public tender wherein the brand (FPS software) had been specifically chosen by SAPS, without SITA's involvement, and moreover the budget for maintenance and support was predetermined by SAPS as they procured the system without the involvement of SITA.

- 5.1.274. SITA stated that it could not be expected to change the operating system or any portion of the FPS software without having sufficient budget and the buy-in from SAPS, the procurers and owners of the system.
- 5.1.275. On 26 March 2021, National Treasury condoned the irregular expenditure in the amount of R99 549 246, 06, incurred by SITA as a result of the procurement of services from FDA without a valid contract in place.
- 5.1.276. On 20 September 2021, National Treasury further condoned irregular expenditure in the amount of R325 302 336, 55, incurred by SITA emanating from the contravention of supply chain management prescripts in respect of the award of the contract to FDA, after SITA demonstrated that consequence management was implemented against those responsible for this process.

Application of the relevant law and prescripts

The Constitution of the Republic of South Africa, 1996 (the Constitution).

- 5.1.277. It is not disputed that SITA is an organ of State as contemplated in sections 239 and 217 of the Constitution. Like all other organs of State, SITA is required to discharge all of its duties and functions in accordance with the law. SITA's conduct should be beyond reproach and it's expected to measure up to policy and legislative prescripts that concern the procurement of goods and services. These requirements must also be understood together with the basic values governing public administration in section 195(1) of the Constitution.
- 5.1.278. Section 217 of the Constitution lays down minimum requirements for a valid procurement process and provides that: -

“When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts

for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”

State Information Technology Agency Act 88 of 1998 (the SITA Act) and GNR.904 of 23 September 2005: General Regulations (SITA Regulations).

5.1.279. The SITA Act establishes a company responsible for the provision of information technology services to the public administration and to provide for matters connected therewith.

5.1.280. Section 20 of the SITA Act provides that: -

“20. Business and service level agreements”

(1)(a) Every department must conclude a business agreement with the Agency to regulate their relationship for purposes of (i) the services contemplated in section 7(1)(a); and (ii) those services contemplated in section 7(1)(b) that it intends to use.

(2) A department or public body and the Agency must conclude a service level agreement to support the business agreement concluded in terms of subsection (1).”

5.1.281. Regulation 7.2 of the SITA Regulations provides that when carrying out its procurement function as provided for in section 7(3), (4)(a)(ii) and (b)(ii) and (5)(b) of the SITA Act, the Agency must comply with section 217 of the Constitution and the Public Finance Management Act, 1999.

The Public Finance Management Act, 1999 (the PFMA)

5.1.282. The purpose of the Act is to regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed

efficiently and effectively, to provide for the responsibilities of persons entrusted with financial management in those governments, and to provide for matters connected therewith.

5.1.283. SITA is listed in Schedule 3A as a national public entity in the PFMA and is therefore required to comply with the provisions of the Act.

5.1.284. Section 1 of the PFMA defines irregular expenditure as: -

“...expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including (a) this Act...”

5.1.285. Section 50 of the PFMA provides that: -

“(1) The accounting authority for a public entity must –

(a) Exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity, (b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity.

(2) A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not— (a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act.”

5.1.286. Section 51(1) of the PFMA provides for the general responsibilities of accounting authorities. It provides that: -

“(1) An accounting authority for a public entity –

- (a) *must ensure that that public entity 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.*
- (b) *must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity.*
- (c) *is responsible for the management, including the safe-guarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity.*
- (d) ...
- (e) ...
- (f)
- (g) ...
- (h) *must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity.”*

5.1.287. Section 57 of the PFMA deals with the responsibilities of other officials of a public entity and reads as follows: -

“An official in a public entity—

- (a) *must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;*
- (b) *is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official’s area of responsibility;*

(c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;

(d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and

(e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility."

5.1.288. Section 76(4) of the PFMA provides that National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning any matter that may be prescribed for all institutions in terms of this Act; financial management and internal control; the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities, issued in terms of the Public Finance Management Act, 1999 in March 2005 (Treasury Regulations).

5.1.289. The National Treasury Regulations promulgated in terms of the PFMA are applicable to public entities listed in Schedule 3A and 3C of the Act. SITA is a Schedule 3A public entity.

5.1.290. Regulation 16A6.4 of the Treasury Regulations provides 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.”

SITA Supply Chain Management Policies dated 01 April 2015 (2015 SCM Policy) and 17 July 2017 (2017 SCM Policy).

5.1.291. Paragraph 3 of the 2015 SCM Policy provides that: -

“General Policy Provisions

3.3 The CEO is accountable for compliance to this policy by SITA, while the Board maintains oversight over the implementation thereof. The CPO, supported by the SCM division, is the custodian of this policy and is accountable for the implementation thereof, together with all SITA officials.”

5.1.292. The Policy defines accountability to mean that the personal responsibility of a person to his or her senior or higher authority for any act or omission in the execution of his or her assigned duties.

5.1.293. Paragraph 23.4.5 of the 2015 SCM Policy provides that: -

“Competitive Bids (Transaction value above R 500 000)

23.4.5.1 As a rule, SITA shall invite competitive bids for all procurement requirements above R 500 000, except where reasonable and justifiable circumstances dictate a deviation from competitive bidding processes.

23.4.5.3 Should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of sole supplier, SITA may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the delegated authorities. SITA is required to report within ten (10) working days to the relevant treasury and the Auditor-

General all cases where goods and services above the value of R1 million (VAT inclusive) were procured in terms of Treasury Regulation 16A6.4. The report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the prescribed competitive bidding process.”

5.1.294. Paragraph 23.9 of the 2015 SCM Policy provides that: -

“Deviations from Normal Procurement Process

23.9.2 SITA may dispense with the official procurement processes to procure any required goods or services through any convenient process, which may include deviation... if goods and services are produced or available from a sole source or single provider only.”

5.1.295. Paragraph 23.14 of the 2015 SCM Policy provides that: -

“Sole Source Procurement

23.14.1 Sole source procurement takes place when there is only one supplier for the required service or products (e.g. OEM or Sole distributor or Agent). If a vendor is a sole supplier or agent of a product, the responsible Procurement Manager must furnish substantiation on how the matter was ascertained as well as a letter of confirmation from the manufacturer that the tenderer is the sole supplier or agent. The letter of confirmation or substantiation must be included as part of the adjudication/award submission report to the adjudication and award structure.”

5.1.296. Paragraph 29.6 of the 2015 SCM Policy provides that: -

“Tax Clearance Certificate (As from 1 November 2014: date deferred until further notice.

29.6.1 From 1 November 2014 (date deferred until further notice), National Treasury Practice Note 3 of 2014, dated 31 July 2014, or any subsequent issue of the National Treasury on this matter, shall be adhered to in regard to the tax status of persons doing business with the state or wanting to register on state supplier databases in order to do business with the state. These conditions include:

29.6.1.1 From 1 November 2014, SARS will gradually phase out paper based tax clearance certificates and instead implement an electronic tax Compliance Status (TCS) system to allow organs of state to conduct on-line verifications and continuous tracking of the tax status of all persons' who conduct business with the State. All such persons must be tax compliant at the date of submission and award of a bid as well as for the full duration of a contract.

29.6.1.4 SITA shall perform tax compliance checks as follows:

- a) Before suppliers are added to its database*
- b) Before a supplier's quotation is accepted*
- c) Before bid award (including awards via Treasury Regulation 16A.6.4)*
- d) Before any payment is made to a supplier, including awards via Treasury Regulation 16A.6.4."*

5.1.297. Paragraph 29.6 of the 2017 SCM Policy provides that: -

"Publishing of awards

Within seven days from the time the bid is awarded, the following information must be made available on National Treasury's e-Tender portal:

- a) contract description and bid number;*
- b) names of the successful bidder(s) and preference points claimed;*
- c) the contract price(s) (if possible);*
- d) contract period;*
- e) names of directors; and*

f) *date of completion / award*”

5.1.298. Paragraph 31.2 of the 2017 SCM Policy provides that: -

“31.2 Creation of contracts

- a) *A formal contract must be entered into between SITA and the service provider after the awarding of a bid and successful negotiation of the contract with the service provider.*
- b) ...
- c) ...
- d) ...
- e) ...
- f) *All changes to the contract during the life of a contract must be formalised in writing and signed off by both parties to the contract.”*

5.1.299. Paragraph 31.4 of the 2017 SCM Policy provides that: -

“31.4 Management of contract amendments

- a) ...
- b) *All amendments must be approved in accordance with the SITA approved delegation of authority.*
- c) *Any amendments to the contract based on the agreement between the parties must be recorded and kept as part of the original contract file.”*

Delegations of Authority document approved by the Chief Executive Officer of SITA on 07 August 2015 (2015 DoA).

5.1.300. The purpose 2015 DoA is to establish a framework for delegations and explicitly set out the functions that should be delegated to SITA’s CEO by the Board of Directors and to the entities officials by the CEO.

- 5.1.301. The objectives of the DoA are to ensure transparency, accountability good corporate governance and sound management by SITA relating to business operations and expenditure. In addition, it promotes and enhances sound financial management by ensuring that managers have support for decision making.
- 5.1.302. Business Cases must address the financial implication, including budget, estimated costs, cost centre, project number, legal implications and a consideration of risks and mitigations.

Conclusion

- 5.1.303. Various irregularities were observed in the procurement of FDA by SITA such as: -
- 5.1.304. The request to procure the service having been submitted to SCM: Demand Management without an approved Business Case from Lines of Business, Incident Number assigned or the request being assessed by that BAS as per SITA processes.
- 5.1.305. Material misrepresentations by BAS that they had assessed the Business Case on 13 January 2016, which could not have occurred as the Business Case was only initiated in April 2016 and approved by Dr Mohapi on 09 May 2016.
- 5.1.306. The Lines of Business did not follow through as per the approved Business Case. The transfer of skills did not occur, The EFRS system was never integrated with the FPS to avoid duplication of functionality between the two systems, and SITA did not obtain the 7% profit margin from SAPS as part of executing the request. SITA did not observe the discrepancies in the quote submitted by FDA on 07 March 2016 and the quote submitted on 16 August 2016, notwithstanding that the 07 March 2016 quote specifically stated that the prices would be fixed until 31 March 2017.

- 5.1.307. The second Tasking letter from SAPS was submitted directly to the Lines of Business and not to the office of the CEO as was the case with the first Tasking Letter.
- 5.1.308. SITA did not provide evidence that the deviation contemplated in National Treasury Regulation 16A6.4 was reported to National Treasury as is required by paragraph 23.4.5 of the 2015 SCM Policy.
- 5.1.309. No evidence was provided by SITA that any market research was done to establish or independently substantiate that FDA was the sole supplier in the market able to render the same service as required by paragraph 23.14 of the 2015 SCM Policy.
- 5.1.310. It was the evidence of both Mr Setumu and Mr Masango that no market research was done. They both indicated that the Business Case was prepared to give effect to the Tasking letter received from SAPS, they had to implement the request and not deviate from it.
- 5.1.311. No evidence was provided by SITA that the Tax affairs of FDA had been verified during the course of the procurement process as required by paragraph 29.6 of the 2015 SCM Policy.
- 5.1.312. No evidence was provided by SITA that the tender award was published on the e-tender portal as per the instruction from National Treasury in the letter dated 10 October 2017 and as per paragraph 29.6 of the 2017 SCM Policy.
- 5.1.313. No evidence could be found that the contract awarded to FDA may have amounted to fruitless and/or wasteful expenditure due to the fact that SITA did not receive value for money from the contract as is contended by the Complainant. The available evidence indicates that SITA rendered the service on behalf of SAPS. All amounts subsequently paid by SITA to FDA were recovered from SAPS.

- 5.1.314. The evidence however indicates that SITA paid approximately R5 258 223.66 for licence fees for the period of November 2019 to April 2020, without an agreement in place between SAPS, SITA and FDA.
- 5.1.315. The payment of the amount of R5 258 223.66 for licence fees for the period of November 2019 to April 2020 was not in accordance with the provisions of section 20 of the SITA Act as it was done without a business agreement being in place.
- 5.1.316. In terms of paragraphs 31.2 and 31.4 of the 2017 SCM Policy, SITA was under the circumstances required to record and keep as part of the original contract with SAPS, the licence fees paid to FDA for the period of November 2019 to April 2020 on the FPS.
- 5.1.317. The Public Protector contends that the payment of the license fees for the period of November 2019 to April 2020 was irregular as defined in section 1 of the PFMA, as the payments were not done in accordance with the requirements of section 20 of the SITA Act. This is corroborated by the letter Mr Luvuyo Keyise addressed to General Sithole: National Commissioner of SAPS on 15 May 2020.
- 5.1.318. It therefore appears from the evidence above that SITA, through its Board of Directors did not ensure that SITA maintains its own internal controls, did not take effective and appropriate steps to prevent incurring expenditure not complying with its SCM policies, nor ensured the compliance by SITA with legislation applicable to it in the contract awarded to FDA, as is required by section 51 of the PFMA.
- 5.1.319. It is also evident that the officials who were implicated in the contract awarded to FDA did not ensure that SITA's internal controls were effectively carried out within their respective areas of responsibility as is required by section 57 of the PFMA.

- 5.1.320. SITA stated in its response to the notice that it investigated and took action against the implicated officials. There is no evidence that any action was taken against the CEO at the time, who as the accounting officer of the entity, and according to paragraph 3.3 of the 2015 SCM Policy, is accountable for SITA's compliance with the SCM policies.
- 5.1.321. The Public Protector appreciates the predicament that SITA found itself in, as canvassed in their response to the notice and further alluded to by Ms Meyer in her response that FDA owned the intellectual property and source code to the FPS software and SITA was therefore hamstrung by the request received from SAPS.
- 5.1.322. That predicament was not sufficient justification for SITA to deviate from its procurement policies. These policies were put in place so as to ensure fair, transparent and open procurement processes in compliance with section 217 of the Constitution.
- 5.1.323. SITA under the circumstances deviated from prescribed SCM processes in the contract awarded to FDA which resulted in a procurement process which was not fair, equitable, transparent, competitive or cost-effective, as is required by section 217 of the Constitution, section 51 of the PFMA and regulation 7.2 of the SITA Regulations.
- 5.1.324. The conduct of SITA was accordingly improper and constituted maladministration.
- 5.2. **Whether the appointment of Core Focus (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

Common cause or undisputed facts

- 5.2.1. It is not disputed that SITA invited bids under reference number RFB 1421/2016 on 27 May 2016 for procurement consultancy services for a period of twelve (12) months.
- 5.2.2. SITA awarded the tender to Core Focus (Pty) Ltd (Corefocus) during November 2016.

Issues in dispute

- 5.2.3. The issue for determination is whether the award of the tender to Corefocus was not in compliance with applicable supply chain management prescripts.
- 5.2.4. The Complainant contends that the contract awarded to Corefocus amounted to irregular expenditure because SITA exceeded the approved budget for the contract without seeking prior approval from National Treasury.
- 5.2.5. SITA stated in response to the allegation that even though Corefocus was appointed through an open tender process, the appointment was not in line with procurement processes and is considered to be irregular.
- 5.2.6. SITA also indicated that the contract award to Corefocus was identified by the Auditor General in the 2017/2018 audit. A copy of the Auditor General's management report was provided for perusal.
- 5.2.7. To determine what transpired, the following documents and prescripts were reviewed: -
 - 5.2.7.1. Available documents indicating how Corefocus was appointed, including internal Business Cases and approvals;
 - 5.2.7.2. Bids submitted by interested bidders;
 - 5.2.7.3. Correspondence with the successful bidder and National Treasury;

- 5.2.7.4. 2015 SCM Policy, 2017 SCM Policy, 2015 DoA and the Delegations of Authority document approved by the Chairperson of the Board of SITA on 16 May 2017 (2017 DoA); and
- 5.2.7.5. Responses received from notices issued in terms of section 7(9) of the Public Protector Act (notices).
- 5.2.8. According to the 2015 DoA, for expenditure that is required to follow the procurement process, a Business Case to initiate the process must be approved in accordance with the DoA. Once the Business Case has been approved, the procurement process will be initiated and the SCM delegations will come into effect.
- 5.2.9. A Business Case prepared by Silvanus David titled *“Procurement of Professional Services to appoint a Procurement Company to perform a support role to the Deputy CEO of ICT Service Delivery”* with a budget of R4 160 000.00 was signed by the officials below: -

| Name | Position | Role | Date signed |
|-----------------------|----------------------|-------------|---------------|
| Mboneli Ndlangisa | DCEO ICT Delivery | Requestor | 18 March 2016 |
| Rudzani Rasikhinya | CFO | Recommender | 30 March 2016 |
| S Mohapi | CEO | Approver | 02 April 2016 |

- 5.2.10. Paragraph 13.6 of the 2015 SCM Policy provides that the Bid Specification Committee (BSC) is established to consider and approve specifications for SITA’s internal requirements prior to the publication of a bid.
- 5.2.11. On 05 May 2016, Mr Willie Needham: the Chairperson of the BSC approved the specifications for Consultant Procurement Services under Incident Number INC9840811.

- 5.2.12. On 20 May 2016, Mr Carl Masekoameng: Procurement Manager, approved the bid notification under bid number RFB 1421/2016.
- 5.2.13. On 27 May 2016, SITA invited bids to provide procurement consultancy services for a period of 12 months. The bid was advertised on the Government Tender Bulletin and on SITA's website. The closing date for submission of bids was 20 June 2016.
- 5.2.14. According to the advert, a compulsory briefing session would occur on 07 June 2016. SITA did not provide any evidence indicating that the briefing session did occur.
- 5.2.15. 2 bids were submitted by Corefocus and Impela Alliances (Impela). It could not be established from the evidence when the bids were submitted to SITA.
- 5.2.16. The bids submitted by the 2 bidders were assessed. It was noted that no schedule 5 related to price was attached to the bid submitted by Impela.
- 5.2.17. The bid submitted by Corefocus contained a bid pricing model in the amount of R8 002 800.00 (Vat Incl.). It is noted that according to Annexure 1: Technical and Pricing Requirements, it was a mandatory requirement that a bidder must have a permanent staff compliment certified by the Chartered Institute of Procurement and Supply (CIPS) at the professional level "*Professional Diploma in Procurement and Supply*".
- 5.2.18. The bidder was required to substantiate or provide relevant proof. Corefocus submitted the CIPS Certificate of Mr Edson Tshuma. A review of the attached CV of Edson Tshuma indicates that he was at the time employed by Amaza Executive Consulting (Amaza) as a Senior Manager and not as a permanent employee of Corefocus. Amaza was subcontracted by Corefocus.
- 5.2.19. Corefocus did not comply with the mandatory technical evaluation criteria. It is not clear how they could have been appointed by SITA.

- 5.2.20. Records of the evaluation by the Bid Evaluation Committee (BEC) were not provided by SITA for consideration by the Public Protector.
- 5.2.21. According to SITA's 2015 Delegations of Authority Policy (Annexure E), the Chief Procurement Officer has the authority for final award of SITA bids where the contract amount is greater or equal to R3 million but does not exceed R10 million. The evidence however, indicates that the submission for final award was made to the Management Procurement Committee (MPC), a structure which has authority to approve final award where the amounts are greater or equal to R10 million but do not exceed R30 million.
- 5.2.22. On 26 September 2016, a submission was compiled on behalf of Ms Emmah Mpya: Senior Procurement Officer to the MPC titled "*Procurement Consultancy Services for a period of (12) twelve months*".
- 5.2.23. According to the submission, the MPC was requested to award RFB1421-2016 for a period of twelve (12) months to Corefocus for the contract amount capped at R4 160 000.00 (Vat Incl).
- 5.2.24. It is noted that there is a discrepancy between the award amount (R4 160 000.00) and the bid amount submitted by Corefocus (R8 002 800.00).
- 5.2.25. On 29 September 2016, the MPC resolved not to approve the award. The reasons provided for the non-award were due to pricing and change of scope. The correspondence was signed by Cathy Magodi: the Chairperson of the MPC.
- 5.2.26. on 24 October 2016, a second submission was made to the MPC and signed by the officials below: -

| Name | Position | Role | Date signed |
|---------------------|---------------------------------------|-------------|-----------------|
| Emmah Mpya | Senior Procurement Officer | Compiler | 18 October 2016 |
| Carl Masekoameng | Provincial Procurement Manager | Verifier | 18 October 2016 |
| (pp) Mogogodi Dioka | Head of Department: Tactical Sourcing | Recommender | 19 October 2016 |
| Jabulile Tlhako | Chief Procurement Officer (Acting) | Supporter | 19 October 2016 |

5.2.27. According to the submission, the MPC was again requested to award RFB1421-2016 for a period of 12 months to Corefocus at the capped amount of R8 002 800.00.

5.2.28. It is noted that the budgeted amount in the Business Case approved by Dr Mohapi on 02 April 2016 was R4 160 000.00.

5.2.29. The submission recorded that Corefocus complied with the mandatory requirement that a bidder must have a permanent staff compliment certified by the Chartered Institute of Procurement and Supply (CIPS) at the professional level "*Professional Diploma in Procurement and Supply*". This could not have been correct as the resource they referred to was Edson Tshuma, an employee of Amaza, a subcontractor of Corefocus.

5.2.30. On 28 October 2016, the MPC however resolved to approve the award to Corefocus for the amount of R4 160 000.00 as per the approved Business Case. The correspondence was signed by Bonke Nkosi: Acting Chairperson of the MPC.

- 5.2.31. According to Annexure E of SITA's 2015 DoA, the Chief Procurement Officer (CPO) has the authority to sign award letters where the tender contract value is less than R30 million.
- 5.2.32. On 08 November 2016, Mogogodi Dioka: Head of Department: Tactical Sourcing (a rank lower than CPO) accordingly signed off a letter of award informing Corefocus that they had been selected as the preferred bidder for procurement consultancy services for a period of 12 months. The total amount of the contract was not stated in the award letter.
- 5.2.33. Corefocus accepted the conditions of the letter on 09 November 2016.
- 5.2.34. According to Annexure E of SITA's 2015 DoA, an Executive of SITA has the authority to sign all Service Level Agreements (SLA).
- 5.2.35. An SLA for procurement consultancy services for a period of 12 months was signed by a representative of Corefocus on 12 January 2017 and by SITA, represented by an Executive: Operations on 23 January 2017.
- 5.2.36. According to Annexure E of SITA's 2015 DoA, the SCM: HOD has the authority to sign contracts where the tender contract value does not exceed R30 million.
- 5.2.37. SITA also entered into a Memorandum of Agreement with Corefocus for procurement consultancy services for a period of 12 months for the contract amount of R4 160 000.00 (Vat Incl.). The agreement was signed on behalf of SITA by Mogogodi Dioka: Head of Department: Tactical Sourcing on 24 January 2017.

Extension of tender number RFB 1421/2016

- 5.2.38. According to Annexure E of the 2017 DoA, requests for deviation from inviting competitive bids must be approved by the CEO.

5.2.39. A Business Case was accordingly prepared by Ms Tsepang Mazume on 05 June 2017 titled “*Procurement Consultancy Services and Capacity Augmentation*” with an estimated budget of R10 million was signed by the officials below: -

| Name | Position | Role | Date signed |
|--------------------|----------------------------------|-----------------|--------------|
| Mpho Mamphaga | Senior Manager: Regional Finance | Budget Verifier | 06 June 2017 |
| Jabulile Tlhako | Executive: SCM | Supporter | 07 June 2017 |
| Rudzani Rasikhinya | CFO | Recommender | 07 June 2017 |
| Setumo Mohapi | CEO | Approver | 12 June 2017 |

5.2.40. According to the Business Case, approval was sought to expand the scope of work for the contract under RFB 1421/2016 to incorporate SCM various service requirements. The scope expansion emanated from the shortage of capacity and the necessary skills to execute the current workload to service both SITA internal business and the SITA procurement external requests.

5.2.41. Ms Jabulile Tlhako addressed an undated letter to National Treasury (it is assumed that it was dated 19 June 2017 based on the response from National Treasury) requesting approval to increase the capped contract amount of the tender “*from R8 002 800.00 to R18 000 000.00 (VAT inclusive) and also extend this contract with additional two months from 1 December 2017 to January 2018.*”

5.2.42. It is noted from the letter that the impression is created that the contract amount was R8 002 800.00 when in reality, the parties had agreed to the contract amount of R4 160 000.00, which was also the amount reflected in the approved Business Case signed by Dr Mohapi on 02 April 2016.

- 5.2.43. On 23 June 2017, Mr Solly Tshitangano: Chief Director: SCM Governance, Monitoring and Compliance at National Treasury responded advising SITA that *“The reasons provided for this extension is justifiable...National Treasury supports the reason for the variation of this contract on phased implementation approach until 31 January 2018.”*
- 5.2.44. According to Annexure E of the 2017 DoA, the Executive Procurement Committee (EPC) has the authority to approve the extension of an existing contract where the contract value is equal to or greater than R10 million but does not exceed R50 million.
- 5.2.45. On 27 June 2017, Juanita Wagner: Acting Senior Manager: Commodity Sourcing accordingly compiled a submission to the EPC titled *“RFB 1421-2016: The Procurement Consultancy Services for a Period of twelve (12) months.”* The submission was recommended by Marvin Sebela: Acting Head of Department: Strategic Sourcing on the same day.
- 5.2.46. The purpose of the submission was to request approval for the scope expansion of the contract by increasing the capped amount to R18 000 000.00 (Vat Incl.) and to further extend the contract period until 31 January 2018.
- 5.2.47. No evidence was provided by SITA that approval was granted by the EPC.
- 5.2.48. On 19 July 2017, a second submission was prepared to the EPC again requesting approval for the scope expansion of the contract by increasing the capped amount to R18 000 000.00 (Vat Incl.) and to further extend the contract period until 31 January 2018.
- 5.2.49. No evidence was provided by SITA that approval was granted by the EPC with regard to the second submission.

5.2.50. According to Annexure E of the 2015 DoA, the SCM: HOD has the authority to sign contract addenda or extensions where the contract value does not exceed R30 million.

5.2.51. SITA accordingly provided a copy of an Addendum to the Memorandum of Agreement between SITA and Corefocus amending the main agreement as following: -

“1. Clause 15.2 of the Contract

The parties agree to the increase in Limitation of Liability and Indemnity. Effectively clause 15.2 is amended as follows: Each Party’s maximum aggregate liability for any and all claims arising from or due to this Agreement, including claims under any Indemnities contained in the Agreement shall not exceed an amount of R18 000 000.00 (Eighteen Million Rand) Vat inclusive.

2. Save to the extent specifically modified in accordance with this addendum, or unless agreed to in writing between the parties, the provisions of the Memorandum of Agreement shall mutatis mutandis continue to apply.

5.2.52. The addendum was signed by Mogogodi Dioka: Head of Department: Tactical Sourcing on behalf of SITA on 15 August 2017 and by a representative of Corefocus on 16 August 2017.

5.2.53. The invoices submitted by SITA indicate that Corefocus began rendering procurement consultancy services for SITA during November 2016 even though the contract between the two entities was only signed in January 2017. The evidence therefore indicates that Corefocus rendered services to SITA for November and December 2016 before a contract was put in place to regulate their relationship.

5.2.54. The Supplier Payment History Report of SITA indicates the following payments to Corefocus: -

| Payment Number. | Payment date | Amount (R) |
|-----------------|------------------|---------------|
| 646787 | 31 March 2017 | 649 611.90 |
| 648269 | 05 May 2017 | 1 983 896.40 |
| 650444 | 09 June 2017 | 1 233 428.70 |
| 651657 | 30 June 2017 | 2 292 585.60 |
| 653681 | 08 August 2017 | 1 638 499.20 |
| 654745 | 24 August 2017 | 5 918 509.50 |
| 665096 | 28 February 2018 | 3 381 297.00 |
| 665252 | 06 March 2018 | 1 313 593.50 |
| TOTAL | | 18 411 421.80 |

- 5.2.55. A total amount of R18 411 421.80 was paid to Corefocus by SITA.
- 5.2.56. The Auditor General's Management Report was perused and its findings are noted that the appointment of Corefocus was in contravention of section 51 of the PFMA and was not fair.
- 5.2.57. It is also noted in the report that management did not exercise oversight responsibility regarding compliance and related internal controls. Further that management did not review and monitor compliance with applicable laws and regulations.
- 5.2.58. SITA did not state in its response to the Public Protector what measures it put in place to remedy the internal control deficiencies identified by the Auditor General. It is however noted that Ms Jabulile Tlhako was charged for her involvement in the contract award to Corefocus in a letter dated 2 June 2018.
- 5.2.59. In addition to the notice that was issued by the Public Protector and directed to Mr Keyise of SITA through email correspondence on 20 October 2021, notices were also directed to the current and prior officials of SITA identified

in the investigation but could be located. A notice was also directed to Corefocus on 05 November 2021.

5.2.60. On 11 January 2022, SITA submitted a response to the notice. SITA did not submit new averments or evidence which had not been considered by the Public Protector during the investigation.

5.2.61. SITA stated in the response to the notice that the irregularities in the contract awarded to Corefocus were condoned by National Treasury after SITA demonstrated that consequence management had been concluded, however no evidence was provided by SITA regarding this assertion.

Application of the relevant law and prescripts

5.2.62. The following legal prescripts which have already been canvassed in this report were considered in this issue: -

5.2.62.1. Section 217 of the Constitution;

5.2.62.2. Sections 1, 51(1), and 57 of the PFMA;

SITA Supply Chain Management Policy dated 17 July 2017 (2017 SCM Policy).

5.2.63. Paragraph 2(c) of the 2017 SCM Policy provides that: -

“General Policy Provisions

2(c). The CEO is accountable for compliance to this policy by SITA, while the Board maintains oversight over the implementation thereof. The CPO, supported by the SCM division, is the custodian of this policy and is accountable for the implementation thereof, together with all SITA officials.”

5.2.64. Paragraph 9 of the 2017 SCM Provides that: -

“9.1 Delegation of authority

All SCM activities must be executed in accordance with pre-established levels of authority through delegations to ensure control and division of responsibility. The approved SITA Delegations of Authority (DOA) applies to all SCM activities executed by SITA officials.”

5.2.65. Paragraph 32 of the 2017 SCM Policy provides that: -

“32.2 Order administration

5.2.66. *An order must be placed based on the existence of a valid contract after the procurement process has been concluded satisfactorily.”*

Delegations of Authority document approved by the Chairperson of the Board of SITA on 16 May 2017 (2017 DoA).

5.2.67. According to Annexure E of the 2017 DoA, the Executive Procurement Committee (EPC) has the authority relating to the extension of an existing contract where the contract value is equal to or greater than R10 million but does not exceed R50 million.

Conclusion

5.2.68. The evidence does not support the Complainant’s contention that the contract awarded to Corefocus amounted to irregular expenditure because SITA exceeded the approved budget for the contract without seeking prior approval from National Treasury. The evidence provided by SITA indicates that approval was obtained from National Treasury on 23 June 2017.

5.2.69. Various other irregularities were however observed in the procurement of Corefocus and SITA did not dispute in its response to the Public Protector

that the appointment of Corefocus was irregular as it was not done in accordance with procurement processes. Irregularities identified in the process included: -

- 5.2.70. The discrepancies between the approved budget amount (R4 160 000.00), and the amount contained in the bid submitted by Corefocus and ultimately recommended to the MPC (R8 002 800.00).
- 5.2.71. The impression created in the letter to National Treasury and signed by Ms Jabulile Tlhako that SITA and Corefocus had agreed to the contract amount of R8 002 800.00 whereas the correct amount agreed to between the parties was R4 160 000.00.
- 5.2.72. SITA also did not provide evidence indicating how the bids under reference number RFB 1421/2016 were evaluated by the BEC.
- 5.2.73. SITA appointed Corefocus even though it did not meet the minimum mandatory requirement that a bidder must have a permanent staff compliment certified by the Chartered Institute of Procurement and Supply (CIPS) at the professional level "*Professional Diploma in Procurement and Supply*".
- 5.2.74. SITA did not provide evidence that the extension/variation of the contract was approved by the EPC as is required by paragraph 9.1 of the 2017 SCM Policy, read with Annexure E of the 2017 DoA.
- 5.2.75. The evidence also indicates that Corefocus began rendering services to SITA before a contract was put in place to regulate their relationship. In terms of paragraph 32.2 of the 2017 SCM Policy, SITA was required to ensure that orders are placed with Corefocus only after a contract had come into existence.
- 5.2.76. The evidence indicates that SITA, through its Board of Directors, did not ensure that the entity maintains its internal controls, did not take effective and

appropriate steps to prevent incurring expenditure not complying with its SCM policies in the procurement and subsequent extension/variation of the contract awarded to Corefocus, as is required by section 51 of the PFMA.

- 5.2.77. The evidence also indicates that the officials who were implicated in the contract awarded to Corefocus did not ensure that SITA's internal controls were effectively carried out within their respective areas of responsibility as is required by section 57 of the PFMA.
- 5.2.78. The Public Protector also notes the Auditor General's Management Report which found that the appointment of Corefocus was in contravention of section 51 of the PFMA and was not fair.
- 5.2.79. SITA took action against Ms Jabulile Tlhako for her involvement in the contract awarded to Corefocus but did not reflect on the measures it put in place to address the internal control deficiencies identified by the Auditor General.
- 5.2.80. SITA accordingly deviated from prescribed SCM processes in the contract awarded to Corefocus and the subsequent extension/variation of that contract which resulted in a procurement process which was not fair, equitable, transparent, competitive or cost-effective, as contemplated by section 217 of the Constitution and section 51 of the PFMA.
- 5.2.81. The conduct of SITA was accordingly improper and constituted maladministration.
- 5.3. **Whether the appointment of Accenture (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

Common cause or undisputed facts

- 5.3.1. It is not disputed that SITA invited bids under reference number RFB 1362/2015 on 13 November 2015 for the acquisition of Procurement Strategic Sourcing Execution Partners for a period of 24 months.
- 5.3.2. SITA awarded the tender to Accenture (South Africa) (Pty) Ltd (Accenture) during April 2016.

Issues in dispute

- 5.3.3. The issue for determination is whether the award of the tender to Accenture was not in compliance with applicable supply chain management prescripts.
- 5.3.4. The Complainant contends that the contract awarded to Accenture amounted to irregular expenditure due to the fact that Accenture did not perform in terms of the specifications of the tender.
- 5.3.5. SITA stated in response to the allegation that Accenture was appointed through an open tender process with an original contract value of R20 million. The contract value was further expanded by R6 million (the approval catered for an extension of 3 months (November 2017 – January 2018) and National Treasury approval was obtained for this additional amount. These amounts are not considered irregular.
- 5.3.6. SITA also stated in response to the allegation that approximately R9 million was overspent on the original approved amount of R20 million for which no approval was obtained. They concede that *“this amount is considered irregular and was dealt with by SITA’s Loss Control Committee. In this regard, the Executive: SCM was found accountable for the irregular expenditure and was charged with this and other transgressions. The Executive: SCM resigned during the disciplinary process at the end of July 2018.”*
- 5.3.7. It was also noted from the evidence provided by SITA that in addition to the award of a tender to Accenture during April 2016 under reference number

RFB 1362/2015 for the acquisition of Procurement Strategic Sourcing Execution Partners for a period of 24 months, SITA also concluded a Memorandum of Agreement (MoA) with Accenture and a Service Level Agreement pursuant to the MoA during July 2016.

- 5.3.8. According to the MoA, Accenture was appointed for ICT Architecture Service for a 24 month period at a contract value of R31 998 319.14 (VAT Incl.). The deliverables required from Accenture included 3 elements, namely the *Government Network and SA Connect Broadband Programme, Data Centres and Hosting Environment and Application Environment*.
- 5.3.9. SITA did not however, provide documents reflecting how this service was procured from Accenture.
- 5.3.10. To determine what occurred in respect of tender number RFB 1362/2015, the following documents and prescripts were reviewed: -
- 5.3.10.1. Available documents indicating how Accenture was appointed, including internal Business Cases and various approvals;
- 5.3.10.2. Bids submitted by interested bidders;
- 5.3.10.3. Correspondence with the successful bidder and National Treasury;
- 5.3.10.4. 2015 SCM Policy, 2017 SCM Policy, 2015 DoA) and 2017 DoA; and
- 5.3.10.5. Responses received from notices issued in terms of section 7(9) of the Public Protector Act (notices).
- 5.3.11. It is trite that execution of the SITA procurement process is triggered by an approved Business Case from Lines of Business requesting acquisition of the required goods or services. The Business Case must be approved in line with the applicable DoA.

5.3.12. A Business Case titled “*Acquisition of Services for Procurement Execution Partners (Professional Services)* ” was signed by the officials below: -

| Name | Position | Role | Date signed |
|-----------------------------|--|-------------------------|--------------|
| Cathy Magodi | HOD: Procurement Centre of Excellence | Compiler / Supporter | 30 June 2015 |
| Petrus Visser | Management Accountant | Budget Verified | 30 June 2015 |
| RL Kruger | Legal Services | Legal Compliance | 07 July 2015 |
| Sydney Tshibubudze | Chief Procurement Officer | Recommender | 07 July 2015 |
| LT. Gen Justice Nkonyane | Deputy CEO | Approver | 08 July 2015 |

5.3.13. According to the Business Case, approval was sought for the acquisition of services from a service provider for the provision of procurement execution support in line with the approved procurement strategic plan over a period of 24 months.

5.3.14. According to the submission, the cost of the procurement would be limited to R10 million for the first year of the contract and another R10 million for the succeeding year would be made during the budgeting period for the 2016/2017 financial year. The total estimated budget cap for the contract would be R20 million over a 24 month period.

5.3.15. Paragraph 13.6 of the 2015 SCM Policy provides that Bid Specification Committee’s (BSC) are established to consider and approve specifications for SITA’s internal requirements prior to the publication of a bid.

- 5.3.16. On 04 November 2015, the Non-ICT Bid Specification Committee (BSC) approved the technical specifications for the tender. The submission was signed by Nomgidi Potloane: Chairperson of the BSC.
- 5.3.17. On 06 November 2015, Juanita Wagner: Consultant: Acquisition Management approved the bid notification.
- 5.3.18. On 13 November 2015, SITA invited bids to provide acquisition of procurement strategic sourcing execution partners for a period of 24 months under tender number RFB1362/2015.
- 5.3.19. The bid was advertised on the Government Tender Bulletin and on SITA's website. The closing date for submission of tenders was 11 December 2015 at 11h00.
- 5.3.20. According to the advert, a briefing session would occur on 27 November 2015. SITA did not provide any evidence indicating that the briefing session did occur.
- 5.3.21. Seven (7) bids were submitted by the following bidders: Accenture (South Africa) (Pty) Ltd (Accenture), Buyajula (Pty) Ltd (Buyajula), Core Focus (Pty) Ltd (Corefocus), Mckinsey and Company Africa (Pty) Ltd (Mckinsey), Ernst and Young Advisory Services (Pty) Ltd (EY), South Africa Strategic Sourcing Consultants (SAS) and Deloitte and Touche (Deloitte). It could not be established from the evidence when the bids were submitted to SITA.
- 5.3.22. The seven (7) bids submitted were assessed for compliance with mandatory requirements by SITA. No irregularities were noted.
- 5.3.23. Records of the evaluation by the Bid Evaluation Committee (BEC) were not provided by SITA for consideration by the Public Protector.

5.3.24. According to Annexure E of the 2015 DoA, the Management Procurement Committee (MPC) has the authority to award bids where the contract value is greater than or equal to R10 million but does not exceed R30 million.

5.3.25. During March 2016, a submission to the MPC titled “*RFB1362/2015: Procurement of Professional services as Execution Partners for a period of twenty Four (24) Months.*” Was signed by the following officials: -

| Name | Position | Role | Date signed |
|-----------------------|---|-------------|---------------|
| Andisiwe Qwase | Administrator: Commodity Sourcing | Compiler | undated |
| Maphefo Mojapelo | Manager: Commodity Sourcing | Checked | undated |
| Jabulile Tlhako | Head of Department: Strategic Sourcing | Reviewer | 16 March 2016 |
| Sydney Tshibubudze | Chief Procurement Officer | Recommender | 16 March 2016 |

5.3.26. According to the submission, the MPC was requested to award RFB 1362/2015 for the procurement of professional services as execution partners for a period of 24 months based on the hourly rate as follows: -

| Supplier Name | Resources Skills Level Description | Unit Cost (Rate per Hour) |
|---------------|---------------------------------------|------------------------------|
| Accenture | Partner Consultant | R2182.00 |
| | Manager Consultant | R1543.20 |
| | Senior Consultant | R806.10 |

| | | |
|--|--------------------|--------|
| | Analyst Consultant | 602.60 |
|--|--------------------|--------|

- 5.3.27. The submission contained a Note stating that *“the estimated hours and total value indicated above were used purely for comparison purpose because the service provider will be paid on actual hours worked as per the project scope on the published costing model.”*
- 5.3.28. On 01 April 2016, the MPC resolved to approve the award of tender RFB 1362/2015 to Accenture. The submission was signed by Rudzani Rasikhinya: Chairperson of the MPC.
- 5.3.29. According to the 2015 DoA, the CPO has the authority to sign award letters where the contract value does not exceed R30 million.
- 5.3.30. On 06 April 2016, Mogogodi Dioka: Acting CPO (Mogogodi Dioka) signed off a letter of award informing Accenture that they had been selected as the preferred bidder for the procurement of professional services as execution partners for a period of 24 months. The total amount of the contract was not stated in the award letter.
- 5.3.31. Accenture accepted the conditions of the letter on the same day.
- 5.3.32. According to Annexure E of SITA’s 2015 DoA, the SCM: HOD has the authority to sign contracts where the tender contract value does not exceed R30 million.
- 5.3.33. SITA entered into a contract with Accenture for professional services as execution partners for a period of 24 months. The agreement was signed by both parties on 08 May 2016. It could not be established who signed the agreement on behalf of SITA.
- 5.3.34. According to Annexure E of SITA’s 2015 DoA, an Executive of SITA has the authority to sign all SLA’s.

5.3.35. 08 May 2016, SITA signed an SLA with Accenture for procurement consultancy services for a period of 24 months. The SLA was signed on behalf of SITA by Jabulile Tlhako in her capacity as Acting CPO (a rank lower than that of Executive at SITA).

Extension of tender number RFB 1362/2015

5.3.36. According to Annexure E of the 2017 DoA, requests for deviation from inviting competitive bids must be approved by the CEO.

5.3.37. An urgent Business Case titled “*Procurement Consultancy Services and Capacity Augmentation*” was signed by the officials below: -

| Name | Position | Role | Date signed |
|--------------------|---|-----------------|-----------------|
| Jabulile Tlhako | Executive: SCM | Requester | 19 October 2017 |
| Portia Matsena | HOD: Government ERP IFMS | Supporter | 19 October 2017 |
| Mpho Mamphaga | Senior Manager: Regional Finance | Budget Verifier | 23 October 2017 |
| Rudzani Rasikhinya | CFO | Recommender | 23 October 2017 |
| Setumo Mohapi | CEO | Approver | 29 October 2017 |

5.3.38. The purpose of the submission was to seek approval to obtain additional funds on contract REF 1362/2015 for staff augmentation which emanates from shortage of capacity and necessary skills to execute the current workload to service both the SITA internal business and procurement external requests.

- 5.3.39. According to the submission, additional funds (R12 million) were required because the approved budget of R20 million for the contract had been depleted by services already acquired from Accenture.
- 5.3.40. The submission also stated that *“To date R26 million has been spent on this contract and this is more than the R20 million that was approved. The extra R6 million spend is expenditure that has been incurred from the gCommerce project and this is because there was a misunderstanding that the invoice will be paid directly from the project...”*
- 5.3.41. No evidence was provided by SITA that the additional R6 million referred to in the submission was budgeted for or approved.
- 5.3.42. According to the submission, the additional R12 million that was requested would cover: a) expenditure already incurred for gCommerce (R6 million), and b) additional funds required for SCM day to day activities (R6 million).
- 5.3.43. It is noted that the activities relating to gCommerce did not form part of the scope of the Business Case that was approved by LT. Gen Justice Nkonyane: Deputy CEO on 08 July 2015.
- 5.3.44. On 01 November 2017, Mogogodi Dioka sent a letter to National Treasury requesting additional funds of R6 million (VAT inclusive) on contract RFB1362/2015 for the procurement of professional services as execution partners for a period of 24 months.
- 5.3.45. On 14 November 2017, Mr Solly Tshitangano: Chief Director: SCM Governance, Monitoring and Compliance (Solly Tshitangano) responded as follows: -
- “The National Treasury acknowledges receipt of your letter dated 1 November 2017.*

Your institution requests approval to extend Accenture contract for the provision of professional services as executive partners. The original contract was R20 000 000 for a period of twenty four (24) months from 1 May 2016 to 31 May 2018. The institution has since exhausted the funds provided for the duration of the contract and has exceeded the initial value of the contract in the amount of R6 000 000 which is a 30% variance. This expansion was however not reported to National Treasury. The new contract amount is R6 000 000 over the same duration which constitutes a cumulative variance of R60% against the original contract.”

- 5.3.46. The request was not approved by National Treasury. According to the letter, it was not clear how many resources were used, at what rate and for how long.
- 5.3.47. The letter stated that National Treasury would only finalise the application after receiving evidence of resources used at SITA and payments thereof.
- 5.3.48. On 21 November 2017, Denga Ravele: Acting Head of Department: Strategic Sourcing sent a letter to National Treasury addressing the concerns raised.
- 5.3.49. According to the 2017 DoA, the MPC has the authority to approve extensions of existing contracts that are equal to or greater than R3 million but do not exceed R10 million.
- 5.3.50. Notwithstanding this delegation of authority to the MPC, a submission was made to the Executive Procurement Committee (EPC) during November 2017. It is noted that the EPC has a higher rank than the MPC.
- 5.3.51. The submission titled *“RFB 1362/2016: Request to approve scope expansion for the contract between SITA and Accenture (Pty) Ltd for the procurement of professional services as execution partners for a period of twenty four (24) months”* was signed by the following officials: -

| Name | Position | Role | Date signed |
|---------------------|-----------------------------------|-----------|---------------------|
| Maphefo Mojapelo | Manager: Commodity Sourcing | Compiler | 22 November 2017 |
| Denga Ravele | HOD: Strategic Sourcing | Supporter | 22 November 2017 |

- 5.3.52. According to the submission, the EPC was requested to approve the additional funds for the contract between SITA and Accenture in the amount of R6 million *“to cater for additional requirements”*.
- 5.3.53. According to the submission *“there’s a possible irregular expenditure of R9 912 598.65 that SITA has already incurred (that is, amount spent to date R 29 912 598.65 less approved amount of R20 000 000.00 is equal to R9 912 598.65.”*
- 5.3.54. On 24 November 2017, the EPC resolved to approve the scope expansion in terms of the additional funds at the estimated amount of R6 million to cater for the additional requirements. The submission was signed by Rudzani Rasikhinya: Chairperson of the EPC.
- 5.3.55. The submission stated that *“the irregular expenditure incurred to be dealt with in line with SITA’s Policies and Procedures on Irregular, Fruitless and Wasteful Expenditure.”*
- 5.3.56. On 15 December 2017, National Treasury approved the variation of the contract on condition that the Accenture would not tender for any SITA work for a period of 12 months and that there were no existing contracts concluded with SITA.
- 5.3.57. No evidence was provided by SITA indicating that there was an agreement in place to regulate the contract expansion or variation.

- 5.3.58. SITA stated in its response to the allegations that approximately R9 million was overspent and dealt with by the entities Loss Control Committee. SITA however did not provide evidence of this information.
- 5.3.59. SITA also indicated that the Executive: SCM was found accountable for the irregular expenditure and was charged with this and other transgressions. The Executive resigned during the disciplinary process at the end of July 2018.
- 5.3.60. SITA provided a letter addressed to Ms Jabulile Tihako dated 29 June 2018 and titled Notice to Attend a Disciplinary Hearing. Charge 3 stated “*Causing of and/or incurring of irregular expenditure – Accenture.*”
- 5.3.61. According to the evidence submitted, Accenture invoiced SITA an amount of R33 808 907.88 between December 2016 and February 2018. SITA did not submit its Supplier Payment History Report indicating how much was actually paid to Accenture: -

| Invoice Number. | Invoice date | Amount (R) |
|-----------------|------------------|--------------|
| 6500067010 | 13 December 2016 | 1 007 773.81 |
| 6500068102 | 27 February 2017 | 1 299 592.20 |
| 6500068849 | 05 April 2017 | 3 710 777.39 |
| 6500069228 | 04 May 2017 | 1 846 800.00 |
| 6500069479 | 22 May 2017 | 1 163 921.76 |
| 6500069975 | 21 June 2017 | 1 117 200.00 |
| 6500069996 | 21 June 2017 | 1 945 706.17 |
| 6500071798 | 03 October 2017 | 1 440 349.25 |
| 6500071816 | 03 October 2017 | 2 176 761.60 |
| 6500072085 | 24 October 2017 | 554 040.00 |
| 6500072230 | 30 October 2017 | 1 384 509.29 |
| 6500072802 | 30 November 2017 | 1 358 544.01 |
| 6500073070 | 08 December 2017 | 606 370.56 |
| 6500073071 | 08 December 2017 | 863 965.88 |

| | | |
|------------|------------------|---------------|
| 6500073341 | 18 December 2017 | 1 824 000.00 |
| 6500073883 | 15 January 2018 | 579 056.16 |
| 6500073884 | 30 January 2018 | 551 632.32 |
| 6500073886 | 30 January 2018 | 1 026 182.88 |
| 6500073927 | 30 January 2018 | 833 242.64 |
| 6500073969 | 01 February 2018 | 2 513 447.10 |
| 6500074008 | 01 February 2018 | 1 273 034.79 |
| 6500074052 | 05 February 2018 | 2 006 466.23 |
| 6500074053 | 05 February 2018 | 1 631 659.35 |
| 6500074054 | 05 February 2018 | 1 092 874.44 |
| TOTAL | | 33 808 907.88 |

5.3.62. Notices issued by the Public Protector were delivered to SITA on 20 October 2021, the current and prior officials of SITA identified in the investigation and could be located during November 2021 and to Accenture on 05 November 2021.

5.3.63. In its response on 11 January 2022, SITA did not submit new averments or evidence which had not been considered by the Public Protector during the investigation.

5.3.64. On 30 December 2020, National Treasury condoned irregular expenditure in the amount of R28 623 373, incurred by SITA emanating from the award of the contract to a bidder that did not meet the minimum bid requirements for the tender, after SITA demonstrated that it complied with the provisions of paragraph 56 of the Irregular Expenditure Framework issued in terms of Treasury Instruction 02 of 2019/2020.

5.3.65. SITA stated in the response to the notice that the irregularities in the contract awarded to Accenture was condoned by National Treasury.

Application of the relevant law and prescripts

5.3.66. The following legal prescripts which have already been canvassed in this report were considered in this issue: -

5.3.66.1. Section 217 of the Constitution;

5.3.66.2. Sections 1, 51(1), and 57 of the PFMA; and

5.3.66.3. Paragraphs 2(c), 31(2) and 31(4) of the 2017 SCM Policy.

National Treasury Instruction Note 3 of 2016/2017 on preventing and combating abuse in the supply chain management system (Instruction Note 3 of 2016).

5.3.67. The above Instruction note, which took effect on 01 May 2016 is applicable to all institutions and public entities which includes SITA. The objective of the Instruction note is to provide guidance on measures to prevent and combat abuse in the SCM system.

5.3.68. Paragraph 9 of the Instruction Note provides that: -

“9.1 The Accounting Officer/Accounting Authority must ensure that contracts are not varied by more than 15% or R15 million (including VAT) for all goods and or services of the original contract value.

9.2 Any deviation in excess of the prescribed thresholds will only be allowed in exceptional cases subject to prior written approval from the relevant treasury.”

SITA Supply Chain Management Policies dated 01 April 2015 (2015 SCM Policy) and 17 July 2017 (2017 SCM Policy)

5.3.69. Paragraph 3.3 of the 2015 SCM and similarly paragraph 2(c) of the 2017 SCM Policy provides that the CEO is accountable for SITA’s compliance with the SCM policies and the CPO is accountable for the implementation thereof.

5.3.70. Paragraph 10.1 of the 2015 SCM Policy provides that: -

“Delegation of Authority

All SCM activities shall be executed in accordance with pre-established levels of authority through delegations to ensure control and division of responsibility. The approved SITA Delegations of Authority (DOA) applies to all SCM activities executed by SITA officials.”

5.3.71. Paragraph 21.4 of the 2017 SCM Policy provides that: -

“21.4 Procurement thresholds

Contracts may be extended or renewed by not more than 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount. Any deviation in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury.”

5.3.72. Paragraph 31.3 of the 2017 SCM Policy provides that: -

“Contract administration

SCM must ensure that all amendments to the contract are kept in the contract file and scanned into the electronic document management system.”

5.3.73. Paragraph 31.5 of the 2017 SCM Policy provides that: -

“Management of contract variations

All contract variations must conform to National Treasury prescripts.”

Delegations of Authority document approved by the Chief Executive Officer of SITA on 07 August 2015 (2015 DoA).

5.3.74. According to Annexure E: Procurement functional delegation of the 2015 DoA, an Executive of SITA has the authority to sign all SLA on behalf of the Agency.

Conclusion

5.3.75. Various irregularities were observed in the procurement of Accenture and these are: -

5.3.76. The signing of the Service Level Agreement on 08 May 2016 by Jabulile Tlhako in her capacity as CPO (a rank lower than that of an Executive of SITA) was not in accordance with the 2015 DoA and was therefore in contravention of paragraph 10.1 of the 2015 SCM Policy.

5.3.77. SITA conceded in its response that it incurred irregular expenditure as a result of the appointment of Accenture.

5.3.78. SITA incurred an additional R6 million over and above the R20 million which had been budgeted for the project. This additional expenditure was the result of activities on the gCommerce project which did not form part of the Business Case approved by LT. Gen Justice Nkonyane during July 2015.

5.3.79. This expenditure (R6 million), which was more than 15% of the value of the original contract (R20 million), was incurred prior to obtaining the written approval of National Treasury as is required by paragraph 9 of the Instruction Note 3 of 2016 and similarly, by paragraph 21.4 of the 2017 SCM Policy. This was not disputed by SITA in its response to the Public Protector.

5.3.80. SITA stated in its response that approximately R9 million was eventually overspent on the original approved amount for which no approval was obtained.

- 5.3.81. SITA did not provide evidence that the variation/ expansion of the original contract was formalised in writing and signed off by SITA and Accenture as is required by paragraph 31 of the 2017 SCM Policy.
- 5.3.82. The evidence indicates that SITA, through its Board of Directors, did not ensure that the entity maintains its internal controls, did not take effective and appropriate steps to prevent incurring expenditure not complying with its SCM policies and Instruction Note 3 of 2016 in the extension/variation of the contract awarded to Accenture, as is required by section 51 of the PFMA.
- 5.3.83. The evidence also indicates that the officials who were implicated in the contract awarded to Accenture did not ensure that SITA's internal controls were effectively carried out within their respective areas of responsibility as is required by section 57 of the PFMA.
- 5.3.84. It is noted that disciplinary action was taken against Ms Jabulile Tlhako for the irregular expenditure incurred by SITA as a result of the Accenture contract.
- 5.3.85. It is also noted that SITA concluded a MoA and SLA with Accenture for ICT Architecture Service for a 24 month period at a contract value of R31 998 319.14 (VAT Incl.), but no documents were provided for this procurement process.
- 5.3.86. It is further noted that SITA stated in its response to the allegations that the irregular expenditure identified in the contract award was dealt with by the entities Loss Control Committee. SITA has however not provided evidence of this information.
- 5.3.87. SITA accordingly deviated from prescribed SCM processes in the extension/variation of the contract awarded to Accenture, which resulted in a procurement process which was not fair, equitable, transparent, competitive

or cost-effective, as contemplated by section 217 of the Constitution and section 51 of the PFMA.

5.3.88. The conduct of SITA was accordingly improper and constituted maladministration.

5.4. **Whether the appointment of Fidelity Security Services (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

Common cause or undisputed facts

5.4.1. It is not disputed that SITA appointed Fidelity Security Services (Pty) Ltd (Fidelity) to provide security guarding services at SITA's Centurion, Erasmuskloof, Beta, Numerus, Blenny and Perseus Parking Buildings during March 2014.

5.4.2. It was contended by the Complainant that SITA awarded a contract to Fidelity without following proper procurement processes. This was not disputed by SITA.

5.4.3. In its response to the allegations, SITA stated that: -

"The appointment of Fidelity was not in line with procurement processes and the appointment is considered to be irregular. An Internal Audit investigation into the matter identified that irregular expenditure in the amount of R17 535 511, 16 (VAT incl.) incurred by contracting with Fidelity Security Services (Pty) Ltd (see attached copy of Fidelity contract).

In addition, the investigation identified that fruitless and wasteful expenditure of R1 036 727. 90 was incurred as a result of the unlawful termination of the contract with the previous service provider, Nationwide Security Services (Pty) Ltd (Nationwide).

In this respect, the termination of the contract with Nationwide Security Services (Pty) Ltd was in breach of the agreement with Nationwide and following a litigation process, SITA paid Nationwide Security Services (Pty) Ltd an amount of R1,036,727.90 (VAT Incl) for damages incurred by Nationwide (see copy of Internal Audit report attached, as submitted to SITA's Loss Control Committee.

The irregular expenditure and fruitless and wasteful expenditure was reported in the 2017/2018 financial statements.

No action was recommended against the implicated officials as they had left the employ of SITA and the HoD: Legal Services subsequently advised that SITA could only recover the legal costs of R30, 000. It was deemed not economical to pursue the case.”

Issues in dispute

- 5.4.4. The contention by the Complainant was not disputed by SITA, what was rather undertaken by the Public Protector was to verify the information provided by SITA in its response to the allegation, the following documents and prescripts were accordingly reviewed: -
- 5.4.4.1. Available documents provided by SITA indicating how Fidelity was appointed, including internal Business Cases and approvals;
- 5.4.4.2. Correspondence with Fidelity and agreement with SITA; and
- 5.4.4.3. SITA Internal Audit Report titled *“Investigation into the procurement process followed to appoint Fidelity Security Services (Pty) Ltd”*.
- 5.4.5. It was established that a Business Case titled *“Permission to partake contract of other State Organs”* was requested by Patricia Matibe: Supervisor: Physical Security (Patricia Matibe) on 28 March 2014 and recommended by Makhosi Tisani on the same day.

5.4.6. The Business Case stated that *“As per Treasury Regulation 16A6.6, we request permission to partake contract of other state organ to operate at the SITA buildings at Pretoria.”*

5.4.7. Paragraph 16A6.6 of the National Treasury Regulations, 2005 provides that:
-

“The accounting officer or accounting authority may, on behalf of the department, constitutional institution or public entity, participate in any contract arranged by means of a competitive bidding process by any other organ of state, subject to the written approval of such organ of state and the relevant contractors.”

5.4.8. The Business Case also stated that *“The estimated cost for the services has been budgeted from Cost Centre 620040.”*

5.4.9. It is noted that the Business Case did not contain any specifications or indicate how much was budgeted for the project.

5.4.10. On 28 March 2014, another Business Case titled *“Treasury Regulation 16.A6.6: Request to acquire the services of a security company for the provisioning of physical security guarding services for SITA offices (Centurion, Erasmuskloof, Beta and Blenny) for a period of 01 year”* was signed by the following officials: -

| Name | Position | Role | Date signed |
|--------------------|--|-------------|---------------|
| Sizwe Majavu | Consultant: Acquisition Management | Compiler | 31 March 2014 |
| Sihle Mthethwa | Executive: SCM (Acting) | Recommender | 01 April 2014 |
| Freeman Nomvalo | Chief Executive Officer | Approved | undated |

- 5.4.11. The submission requested approval for the appointment of Fidelity for the provision of security services at SITA for a period of 01 year at a cost of R16 560 021.00 (VAT Incl) which equates to R1 380 001.82 per month.
- 5.4.12. Attached to the submission was a Tasking letter from corporate (Annexure A), Permission to participate (Annexure B) and Service provider proposal (Annexure C).
- 5.4.13. Annexure A is the first Business Case dated 28 March 2014 compiled by Patricia Matibe.
- 5.4.14. Annexure B is a memorandum recommending and confirming that funds are available for the "*Business Case: Permission to partake contract of other state organ*". The memorandum was signed by Ingrid Rachel Masako: Management Accountant on 31 March 2014.
- 5.4.15. Annexure C is a letter from the South African Post Office addressed to the CEO of SITA titled "*SITA Request to Participate in South African Post Office SOC Limited (SAPO) Security Agreement*" signed by Moalosi Borotho: Group Executive SCM on 23 April 2014 and confirmed by Christopher Hekane: Chief Executive Officer of SAPO on 24 April 2014.
- 5.4.16. According to the letter, SAPO granted its written approval to SITA in terms of Treasury Regulation 16A6.6 to participate in the contract between Fidelity and SAPO.
- 5.4.17. Fidelity was informed of the award in a letter dated 31 March 2014 signed by Freeman Nomvalo: CEO of SITA.
- 5.4.18. Fidelity acknowledged and accepted the conditions of the contents of the award letter on 06 May 2014.
- 5.4.19. It is noted that the award letter (31 March 2014) pre-dates the letter from SAPO (23 and 24 April 2014).

- 5.4.20. A “SITA Contract Summary Sheet” was perused and it was noted that the contract value for the contract was R16 464 742.92 and it would commence on 31 March 2014 and terminate on 30 March 2015.
- 5.4.21. A memorandum of agreement was entered into between SITA and Fidelity, signed on behalf of Fidelity on 16 May 2014 and on behalf of SITA on 19 May 2014.
- 5.4.22. It was noted from the evidence that Fidelity commenced providing services to SITA on 01 April 2014, prior to concluding an agreement which only occurred in May 2014.
- 5.4.23. The agreement was perused and no reference to the agreement between SAPO and Fidelity could be found. Indicating that SITA had entered into its own contractual arrangement with Fidelity as opposed to participating in the contract between SAPO and Fidelity.
- 5.4.24. The Supplier Payment History Report of SITA indicates the following payments to Fidelity between the period 01 April 2014 and 31 March 2015: -

| Payment Number. | Payment date | Amount (R) |
|-----------------|-------------------|--------------|
| 586826 | 06 June 2014 | 101 514.02 |
| 587203 | 13 June 2014 | 50 937.38 |
| 5488142 | 30 June 2014 | 3 671 481.59 |
| 588085 | 30 June 2014 | 503 536.55 |
| 589181 | 30 June 2014 | 101 599.94 |
| 590285 | 18 July 2014 | 1 312 803.87 |
| 591521 | 29 August 2014 | 1 370 681.42 |
| 592280 | 12 September 2014 | 131 782.71 |
| 593515 | 03 October 2014 | 27 888.22 |
| 594288 | 17 October 2014 | 50 537.57 |
| 595141 | 31 October 2014 | 631 012.83 |

| | | |
|--------|------------------|---------------|
| 595618 | 07 November 2014 | 786 485.08 |
| 596081 | 14 November 2014 | 50 537.57 |
| 597068 | 28 November 2014 | 55 776.44 |
| 598457 | 19 December 2014 | 2 741 816.06 |
| 599137 | 22 January 2015 | 27 888.22 |
| 599647 | 30 January 2015 | 1 421 445.60 |
| 600940 | 20 February 2015 | 4 978.00 |
| 601429 | 27 February 2015 | 1 398 796.25 |
| 602387 | 13 March 2015 | 27 888.22 |
| 603800 | 27 March 2015 | 27 888.22 |
| 604169 | 30 March 2015 | 1 371 421.03 |
| 604438 | 31 March 2015 | 101 075.14 |
| TOTAL | | 16 016 361.81 |

5.4.25. A total amount of R16 016 361.81 was paid to Fidelity by SITA.

5.4.26. An internal audit report was perused titled *“Investigation into the procurement process followed to appoint Fidelity Security Services (Pty) Ltd.”*

5.4.27. According to the report, the following discrepancies were identified in the procurement of Fidelity: -

“6.1.1 The permission from SAPO was obtained on 24 April 2014, after Fidelity Security Services (Pty) Ltd started providing the service at SITA on 1 April 2014;

6.1.2 The Business Case to request the service of a physical security service provider was compiled after Fidelity Security Services (Pty) Ltd commenced with the service at SITA;

In this respect, Ms Matibe confirmed that although the Business Case was signed and dated 28 March 2014, it was compiled after Fidelity Security Services (Pty) Ltd took over the security services on 1 April

2014 and that Mr Tisani instructed her to date the memo to a date before Fidelity Security Services (Pty) Ltd took over the security services from Nationwide Security Services (Pty) Ltd.”

- 5.4.28. The internal audit report made various recommendations but SITA did not provide evidence indicating that same was implemented.
- 5.4.29. SITA did not dispute the contents of the notice issued in terms of section 7(9) of the Public Protector Act, nor did provide additional evidence which was not previously considered during the investigation.
- 5.4.30. SITA also contended in its response to the notice that this incident occurred in 2015, thus three years prior to it being reported to the Public Protector and therefore section 6(9) of the Public Protector Act was applicable. Further that this matter had been condoned by National Treasury.
- 5.4.31. The merits regarding the application of section 6(9) of the Public Protector Act have been dealt with in this report and will not be repeated here.
- 5.4.32. SITA stated that condonation was received from National Treasury on this matter. On 30 December 2020, National Treasury condoned irregular expenditure in the amount of R439 224, incurred by SITA emanating from the procurement of services on an expired contract, after SITA demonstrated that it complied with the provisions of paragraph 56 of the Irregular Expenditure Framework issued in terms of Treasury Instruction 02 of 2019/2020
- 5.4.33. On 05 November 2021, a notice was issued by the Public Protector and delivered by way of email correspondence to Fidelity. No response was received from Fidelity.

Application of the relevant law and prescripts

5.4.34. The following legal prescripts which have already been canvassed in this report were considered in this issue: -

5.4.34.1. Section 217 of the Constitution; and

5.4.34.2. Section 51(1) of the PFMA.

5.4.35. Section 76(4) of the PFMA provides that National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning any matter that may be prescribed for all institutions in terms of this Act; financial management and internal control; the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities, issued in terms of the Public Finance Management Act, 1999 in March 2005 (Treasury Regulations).

5.4.36. Regulation 16A6.6 of the Treasury Regulations provides that: -

“The accounting officer or accounting authority may, on behalf the department, constitutional institution or public entity, participate in any contract arranged by means of a competitive bidding process by any other organ of state, subject to the written approval of such organ of state and the relevant contractors.”

Conclusion

5.4.37. SITA did not dispute in its response to the allegations that the appointment of Fidelity was not in line with procurement processes and was therefore irregular.

- 5.4.38. The evidence indicates that SITA sought approval to participate in a contract between the South African Post Office (SAPO) and Fidelity in terms of regulation 16.A6.6 of the National Treasury Regulations.
- 5.4.39. The application of National Treasury Regulation 16A6.6 was distorted by SITA under the circumstances to avoid undertaking a competitive bidding process.
- 5.4.40. The evidence indicates that Fidelity commenced rendering physical security service to SITA on 01 April 2014, which was before the Business Case for physical security service was approved by the then CEO of SITA, Freeman Nomvalo.
- 5.4.41. The evidence also indicates that SITA only obtained permission on 24 April 2014 to participate in the contract between SAPO and Fidelity. However, Fidelity had already commenced rendering services to SITA on 01 April 2014 when it obtained permission to participate in the contract between SAPO and Fidelity.
- 5.4.42. It was irregular for Fidelity to render physical security services to SITA before obtaining approval from SAPO.
- 5.4.43. SITA also conceded that it incurred irregular expenditure and fruitless and wasteful expenditure as a result of the contract award to Fidelity. SITA dealt with the irregularity by reporting same in its 2017/2018 financial statements. And further obtained condonation from National Treasury for the irregular expenditure incurred.
- 5.4.44. SITA also indicated that no disciplinary action was taken against implicated officials of SITA as they had left the employ of the entity.
- 5.4.45. SITA accordingly deviated from prescribed SCM processes in the contract awarded to Fidelity which resulted in a procurement process which was not

fair, equitable, transparent, competitive or cost-effective, as contemplated by section 217 of the Constitution and section 51 of the PFMA.

5.4.46. The conduct of SITA was also improper and constituted maladministration.

5.5. **Whether the appointment of Parahelic CC by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

Common cause or undisputed facts

5.5.1. It is not in dispute that SITA appointed Parahelic CC (Parahelic) during 2016.

5.5.2. According to the documentation provided by SITA, the appointment of Parahelic was for the provision of financial modelling services including costing and pricing module for SITA.

Issues in dispute

5.5.3. The issue to be determined is whether the appointment of Parahelic was not in compliance with applicable supply chain management prescripts.

5.5.4. The Complainant contends that SITA awarded a contract to Parahelic without following proper procurement processes. Further, that SITA extended the contract to Parahelic without the prior approval of National Treasury.

5.5.5. In response to the allegations, SITA stated that: -

“The appointment of Parahelic was not in line with procurement processes and is considered to be irregular.

This was a matter that was identified by the Auditor General in the 2016/2017 audit (see copy of Management Letter point attached). Whilst the Auditor General considers this to be irregular, Management disagrees with this view.”

- 5.5.6. In essence, SITA on the one hand concedes that the appointment of Parahelic was not in line with procurement processes and is considered to be irregular, but in the same vein states that it does not agree with the finding of the Auditor General that the appointment of Parahelic was irregular.
- 5.5.7. To establish what transpired, the following documents and prescripts were reviewed: -
- 5.5.7.1. Available documents provided by SITA indicating how Parahelic was appointed, including internal Business Cases and approvals;
- 5.5.7.2. Correspondence with successful bidder and National Treasury;
- 5.5.7.3. Memorandum of agreement between SITA and Parahelic dated February 2016 and August 2016 respectively;
- 5.5.7.4. Audit findings of the Auditor General South Africa;
- 5.5.7.5. 2015 and 2017 SCM Policy, 2015 and 2017 DoA; and
- 5.5.7.6. Responses to notices issued in terms of section 7(9) of the Public Protector Act.
- 5.5.8. According to the 2015 DoA, the CEO must approve all Business Cases where normal procurement processes are not followed, including deviations.
- 5.5.9. It was established from an unsigned Business Case titled “*Opex procurement request to appoint a service provider for financial modelling*” that a request was made for approval to deviate from normal procurement processes to appoint Parahelic as a single source consulting firm on an urgent basis for a

period of six months to provide financial modelling services including costing and pricing module to be presented at Government Information Technology Officers Council (GITOC) on 09 February 2016.

- 5.5.10. The following was observed from the Business Case “...SITA needs to urgently prepare and submit a high quality tariff proposal to GITOC for consideration. This leaves SITA with very little time available and a service provider is needed immediately.”
- 5.5.11. According to the Business Case, SITA’s internal staff had prepared tariff submissions before which had not been approved by its stakeholders as they were deemed not to be of the required quality.
- 5.5.12. The Business Case stated that if the tariff submissions were not of the required quality, it increased the risk of GITOC rejecting the tariff proposal. This motivated the appointment of an external service provider to assist with the financial modelling.
- 5.5.13. According to the submission, the cost for the service was estimated at R1 million.
- 5.5.14. SITA however did not provide the approved Business Case nor was there any evidence indicating that this Business Case was approved.
- 5.5.15. SITA entered into a Memorandum of Agreement with Parahelic. The agreement would be for a period of six months, commencing on 03 February 2016 and terminating on 02 August 2016.
- 5.5.16. The cost of the contract was R1 million (VAT incl.).
- 5.5.17. The agreement was signed on behalf of SITA and a representative of Parahelic on 29 February 2016.

- 5.5.18. According to the 2015 DoA, all contracts with a value not exceeding R30 million must be signed by the HOD: SCM. It could however not be established from the evidence who signed the agreement on behalf of SITA.
- 5.5.19. SITA also entered into a Service Level Agreement (SLA) with Parahelic. The SLA was duly signed (but undated) on behalf of SITA by RC Rasikhinya, the then Chief Financial Officer and a representative of Parahelic on 29 February 2016.
- 5.5.20. SITA did not provide any evidence indicating that a letter of award was sent and accepted by Parahelic.

First extension of the contract between SITA and Parahelic

- 5.5.21. According to the 2015 DoA, the CEO must approve all Business Cases where normal procurement processes are not followed, including contract extensions.
- 5.5.22. A Business Case titled “*Extension of an existing contract of Parahelic CC – currently providing financial modelling*” was accordingly signed by the following officials: -

| Name | Position | Role | Date signed |
|---------------|---|-------------|--------------|
| (unknown) | Senior Manager: Costing and Pricing | Requester | 26 July 2016 |
| RC Rasikhinya | Chief Financial Officer | Recommender | 26 July 2016 |
| (Unknown) | Chief Executive | Approver | 28 July 2016 |

- 5.5.23. The purpose of the Business Case was to request an extension of the contract with Parahelic which was due to expire on 02 August 2016 by a further 08 months ending 31 March 2017.

- 5.5.24. In addition, to also request approval for Parahelic to provide SITA with two extra resources to be able to expedite the work at hand by end of March 2017.
- 5.5.25. According to paragraph 10.1 of the Business Case, the cost implications and available budget for the project was recorded as follows *“the total spend on capped amount will be R899 032 (Vat Inclusive) leaving a balance of R100 968 (Vat Inclusive) estimated at the end of the contract and the budgeted amount for professional and special services amounts to R1 596 00 (vat Inclusive).”*
- 5.5.26. It was noted that the Costing and Pricing Team addressed a memorandum dated 29 July 2017 to RC Rasikhinya titled *“Addendum: to Business case Extension of an existing contract of Parahelic CC – currently providing financial services modelling.”*
- 5.5.27. The purpose of the memorandum was to provide financial analysis for the extra two resources required in the Business Case. According to the memorandum, the total funds required for the two resources was R2 394 000.00.
- 5.5.28. This amount was confirmed by RC Rasikhinya.
- 5.5.29. On 04 August 2016, Mogogodi Dioka, the then Head of Department: Strategic Sourcing addressed a letter to National Treasury requesting approval for the re-appointment of Parahelic through single source procurement for a period of 07 months.
- 5.5.30. According to the 2015 DoA, the Management Procurement Committee (MPC) has the delegation of authority to approve extensions of existing contracts (not yet expired).
- 5.5.31. A submission was accordingly made to the MPC during August 2016. The submission as titled *“SS-1175-TM-2016: Request to appoint Parahelic CC for*

the development of financial modelling services for SITA for a period of seven (7) months.”

5.5.32. The submission was signed by the following officials: -

| Name | Position | Role | Date signed |
|------------------------------|---|-------------|----------------|
| Thabelo Mutshinyalo | Senior Procurement Officer: ICT Cluster | Compiler | 05 August 2016 |
| Mogogodi Dioka | Head of Department: Tactical Sourcing | Supporter | 05 August 2016 |
| On behalf of Jabulile Tlhako | Chief Procurement Officer (Acting) | Recommender | 08 August 2016 |
| Moipone Ngwane | Senior Manager: Costing and Pricing | (unknown) | 10 August 2016 |

5.5.33. According to the submission, the MPC was requested to approve the award of a contract to Parahelic for the development of financial modelling services for SITA subject to National Treasury approval of single source appointment as follows: -

| Name of Bidder | Service on Offer | Period | Price (VAT Incl.) |
|----------------|--|---|-------------------|
| Parahelic CC | Development of financial modelling services for SITA | Estimated seven (7) months ending 31 March 2017 | R3 388 000.00 |

- 5.5.34. On 11 August 2016, Bonke Nkosi, the then Acting Chairperson of the MPC informed the Chief Procurement Officer that the MPC had resolved to approve the award of SS 1175-TM-2016 to Parahelic for a period of 07 months ending 31 March 2017 at a project cost of R3 388 000.00.
- 5.5.35. It is noted that the agreement between SITA and Parahelic had already expired on 02 August 2016 when the submission to extend the contract was approved by the MPC.
- 5.5.36. On 19 August 2016, Solly Tshitangano the then Chief Director: SCM Governance, Monitoring and Compliance from National Treasury responded to the letter from SITA dated 04 August 2016.
- 5.5.37. According to the letter, National Treasury sought to approve the deviation from a competitive bidding process to appoint Parahelic for a further period of 07 months.
- 5.5.38. According to the 2015 DoA, the CPO has the delegation of authority to sign off award letters where the contract value does not exceed R30 million.
- 5.5.39. On 23 August 2016, Mogogodi Dioka, the then Head of Department: Tactical Sourcing (a rank lower than that of CPO) addressed a letter to Parahelic informing them of the contract award.
- 5.5.40. Parahelic accepted the conditions of the letter on 23 August 2016.
- 5.5.41. It is noted that the letter of award did not contain a contract value but only a breakdown of three resources and rate per hour.
- 5.5.42. According to SITA's 2015 DoA, the HOD: SCM has the delegation of authority to sign off contracts and addendum or extensions.
- 5.5.43. SITA accordingly entered into a Memorandum of Agreement with Parahelic for financial modelling services. The agreement was signed by a

representative of Parahelic on 24 August 2016 and by Mogogodi Dioka the then Head of Department: Strategic Sourcing on behalf of SITA on 25 August 2016.

5.5.44. According to SITA's 2015 DoA, an Executive of SITA has the delegation of authority to sign off all SLA's on behalf of SITA.

5.5.45. SITA accordingly entered into an SLA with Parahelic. The SLA was signed by a representative of Parahelic on 24 August 2016 and by RC Rasikhinya in his capacity as the Chief Financial Officer of SITA on 25 August 2016.

Second extension or re-appointment of the contract between SITA and Parahelic

5.5.46. According to the 2015 DoA, the CEO must approve all Business Cases where normal procurement processes are not followed, including contract extensions.

5.5.47. A Business Case titled "*Extension of an existing contract of Parahelic CC – currently providing financial modelling*" was accordingly signed by the following officials: -

| Name | Position | Role | Date signed |
|---------------|---|-------------|---------------|
| (unknown) | Senior Manager: Costing and Pricing | Requester | 27 March 2017 |
| RC Rasikhinya | Chief Financial Officer | Recommender | 27 March 2017 |
| (Unknown) | Chief Executive | Approver | 28 March 2017 |

- 5.5.48. The purpose of the Business Case was to request a further extension of the contract with Parahelic which is expiring on 30 March 2017, by a further 03 months ending 30 June 2017.
- 5.5.49. According to paragraph 10.1 of the Business Case, the cost implications and available budget for the project was recorded as follows *“the current contract costs are capped at R3 277 500 (Vat Inclusive) and this is funded from an amount budgeted for professional and special service within the cost centre of the Chief Financial Officer...”*
- The extension of the contract will only be for a total of R500 000 (Vat Inclusive) spend capped for 3 months.”*
- 5.5.50. It was noted that the Costing and Pricing Team addressed a memorandum dated 06 April 2017 to Dr Mohapi, the then Chief Executive Officer and RC Rasikhinya titled *“Addendum: Re-appointment of Parahelic CC to provide financial services modelling.”*
- 5.5.51. The memorandum stated that *“the purpose of this memo is to amend the requirements in the business case extension of Parahelic, however the contract has since expired and now this will be a re-appointment. There has since been an urgent requirement to acquire the services of two (2) Cloud Specialists through Parahelic CC to urgently assist SITA in reviewing the Cloud Model in relation to the industry best practice.”*
- 5.5.52. If this was considered a re-appointment by SITA, it is unclear why the entity did not embark on a new competitive bidding process nor provided reasons for what precipitated the urgency.
- 5.5.53. According to the memorandum, the revised contract value for the additional 03 months was R1 261 410.00. The revised cost was recommended by RC Rasikhinya on 06 April 2017 and approved by Dr Mohapi on 13 April 2017.

- 5.5.54. On 19 April 2017, Mogogodi Dioka addressed a letter to National Treasury requesting approval for a single source process for the retention of Parahelic for a period of 03 months.
- 5.5.55. According to the letter, the total cumulative value to date, including the current proposed extension would be R4 649 410.00 (VAT Incl.).
- 5.5.56. On 21 April 2017, Solly Tshitangano of National Treasury responded to SITA granting approval for the deviation. National Treasury however stated that “... *it is not clear why the previous extension did not cover this additional work*” further that “*the National Treasury support the deviation on condition that the previous extension intentionally exclude this additional work.*”
- 5.5.57. It should be noted that at no stage was the Business Case approved on 28 March 2017 done so under the auspices of a single source procurement as was contended in the letter dated 19 April 2017, addressed to National Treasury. SITA does not seem to have provided a basis for not embarking on a competitive process for the required service.
- 5.5.58. According to the 2015 DoA, the Management Procurement Committee (MPC) has the delegation of authority to award a single source procurement where the contract value does not exceed R30 million.
- 5.5.59. A submission was accordingly made to the MPC during April 2017. The submission was titled “*SSP-1498-2017: Request to re-appoint the current service provider Parahelic CC for the provision of financial modelling services.*”
- 5.5.60. The submission was signed by the following officials: -

| Name | Position | Role | Date signed |
|------------------|---------------------------------------|-----------------------|---------------|
| Moses Semosa | Supply Chain Management Consultant | Compiler | (undated) |
| Nozililo Nzamela | Senior Procurement Manager: ICT | Reviewer and Verifier | 24 April 2017 |
| Mogogodi Dioka | Head of Department: Tactical Sourcing | Recommender | 25 April 2017 |
| RC Rasikhinya | CFO | Recommender | 25 April 2017 |
| Jabulile Tlhako | Chief Procurement Officer | Recommender | 25 April 2017 |

5.5.61. According to the submission, the MPC was requested to approve a single source procurement as follows: -

| Name of Bidder | Product on Offer / Solution | Period | Price (VAT Incl.) |
|----------------|---|-------------------|-------------------|
| Parahelic CC | Re-appoint the current service provider for the provision of financial modelling services | three (03) months | R1 261 410.00 |

5.5.62. In a letter dated 26 April 2017, Andre Pretorius, the then Chairperson of the MPC informed the Chief Procurement Officer that the MPC had resolved to approve the award of SS 1498-2017 to Parahelic for a period of 03 months at a project cost of R1 261 410.00.

- 5.5.63. It is noted that the agreement between SITA and Parahelic had already expired on 31 March 2017 when the submission to re-appoint Parahelic was approved by the MPC.
- 5.5.64. SITA did not provide any evidence indicating that a letter of award was sent and accepted by Parahelic.
- 5.5.65. SITA also did not provide any evidence indicating that it entered into a Memorandum of Agreement or signed a Service Level Agreement with Parahelic for the provision of financial modelling services for the 03 month period.
- 5.5.66. The Supplier Payment History Report of SITA indicates the following payments to Parahelic between the period March 2016 and August 2017: -

| Payment Number. | Payment date | Amount (R) |
|-----------------|------------------|--------------|
| 626475 | 31 March 2016 | 182 756.25 |
| 628160 | 06 May 2016 | 162 450.00 |
| 629971 | 10 June 2016 | 71 606.25 |
| 631298 | 30 June 2016 | 158 887.50 |
| 634047 | 17 August 2016 | 173 493.75 |
| 634493 | 26 August 2016 | 140 718.75 |
| 638541 | 31 October 2016 | 273 386.25 |
| 640938 | 12 December 2016 | 458 992.50 |
| 641878 | 06 January 2017 | 484 500.00 |
| 643425 | 10 February 2017 | 229 068.75 |
| 646637 | 30 March 2017 | 706 800.00 |
| 647259 | 11 April 2017 | 484 500.00 |
| 648478 | 08 May 2017 | 640 252.50 |
| 654497 | 18 August 2017 | 1 114 848.75 |
| 655355 | 31 August 2017 | 146561.25 |

| | |
|--------------|---------------------|
| TOTAL | 5 428 822.50 |
|--------------|---------------------|

- 5.5.67. It is noted that SITA overspent on its approved budget for the project by an amount of R779 412.50 (R5 428 822.50 – R4 649 410.00).
- 5.5.68. SITA did not provide any evidence indicating that the additional expenditure was budgeted for or approved.
- 5.5.69. It is noted that SITA provided an undated audit conducted by the Auditor General. The Auditor General found that based on the reasons provided by SITA for deviating from inviting competitive bids, it is clear that this was not done under circumstances where it was impractical to follow procurement process, namely: in an emergency where immediate action is necessary; if goods or services are produced or available from a sole provider; it was an unsolicited bid; the auditee participated in a contract arranged by another organ of state or in any exceptional case where it was impractical or impossible to follow the official procurement process.
- 5.5.70. The Auditor General concluded that the reason for deviating from inviting competitive bids was due to poor planning, leading to irregular expenditure having been incurred.
- 5.5.71. Notices were issued and delivered for the attention of Mr Keyise on 05 November 2021 and former and current SITA officials during November 2021. Members of Parahelic could not be located and the notice was not served on them.
- 5.5.72. On 11 January 2022, SITA responded to the notice and contended that the finding that the extension of the contract awarded to Parahelic was invalid as the contract extension was approved after the expiry of the contract is incorrect.

5.5.73. SITA contended that as per the documentation in the possession of the Public Protector, this was a single source procurement (business case addendum, National Treasury approval and approval by MPC was for a single source). This was due to the realisation that the contract had expired and hence the service provider was appointed as a single source and not as a contract extension.

5.5.74. SITA stated in its response to the notice that obtained condonation from the SITA Board on the matter but did not provide evidence in that regard.

Application of the relevant law and prescripts

5.5.75. The following legal prescripts which have already been canvassed in this report were considered in this issue: -

5.5.75.1. Section 217 of the Constitution;

5.5.75.2. Sections 1, 51(1) and 57 of the PFMA;

5.5.75.3. Treasury Regulation 16A6.4; and

5.5.75.4. Paragraphs 3(3) and 23.4.5 of the 2015 SCM Policy.

5.5.76. Paragraph 23.15 of the 2015 SCM Policy provides that: -

“Single Source Procurement

23.15.3 SITA may use single source procurement, only in the following exceptional circumstances:

23.15.3.1 Where SITA applied the competitive bidding process, but the bids received were all non-responsive, thus the time required to go out on the same process has elapsed.

23.15.3.2 Where SITA can buy under exceptionally advantageous conditions that only arise in the very short term.

23.15.3.3 In the event that a change of provider would compel SITA to obtain spare parts or additional equipment or services that are not compatible or interchangeable with existing equipment or services that were obtained from an original provider.

23.15.3.4 For tasks that represent a natural continuation of previous work done where appointing another supplier is impractical.

23.15.3.5 The goods, services or works to be bought have to be designed by the provider.

23.15.3.6 When goods, services or works can only be supplied or rendered by a particular provider and no reasonable alternative or substitute exists.

23.15.3.7 There are legislative, technological or safety reasons to restrict purchases to providers who have proven their capacity.”

5.5.77. Paragraph 23.15.4 of the 2015 SCM Policy provides that: -

“Request for single source procurement must be pre-approved by the CPO before the targeted supplier is engaged through a written motivation submission substantiating reasons for considering single source instead of an open bid process. The CPO may reject the request and recommend for an open bid process.”

5.5.78. Paragraph 31.1 of the 2015 SCM Policy provides that: -

“Conclusion of contracts

31.1.1 SCM must act on the award decision by issuing the letter of acceptance, the formal contract, including the service level agreement, where applicable, to the successful bidder/s.

31.1.2 Acceptance of a successful bid by a bidder must be in writing and must be sent by registered/certified mail...

31.1.4 Both parties to the contract shall sign the contract form or formal contract in at least two originals. Original contracts shall be kept in a safe place for judicial reference.

5.5.79. Paragraph 35.4.16 of the 2015 SCM Policy provides that: -

“35.4.16.3 No contract can be amended after the original contract has ceased to exist.”

5.5.80. Paragraph 35.4.17 of the 2015 SCM Policy provides that: -

“Extension of Contract Periods

35.4.17.1 The valid extension of a contract shall be finalised before the current expiry date of the contract.”

Conclusion

5.5.81. The evidence reflects that SITA deviated from inviting competitive bids to appoint Parahelic. The reasons provided by SITA however, did not fall within the exceptional circumstances envisioned for single source procurement as contemplated by paragraph 23.15 of the 2015 SCM Policy, in that: -

5.5.81.1. SITA did not first apply a competitive bidding process prior to appointing Parahelic;

- 5.5.81.2. SITA did not motivate that the services offered by Parahelic would be under exceptionally advantageous conditions that would only arise in the very short term;
- 5.5.81.3. There is no indication that the services offered by Parahelic were unique to them or that the services were a continuation of existing services rendered to SITA.
- 5.5.82. SITA did not provide evidence that the Business Case for the appointment of Parahelic was approved in line with the applicable Delegation of Authority.
- 5.5.83. SITA also did not provide evidence that pre-approval by the Chief Procurement Officer (CPO) was obtained prior to the appointment of Parahelic as is required by paragraph 23.15.4 of the 2015 SCM Policy.
- 5.5.84. SITA did not provide any evidence indicating that a letter of award was sent and accepted by Parahelic prior to its first appointment during February 2016 and again during the second contract extension during March 2017, as is required by paragraph 31.1 of the 2015 SCM Policy.
- 5.5.85. SITA did not provide evidence that the deviation from procurement process to appoint Parahelic during August 2016 was reported to National Treasury as is required by paragraph 23.4.5 of the 2015 SCM Policy.
- 5.5.86. The evidence also indicates that the Parahelic contract was extended twice, and on both occasions, only after the contract had expired. In terms of paragraphs 35.4.16.3 and 35.4.17 of the 2015 SCM Policy, valid extensions of contracts must have been finalised before the expiry date of the current contract.
- 5.5.87. According to the evidence adduced, the initial contract with Parahelic expired on 2 August 2016 but was only extended on 25 August 2016 (the last date of signature on the contract).

- 5.5.88. The second contract expired on 31 March 2017 but was only extended on 26 April 2017, which was the date when approval to extend the contract was obtained from the MPC.
- 5.5.89. The second extension was later rephrased as a reappointment of Parahelic by way of a single source procurement in the submission to the MPC during April 2017, and this was approved by the MPC even though there were no exceptional circumstances as contemplated in paragraph 23.15 of the 2015 SCM Policy to justify undertaking a single source procurement strategy.
- 5.5.90. SITA could not have lawfully extended contracts which had already expired. Under the circumstances, SITA should have initiated a new procurement process for the required services.
- 5.5.91. SITA disputed the finding relating to the second extension and contends that it was rather a re-appointment through a single source procurement strategy. This view contradicts the wording of the Business Case approved by the CEO of SITA on 28 March 2017 which initiated the procurement of services from Parahelic. It is trite that execution of the SITA procurement process is always triggered by an approved Business Case from Lines of Business requesting the acquisition of the required goods or services.
- 5.5.92. The first time the concept of appointing Parahelic through single source procurement seems to have arisen in the letter addressed to National Treasury on 19 April 2017, by Mogogodi Dioka, after the Business Case was approved that the contract be extended for a further period of 03 months.
- 5.5.93. It therefore appears from the evidence that the reasons for not inviting competitive bids was the result of poor planning as opposed to single source procurement being the appropriate method of sourcing the required services.
- 5.5.94. Even if it were to be accepted that it was a re-appointment and not an extension, there remains no evidence that the procurement of Parahelic was

done in line with the requirements for single source procurement as envisaged in paragraph 23.15 of the 2015 SCM Policy.

- 5.5.95. It is also noted that the Auditor General concluded that the appointment of Parahelic by SITA was not done under circumstances where it was impractical to follow procurement process.
- 5.5.96. There is also no evidence that SITA concluded a contract with Parahelic for the second extension / re-appointment even though the invoices provided by SITA indicate that Parahelic continued to render services to SITA until 31 August 2017.
- 5.5.97. In terms of paragraph 31.1 of the 2015 SCM Policy, SITA was required to issue a letter of award and conclude a formal contract with Parahelic for the services to be rendered.
- 5.5.98. It is noted that SITA also overspent on its approved budget for the project by an amount of R779 412.50 (R5 428 822.50 – R4 649 410.00). SITA had indicated to National Treasury that the cumulative value of the contract including extensions would be R4 649 410.00, but the evidence indicates that SITA spent R5 428 822.50 on Parahelic over the service period. SITA did not however provide any evidence indicating that the additional expenditure was budgeted for or approved.
- 5.5.99. The evidence indicates that SITA, through its Board of Directors, did not ensure that the entity maintains its internal controls, did not take effective and appropriate steps to prevent incurring expenditure not complying with its SCM policies in the tender awarded to Parahelic and the subsequent extension/variation of the contract, as is required by section 51 of the PFMA.
- 5.5.100. The evidence also indicates that the officials who were implicated in the contract awarded to Parahelic did not ensure that SITA's internal controls

were effectively carried out within their respective areas of responsibility as is required by section 57 of the PFMA.

- 5.5.101. SITA accordingly did not take effective and appropriate steps to prevent incurring expenditure not complying with its SCM policies in the procurement of Parahelic as is required by section 51 of the PFMA.
- 5.5.102. SITA therefore deviated from prescribed SCM processes in the appointment of Parahelic resulting in a procurement process which was not fair, equitable, transparent, competitive or cost-effective, as contemplated by section 217 of the Constitution and section 51 of the PFMA.
- 5.5.103. The conduct of SITA was accordingly improper and constituted maladministration.

5.6. **Whether the appointment of Jika Africa Advisory Services (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

Common cause or undisputed facts

- 5.6.1. It is not in dispute that SITA appointed Jika Africa Advisory Services (Pty) Ltd (Jika) during August 2016.
- 5.6.2. According to the evidence provided by SITA, the appointment was to assist SITA with negotiations for the outright purchase (100% ownership by SITA) of the Intellectual Property (IP) of the Intenda Solution Suite of software within the public sector which is a full source-to-pay e-Procurement portal, from Intenda (Pty) Ltd (Intenda).

Issues in dispute

- 5.6.3. The issue to be determined is whether the appointment of Jika was in compliance with applicable supply chain management prescripts.
- 5.6.4. The Complainant contends that the contract awarded to Jika resulted in SITA incurring irregular expenditure by exceeding the approved budget for the contract without obtaining prior approval from National Treasury.
- 5.6.5. In response to the allegation, SITA contends that the appointment of Jika was in line with procurement processes and is not considered to be irregular.
- 5.6.6. The following documents and prescripts were reviewed: -
 - 5.6.6.1. Available documents indicating how Intenda was procured, including internal Business Cases and approvals;
 - 5.6.6.2. Bids submitted by Intenda;
 - 5.6.6.3. Correspondence with National Treasury;
 - 5.6.6.4. Contract between SITA and Intenda;
 - 5.6.6.5. Contract between SITA and Jika;
 - 5.6.6.6. Invoices submitted to SITA for payment by Jika;
 - 5.6.6.7. 2015 SCM Policy and 2015 DoA; and
 - 5.6.6.8. Response received to the notice issued by the Public Protector.
- 5.6.7. SITA did not provide the documents indicating how the contract awarded to Jika was budgeted for and approved.

- 5.6.8. SITA also did not provide documents reflecting the procurement process followed in the appointment of Jika to assist with commercial negotiations for the procurement of the Intenda Solutions Suite from Intenda. The documents SITA provided only related to the procurement process followed in the appointment of Intenda which fell outside the scope of the investigation.
- 5.6.9. From the documents provided by SITA relating to the procurement of Jika, it was established that SITA entered into a contract with Jika (last signature date is 25 August 2016).
- 5.6.10. Clause 8 of the agreement states that SITA would remunerate Jika an amount not exceeding the following: -
- 1) A fixed fee of R 450 000.00 (excl. VAT) for the engagement; and
 - 2) An additional incentive as follows: -
 - a) 5% of all savings from the agreed price down to R45m (VAT excl.); and
 - b) A further incentive of 10% of savings made below R45m, (VAT excl.). Savings will be on the agreed base price tabled by Intenda to SITA prior to commencement of any commercial negotiations.
- 5.6.11. According to an internal memorandum to the then SITA Chief Procurement Officer, Ms Jabulile Tihako dated 13 July 2016, the negotiation strategy would comprise an initial investigation of the product required from Intenda and how it would be integrated into SITA. Request a proposal from Intenda, including current pricing for the product. Secondly, a consultation phase comprising of collecting and analysing all data received from Intenda and SITA. Finally, the negotiation and development of a final contract between SITA and Intenda.
- 5.6.12. According to the close out report prepared by Jika to SITA, the following terms were negotiated with Intenda: -

| Description | Proposed initial Price | Negotiated final Price | Savings over a 5 year period |
|----------------------------|------------------------|--|---|
| Software | R305m | R222.3m* renegotiated on the 9 th February 2017 to R210.9m | R82.7m* new savings after changes is R94.1m |
| Support and maintenance | R305m | R136.8m | R168.2m |
| Training variable | R1095 per day | R650 per day | R6.5m |
| Rate table variable | 10% off list | 20% off list | Variable |
| Skills variable | 10% off list | Approx. R200 per hour | R23m |
| Cost of cash variable | Upfront pay | Delay pay | R29.4m |
| Help desk | No free calls | 150 free calls | R4.5m |
| Total with variables | | | R314.4m |
| Total Excl variable | | | R250.9* new after changes R262.3. |

5.6.13. SITA concluded a contract with Intenda (the last date of signature was 13 March 2017).

5.6.14. The Supplier Payment History Report of SITA indicates the following payments to Jika pursuant to the Intenda negotiations: -

| Payment Number. | Payment date | Amount (R) |
|-----------------|------------------|----------------------|
| 637553 | 14 October 2016 | 285 000.00 |
| 640229 | 30 November 2016 | 228 000.00 |
| 646976 | 31 March 2017 | 14 000 000.00 |
| TOTAL | | 14 513 000.00 |

- 5.6.15. On 11 January 2022, SITA responded to the provisional findings contained in the notice by stating that the appointment of Jika was in line with procurement processes and is not considered to be irregular.
- 5.6.16. SITA also contended that first appointment of Jika was through a Business Case titled *“Deviation from the normal procurement process for the appointment of a reputable service provider to assist SITA in the negotiation with Software AG South Africa (Pty) Ltd”* compiled by Mashumi K Mzaidume the then Company Secretary and approved by Dr Mohapi on 11 August 2015.
- 5.6.17. According to SITA, the second appointment was through a Business Case titled *“Deviation from the normal procurement process for the appointment of a reputable service provider to assist SITA with contract negotiations with IBM South Africa (Pty) Ltd”* compiled by Mashumi K Mzaidume the then Company Secretary and approved by Dr Mohapi on 15 January 2016.
- 5.6.18. According to SITA, pre - approval for deviation from the normal procurement process was approved by the former Chief Procurement Officer on 28 January 2016. The MPC approved the award of the tender to Jika on 17 February 2016.
- 5.6.19. SITA stated that the third appointment was through a Business Case titled *“Acquisition of expert negotiators for SITA large acquisitions and contracts”* compiled by Cathy Magodi: HOD Procurement Centre of Excellence and approved by then Deputy Chief Executive Officer: Lt. Gen Justice Nkonyane.
- 5.6.20. According to SITA, the tender with reference number RFB 1398/2015 *“for the establishment of a panel of expert negotiators for SITA large acquisitions and contracts for a period of three (3) years”* was published on 24 March 2016.
- 5.6.21. The SCM Submission report dated September 2016 to the MPC compiled requested the MPC to award RFB 1398/2016 to Edward Nathan Sonnenbergs Incorporated (ENS) only. In the MPC resolution dated 17

October 2016, signed by Andre Pretorius: Chairperson of the MPC, it was resolved to approve the appointment of ENS.

- 5.6.22. ENS was the only service provider on the panel as per the results of the procurement process that was concluded. Work orders are issued to ENS as and when required.
- 5.6.23. SITA did not provide documents to support what was stated in its response to the notice.
- 5.6.24. The Directors of Jika could not be located and the notice was therefore not served on them.
- 5.6.25. On 08 November 2021, Mrs. Nomalungelo Glenrose Wolf submitted an affidavit in response to the notice that was served on her around 05 November 2021.
- 5.6.26. In her affidavit, Ms Wolf submitted that she is an ex – employee of SITA and was dismissed on 31 July 2017.
- 5.6.27. She submitted that during October and November 2015, she was reporting to the then HOD: Supply Chain Management. She contends that she had been given a Business Case and instructed by the HOD to appoint Jika. She read the Business Case provided by the HOD with a view to confirming that it complied with procurement policy processes and procedures.
- 5.6.28. Upon reading the Business Case, she realized that it was giving SCM an instruction to appoint Jika, who were already part of the negotiating team (SITA (Line of Submission and Legal Department) IBM/ENS/JIKA AFRICA), by the time the Business Case was assigned to her.
- 5.6.29. Upon realizing that the Business Case was giving an instruction which she perceived to be irregular, she then went to the office of the HOD to raise her

concerns on the irregularity of the Business Case. Despite her concerns she was instructed to proceed.

- 5.6.30. Ms Wolf contends that she then wrote an email to the then CPO and to the HOD conveying her concerns about the irregularity in the Business Case. Neither the CPO nor the HOD responded to her email.
- 5.6.31. She proceeded to compile the submission to appoint Jika as instructed. She took the submission to the HOD and explained to her that she would not sign the submission since she was not comfortable with what she perceived to be an irregular process.
- 5.6.32. According to Ms Wolf, the HOD said it was fine, she accepted the submission and signed it off and Ms Wolf left it at that.
- 5.6.33. She contended that she is aware that the CPO and the HOD instructed colleagues in the office to register Jika on the supplier database and also to create a blanket purchase order to facilitate payment. The CPO and HOD had chosen to deal with others colleagues and sidelined her.

Application of the relevant law and prescripts

The National Archives and Records Service of South Africa Act, 1996 and Regulation.

- 5.6.34. The National Archives and Records Service of South Africa Act, 1996, provides (National Archives Act) *inter alia*, for the proper management and care of the records of governmental bodies.
- 5.6.35. Section 1 of the act defines a governmental body as any legislative, executive, judicial or administrative organ of state (including a statutory body) at the national level of government. It is not in dispute that SITA is an organ of state and is therefore bound by the provisions of the act.

- 5.6.36. Regulations were promulgated in terms of section 18 of the act during 2002. Regulation 10 provides that the head of a governmental body shall be responsible for ensuring that all records of such body receive appropriate physical care; are protected by appropriate security measures; and are managed in terms of standing orders of that body and other relevant legislation. Section 1 of the Act defines the head of a governmental body as the CEO of such entity or the accounting officer, as the case may be.
- 5.6.37. Regulation 10 is interpreted to mean that government bodies, including SITA, should ensure that they manage their records in a well-structured record keeping system and put the necessary policies and procedures in place to ensure that their record keeping and management practices comply with the requirements of the act.

2017 SCM Policy

- 5.6.38. Paragraph 33.2 of the 2017 SCM Policy provides that records must be maintained either manually or electronically in accordance with SITA's document management policy.
- 5.6.39. It further provides that the following records must be maintained: verbal and written quotations; bid documents issued; specific term contracts; urgent and emergency procurement; record of deviation processes; irregular, fruitless and wasteful expenditure and SCM circulars distributed within SITA.

Conclusion

- 5.6.40. SITA did not provide documentation relating to the procurement of Jika, including how the contract was budgeted for and approved.
- 5.6.41. Despite requests to provide the required documents, SITA did not do so.

- 5.6.42. The evidence submitted by Ms Wolf is noted but it is also observed that it is not supported by any documents, nor could it be corroborated during the investigation.
- 5.6.43. Due to the lack of evidence, no conclusion could be drawn on the allegation that SITA incurred irregular expenditure by exceeding the approved budget for the contract, without obtaining prior approval from National Treasury.
- 5.6.44. Under the circumstances, SITA did not ensure that the documents relating to the procurement of Jika received appropriate physical care in line with applicable policies as contemplated by regulation 10 of the National Archives Regulations.
- 5.6.45. SITA also did not maintain records relating to quotations or bid documents issued, as required by paragraph 33.2 of the 2017 Policy.
- 5.6.46. SITA's conduct relating to the maintenance of records for the procurement of services from Jika was accordingly improper and constituted maladministration.
- 5.7. **Whether the appointment of Bowmans Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

Common cause or undisputed facts

- 5.7.1. It is not disputed that SITA appointed the firm of attorneys of Bowman Gilfillan (Bowmans) under reference number RFQ 649 – BA – NT029 – 2015 on 17 February 2016 to perform an independent audit and risk assessment of the Human Capital function at SITA.

5.7.2. The Complainant contends that the contract awarded to Bowmans amounted to irregular expenditure because SITA exceeded its approved budget for the contract and then proceeded to extend the contract without seeking prior approval from National Treasury.

5.7.3. This is not disputed by SITA. In a response to the allegations dated 13 August 2018, SITA conceded that the appointment of Bowmans relating to the Human Capital Management investigation was not in line with procurement processes and was irregular.

Issues in dispute

5.7.4. To establish the process undertaken in the appointment of Bowmans, the following documents and prescripts were reviewed: -

5.7.4.1. 2015 SCM Policy and DoA;

5.7.4.2. Available documents relating to the process followed in the procurement of Bowmans as a service provider, correspondence with National Treasury and extensions of the contract with Bowmans;

5.7.4.3. Payment documents, Payment History Report, statements and invoices between SITA and Bowmans; and

5.7.4.4. Response received to the notice issued by the Public Protector.

5.7.5. The evidence provided by SITA reflects that on 19 January 2015, SITA approached National Treasury with a request to participate in a contract arranged by the latter institution.

5.7.6. The letter signed by the then CEO of SITA, SF Nomvalo stated that *“SITA is aware that your office has in place, a number of contracts with various forensic service providers. SITA’s Audit, Risk and Compliance Committee*

(ARCC)...requires an independent investigation to be conducted as a matter of urgency and therefore requests that SITA participate in the relevant National Treasury contracts.”

5.7.7. National Treasury acceded to the request in a letter dated the same day from Zanele Mxunyelwa, the Head: Specialised Audit Service.

5.7.8. Regulation 16.A6.6 of the National Treasury Regulations states that *“The accounting officer or accounting authority may, on behalf of the department, constitutional institution or public entity, participate in any contract arranged by means of a competitive bidding process by any other organ of state, subject to the written approval of such organ of state and the relevant contractors.”*

5.7.9. Email correspondence dated 01 February 2016 between SITA and National Treasury indicates that written approval was sought from the other contractors as per regulation 16.A6.6 of the National Treasury Regulations.

5.7.10. According to the Annexure B: Expenditure Management Delegation of the 2015 DoA, an Executive of SITA has the authority to approve a Business Case to initiate a procurement process where the contract value does not exceed R10 million.

5.7.11. A Business Case titled *“Approval to initiate the procurement process to appoint an external auditing company to perform an independent audit and risk assessment of Human Capital Management function”* was accordingly signed by the officials below: -

| Name | Position | Role | Date signed |
|---------------|-----------------------|-----------------|------------------|
| Leshoke Puane | Internal Auditor: | Requester | 02 February 2016 |
| Petrus Visser | Management Accountant | Budget Verified | 02 February 2016 |

| | | | |
|----------------|---|-------------|---------------------|
| Wimpie Oelofse | Acting Senior Manager: Internal Audit | Recommender | 02 February 2016 |
| Dave Boucher | Acting Executive: Internal Audit | Approver | 02 February 2016 |

- 5.7.12. The purpose of the Business Case was to follow an RFQ process to appoint a service provider on the list of service providers as approved by National Treasury, to perform an independent audit and risk assessment in respect of the Human Capital Management division.
- 5.7.13. It is noted in paragraph 4 of the Business Case that a compulsory briefing session would be held with the National Treasury panel members prior to the closing of the RFQ, dealing with specific requirements of the contract.
- 5.7.14. Paragraph 10 of the Business Case states that the cost of the contract would not exceed R900 000.00.
- 5.7.15. SITA did not provide any evidence that a briefing session took place as per the Business Case but indicated during the investigation that it took place on 05 February 2016.
- 5.7.16. SITA also did not provide evidence indicating how Bowmans was procured.
- 5.7.17. According to Annexure E of the 2015 DoA, letters of award in contracts which do not exceed R3 million in value may be signed by the HOD: SCM.
- 5.7.18. On 17 February 2016, the Head of Division: Tactical Sourcing, Sizwe Majavu addressed a letter of award to Bowmans in respect of tender RFQ 649-BA-NT029-2015.

- 5.7.19. The letter of award stated that the total cost of the tender was R495 436.00 (VAT Incl.).
- 5.7.20. SITA did not provide evidence that a formal contract was concluded with Bowmans.
- 5.7.21. It appears that SITA sought to expand the scope of the Bowmans contract and drafted a second Business Case titled *“Approval for additional funds due to scope expansion relating to the services being rendered by Bowman Gilfillan, appointed at the request of the Audit, Risk and Compliance Committee, to perform an independent audit and risk assessment of Human Capital Management Function”* which was signed by the following officials: -

| Name | Position | Role | Date signed |
|--------------------|--|-----------------|--------------|
| Ofentse Molefe | Acting Senior Manager: Forensic Auditor | Requester | 14 July 2016 |
| Bavika Munien | Acting HOD: Management Accountant | Budget Verifier | 14 July 2016 |
| Dave Boucher | Acting Executive: Internal Audit | Recommender | 14 July 2016 |
| Rudzani Rasikhinya | CFO | Recommender | 14 July 2016 |
| Setumo Mohapi | CEO | Approver | 19 July 2016 |

- 5.7.22. It was noted on the Business Case that Ms Bavika Munien indicated that there was currently no budget available to cover the costs of the scope

expansion. Dr Mohapi however proceeded to approve the submission authorising the additional expenditure.

- 5.7.23. According to the Business Case, following the appointment of Bowmans on 17 February 2016, preliminary procedures identified numerous risk areas at SITA and during regular feedback sessions with the Chairperson of the Audit, Risk and Compliance Committee, their mandate had been widened to conduct a more detailed and in-depth audit into HCM functions, together with forensic investigations and legal support were needed.
- 5.7.24. The estimated budget required to complete the project was R7 635 733.47 (Excl. VAT) for the audit and risk assessment project and R2 004 770.00 (Excl. VAT) for disciplinary processes resulting from the investigation.
- 5.7.25. During 2017, SITA required additional funds for the Bowmans contract and prepared a third Business Case titled *“Approval for additional funds due to scope expansion relating to the services being rendered by Bowman Gilfillan, appointed at the request of the Audit, Risk and Compliance Committee, to perform an independent audit and risk assessment of Human Capital Management Function”* which was signed by the following officials: -

| Name | Position | Role | Date signed |
|----------------|---|-----------------|--------------------|
| Ofentse Molefe | Acting Senior Manager: Forensic Auditor | Requester | 24 January 2017 |
| Bavika Munien | Acting HOD: Management Accountant | Budget Verifier | 24 January 2017 |
| Dave Boucher | Acting Executive: Internal Audit | Recommender | 25 January 2017 |

| | | | |
|--------------------|-----|-------------|------------------|
| Rudzani Rasikhinya | CFO | Recommender | 26 January 2017 |
| Setumo Mohapi | CEO | Approver | 02 February 2017 |

5.7.26. According to the Business Case, approval was sought for additional funds in the amount of R1 450 379.03 (Excl. VAT) due to operational needs relating to services rendered by Bowmans on disciplinary proceedings emanating from the investigation which was conducted into the HCM function.

5.7.27. In a letter signed by Marvin Sebela the Acting HOD: Strategic Sourcing and dated 29 June 2017 (over a year had elapsed from the first scope expansion), SITA submitted a request to National Treasury to approve the scope expansion on services related to work rendered by Bowmans to perform the audit and risk assessment of the HCM function.

5.7.28. In a letter dated 5 July 2017, Solly Tshitangano the Chief Director: Governance, Monitoring and Compliance responded to the request by SITA. SITA was advised in the letter that National Treasury did not support the scope expansion.

5.7.29. The letter also stated that SITA must publish the award on the e-tender portal. SITA did not provide any evidence indicating that this occurred.

5.7.30. SITA provided the following invoices submitted by Bowmans: -

| Invoice Number | Invoice date | Amount (R) |
|----------------|---------------|--------------|
| S6125605 | 31 March 2016 | 821 114.96 |
| S6125683 | 31 March 2016 | 144 959.85 |
| S6126643 | 26 April 2016 | 70 148.14 |
| S6127446 | 29 April 2016 | 1 590 799.89 |

| | | |
|----------|-------------------|--------------|
| S6126543 | 31 April 2016 | 201 498.71 |
| S6128180 | 19 May 2016 | 22 443.75 |
| S6128861 | 31 May 2016 | 1 741 091.22 |
| S6131623 | 30 June 2016 | 1 429 973.81 |
| S6133743 | 29 July 2016 | 1 251 087.71 |
| S6133764 | 29 July 2016 | 1 270 800.69 |
| S6135029 | 30 August 2016 | 522 341.16 |
| S6135030 | 30 August 2016 | 827 616.72 |
| S6138137 | 30 September 2016 | 345 413.73 |
| S6140240 | 31 October 2016 | 340 176.00 |
| S6141679 | 30 November 2016 | 31 806.00 |
| S6143413 | 20 December 2016 | 96 216.00 |
| S6146008 | 06 February 2017 | 1 859 001.86 |
| S6148158 | 28 February 2017 | 91 579.07 |
| S6148164 | 28 February 2017 | 25 073.73 |

- 5.7.31. Bowmans prepared a close out report for SITA dated 12 April 2017.
- 5.7.32. The date of the close out report as well as the invoices listed above indicate that SITA only approached National Treasury after the project had been concluded and payments made to Bowmans.
- 5.7.33. It appears from the evidence that Bowmans conducted the investigation into the HCM function and also initiated the disciplinary process against affected employees.
- 5.7.34. Notices were issued by the Public Protector and served on SITA on 05 November 2021 and to Ms Ashleigh Graham of Bowmans on 08 November 2021.
- 5.7.35. On 06 December 2021, a response to the notice was received from Mr Neil van Vuuren of Bowmans. He indicated in the letter that Bowmans did not wish

to respond to the notice as SITA had been afforded an opportunity to respond thereto.

- 5.7.36. On 11 January 2022, SITA responded to the notice and stated that the matter had been condoned by National Treasury but did not provide evidence of the condonation.
- 5.7.37. SITA also context to the evidence that Dr Mohapi approved the Business Case authorising additional expenditure on 19 July 2016, despite Ms Bavika Munien indicating in the submission that there was currently no funds to cover the scope expansion.
- 5.7.38. According to SITA, this was an ad-hoc request and therefore no budget would be available. Sufficient funds were found to cover the costs. This was not considered a risk. They considered this a normal process not to budget for new forensic processes and that this principle is followed within the public sector (including National Treasury) as an entity should not expect fraud to take place. However, it is also accepted that this should not prevent the appointment of forensic service providers where necessary when it becomes necessary as fraud is regarded as a serious matter.
- 5.7.39. SITA stated in its response to the notice that it obtained condonation from National Treasury on this matter. On 11 December 2020, National Treasury condoned irregular expenditure in the amount of R10 696 289, incurred by SITA emanating from the expansion of the contract awarded to Bowman without approval, after SITA demonstrated that it complied with paragraph 56 of the Irregular Expenditure Framework 2019/20.

Application of the relevant law and prescripts

- 5.7.40. The following legal prescripts which have already been canvassed in this report were considered in this issue: -

- 5.7.40.1. Section 217 of the Constitution;
- 5.7.40.2. Sections 1, 51(1) and 57 of the PFMA;
- 5.7.40.3. Paragraph 9 of the National Treasury Instruction Note 3 of 2016/2017 on preventing and combating abuse in the supply chain management system;
- 5.7.40.4. Treasury Regulation 16A6.4; and
- 5.7.40.5. Paragraphs 3(3) of the 2015 SCM Policy.

5.7.41. Paragraph 23.1 of the 2015 SCM Policy provides that: -

“System of Acquisition Management

23.1.1 Goods and services shall only be procured in accordance with authorised quotation or bidding processes within threshold values determined by National Treasury.”

5.7.42. Paragraph 23.4.4 of the 2015 SCM Policy provides that: -

“Above the Transaction Value of R10 000 but not exceeding R500 000 (Vat Included)

23.4.4.1 SITA may invite and accept written price quotations for requirements up to an estimated value of R500 000 from as many suppliers as possible, that are registered on the prospective provider list.

23.4.4.2 Where no suitable suppliers are available from the prospective list, written price quotations may be obtained from other possible suppliers.

23.4.4.3 If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the delegated SITA official.

5.7.43. Paragraph 23.4.5 of the 2015 SCM Policy provides that: -

“Competitive Bids (Transaction value above R 500 000)

23.4.5.1 As a rule, SITA shall invite competitive bids for all procurement requirements above R500 000.00 except where reasonable and justifiable circumstances dictate a deviation from competitive bidding process.

23.4.5.6 Contracts may be extended or renewed by not more than 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount. Any deviation in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury.”

5.7.44. Paragraph 23.7 of the 2015 SCM Policy provides that: -

“Types of competitive Bids

23.7.1.6 RFQ – Request for Quotation is used for bids which result from RFA’s (request for accreditation) where a preferred list (or panel of service providers) exists for a particular commodity and in some instances for specific provinces...It is a preferred method of sourcing goods/services where a pre accreditation process has already occurred. Only bidder’s accredited for the required product / service(s) may be invited to submit bids. Technical evaluation should not be conducted if preferred list suppliers were already accredited and found to be technically qualified to provide the required goods and services and there are no other special business requirements. Therefore, only price and preferential points evaluation should be conducted. In cases where technical evaluation is not required, bidders are required to sign a declaration that the offered pricing is based on the specification published with the invitation. This is for all values applicable.”

5.7.45. Paragraph 31.1 of the 2015 SCM Policy provides that: -

“Conclusion of contracts

31.1.1 SCM must act on the award decision by issuing the letter of acceptance, the formal contract, including the service level agreement, where applicable, to the successful bidder/s.

31.1.3 For quotations, the delegated official shall sign the letters of acceptance and contract form or other necessary documentation to commit SITA. SITA must be satisfied that all necessary contractual conditions have been included prior to signing.

31.1.6.1 Upon finalisation of the bid process, a formal contract shall be concluded whereupon orders may be placed with the successful provider.”

5.7.46. Paragraph 35.4.16 of the 2015 SCM Policy provides that: -

“Contract Variations / Amendments

35.4.16.2 Contracts may be amended/varied/modified according to the Board’s delegated powers to achieve the original objective of the contract. Amendments may not materially alter the original objective; as such amendments should form part of a new bid invitation. All contracting parties must agree to the amendment in writing.

35.4.16.3 No contract can be amended after the original contract has ceased to exist. Purchase order and service requests should be executed within the contract duration and execution outside the contract duration will be deemed as irregular expenditure.”

Conclusion

- 5.7.47. SITA did not dispute in its response to the allegation that the appointment of Bowmans was not in line with procurement process. By its own admission, the process followed to appoint Bowmans was irregular.
- 5.7.48. The evidence indicates that SITA awarded a contract to Bowmans in the amount of R495 436.00 (Incl. VAT). SITA then proceeded to approve the expansion of this contract by the amount of R9 680 503.47 (Excl. VAT) in July 2016 and a further R1 450 379.03 (Excl. VAT) in February 2017.
- 5.7.49. This additional expenditure (which far exceeded 15% of the value of the original contract) was incurred prior to obtaining the written approval of National Treasury as is required by paragraph 9 of the National Treasury Instruction Note 3 of 2016/2017 read with paragraph 23.4.5 of the 2015 SCM Policy.
- 5.7.50. SITA did not provide evidence that the services of Bowmans were procured in accordance with an authorised quotation or bidding process as is contemplated by paragraphs 23.1.1 and 23.4.4 of the 2015 SCM Policy.
- 5.7.51. It was noted that SITA approved the extension/expansion of the contract with Bowmans during July 2016, even though Bavika Munien the Acting HOD: Management Accountant had specifically stated in the Business Case that there was currently no budget for the scope expansion. The Public Protector takes note of the explanation given by SITA and deems it justifiable and reasonable under the circumstances.
- 5.7.52. SITA did not provide evidence that an evaluation on technicality and/or price occurred, nor did SITA provide evidence that Bowmans signed a declaration that the offered pricing was based on the specification published with the invitation prior to its appointment as contemplated by paragraph 23.7.1.6 of the 2015 SCM Policy.

- 5.7.53. SITA did not provide evidence that a formal contract was concluded with Bowmans following the initial award as required by paragraph 31.1 of the 2015 SCM Policy.
- 5.7.54. SITA did not provide evidence that the amendments/variations or scope expansions of the contract which took place in 2016 and 2017, were reduced to writing and signed by Bowmans, as is required by paragraph 35.4.16 of the 2015 SCM Policy.
- 5.7.55. The evidence indicates that SITA, through its Board of Directors, did not ensure that the entity maintains its internal controls, did not take effective and appropriate steps to prevent incurring expenditure not complying with its SCM policies in the tender awarded to Bowmans and the subsequent expansion/variation of the contract, as is required by section 51 of the PFMA.
- 5.7.56. The evidence also indicates that the officials who were implicated in the contract awarded to Bowmans did not ensure that SITA's internal controls were effectively carried out within their respective areas of responsibility as is required by section 57 of the PFMA.
- 5.7.57. SITA accordingly did not comply with its operational policies as required by section 51 of the PFMA which resulted in a procurement process which was not fair, equitable, transparent, competitive or cost-effective, as contemplated by section 217 of the Constitution and section 51 of the PFMA.
- 5.7.58. It is noted that Ms Jabulile Tlhako, the then Executive: SCM was charged on 29 June 2018 with causing SITA to incur irregular expenditure in the Bowmans contract. She was found accountable for the irregular expenditure. She subsequently resigned during the disciplinary process at the end of July 2018.
- 5.7.59. It is also noted that Bowmans conducted the investigation in the HCM function and also initiated the disciplinary process.

5.7.60. The conduct of SITA was accordingly improper and constituted maladministration.

5.8. **Whether the appointment of Hewu Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

Common cause or undisputed facts

5.8.1. It is not disputed that SITA appointed Hewu Attorneys (Hewu) under reference number RFB 1200/2015 during January 2016 for the provision of legal services for SITA.

Issues in dispute

5.8.2. The issue to be determined is whether the appointment of Hewu was not in compliance with applicable supply chain management prescripts.

5.8.3. The Complainant contends that SITA irregularly appointed Hewu for the provision of legal services for SITA.

5.8.4. In response to the allegation, SITA merely stated that Hewu was appointed through an open tender and made no further submissions in that regard.

5.8.5. The following documents and prescripts were reviewed: -

5.8.5.1. 2015 SCM Policy;

5.8.5.2. Available documents relating to the process followed in the procurement of Hewu as a service provider;

- 5.8.5.3. Payment documents, Payment History Report, statements and invoices between SITA and Hewu; and
- 5.8.5.4. Responses to notices issued in terms of the Public Protector Act.
- 5.8.6. SITA provided a copy of a document titled *“RFB1200-1/2015: supplementary bid for preferred panel of attorneys for the provision of legal services under RFB 1200-2014 (for the remaining period of the existing tender which expires on the 31 December”* reflecting Hewu Attorneys as a service provider.
- 5.8.7. In a letter from Sydney Tshibubudze: Chief Procurement Officer, dated 22 January 2016, Hewu was informed that it had been shortlisted as a preferred bidder on RFB 1200-1/2015 subject to signing a Memorandum of Understanding.
- 5.8.8. Hewu accepted the conditions of the letter by signing it on 26 January 2016.
- 5.8.9. SITA provided a Service Level Agreement entered into with Hewu signed on behalf of the latter on 08 February 2016 and the former on 23 February 2016.
- 5.8.10. According to the agreement, Hewu was appointed to the panel of attorneys to render services to SITA through allocation on work order basis. The duration of the agreement would be for the remaining period of the RFB 1200/2014 tender.
- 5.8.11. SITA entered into a Rectification to the Service Level Agreement with Hewu. The last date of signature on the agreement was 24 March 2017.
- 5.8.12. The agreement contained 2 clauses stating that the termination date of contract RFB1200/2014 is 31 December 2017. Further that *“save to the extent specifically modified in accordance with this rectification, or unless agreed to in writing between the parties, the provisions of the Main Agreement shall continue to apply.”*

5.8.13. Copies of documents reflecting the procurement process followed in the appointment of Hewu were not provided for review.

5.8.14. SITA provided Payment Remittance Advices reflecting payments made to Hewu reflecting the following information: -

| Invoice Number | Invoice date | Amount (R) |
|--|--|------------|
| 347 | 10 May 2016 | 49 000.00 |
| INV01-35 | 17 March 2017 | 214 621.50 |
| INV01-42 | 30 March 2017 | 22 925.40 |
| INV01-46 | 12 May 2017 | 202 758.00 |
| INV01-52 and INV01-54 | 21 and 27 June 2017 | 263 535.27 |
| INV01-56 and INV01-57 | 13 July 2017 | 513 992.15 |
| INV01-74 and INV01-75 | 15 August 2017 | 569 516.80 |
| INV01-81, INV01-82 and INV01-84 | 13 September 2017 | 202 714.00 |
| INV01-92 and INV01-93 | 02 November 2017 | 250 770.00 |
| INV01-96, INV01-97, INV01-98 and INV01-99 | 17 November 2017 and 01 December 2017 | 415 618.63 |
| INV01-101, INV01-102A and INV01-103 | 28 February 2018 | 340 963.00 |
| INV01-104A, INV01-105, and INV01-88A | 06 March 2018, 12 March 2018 and 06 October 2017 | 148 772.50 |

- 5.8.15. It is noted from the above payments that SITA made payments to Hewu for invoices submitted for work done in 2018 even though the Rectification to the SLA dated 24 March 2017 recorded that the termination date for contract RFB1200/2014 was 31 December 2017.
- 5.8.16. SITA did not provide evidence that there was an agreement in place for the work done subsequent to the termination of the agreement dated 24 March 2017.
- 5.8.17. SITA addressed the issue of the payment of invoices outside the contract validity period in the response to the notice received on 11 January 2022.
- 5.8.18. SITA contended that the invoices in question were in regard to the continuation of work that was allocated before the contract expired. According to SITA, legal matters have a life of their own and it may not be advisable to change legal firms until the specific matter(s) they are dealing with is/are finalised.
- 5.8.19. SITA provided evidence confirming that the payment of invoices submitted by HEWU after the contract came to an end related to: -
- 5.8.19.1. The continuation of work in preparation for a matter in the CCMA against an employee of SITA. Hewu was appointed during the internal disciplinary hearing of this employee and it continued to represent SITA in the CCMA;
- 5.8.19.2. Closing argument and drafting of the ruling following a protracted hearing which started before the contract with Hewu expired; and
- 5.8.19.3. Items accruing in October 2017 but payment effected in March 2018.

5.8.20. Clause 7.12 of the Service Level Agreement further provides that firms are expected to report on the matters until the completion of the instruction, which is understood when the matter is finalised.

Application of the relevant law and prescripts

5.8.21. The following legal prescripts which have already been canvassed in this report were considered in this issue: -

5.8.21.1. Section 1 of the National Archives Act;

5.8.21.2. Regulation 10 of the National Archives regulations; and

5.8.21.3. Paragraph 33.2 of the 2017 SCM Policy.

Conclusion

5.8.22. SITA did not provide complete documentation relating to the procurement of Hewu, including how the contract was budgeted for and approved.

5.8.23. Despite requests to provide the required documents, SITA did not do so.

5.8.24. Based on the available evidence, no conclusion could therefore be drawn on the allegation that SITA irregularly appointed Hewu for the provision of legal services.

5.8.25. SITA did not ensure that the documents relating to the procurement of Hewu received appropriate physical care in line with applicable policies as contemplated by regulation 10 of the National Archives Regulations.

5.8.26. SITA also did not maintain records relating to quotations or bid documents issued as required by paragraph 33.2 of the 2017 Policy.

- 5.8.27. SITA's conduct relating to the maintenance of records for the procurement of services from Hewu was accordingly improper and constituted maladministration.
- 5.8.28. Turning to the issue of the payment of invoices after the expiry of the contract validity period, the response to the notice was canvassed and the Public Protector accepts SITA's version that the instruction for legal work was given to Hewu during the validity of the contract even though Hewu invoiced SITA for work done, after the contract had come to an end. Further that the work relating to such instruction was finalised or continued after the contract validity period.
- 5.8.29. Given the nature of litigious work, there could have been a number of acceptable reasons why the finalisation of the work could have proceeded after the contract had come to end and it would not have been pragmatic for SITA to appoint new attorneys to finalise work already initiated by Hewu.
- 5.8.30. Embarking on a new competitive bidding process would have created further delays including expenditure for having to go out on open tender and to brief new attorneys, who would need to acquaint themselves with documents and processes that would have been commenced by Hewu.
- 5.8.31. The explanation provided by SITA is plausible and reasonable under the circumstances and this matter is not taken further.
- 5.8.32. SITA is however cautioned to account for such variables in its procurement planning going forward.
- 5.9. **Whether the appointment of Cyanre Digital Forensic Lab by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

Common cause or undisputed issues

- 5.9.1. It is not disputed that SITA appointed Cyanre Digital Forensic Lab (Cyanre) on an urgent basis during September 2016 and March 2017 to conduct a forensic audit of the Intenda e-Portal system.

Issues in dispute

- 5.9.2. The issue to be determined is whether the appointment of Cyanre was not in compliance with applicable supply chain management prescripts.
- 5.9.3. The Complainant contends that SITA awarded a contract to Cyanre without following proper procurement processes.
- 5.9.4. SITA did not dispute or concede the allegation in its response to the Public Protector during 2018. SITA stated that the following occurred in the appointment of Cyanre: -

“On 22 September 2016, approval was granted to appoint, on an urgent basis, the entity Cyanre, The Computer Forensics Lab to conduct an urgent forensic audit in respect of the Intenda e-Portal system on the 285 application to, inter alia, determine whether there had been any unauthorized manipulation of the data on the system and whether any fraud and corruption had occurred. (see approved business case attached).

Cyanre uses the services of subcontractors to conduct the non IT related aspects of investigations and in this respect they appointed the entity, Greenmont Forensic Services.

However, due to capacity limitations, the complexity of the issues to be investigated as the investigation progressed as well as the requirement for legal expertise, Cyanre replaced Greenmont with another of their subcontractors, Bowmans in February 2017 (Cyanre has a consultancy

agreement with Bowmans and have worked together for a number of years). The value of the contract was R3, 203,276.30.

On 7 March 2017, and following death threats against senior employees and damage to property, an Emergency Procurement memo was prepared to appoint the services of Cyanre to conduct an urgent forensic investigation within the SCM environment. Cyanre subcontracted Bowmans to assist with the investigation. The cost of the project was estimated at R18, 771,832.80 (Incl. VAT) (see business case and proposal attached).

A copy of the Close-out report in respect of the SCM investigation is attached.”

- 5.9.5. To establish what transpired, the following documents and prescripts were reviewed: -
 - 5.9.5.1. 2015 SCM Policy and DoA;
 - 5.9.5.2. Approved memoranda for the appointment of Cyanre;
 - 5.9.5.3. Proposals submitted to SITA by Cyanre;
 - 5.9.5.4. Statements and invoices submitted between SITA and Cyanre; and
 - 5.9.5.5. Responses to the notice issued in terms of the Public Protector Act.
- 5.9.6. According to SITA’s 2015 DoA, the CEO must approve all Business Cases where normal procurement processes are not followed, including deviations for sole source suppliers, closed tenders, emergency and urgent procurement.
- 5.9.7. On 22 September 2016, Ms Jabulile Tlhako: acting Chief Procurement Officer accordingly submitted a request to Dr Mohapi to approve the appointment of

Cyanre on an urgent basis to conduct a forensic audit of the Intenda e-Portal system.

- 5.9.8. According to the submission, the urgency of the procurement was predicated by anomalies identified during the course of an internal audit of the system.
- 5.9.9. A forensic audit was therefore required to determine whether there had been any unauthorised manipulation of data within the system as well as any instances of fraud and corruption.
- 5.9.10. Dr Mohapi approved the submission on the same day (22 September 2016).
- 5.9.11. On 30 September 2016, Dave Boucher: acting Executive Internal Audit prepared a memorandum to the CEO advising him that Cyanre had been appointed to conduct the forensic audit and to request his approval of the attached proposal setting out the professional fees for the investigation and to further approve that the ongoing investigation and associated fees be managed by Internal Audit and SCM Executives with the support of the CFO.
- 5.9.12. The submission contained the following signatories: -

| Name | Position | Role | Date signed |
|-----------------|----------------------------------|-------------|-------------------|
| Dave Boucher | Acting Executive: Internal Audit | Requester | 30 September 2016 |
| Jabulile Tlhako | Acting Chief Procurement Officer | Supporter | 30 September 2016 |
| Andre Pretorius | Acting Chief Financial Officer | Recommender | 30 September 2016 |

| | | | |
|---------------|-------------------------|----------|-------------------|
| Setumo Mohapi | Chief Executive Officer | Approver | 30 September 2016 |
|---------------|-------------------------|----------|-------------------|

- 5.9.13. It is noted that the acting CFO indicated in the submission that funds would be identified for this. This is interpreted to mean that at the stage of approval of the submission, no budget or funds had been either identified or approved for the procurement.
- 5.9.14. It is noted that the proposal did not contain a total cost of the services to be rendered by Cyanre.
- 5.9.15. SITA did not provide a close-out report indicating what services were ultimately rendered by Cyanre relating to the Intenda e-Portal system.
- 5.9.16. Cyanre submitted a proposal to SITA dated 28 November 2016 titled *“Proposal: Computer Forensic Analysis”* for the approval of their investigation plan and cost. It is unclear whether the proposal related to the Intenda e-Portal system as no reference is made to it. The proposal only refers to the forensic acquisition and analysis of a digital storage device(s).
- 5.9.17. SITA did not provide evidence that a letter of award was sent to Cyanre or that a formal contract was concluded between the two entities pursuant to the procurement.

Second appointment of Cyanre

- 5.9.18. On 07 March 2017, Ms Jabulile Tlhako: Chief Procurement Officer prepared a second submission to the CEO requesting approval for the appointment of Cyanre on an emergency basis to conduct a forensic audit of the SCM environment following threats against senior employees and their families as well as damage to the personal property (vehicle) of a senior employee.

- 5.9.19. According to the submission, the above matter had been discussed at a board meeting on 27 February 2017 and the decision was taken to immediately seize and image computer equipment of all officials in the SCM environment.
- 5.9.20. SITA did not provide copies of minutes of the board meeting which took place on 27 February 2017.
- 5.9.21. The submission also stated that Cyanre had appointed Bowmans to assist with the forensic investigation and the provision of legal services pertaining to the appointment of Cyanre by SITA.
- 5.9.22. It is noted that Bowmans had already been appointed by SITA to conduct an investigation of the Human Capital Management (HCM) environment around the same time that they were also subcontracted by Cyanre for this investigation.
- 5.9.23. It is also noted that even though Cyanre sub-contracted Bowmans to assist with the investigation, this fact was not indicated in the proposals submitted to SITA for consideration.
- 5.9.24. The submission dated 07 March 2017 was recommended by Ms Jabulile Tlhako: Chief Procurement Officer on 07 March 2017 and approved on behalf of Dr Mohapi on the same date.
- 5.9.25. A cost estimation dated 27 May 2017 from Cyanre indicated a total amount of R18 771 832.80 for the project.
- 5.9.26. SITA acknowledged the cost estimate on 01 June 2016.
- 5.9.27. No evidence was provided by SITA that a letter of award was sent to Cyanre or that a formal contract was concluded between Cyanre and SITA for the emergency procurement during March 2017.

5.9.28. The following supplier invoices by Cyanre were provided by SITA for the period December 2016 to May 2018 relating to Intenda and the audit of the SCM environment. Other invoices related to FDA and Fundudzi: -

| Invoice Number | Invoice date | Amount (R) |
|----------------|-------------------|--------------|
| CYL06295 | 06 December 2016 | 557 465.75 |
| CYL06344 | 27 January 2017 | 387 804.06 |
| CYL06376 | 21 February 2017 | 388 725.75 |
| CYL06442 | 10 April 2017 | 2 376 285.15 |
| CYL06443 | 10 April 2017 | 673 866.12 |
| CYL06477 | 28 April 2017 | 2 237 701.73 |
| CYL06478 | 28 April 2017 | 447 445.44 |
| CYL06520 | 31 May 2017 | 177 425.33 |
| CYL06521 | 31 May 2017 | 2 131 722.00 |
| CYL06625 | 07 August 2017 | 165 866.58 |
| CYL06626 | 07 August 2017 | 145 350.00 |
| CYL06627 | 07 August 2017 | 1 940 636.47 |
| CYL06639 | 11 August 2017 | 1 585 344.18 |
| CYL06640 | 11 August 2017 | 60 119.33 |
| CYL06703 | 29 September 2017 | 228 627.00 |
| CYL06704 | 29 September 2017 | 1 614 098.34 |
| CYL06732 | 11 October 2017 | 107 744.97 |
| CYL06733 | 11 October 2017 | 2 112 584.33 |
| CYL06804 | 30 November 2017 | 2 972 174.06 |
| CYL06810 | 04 December 2017 | 737 283.23 |
| CYL06878 | 31 January 2018 | 2 699 362.75 |
| CYL06879 | 31 January 2018 | 874 644.81 |
| CYL06894 | 12 April 2018 | 371 378.72 |
| CYL07028 | 30 April 2018 | 58 420.00 |
| CYL07034 | 17 May 2018 | 68 985.63 |
| CYL07053 | 24 May 2018 | 259 581.11 |
| CYL07166 | 31 July 2018 | 51 922.50 |

| | | |
|----------|------------------|--------------|
| CYL07256 | 15 October 2018 | 1 686 273.75 |
| CYL07393 | 07 February 2019 | 382 536.00 |

- 5.9.29. Bowmans prepared a close-out report on the SCM tender dated 04 July 2018 notwithstanding the SCM contract having been awarded to Cyanre.
- 5.9.30. SITA did not provide the Service Level Agreement with Cyanre or the sub-contract agreement between Cyanre and Bowmans. Therefore, the extent of the work done by Cyanre *vis-à-vis* the work done by Bowmans on the SCM contract could not be established.
- 5.9.31. Notices were issued by the Public Protector and served on SITA as well as Cyanre on 05 November 2021. A response was not received from Cyanre.
- 5.9.32. SITA disputed the findings contained in the notice in a letter sent to the Public Protector on 11 January 2022. In its response to the notice, SITA contended that the procurement of Cyanre was done in compliance with the provisions of the policy that regulate emergency procurement processes.
- 5.9.33. According to SITA, following threats and damage to property, which were considered most imminent, and which were believed to be from the SCM/HCM environment (as the part of the clean-up campaign), immediate intervention was required to seize all laptops in the environment to analyse and deal with any threat from that quarter. The decision for an emergency procurement was thus, in our opinion, a valid decision, in line with emergency criteria.
- 5.9.34. SITA also stated that the threats continued until the intervention and eventually abated after a short period of time. The Crime Intelligence Division of SAPS were also called in to investigate the threats and damage to property.

5.9.35. SITA did not provide evidence indicating that it obtained condonation from its Board or National Treasury on this matter.

Application of the relevant law and prescripts

5.9.36. The following legal prescripts which have already been canvassed in this report were considered in this issue: -

5.9.36.1. Section 217 of the Constitution;

5.9.36.2. Sections 1, 51(1) and 57 of the PFMA;

5.9.36.3. Treasury Regulation 16A6.4; and

5.9.36.4. Paragraphs 3.3 and 23.1 of the 2015 SCM Policy.

5.9.37. Paragraph 23.4.5 of the 2015 SCM Policy provides that: -

“Competitive Bids (Transaction value above R 500 000)

23.4.5.1 As a rule, SITA shall invite competitive bids for all procurement requirements above R500 000.00 except where reasonable and justifiable circumstances dictate a deviation from competitive bidding process.

23.4.5.3 Should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, SITA may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the delegated authorities. SITA is required to report within ten (10) working days to the relevant treasury and the Auditor-General all cases where goods and services above the value of R1 million (VAT inclusive) were procured in terms of Treasury Regulation 16A6.4. The

report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the prescribed competitive bidding process.”

5.9.38. Paragraph 23.7 of the 2015 SCM Policy provides that: -

“Types of Competitive Bids

23.7.1.4 RFB – In the main, a Request for Bids should be the method of procurement considered whenever acquiring products or services except when the nature of the transaction makes quoting inappropriate. This is for items with a forecasted value in excess of R500 000. This is mostly referred as open market tendering.

23.7.1.6 RFQ – Request for Quotation is used for bids which result from RFA’s where a preferred list (or panel of service providers) exists for a particular commodity and in some instances for specific provinces...It is a preferred method of sourcing goods/services where a pre accreditation process has already occurred. Only bidder’s accredited for the required product / service(s) may be invited to submit bids. Technical evaluation should not be conducted if preferred list suppliers were already accredited and found to be technically qualified to provide the required goods and services and there are no other special business requirements. Therefore, only price and preferential points evaluation should be conducted. In case where technical evaluation is not required, bidders are required to sign a declaration that the offered pricing is based on the specification published with the invitation. This is for all values applicable.”

5.9.39. Paragraph 23.9 of the 2015 SCM Policy provides that: -

“Deviations from Normal Procurement Process

23.9.1 Deviation from competitive bidding processes are only to be used if justification exists and the necessary approval has been obtained. The

reasons for deviating from inviting competitive bids must be recorded and approved before the market is engaged.

23.9.2 SITA may dispense with the official procurement processes to procure any required goods or services through any convenient process, which may include deviation for emergency and urgent procurement.”

5.9.40. Paragraph 23.11 of the 2015 SCM Policy provides that: -

“Urgent Procurement

23.11.1 Urgent requirement can be as a result of foreseeable and not necessarily immediate in need that requires urgent action to avoid undesirable situation, as opposed to an imminent / immediate and unforeseeable requirement in which an emergency is defined. However, a lack of proper planning should not be constituted as an urgent case.

23.11.2 An urgent procurement process will only apply where early delivery is of critical importance and utilisation of an approved procurement process is either impossible, or impractical. SITA may dispense with the invitation of bids and may obtain the requirement by means of quotations by preferably making use of the list of prospective providers per commodity or single source procurement mechanism or extremely shortened procurement process or otherwise in any manner to the best interest of SITA.

23.11.3 The appropriate course of action for urgency shall be justifiable under the circumstances and the nature of the urgency and details of the procurement process followed must be recorded and reported.

23.11.4 Urgent requirements may be approved via “special meetings” or round-robin approvals, and should be immediately prioritised by the relevant Procurement Manager. If it is impossible, or impractical to receive approval via the relevant adjudication / award structure, the CEO should approve the execution of the chosen procurement mechanism based on the formal

submission report supported by the CPO. Subsequently, a feedback submission report should be tabled to the relevant adjudication / award structure committee for noting and / or ratification.

23.11.6 A business case approved by the relevant Line Executive must trigger the urgent procurement.”

5.9.41. Paragraph 23.12 of the 2015 SCM Policy provides that: -

“Emergency Procurement

23.12.1 Emergency requirement can be as a result of imminent / immediate and unforeseeable circumstances that requires immediate action to avert an actual or potential threat or dangerous or risky situation or misery situation. However, a lack of proper planning should not be construed as an emergency case.

23.12.2 Emergency procurement will only apply in serious, unexpected and potentially dangerous circumstances which require immediate rectification, i.e. in the event of:-

23.12.2.1 A threat or interruption in SITA’s ability to execute its mandate;

23.12.2.2 Dangerous or risky situation or misery;

23.12.2.3 Threat of major consequential expense to SITA;

23.12.2.4 Threat of serious damage to SITA’s reputation and good name;

23.12.2.5 An immediate threat to the environment or human safety.

23.12.3 Approved procurement processes may be bypassed. SITA may dispense with the invitation of bids and obtain the requirement by means of quotations by preferably making use of the list of prospective providers or otherwise in any manner in the best interests of SITA.

23.12.4 Emergency procurement can take place either through single source procurement, sole source procurement, quotations or closed shortened bid process depending on the time frames required to satisfy the requirement.

23.12.5 In case of emergency, the relevant Line Executive or CEO must give instruction for an official to take immediate action to avert the situation through executing emergency procurement process to acquire goods and services required to avert the immediate situation. Where the estimated value to acquire goods and services required for averting the immediate situation is above R10m, only the CEO can give instruction to execute emergency procurement process.

23.12.6 Once the goods and services required to avert immediate situation has been delivered or rendered, the responsible Lines of Business Manager must present an emergency procurement report to the relevant adjudication/award structure committee for the approval of emergency procurement and ratification of expenditure incurred. A copy of a written proof of instruction to execute emergency procurement from the Line Executive or CEO must accompany the emergency procurement report as an annexure attachment. The responsible Line of Business Manager must submit an emergency procurement report to the secretariat of the relevant committee to be tabled in the next committee meeting. The report must be supported by the CPO before submission to the relevant secretariat.

23.12.9 The process for emergency shall be justifiable under the circumstances and the nature of emergency and details of the procurement process followed must be recorded and reported.”

5.9.42. Paragraph 23.14 of the 2015 SCM Policy provides that: -

“Sole Source Procurement

23.14.1 Sole source procurement takes place when there is only one supplier for the required services or products (e.g. OEM or Sole distributor or Agent).

If a vendor is a sole supplier or agent of a product, the responsible Procurement Manager must furnish substantiation on how that matter was ascertained as well as a letter of confirmation from the manufacturer that the tenderer is the sole supplier or agent. The letter of confirmation or substantiation must be included as part of the adjudication/award submission report to the adjudication and award structure.”

5.9.43. Paragraph 23.15 of the 2015 SCM Policy provides that: -

“Single Source Procurement

23.15.3 SITA may use single source procurement, only in the following exceptional circumstances:

23.15.3.1 Where SITA applied the competitive bidding process, but the bids received were all non-responsive, thus the time required to go out on the same process has elapsed.

23.15.3.2 Where SITA can buy under exceptionally advantageous conditions that only arise in the very short term.

23.15.3.3 In the event that a change of provider would compel SITA to obtain spare parts or additional equipment or services that are not compatible or interchangeable with existing equipment or services that were obtained from an original provider.

23.15.3.4 For tasks that represent a natural continuation of previous work done where appointing another supplier is impractical.

23.15.3.5 The goods, services or works to be bought have to be designed by the provider.

23.15.3.6 When goods, services or works can only be supplied or rendered by a particular provider and no reasonable alternative or substitute exists.

23.15.3.7 There are legislative, technological or safety reasons to restrict purchases to providers who have proven their capacity.”

23.15.4 Request for single source procurement must be pre-approved by the CPO before the targeted supplier is engaged through a written motivation submission substantiating reasons for considering single source instead of an open bid process. The CPO may reject the request and recommend for an open bid process.”

5.9.44. Paragraph 23.17 of the 2015 SCM Policy provides that: -

“Shortened Publication period

23.17.1 Due to the urgency of the requirement, a shortened publication period may be considered to expedite the procurement process.

23.17.2 Request for shortened publication period procurement must be pre-approved by the CPO before the market is engaged through a written motivation submission substantiating reasons for considering shortened publication period procurement instead of a normal publication period.”

5.9.45. Paragraph 27.4 of the 2015 SCM Policy provides that: -

“Issuing of Request for Quotations (RFQ)

27.4.1 Enquiry document shall at least include the full name and number of the RFQ, the closing date, time and location, a responsible description of the requirement, minimum score for functionality where applicable, the applicable PPPFA evaluation system...

27.4.2 For RFQ where accredited preferred list or panel of service providers exists for a particular commodity Bids shall be issued for at least 14 calendar days before closing, except in urgent cases when bids may be advertised for a shorter period as the delegated authority may determine...

27.4.3 For RFQ where a preferred list of suppliers has been identified, advertising is not necessary since the targeted suppliers are known. Therefore, targeted suppliers can be contacted directly to collect bid documents, receive documents via email, or download them from SITA websites...”

5.9.46. Paragraph 27.11 of the 2015 SCM Policy provides that: -

“Quotation / Bid Documentation Pack

27.11.1 SCM is responsible for compiling bid documents following approval by the SITA delegated authority or BSC.

27.11.2 The quotation / bid documentation pack must at least contain all mandatory forms and documents prescribed by the National Treasury, the approved specifications and invitation to bid.

27.11.3 The quotation / bid documentation pack will consist of the following:

27.11.3.1 Covering letter, which should at least include the bid number, description of the requirement, name of the organization by which it is required and the closing date and time.

27.11.3.2 Standard bid documents that should be included, as a minimum, but are not limited to the following:

- a) Invitation to Bid that is the bidders’ consent to enter into a contract under the conditions specified in the bid documents, should the offer be accepted.*
- b) Tax clearance requirements.*
- c) Relevant pricing schedule.*
- d) Declaration of interest.*
- e) Declaration of bidder’s past SCM practices.*

f) *Certificate of Independent Bid Determination.*

27.11.3.3 Specifications / TOR.

27.11.3.4 General terms and conditions of contract.

27.11.3.5 Special contract conditions.

27.11.3.6 Copy of the formal contract or service level agreement (SLA), where applicable.

27.11.3.7 Where functionality will be evaluated the following must be clearly specified in the invitation quote/bid (a) Evaluation criteria for measuring functionality; (b) Weight of each criterion; (c) Applicable minimum threshold or qualifying score for functionality. Where bids include considerations for local production and content, the designated sector and minimum threshold must be stated in the invitation to bid...

5.9.47. Paragraph 29.6 of the 2015 SCM Policy provides that: -

“Tax Clearance Certificate (As from 1 November 2014: date deferred until further notice.

29.6.1.4 SITA shall perform tax compliance checks as follows:

- a) Before suppliers are added to its database*
- b) Before a supplier’s quotation is accepted*
- c) Before bid awarding (including awards via Treasury Regulation 16A.6.4)*
- d) Before any payment is made to a supplier, including awards via Treasury Regulation 16A.6.4.”*

5.9.48. Paragraph 31.1 of the 2015 SCM Policy provides that: -

“Conclusion of contracts

31.1.1 SCM must act on the award decision by issuing the letter of acceptance, the formal contract, including the service level agreement, where applicable, to the successful bidder/s.

31.1.2 Acceptance of a successful bid by a bidder must be in writing and must be sent by registered/certified mail or as indicated in a special condition in the bid...

31.1.3 For quotations, the delegated official shall sign the letters of acceptance and contract form or other necessary documentation to commit SITA...

31.1.4 Both parties to the contract shall sign the contract form or formal contract in at least two originals. Original contracts shall be kept in a safe place for judicial reference.”

Delegations of Authority document approved by the Chief Executive Officer of SITA on 07 August 2015 (2015 DoA).

5.9.49. Paragraph 6.2(f) of the 2015 DoA provides that:-

“All business cases must address the financial implication including the following:

- i) Budget;*
- ii) Estimated costs;*
- iii) Cost centre;*
- iv) Project number;*
- v) Fin code...”*

5.9.50. Annexure E: Procurement Functional Delegation provides that the Management Procurement Committee (MPC) has authority to ratify or adjudicate emergency procurement where the value of the contract does not exceed R30 million.

Conclusion

- 5.9.51. SITA did not provide evidence that Cyanre was appointed in accordance with an authorised quotation or bidding process as contemplated in paragraph 23.1 read with 23.7 of the 2015 SCM Policy and in the form contemplated in paragraphs 27.4 and 27.11 of the Policy.
- 5.9.52. The evidence indicates that SITA deviated from inviting competitive bids in the appointment of Cyanre. SITA did not however provide evidence that the deviation was reported to National Treasury and the Auditor General within ten (10) working days of the deviation as is required by paragraph 23.4.5.3 of the 2015 SCM Policy.
- 5.9.53. SITA did not provide evidence that it conducted Tax compliance checks on Cyanre as required by paragraph 29.6 of the 2015 SCM Policy.
- 5.9.54. SITA first appointed Cyanre on an urgent basis to conduct a forensic audit of the Intenda e-Portal system during 2016. The deviation was not done under circumstances where it was either impossible or impractical to invite competitive bids as contemplated by paragraph 23.11.2 of the 2015 SCM Policy.
- 5.9.55. At the time of appointing Cyanre on an urgent basis, the alleged undesirable situation had already occurred and the appointment of Cyanre would not have prevented its occurrence.
- 5.9.56. Audits or investigations occur only after the fact and cannot be considered an urgent intervention designed to avoid a particular undesirable situation from occurring as is contemplated by paragraph 23.11.1 of the 2015 SCM Policy.
- 5.9.57. It is also noted that the Business Case approving the appointment of Cyanre on an urgent basis did not address the financial implication, which includes

the budget and estimated costs of the project, as is required by paragraph 6.2(f) of the 2015 DoA.

- 5.9.58. SITA stated in the response to the notice that it was not possible to estimate the financial implications of the work to be conducted at that stage as the technical nature of the requirements needed to be assessed and determined. This response is noted, however, paragraph 6.2(f) of the 2015 DoA is written in peremptory words and there is no indication from the Delegations that this requirement may be dispensed with based on the technical nature of the requirements.
- 5.9.59. The evidence indicates that Cyanre submitted a cost proposal dated 28 November 2016, which was after the submission to appoint Cyanre was approved by Dr Mohapi on 30 September 2016.
- 5.9.60. The evidence also indicates that during March 2017, SITA proceeded to appoint Cyanre on an emergency basis to conduct a forensic audit of the SCM environment.
- 5.9.61. The deviation was not done under circumstances where it would have been impossible or impractical to invite competitive bids. A deviation on the basis of an emergency occurs in the circumstances contained in paragraph 23.12 of the 2015 SCM Policy. Namely that an imminent or immediate and unforeseeable situation has occurred that requires immediate action to avert an actual or potential situation from occurring.
- 5.9.62. In this case, the appointment of a service provider to conduct a forensic audit cannot be considered an immediate intervention as is contemplated by paragraph 23.12.1 of the 2015 SCM Policy.
- 5.9.63. Forensic audits are not immediate but occur over a long period. Any action contemplated by SITA would have only been taken after the audit was

finalised and the findings reported to SITA by the service provider. Therefore, the intervention would not have been immediate.

- 5.9.64. Further, in terms of paragraph 23.12.1 of the 2015 SCM Policy, the intervention must have been immediate in order to avert an actual or potential threat or dangerous or risky situation. At the time of appointing Cyanre, the alleged threats against senior employees as well as the damage to personal property referred to in the submission to the CEO had already occurred and the emergency was therefore cured.
- 5.9.65. Even if the circumstances considered by SITA justified an emergency procurement, there is no indication from the Policy that they could relax or circumvent the requirements set out in paragraph 23.12. In terms of paragraph 23.12.4 of the Policy, emergency procurement can take place either through single or sole source procurement, quotations or closed shortened bid process. No evidence was provided by SITA indicating that any of the above procurement processes were followed in the appointment of Cyanre.
- 5.9.66. The Public Protector notes SITA's response to the notice but maintains the view that the procurement of Cyanre was not in compliance with paragraphs 23.11 and 23.12 of the 2015 SCM Policy.
- 5.9.67. No evidence was provided by SITA that an emergency procurement report supported by the Chief Procurement Officer was presented to the relevant adjudication/award structure committee for approval of the emergency procurement and ratification of the expenditure incurred as is contemplated by paragraph 23.12.6 of the 2015 SCM Policy read with Annexure E: Procurement Functional Delegation of the 2015 DoA.
- 5.9.68. SITA did not provide evidence that they entered into a formal contract with Cyanre as contemplated by paragraph 31.1 of the 2015 SCM Policy.

- 5.9.69. The evidence indicates that SITA, through its Board of Directors, did not ensure that the entity maintains its internal controls, did not take effective and appropriate steps to prevent incurring expenditure not complying with its SCM policies in the tender awarded to Parahelic, as is required by section 51 of the PFMA.
- 5.9.70. The evidence also indicates that the officials who were implicated in the contract awarded to Parahelic did not ensure that SITA's internal controls were effectively carried out within their respective areas of responsibility as is required by section 57 of the PFMA.
- 5.9.71. SITA accordingly did not comply with its operational policies as required by section 51 of the PFMA which resulted in a procurement process which was not fair, equitable, transparent, competitive or cost-effective, as contemplated by section 217 of the Constitution and section 51 of the PFMA.
- 5.9.72. The conduct of SITA was accordingly improper and constituted maladministration.
- 5.10. **Whether the recruitment of Mr Sithembele Senti as an Executive in the Chief Executive Officer's office by SITA was not consistent with applicable prescripts regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration.**

Common cause or undisputed facts

- 5.10.1. It is not disputed that SITA appointed Mr Sithembile Senti in the position of Executive: Multi-Stakeholder Management on a contract basis from March 2016 to the end of April 2019.

Issues in dispute

- 5.10.2. The issue to be determined is whether the appointment of Mr Senti was not in compliance with applicable prescripts regulating recruitment and selection of employees.
- 5.10.3. The Complainant contends that Mr Sithembile Senti was appointed as an Executive in the CEO's office without following proper recruitment processes.
- 5.10.4. SITA did not dispute or concede to the allegation in its response to the Public Protector during 2018. SITA stated that the following occurred in the recruitment of Mr Senti: -

“Appointment of Mr Senti was discussed at the SITA Board on 26 February 2016 and approved in principle (see attached resolution).

Mr Senti was appointed in a position of Executive: Multi- Stakeholder Management in the Office of the CEO on a contract basis from 1 March 2016 to 28 February 2017 (see contract attached).

A Business Case (See copy attached) was prepared to request a contract extension for Mr Senti for a period of 2 months, effective 1 March 2017 to 30 April 2017.

On 26 April 2017, a further Business Case requesting a contract extension for Mr Senti for a one year period (1 May 2017 to 30 April 2018) was prepared (see attached).

A further Business Case (Request for contract extension for Mr Senti) was prepared requesting extension for a period of 1 year commencing 1 May 2018 to 30 April 2019.”

- 5.10.5. To establish what transpired in the recruitment of Mr Senti, the following documents and prescripts were reviewed: -

- 5.10.5.1. Minutes of a meeting of the Board of Directors of SITA approving the appointment of an Executive: Multi-Stakeholder Management dated 16 February 2016, including the resolution of the Board;
- 5.10.5.2. Documents relating to the process followed in the recruitment of Mr Senti, including contract of employment between SITA and Mr Senti as well as subsequent contract extensions;
- 5.10.5.3. Notice of termination of employment dated 24 May 2019;
- 5.10.5.4. Pre-employment vetting report dated 18 April 2016;
- 5.10.5.5. SITA Recruitment, Selection and Placement Policy and Procedures dated 01 April 2012 (2012 Recruitment Policy); and
- 5.10.5.6. Responses to the notice issued by the Public Protector.
- 5.10.6. It was established from a submission from Dr Mohapi dated 24 February 2016 that the Board of Directors of SITA was requested to approve the additional capacity requirements for the execution of the 2015/19 Strategic Plan and 2016/2017 Annual Performance Plan initiatives of SITA.
- 5.10.7. According to the submission, at a Board meeting held on 16 February 2016, the actual performance of achieving SITA's strategic initiatives was discussed and the executives had indicated that the current capacity was insufficient to deal with operational commitments as well as the transformational agenda.
- 5.10.8. According to the submission, the Board had committed to support the Executives with the request for additional capacity. The Executives were requested to submit the additional capacity requirements to the Board for consideration.

- 5.10.9. According to the minutes of a meeting of the Board of SITA which took place on 26 February 2016, the Managing Director of SITA had requested the Board to endorse the appointment of an Executive: Multi-Stakeholder Management. The purpose of this resource would be to provide “*an efficient, effective and strategic executive oversight and management of mission critical multi-stakeholder projects for the Managing Director.*” The contract would be valid for a period of 12 months with effect from 01 March 2016 to 31 March 2017.
- 5.10.10. According to the minutes, the Board resolved to approve the principle and the budget for the appointment of the resource “*named in the submission*” on the terms and conditions set out therein.
- 5.10.11. A letter dated 01 March 2016 and addressed to the Chief Executive officer was signed on behalf of Mr Mashumi K Mzaidume, the then Company Secretary. In the letter, the CEO was informed that the SITA Board had in a special meeting of 26 February 2016 approved the appointment of Mr Senti as the identified candidate for the position of Executive Multi-Stakeholder Management in the office of the CEO for a period of 12 months.
- 5.10.12. It could not be established from the CEO’s submission or the minutes of the Board meeting of 26 February 2016 if the resource referred to was specifically Mr Senti. It could therefore not be established what criteria was utilized to identify Mr Senti as the most suitable candidate for the position.
- 5.10.13. Dr Setumo addressed an offer of employment dated 01 March 2016 to Mr Senti. According to the offer, Mr. Senti was offered employment in the position of Executive: Multi-Stakeholder Management in the office of the CEO, Job level E3, on a one-year contract basis with effect from 01 March 2016.
- 5.10.14. SITA did not provide evidence that Mr Senti accepted the offer of employment by signing same. SITA also did not provide evidence that a contract of employment was signed with Mr Senti.

- 5.10.15. The total remuneration package of R 1 875 547.00 per annum was offered to Mr. Senti.
- 5.10.16. SITA did not provide evidence that the post of Executive: Multi-Stakeholder Management was a funded post within the structure of SITA.
- 5.10.17. Ms Lynette Blom (Ms Blom) addressed a memo to Dr Setumo dated 22 February 2017 requesting approval to extend the contract of Mr Senti for a period of 2 months from 01 March 2017 to 30 April 2017 to finalise the 2015/19 Strategic Plan and 2017/18 Annual Performance Plan initiatives.
- 5.10.18. Dr Setumo approved the memorandum on 28 February 2017.
- 5.10.19. It is noted on the submission that no budget had been verified for the contract extension.
- 5.10.20. In a memorandum from Dr Setumo dated 26 April 2017 titled "*Business requests approval*" the Board of SITA was requested to approve the contract extension of Mr Senti for a further period of one year from 01 May 2017 to 30 April 2018 to allow him to complete critical special projects aligned to the 2015/19 Strategic Plan and the 2017/18 Annual Performance Plan initiatives.
- 5.10.21. SITA did not provide evidence that Board approval was obtained for this contract extension.
- 5.10.22. SITA provided a copy of an unsigned fixed term contract of employment between SITA and Mr Senti. According to this document, Mr Senti was appointed in the same position commencing on 01 May 2017 and terminating on 30 April 2018.
- 5.10.23. According to this agreement, Mr Senti's total remuneration package would be R2 250 657.00.

- 5.10.24. On 05 March 2018, Ms Blom sent an e-mail to Dr Setumo informing him that Mr Senti's fixed term contract would be expiring on 30 April 2018 and seeking advice on whether the contract should be renewed or terminated.
- 5.10.25. There is no indication that Ms Blom received a response to this enquiry. She sent a follow up e-mail to Dr Setumo on 26 March 2018 reminding him of the expiry of Mr Senti's fixed term contract on 30 April 2018.
- 5.10.26. On 27 March 2018, Ms Blom received an email from Makgopelo Mkhwanazi the then Executive: Human Capital Management advising her that the CEO had agreed to extend the contract to the end of March 2019.
- 5.10.27. In response, Ms Blom raised concerns that the previous extension had to be approved by Human Resources and "Rem" (it was not established what Rem referred to) as well as the Board of SITA for which a Business Case was required to motivate the business rationale for the extension. Ms Blom then requested business rationale for Mr Senti's contract extension in order to draft a Business Case as well as the due dates for the submission.
- 5.10.28. On 29 March 2018, Dr Setumo sent an e-mail to Ms Blom stating that *"I don't see any need for further board approvals. Please prepare documentation for an extension and I will take responsibility thereafter. I will make a submission to the Board through the HR committee for the April Board and Board committee meetings. Should the Board decide to reverse my decision, then let I will deal with matters then."* (sic)
- 5.10.29. SITA did not provide the minutes of the Board meetings where this issue was raised for consideration.
- 5.10.30. On 03 April 2018, Ms Blom sent an e-mail to Dr Setumo referring him to an attached draft memo for the contract extension of Mr Senti's contract for his review and input.

- 5.10.31. On 26 April 2018, Dr Setumo sent Makgopelo Mkhwanazi an e-mail with a request that she organize the contract extension documents for 12 months. He also stated in the e-mail that *“I’m not sure why I’m being told that I need Board approval when the job is not done.”*
- 5.10.32. Another undated memo titled *“Request for contract extension for Mr Sithembele Senti”* was prepared for Dr Setumo requesting approval for the contract extension of Mr Senti for a further 1 year from 01 May 2018 to 30 April 2019 to allow him to complete critical special projects aligned to the 2015/19 Strategic Plan and the 2018/19 Annual Performance Plan initiatives.
- 5.10.33. It is noted that the financial implications and available budgets paragraph in the memorandum stated that Mr Senti would be remunerated at the rate of an Executive within the organization.
- 5.10.34. It is also noted that the submission stated that the CEO had the delegation of authority to approve the submission.
- 5.10.35. The submission was approved by Dr Setumo on 26 April 2018.
- 5.10.36. Attached to the request for an extension is an addendum to the contract between SITA and Mr Senti. According to the addendum, the contracts signed by the parties on 01 March 2016 and 01 May 2017 were amended to reflect the extension of the contract. The addendum was signed on behalf of SITA but there is no indication that Mr Senti signed the Addendum.
- 5.10.37. It should be noted that both the offer of employment dated 01 March 2016 and the contract of employment dated 01 May 2017 were not signed by Mr Senti.
- 5.10.38. An undated Business Case signed by Makgopelo Mkhwanazi to the Acting CEO: Ntutule Tshenye titled *“Request for contract extension for Mr Sithembele Senti”* requested approval to extend Mr Senti’s contract from 01

May 2019 to 31 May 2019 to allow him to conclude and handover the activities relating to information Technology Unit (ITU) for 2018/2019 financial year.

- 5.10.39. The Business Case was approved by Ntutule Tshenye. No date was indicated on the submission.
- 5.10.40. It is noted on the submission that no budget had been verified for the contract extension.
- 5.10.41. Attached to the Business Case is an addendum to the contract between SITA and Mr Senti. According to the addendum, the contract signed by the parties on 01 May 2018 was amended to reflect the extension of the contract. The addendum was signed on behalf of SITA, but there is no indication that Mr Senti signed this Addendum.
- 5.10.42. Makgopelo Mkhwanazi signed a notice of termination of contract, dated 24 May 2019 and addressed to Mr Senti informing him that his fixed term contract will terminate on 31 May 2019 and would not be renewed.
- 5.10.43. The notice also requested Mr Senti to complete the attached notice of termination form and clearance certificate. Mr Senti completed the notice of termination form and signed it on 31 May 2019.
- 5.10.44. It is noted that Mr Senti's fixed term employment with SITA commenced during March 2016 and it terminated on 31 March 2019, after a period of approximately 3 years.
- 5.10.45. SITA also provided a pre-employment Vetting Report for Mr Senti dated 18 April 2016. The following was noted: -
- 5.10.45.1. A pre-employment Vetting request was received from Moeketsi Tlhabanelo: Senior Manager: HC Services and Administration on 14 March 2016 for the position of Executive: Multi-Stakeholder Management

in the office of the CEO. Mr Senti was appointed on 01 March 2016 even though the request was received on 14 March 2016 by the Vetting office. Therefore, Mr Senti was employed by SITA before pre-employment vetting was conducted.

- 5.10.45.2. Mr Senti is in possession of a Matric and a Diploma: Human Resources Management qualification awarded to him by Varsity College, Gauteng in 2013.
- 5.10.45.3. Mr Senti has a possible criminal record. The report however also recorded that this would have to be manually verified by the South African Police Service. It is also recorded that Mr Senti was requested to depose to an affidavit to confirm if he had ever been arrested for a criminal offence. He declined because he was not aware of any criminal charge against him.
- 5.10.45.4. No job profile or job advert was provided for the position. The minimum qualification requirements for the position were not provided and no recommendation could therefore be made.
- 5.10.46. The Vetting office concluded that no recommendation for employment could be made without the outstanding information relating to the possible criminal offence and the minimum qualification requirements for the position.
- 5.10.47. Notices were issued for responses to SITA and current and prior officials of SITA who were identified during the investigations on 05 November 2021 as well as to Mr Senti on 11 November 2021.
- 5.10.48. A response was received from SITA on 11 January 2022 but they did not submit any evidence which had not been considered during the investigation.

Application of the relevant law and prescripts

5.10.49. The following legal prescripts which have already been canvassed in this report were considered in this issue: -

5.10.49.1. Sections 1 and 57 of the PFMA;

State Information Technology Agency act, 1998 (SITA act)

5.10.50. Section 14 of the SITA Act provides that: -

(1) *“The Managing Director may appoint staff to perform work for the Agency, subject to any general or special direction of the Board.*

(4) *In the making of appointments and the filling of posts, the evaluation of persons must be based on training, skills, competence, knowledge and the need to redress the imbalances of the past to achieve an Agency broadly representative of the South African people, including representation according to race, gender and disability.”*

SITA Recruitment, Selection and Placement Policy and Procedures dated 01 April 2012 (2012 Recruitment Policy or the Policy).

5.10.51 The Policy governs and outlines all the requirements, processes and procedures to attract and appoint suitable candidates to vacant posts within SITA. The Policy provides that all recruitment, selection and placement processes have to be executed and managed in a transparent, fair and equitable way.

5.10.52 Paragraph 1 of the Policy provides that the Executive: Corporate Services is mandated to maintain and monitor compliance to the policy.

5.10.53 Paragraph 3 of the Policy provides that the objective of the policy is to provide guidelines and standards for coordinating and managing SITA’s human capital needs, through the following primary objectives: -

“(a) To ensure that recruiting, selecting and placing of candidates is undertaken in a justifiable, equitable, transparent and fair manner.”

5.10.54 Paragraph 4 provides that the 2012 Policy applies to all SITA internal applicants and external job applicants.

5.10.55 Paragraph 8 of the Policy provides that: -

“8.1 Compliance rules

(a) SITA shall only fill approved vacant funded posts that are advertised by the Recruitment Unit to afford everyone equal opportunity.

(b) All vacant approved posts shall be advertised internally and externally but internal candidates will be given first priority for career advancement.

8.2 Rules for Deviations

(a) Specific deviation from the approved employment equity plan that is critical and scarce skills, approval shall be given by the CEO.

(b) ...

(c) ...

(d) No deviations with regard to the outlined provisions in this policy are permitted, except when such deviation is in the best interest of the employer.”

5.10.56 Paragraph 8.3 of the Policy provides that: -

“(a) HR, as the custodian of this policy, all persons accountable for the recruitment, sourcing, appointment, transfer and secondment of employees shall comply with this policy.

(b) In line with good corporate governance it is expected that all relevant persons will apply this in its totality...

5.10.57 Paragraph 10.1.2 of the Policy states that: -

“External Recruitment

(a) External recruitment shall be triggered where it has been established through talent intelligence that the skills required are scarce and internally there are no suitable successors to fill the position.

(b) Only positions that are classified as scarce and critical shall be advertised externally.”

5.10.58 Paragraph 10.1.3 of the Policy provides that: -

“Recruitment Methods

(a) SITA shall employ various recruitment methods ranging from online advertising on social media, internet, intranet, newspapers, notice boards, employee referral, etc.

(b) SITA may embark on skills search or head hunting to identify candidates, for example for senior posts or where skills are scarce, provided it can be demonstrated that the special requirements of the post(s) in question are likely to demonstrate that the skills required will render more traditional advertising methods ineffective.

(c) Once candidates have been identified, the principle of selection on merit shall be applied as for any other recruitment method.”

5.10.59 Paragraph 11 of the Policy provides that: -

“Selection

- (a) SITA shall subject applicants to various selection processes which may include panel interviews, competency assessments and simulations. The relevant executive or his/her delegate shall appoint the selection committee for post(s) at GM and senior management service level.*
- (b) ...*
- (c) ...*
- (d) ...*
- (e) ...*
- (f) Sufficient candidates should be short-listed to ensure open competition. At least five candidates may be short-listed as a minimum, particularly for positions that are not regarded as scarce skills. In case of scarce skills, at least three candidates may be short-listed.*
- (g) The Human Resources practitioner should consolidate and compile a comprehensive interview report reflecting panel deliberations, scoring and recommendations to be approved by the relevant official.*
- (h) Any deviations arising from the selection process should be documented in the interview report and recruitment checklist and duly approved by the relevant delegated person.”*

5.10.60 Paragraph 11.1.4 of the Policy provides that: -

“Pre-employment vetting

- (a) Candidates shall be required to undergo a pre-employment vetting process prior to being offered employment in order to ensure that the minimum security and integrity requirements of the company are met and to verify information provided during the selection process.”*

5.10.61 Paragraph 12.1.2 of the Policy provides that: -

“Security vetting

All new employees, permanent and fixed term contractors shall be security cleared to the level required by the post they are to fill and in accordance with the specifications of the relevant manager. Posts are graded depending on the access and classification of information required to fulfil the functions of that post. In exceptional cases, a higher level of security clearance may be required regardless of the job level.”

Conclusion

5.10.62 Dr Setumo is in terms of section 14 of the SITA Act, empowered to appoint SITA employees. Such appointments are subject to an evaluation based on amongst other things, training, skills, competence and knowledge.

5.10.63 The evidence reflects that the Board of Directors of SITA endorsed the appointment of an Executive Multi-Stakeholder Management for a period of 12 months during February 2016. The purpose of this resource was to provide an efficient, effective and strategic executive oversight and management of mission critical multi-stakeholder projects for the Managing Director.

5.10.64 The submission to the Board did not reference Mr Senti. SITA however proceeded to offer Mr Senti employment on a fixed term basis, commencing from 01 March 2016 and terminating on 31 March 2017.

5.10.65 Mr Senti would however occupy his role as an Executive: Multi-Stakeholder Management through contract extensions until his fixed term contract of employment was terminated by SITA on 31 May 2019.

- 5.10.66 It is noted that Mr Senti's contract of employment was extended through memoranda (memos) even though the Board had approved the recruitment of an Executive: Multi-Stakeholder Management for a period of 12 months.
- 5.10.67 The recruitment of Mr Senti and the subsequent extension of his contract of employment seems to have been the sole prerogative of the then CEO, Dr Setumo and this is evident from the e-mail correspondence exchanged between himself, Lynette Blom and Makgopelo Mkhwanazi.
- 5.10.68 It is unclear how Mr Senti was identified as the most suitable candidate for the position.
- 5.10.69 There is however, no indication from the evidence that the recruitment of Mr Senti was the result of a process of selection which included advertising, shortlisting, panel interviews, recommendations and approvals as contemplated by paragraph 8.1 read with paragraph 11 of the 2012 Recruitment Policy (the Policy).
- 5.10.70 The Policy does allow for skills search and head-hunting to identify candidates in terms of paragraph 10.1.3 of the Policy, for senior posts or where skills are scarce, provided it can be demonstrated that the special requirements of the post is likely to demonstrate that the skills required would render traditional advertising methods ineffective. In this case no such facts were shown.
- 5.10.71 Mr Senti was in possession of a Diploma: Human Resources Management and no evidence was provided by SITA that he possessed exceptional or scarce skills which would have rendered traditional advertising methods or a competitive recruitment process ineffective.
- 5.10.72 Paragraph 10.1.3(a) of the Policy further provides that once candidates have been identified (through skills searching or head hunting), the principle of selection on merit must be applied as for any other recruitment method, which

did not occur in this case. The Policy did not sanction the process that was followed to recruit Mr Senti.

- 5.10.73 The evidence also indicates that SITA conducted pre-employment vetting only after Mr Senti had been offered employment. In terms of paragraph 11.1.4 of the Policy, Candidates are required to undergo a pre-employment vetting process prior to being offered employment.
- 5.10.74 SITA did not provide evidence that Mr Senti was subjected to security clearance during the course of his employment as is required by paragraph 12.1.2 of the Policy.
- 5.10.75 SITA did not provide evidence that the post occupied by Mr Senti was a funded post as is contemplated by paragraph 81(a) of the Policy.
- 5.10.76 The process followed in the recruitment of Mr Senti was not justifiable, equitable, transparent and fair as contemplated in paragraph 3(a) of the Policy as other candidates were not given an opportunity to contest for the position.
- 5.10.77 The deviation from the provisions of the Policy in recruiting Mr Senti was also not in the best interests of SITA as contemplated in paragraph 8.2 of the Policy as it unjustifiably prevented a fair and competitive recruitment process to take place.
- 5.10.78 The process followed in the recruitment of Mr Senti to the position of Executive Multi-Stakeholder Management was therefore irregular as it was not done in accordance with the Policy.
- 5.10.79 In terms of paragraph 1 of the Policy, the Executive: Corporate Services was required to maintain and monitor compliance to the policy. In terms of paragraph 8.3, all officials who were involved in the recruitment of Mr Senti were all required to comply with such Policy, which did not occur.

5.10.80 SITA accordingly did not comply with its operational policies as required by section 51 of the PFMA which may have also resulted in SITA incurring expenditure not complying with its SCM policies in contravention of section 51 of the Act.

5.10.81 The conduct of SITA in recruiting Mr Senti was accordingly improper and constituted maladministration.

6.1.1 **Whether the recruitment of Mr Kenneth Wienand in the office of the Chief Financial Officer by SITA was not consistent with applicable prescripts regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration.**

Common Cause

5.10.82 It is not disputed that SITA appointed Mr Kenneth Wienand (Mr Wienand) as a Consultant on a contract basis from March 2016 to the end of April 2019.

Issues in dispute

5.10.83 The issue to be determined was whether the appointment of Mr Senti was not in compliance with the applicable prescripts regulating recruitment and selection of employees.

5.10.84 The Complainant contended that Mr Wienand was appointed as a Consultant in the Chief Financial Officers office without following proper recruitment processes.

5.10.85 SITA did not dispute or concede to the allegation in its response to the Public Protector during 2018. SITA stated that the following occurred in the recruitment of Mr Wienand: -

“Mr Wienand was appointed on a contract basis to assist the CFO in the transformation of the Finance function.

A Business Case (See copy of business case attached) was prepared to request approval to deviate from the normal recruitment processes and to appoint a fixed term contractor for a period of six months but not exceeding eight months to assist the Management

Accounting Function with resolving the budget for the 2015-2016 financial year and also to prepare the budget for the 2016-17 financial year, at an estimated cost of R2m for a period of six months, but not exceeding eight months.

The memo was requested and signed by Andre Pretorius, Head of Department: Financial Accounting on 23 July 2015, and recommended by Vuyo Mlokothe, Executive: Corporate Services (Former) and Lt. General Justice Nkonyane (Ret), Deputy Chief Executive Officer (Former) on 24 July 2015. The memo was approved by the Chief Executive Officer on 27 July 2015.

A Business Case dated 18 August 2016 was requested by the CFO for approval for the contract of Mr Ken Wienand to be extended for a period in line with the CFO’s contract (see business case attached).

The Business Case was recommended by the former Acting Executive: Corporate Services (Mr Mochalibane) and approved by the CEO on 19 August 2016.

On 30 August 2016, a fixed term contract of employment was concluded between Mr Wienand and SITA. The contract was concluded for a period of 3 years commencing on 1 October 2016 and terminating on 30 September 2019 (see contract attached).”

5.10.86 To establish what transpired in the recruitment of Mr Wienand, the following documents and prescripts were reviewed: -

5.10.86.1 Documents relating to the process followed in the recruitment of Mr Wienand and contract of employment between SITA and Mr Wienand;

5.10.86.2 Notice of termination of employment dated 30 September 2019;

5.10.86.3 Pre-employment vetting report, dated 18 August 2015;

5.10.86.4 SITA Recruitment, Selection and Placement Policy and Procedures dated 01 April 2012 (2012 Recruitment Policy); and

5.10.86.5 Response to the notice issued by the Public Protector.

5.10.87 It was established that a Business Case titled “*Memo for Business Approval Request*” was signed by the following officials: -

| Name | Position | Role | Date signed |
|-----------------------------|--|-------------|--------------|
| Andre Pretorius | Head of Department: Financial Accounting | Requester | 23 July 2015 |
| Vuyo Mlokothe | Executive: Corporate Service | Recommender | 24 July 2015 |
| Lt General Justice Nkonyane | Deputy Chief Executive Officer | Recommender | 24 July 2015 |
| Dr Setumo Mohapi | CEO | Approver | 27 July 2015 |

- 5.10.88 The purpose of the Business Case was to request approval to deviate from the normal recruitment processes to appoint a fixed term contractor for a period of six (6) months but not exceeding eight (8) months to assist the Management Accounting function with resolving the budget for the 2015-16 financial year and also to prepare the budget for the 2016-17 financial year.
- 5.10.89 According to the submission, the 2015-16 budget in the Strategic Plan was calculated incorrectly and could not be substantiated. It became clear to SITA that the current team was unable to produce an acceptable budget without daily interventions and assistance.
- 5.10.90 It was also stated in the Business Case that the current process was not compliant with budget related guidelines issued by National Treasury. To produce acceptable results, it was critical that a person with known capability and skills be recruited to manage the risk for SITA down to acceptable levels and to also ensure compliance with National Treasury Instructions and guidelines.
- 5.10.91 In addition, SITA was at the time, unsuccessful in recruiting a new CFO to replace the current CFO at the end of July 2015 and this had created an emergency to appoint someone to assist with Management Functions.
- 5.10.92 According to the Financial Implications and Available Budget paragraph, the estimated amount for the function would be R2 million for a six-month period, but no exceeding eight months. This amount would be funded by the vacancy that would result from the departure of the current CFO at the end of July 2015.
- 5.10.93 The Public Protector did not consider any evidence relating to the alleged departure of the CFO during 2015.

5.10.94 Attached to the Business Case was a scoring sheet signed by Andre Pretorius and LT. General J Nkonyane on 7 and 14 September 2015 respectively.

5.10.95 The score sheet contained only the name of Mr Kenneth Wienand. The average score attributed to him was 4.40. This indicates that Mr Wienand was the only candidate considered for the position.

5.10.96 A second Business Case titled “Memo for Business Approval Request” was signed by the following officials: -

| Name | Position | Role | Date signed |
|--------------------------|---|-------------|----------------|
| Ms Rudzani Rasikhinya | CFO | Requester | 18 August 2016 |
| Lucky Mochalibane | Executive: Corporate Services (Acting) | Recommender | 18 August 2016 |
| Dr Setumo Mohapi | CEO | Approver | 19 August 2016 |

5.10.97 The purpose of this Business Case was to request approval to extend Mr Wienand’s contract of employment in line with the CFO’s contract and the estimated time to implement SITA’s financial sustainability strategy.

5.10.98 According to the submission, it was critical for Mr Wienand to continue with critical projects for SITA and to support the CEO and CFO with improving the finance function structure, the design and implementation of new processes, including the financial sustainability strategy.

- 5.10.99 According to the financial implications and available budget paragraph, the estimated amount for the function would be R2.2 million for the first year aligned to the same period as the CFO's contract.
- 5.10.100 SITA entered into a fixed term contract of employment with Mr Wienand. The contract was signed on behalf of the former on 30 August 2016 and the latter also on the same date.
- 5.10.101 According to the contract, Mr Wienand was appointed as a Professional: Budget and Reporting. The contract would commence on 01 October 2016 and terminate on 30 September 2019 (a period of approximately 3 years).
- 5.10.102 According to clause 10 of the contract, Mr Wienand would be remunerated at a total annual package of R 1 955 000.00.
- 5.10.103 SITA provided a copy of a Clearance Certificate indicating that Mr Wienand's employment with SITA terminated on 30 September 2019 as per the contract of employment.
- 5.10.104 SITA also provided a pre-employment Vetting Report for Mr Wienand dated 18 August 2015. The following was noted: -
- 5.10.104.1 A pre-employment Vetting request was received from Moeketsi Tlhabanelo: Senior Manager: HC Services and Administration on 11 August 2015 for the position of Chief Financial Officer.
- 5.10.104.2 Mr Wienand is in possession of a Matric (Matric certificate was not submitted). A Degree: Hons. Degree Accounting Science qualification awarded to him by UNISA in 2013. He had a Certificate of Membership from the South African institute of Chartered Accountants since 1995.
- 5.10.104.3 Mr Wienand did not have a criminal record.

- 5.10.105 The Vetting office concluded that the candidate is recommended for employment since all the minimum security requirements had been met.
- 5.10.106 Mr Wienand was in the employ of SITA from October 2015 to the end of September 2019, a period of approximately 4 years.
- 5.10.107 Notices were issued for responses to SITA and current and officials of SITA who were identified during the investigations on 05 November 2021 as well as to Mr Wienand on 11 November 2021.
- 5.10.108 A response was received from SITA on 11 January 2022 but they did not submit any evidence which had not been considered during the investigation.
- 5.10.109 SITA also contended in the response to the notice that this incident occurred in 2015 and a period of 03 years had elapsed from the date that the complaint was lodged with the Public Protector. According to SITA, section 6(9) of the Public Protector Act was applicable to this matter.
- 5.10.110 The issue of section 6(9) of the Public Protector Act was canvassed elsewhere in this report and will not be repeated herein.

Application of the relevant law and prescripts

- 5.10.111 The legal prescripts relied upon in this issue mirrored that which was considered in the appointment of Mr Senti above and will not be repeated here.

Conclusion

- 5.10.112 Similar to the appointment of Mr Senti, the evidence indicates that Mr Wienand was appointed by SITA without any process of advertising, shortlisting, panel interviews, recommendations and approvals as

contemplated by paragraph 8.1 read with paragraph 11 of the 2012 Recruitment Policy (the Policy).

- 5.10.113 It is unclear why in the case of Mr Senti, prior Board approval was obtained yet in the case of Mr Wienand, approval was only obtained from the CEO. This indicates an inconsistency in the application of SITA's own processes and procedures.
- 5.10.114 The evidence indicates that Mr Wienand was first appointed for a period of six (6) months but not exceeding eight (8) months to assist the Management Accounting function with resolving the budget for the 2015-16 financial year and also to prepare the budget for the 2016-17 financial year.
- 5.10.115 Mr Wienand was then appointed for a period of 3 years as a Professional: Budget and Reporting, between October 2016 and September 2019.
- 5.10.116 It could not be established from the evidence whether the posts occupied by Mr Wienand were funded posts within the structure of SITA.
- 5.10.117 The Policy does allow for skills search and head hunting to identify candidates in terms of paragraph 10.1.3 of the Policy, for senior posts or where skills are scarce, provided it can be demonstrated that the special requirements of the post is likely to demonstrate that the skills required would render traditional advertising methods ineffective. In this case no such facts were shown.
- 5.10.118 Mr Wienand is a Chartered Accountant and is in possession of a Degree: Hons. Accounting Science qualification and no evidence was provided by SITA that he possessed exceptional or scarce skills which would have rendered traditional advertising methods or a competitive recruitment process ineffective.
- 5.10.119 Paragraph 10.1.3(a) of the Policy provides that once candidates have been identified (through skills searching or head hunting), the principle of selection

on merit must be applied as for any other recruitment method, which did not occur in this case. The Policy did not sanction the process that was followed to recruit Mr Wienand.

- 5.10.120 There is also no evidence that Mr Wienand had undergone security clearance during the course of his employment as is required by paragraph 12.1.2 of the Policy.
- 5.10.121 The process followed in the recruitment of Mr Wienand was not justifiable, equitable, transparent and fair as contemplated in paragraph 3(a) of the Policy as other candidates were not given an opportunity to contest for the position.
- 5.10.122 The deviation from the provisions of the Policy in recruiting Mr Wienand was also not in the best interests of SITA as contemplated in paragraph 8.2 of the Policy as it unjustifiably prevented a fair and competitive recruitment process.
- 5.10.123 The process followed in the recruitment of Mr Wienand to the position of Professional: Budget and Reporting was therefore irregular as it was not done in accordance with the Policy.
- 5.10.124 In terms of paragraph 1 of the Policy, the Executive: Corporate Services was required to maintain and monitor compliance to the policy. In terms of paragraph 8.3, all officials who were involved in the recruitment of Mr Wienand were all required to comply with such Policy, which did not occur.
- 5.10.125 SITA accordingly did not comply with its operational policies as required by section 51 of the PFMA which may have also resulted in SITA incurring expenditure not complying with its SCM policies in contravention of section 51 of the Act.
- 5.10.126 The conduct of SITA in the recruitment of Mr Wienand was accordingly improper and constituted maladministration.

6 OBSERVATIONS

- 6.1 Having considered the totality of the evidence obtained during the investigation against the applicable regulatory framework, the following observations were made: -
- 6.2 Although SITA has established compliance controls in place, it is the implementation and monitoring thereof that is not consistent, resulting in deviations from SCM processes and procedures.
- 6.3 SITA should ensure that National Treasury Regulation 16A6 regarding deviations from inviting competitive bidding is utilised strictly to procure goods and services of critical importance and only in specific circumstances where it is either impractical or impossible to follow a competitive procurement process for the required goods or services.
- 6.4 Attention is drawn to National Treasury Practice Note 6 of 2007/2008, paragraph 2.5 and 2.7 which provides that: -

“2.5 An effective system of supply chain demand management requires an accounting officer or accounting authority to ensure that the resources required to support the strategic and operational commitments of an institution are properly budgeted for and procured at the correct time. Planning for the procurement of such resources must take into account the period required for competitive bidding processes. It must therefore be emphasised that a lack of proper planning does not constitute a reason for dispensing with prescribed bidding processes.

2.7 Taking cognisance of the above, accounting officers and accounting authorities are directed to ensure that Treasury Regulation 16A6.4 is utilised strictly to procure goods and services of critical importance and only in specific cases when it is impractical to invite competitive bids.”

- 6.5 Strict compliance with SCM processes minimises the risk of abuse and sustains SITA's strategic SCM objectives to promote and maintain good corporate governance, promote consistency in the SCM Policy and related government policy initiatives and compliance with legislative requirements.
- 6.6 It is also noted that the investigation was hamstrung by a lack of information particularly in the procurement of Jika, Fidelity and Hewu. SITA must ensure that it manages and maintains a well-structured records-keeping system in line with the National Archives and Records Service of South Africa Act, 1996 and its Regulations, paragraph 33.2 of the 2017 SCM Policy and section 51(1) of the PFMA which provides that an accounting authority of a public entity must ensure that that public entity has and maintains effective, efficient and transparent systems of financial and risk management and internal controls.
- 6.7 It was also noted during the investigation that approved Delegations of Authority were not always adhered to by SITA employees. There is an expectation at all times, that all employees must behave in a way that respects the laws, delegations of authority, policies, procedures and values that govern or are applicable to SITA.
- 6.8 If, for any reason, the policies or Delegations of Authority are no longer deemed to be appropriate, adequate or in conflict with practice, amendments should be carefully considered and implemented to meet the current environment and needs of SITA.
- 6.9 To ensure regularity, compliance and to avoid deviations from SCM processes, SITA should under the circumstances also be vigilant and continually review its SCM processes and policies. Paragraph 2(d) of the 2017 SCM Policy provides that: -

“The CPO should, at least once every two years, review the policy for inter alia regulatory compliance, applicability to SITA’s SCM requirements and

implementation effectiveness. The review should consider new SCM regulations and practice notes published by National Treasury (NT) and other regulatory bodies. As necessary, the CPO should submit proposals for amendment of the policy to the SITA Executive Committee (Exco) for recommendation for adoption by the SITA Board of Directors.”

6.10 On the issue of a functional Board of Directors, it was noted with concern that SITA has not had a Board since 2019. The importance of a Board cannot be emphasised, as the accounting authority of the entity, they are tasked with ensuring compliance with the provisions of section 51 of the PFMA as it applies to the supply chain management process, amongst others. Where there is no Board, the accountability and efficacy of the entity is also diminished, to the potential detriment of the stakeholders it seeks to serve.

6.11 A Board will ensure that decisive action is taken to prevent any improprieties from occurring in terms of the Board’s responsibility as envisaged in section 51(1)(a)(iii) and 51(1)(b)(ii) of the PFMA and its fiduciary responsibilities as contemplated by section 50(1)(b), 50(1)(d) and 50(2)(a) of the PFMA.

7 FINDINGS

7.1 Having regard to the evidence, the regulatory framework determining the standard that should have been complied with by SITA, the Public Protector makes the following findings: -

7.2 **Whether the appointment of Forensic Data Analysts (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

7.2.51 The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Forensic Data Analysts (Pty) Ltd is substantiated.

- 7.2.52 SITA deviated from inviting competitive bids to appoint FDA. The deviation is however deemed to be irregular as it did not comply with applicable supply chain management prescripts.
- 7.2.53 The deviated was not fair, equitable, transparent, competitive or cost-effective, as contemplated by section 217 of the Constitution and section 51 of the Public Finance Management Act, 1999 (PFMA).
- 7.2.54 SITA's conduct was improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.
- 7.3 **Whether the appointment of Core Focus (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**
- 7.3.51 The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Core Focus (Pty) Ltd is substantiated.
- 7.3.52 SITA appointed Corefocus even though it did not meet the minimum mandatory requirements as per the bid documents for the tender.
- 7.3.53 SITA proceeded to extend/vary the contract awarded to Corefocus during June 2017 without following the prescribed supply chain management prescripts. The procurement and subsequent extension or variation of the contract are accordingly deemed to be irregular.
- 7.3.54 The procurement and extension/variation of the contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.

7.3.55 SITA's conduct was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

7.4 Whether the appointment of Accenture (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.

7.4.51 The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Accenture (Pty) Ltd is substantiated.

7.4.52 SITA procured the services of Accenture and proceeded to extend/vary the contract without following the prescribed supply chain management prescripts and is deemed to be irregular. SITA conceded in its response to the allegations during the investigation that it incurred irregular expenditure as a result of the contract awarded to Accenture.

7.4.53 The procurement and extension/variation of the contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.

7.4.54 SITA's conduct was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

7.5 Whether the appointment of Fidelity Security Services (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.

- 7.5.51 The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Fidelity Security Services (Pty) Ltd is substantiated.
- 7.5.52 SITA did not dispute in its response to the allegations that the appointment of Fidelity was not in line with procurement processes and is considered to be irregular.
- 7.5.53 SITA also stated that it incurred irregular expenditure and fruitless and wasteful expenditure as a result of the contract.
- 7.5.54 The appointment of Fidelity was not fair, equitable, transparent, competitive or cost-effective, as is required by section 217 of the Constitution.
- 7.5.55 SITA's conduct was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.
- 7.6 **Whether the appointment of Parahelic CC by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**
- 7.6.51 The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Parahelic CC is substantiated.
- 7.6.52 SITA deviated from inviting competitive bids and utilised a single source procurement strategy to appoint Parahelic. The reasons provided by SITA for the appointment did not however fall within the exceptional circumstances envisioned for single source procurement as is required by SITA's supply chain management prescripts.
- 7.6.53 SITA proceeded to extend/vary the contract awarded to Parahelic without following the prescribed supply chain management prescripts. The

procurement and subsequent extension or variation of the contract are accordingly deemed to be irregular.

7.6.54 The procurement and extension/variation of the contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.

7.6.55 SITA's conduct was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

7.7 Whether the appointment of Jika Africa Advisory Services (Pty) Ltd by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.

7.7.51 There is insufficient information to draw a conclusion on the allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Jika Africa Advisory Services (Pty) Ltd.

7.7.52 SITA did not provide documentation relating to the procurement of Jika, including how the contract was budgeted for and approved.

7.7.53 Despite requests to provide the required documents, SITA did not do so.

7.7.54 No conclusion could be drawn on the allegation that SITA incurred irregular expenditure by exceeding the approved budget for the contract, without obtaining prior approval from National Treasury.

7.7.55 Under the circumstances, SITA did not ensure that it maintained appropriate records relating to the procurement of Jika and that such records received appropriate physical care.

7.7.56 SITA's conduct relating to the maintenance of records for the procurement of Jika was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

7.8 **Whether the appointment of Bowmans Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

7.8.51 The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Bowmans Attorneys is substantiated.

7.8.52 SITA conceded in its response to the allegation that the appointment of Bowmans was not in line with procurement prescripts.

7.8.53 SITA proceeded to extend/vary the contract awarded to Bowmans without following the prescribed supply chain management prescripts. The procurement and subsequent extension or variation of the contract is accordingly deemed to be irregular.

7.8.54 The procurement and extension/variation of the contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.

7.8.55 SITA's conduct was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

7.9 **Whether the appointment of Hewu Attorneys by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.**

- 7.9.51 There is insufficient information to draw a conclusion on the allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Hewu Attorneys for the provision of legal service.
- 7.9.52 SITA did not provide complete documentation relating to the procurement of Hewu, including how the contract was budgeted for and approved.
- 7.9.53 Despite requests to provide the required documents, SITA did not do so.
- 7.9.54 Under the circumstances, SITA did not ensure that it maintained appropriate records relating to the procurement of Hewu and that such records received appropriate physical care.
- 7.9.55 It was noted during the investigation that SITA made payments to Hewu for invoices submitted for work done after the contract between the two entities had come to an end.
- 7.9.56 The Public Protector accepts SITA's explanation as reasonable under the circumstances. The invoices related to instructions given to Hewu during the contract validity period which had not been completed.
- 7.9.57 It would not have been practical for SITA to appoint new attorneys through a competitive bidding process as this would have created further delays and SITA incurring expenditure resulting from a fresh bidding process and to brief new attorneys on documents and processes initiated by Hewu.
- 7.9.58 SITA is however cautioned to account for such variables in its procurement planning going forward.
- 7.9.59 SITA's conduct relating to the maintenance of records for the procurement of Hewu was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

7.10 Whether the appointment of Cyanre Digital Forensic Lab by SITA was not consistent with applicable supply-chain management prescripts and whether such conduct constitutes improper conduct or maladministration.

7.10.51 The allegation that SITA did not follow applicable supply chain management prescripts in the appointment of Cyanre Digital Forensic Lab is substantiated.

7.10.52 The evidence indicates that SITA deviated from inviting competitive bids to appoint Cyanre. The deviation is however deemed to be irregular as it did not comply with applicable supply chain management prescripts.

7.10.53 The contract was not fair, equitable, transparent, competitive or cost-effective, as required by section 217 of the Constitution and section 51 of the PFMA.

7.10.54 SITA's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(5) of the Public Protector Act.

7.11 Whether the recruitment of Mr Sithembele Senti as an Executive in the Chief Executive Officer's office by SITA was not consistent with applicable prescripts regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration.

7.11.51 The allegation that the recruitment of Mr Senti as an Executive in the Chief Executive Officer's office by SITA was not in accordance with applicable prescripts regulating the recruitment and selection of employees of SITA is substantiated.

7.11.52 The process followed by SITA in the recruitment of Mr Senti to the position of Executive in the CEOs office was not in compliance with the prescripts

regulating the recruitment and selection of employees of SITA and is deemed to be irregular.

7.11.53 There is no indication from the evidence that the recruitment of Mr Senti was the result of a process of selection which included advertising, shortlisting, panel interviews, recommendations and approvals as is required by SITA's recruitment policy.

7.11.54 Mr Senti's contract of employment was extended through memoranda (memos) even though the Board had approved the recruitment of an Executive: Multi-Stakeholder Management for a period of 12 months.

7.11.55 The process followed in the recruitment of Mr Senti was not justifiable, equitable, transparent and fair as is required by the recruitment policy as other candidates were not given an opportunity to contest for the position.

7.11.56 The deviation from the provisions of the recruitment policy in recruiting Mr Senti was also not in the best interests of SITA as is required by the policy as it unjustifiable prevented a fair and competitive recruitment process from taking place.

7.11.57 SITA's conduct in recruiting Mr Senti was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act

7.12 **Whether the recruitment of Mr Kenneth Wienand in the office of the Chief Financial Officer by SITA was not consistent with applicable prescripts regulating the recruitment and selection of employees of SITA and whether such conduct constitutes improper conduct or maladministration.**

7.12.51 The allegation that the recruitment of Mr Wienand in the Chief Financial Officer's office by SITA was not in accordance with applicable prescripts

regulating the recruitment and selection of employees of SITA is substantiated.

- 7.12.52 Similar to the appointment of Mr Senti, the process followed by SITA in the recruitment of Mr Wienand in the CFO's office was not in compliance with the prescripts regulating the recruitment and selection of employees of SITA and is deemed to be irregular.
- 7.12.53 Mr Wienand was appointed by SITA without the process of advertising, shortlisting, panel interviews, recommendations and approvals as is required by the recruitment policy.
- 7.12.54 The process followed in the recruitment of Mr Wienand was not justifiable, equitable, transparent and fair as is required by the recruitment policy as other candidates were not given an opportunity to contest for the position.
- 7.12.55 The deviation from the provisions of the policy in recruiting Mr Wienand was also not in the best interests of SITA as is required by the policy as it unjustifiably prevented a fair and competitive recruitment process.
- 7.12.56 SITA's conduct in recruiting Mr Wienand was therefore improper as envisaged by section 182(1) of the Constitution and constituted maladministration in terms of section 6(5) of the Public Protector Act.

8 REMEDIAL ACTION

- 8.1 The notice issued by the Public Protector and served on SITA on 05 November 2021 incorporated proposed remedial action for SITA to consider.
- 8.2 On 18 February 2022, a meeting was also held with Mr Vincent Mphaphuli the current HOD: Legal Services, Mr Dave Boucher: Internal Audit and Mr Freddie Mitchell the current Executive: Internal Audit to discuss the proposed remedial action which would find its way into this report.

- 8.3 Before dealing with the proposed remedial action, the Public Protector notes the cooperation received from SITA and thanks them for their transparency during this investigation. The Public Protector further acknowledges the steps taken by SITA in addressing the concerns uncovered during the course of the investigation. SITA's conduct during this process has been exemplary. Note is however taken of the inadequate measures to maintain complete records relating to the procurement of services from Jika and Hewu and SITA is urged to address this going forward.
- 8.4 Some of the measures SITA stated to have taken are: -
- 8.4.51 Took action against officials within the SCM environment who were implicated in wrong doing. The List of affected officials SITA took action against was perused during the meeting held on 18 February. It is also noted that some officials are no longer employed by SITA, particularly relating to the appointment of Mr Senti and Mr Wienand;
- 8.4.52 Reported contracts irregularly awarded to FDA, Corefocus, Accenture, Fidelity, Parahelic, Bowmans and Cyanre to National Treasury to request condonation;
- 8.4.53 Developing a new SCM policy which was implemented on 04 September 2019 that is in line with the PFMA and relevant Treasury prescripts. Before any appointments are made, SITA's legal services, Internal Audit and Risk and Compliance submit a report on possible non-compliance risks;
- 8.4.54 Embedded in the new policy is the requirement that depending on the value of the bids received by SITA, appointments of suppliers are subjected to internal audit to ensure that all the procurement processes have been followed to the latter of the law. In addition, Internal Audit, Legal Services and Risk and Compliance services also provide advice to SITA's Executive Bid Adjudication Committee on any possible risks for all tenders being adjudicated upon;

8.4.55 Revised the SCM policy to improve procurement process by restructuring of Procurement Committees, where the Bid Specification Committee is now decentralised but all approval of all bid specifications are now approved by Bid Adjudication Committees;

8.4.56 Conducted training sessions for its Supply Chain Management (SCM) team and Customer Relations Managers on procurement processes. The training conducted, has focused especially on such SITA employees who interface with customers. SITA further committed to conduct training and create additional awareness to Supply Chain management staff and Customer Relations Managers on the processes for IT requirements from government departments. The following training interventions were conducted in the 2020/2021 financial year within the SITA SCM environment: -

8.4.56.1 SCM Policy – 7 July 2020;

8.4.56.2 Bid Committees – 9 July 2020;

8.4.56.3 PPPFA – 3 December 2020;

8.4.56.4 Local Content – 10 December 2020;

8.4.56.5 Remedy 9 – 11 May 2020;

8.4.56.6 Oracle EBS Sourcing Module and Supplier registration – 1 June 2020;

8.4.56.7 SharePoint – 17 July 2020; and

8.4.56.8 gCommerce – 13 and 18 May 2021 (refresher).

8.4.57 In addition, during 2020, the following technology platforms were implemented to further enhance the capacity of the SCM Division: -

8.4.57.1 SCM procurement tracking;

8.4.57.2 eProcurement; and

8.4.57.3 Contract Management and a SharePoint.

8.5 Having regard to the meeting held with SITA on 18 February 2022 and the further submissions made to the Public Protector regarding the proposed remedial action, the remedial action contained in this report is deemed

appropriate to address the remaining improprieties not yet addressed by SITA and to assist in preventing future recurrence. The remaining improprieties may include, amongst others, measures to address the irregular recruitment of Mr Senti and Mr Wienand identified in this report in terms of any relevant legal prescripts.

9 The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution is therefore the following: -

9.1 The Accounting Authority of SITA: -

9.1.1 Ensures that SITA's SCM Management frequently monitors compliance in line with section 57(a) – (c) of the Public Finance Management Act, 1999 (PFMA), to ensure that deviations from inviting competitive bids are done in terms of Treasury Regulation 16A6.4.

9.1.2 Ensure strict compliance by employees with the prescripts and policies regulating the SCM environment; the recruitment, selection and appointment of employees and record and document management at SITA in line with section 57 (a) – (e) of the Public Finance Management Act, 1999, on a quarterly basis.

9.1.3 Ensures regular training, mentoring and/or coaching of employees on policies and procedures relevant and applicable within their area of responsibility in line with applicable policies regulating the training of employees.

9.1.4 In terms of paragraphs 1.2.3 and 1.12.3 of Annexure C: Code of Ethics of the 2017 SCM Policy, and in consultation with SITA's legal advisor(s), consider investigating and where appropriate, taking corrective action against any other individuals implicated in any further wrongdoing in the SCM and HCM environment identified in this report **within one hundred and twenty (120) working days** where this did not occur.

9.1.5 In terms of paragraph 1.12.1 of Annexure C: Code of Ethics of the 2017 SCM Policy and in consultation with SITA's legal advisor(s), consider SITA's duty to report any irregular expenditure, (including any expenditure which may have arisen as a result of the irregularities identified in this report), to the Auditor General and National Treasury **within one hundred and twenty (120) working days** where this did not occur.

9.1.6 In terms of paragraph 1.12.2 of Annexure C: Code of Ethics of the 2017 SCM Policy and in consultation with SITA's legal advisor(s), consider SITA's duty to record any irregular expenditure (including any expenditure which may have arisen as a result of the irregularities identified in this report) in SITA's irregular expenditure register **within one hundred and twenty (120) working days** where this did not occur.

9.2 The Auditor General of South Africa: -

9.2.1 Takes note of the findings relating to the improper conduct and/or maladministration by SITA reported herein.

9.2.2 Within its own discretion consider the findings and remedial action in this report and consider taking any action deemed appropriate under the circumstances in terms of any applicable legislation.

9.3 The Minister of Communications and Digital Technologies: -

9.3.1 To take cognisance of the findings of maladministration and improper conduct by SITA.

9.3.2 Include in the oversight role over SITA, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of the powers conferred under section 182(2)(c) of the Constitution.

9.4 The Speaker of the National Assembly: -


- 9.4.1 To ensure that the report is tabled before the Communications Portfolio Committee for deliberation regarding: -
- 9.4.2 Investigations conducted into allegations of financial misconduct committed by members of the Accounting Authority in terms of Treasury Regulation 33.1.3.
- 9.4.3 The investigation of instances of irregular, fruitless and wasteful expenditure to determine if disciplinary action needs to be taken against implicated officials.
- 9.4.4 Disciplinary steps have been taken against any officials who made or permitted the irregular expenditure based on the outcome of the investigation in terms of section 51(1)(e)(iii) of the PFMA.

9.5 The Directorate of Priority Crimes Investigation: -

- 9.5.1 Consider this report and establish if any acts of impropriety identified herein amount to acts of a criminal conduct in line with the Prevention and Combating of Corrupt Activities Act, 2004 and if so, pursue criminal investigations against the perpetrators.

10 MONITORING

- 10.1 The Accounting Authority of SITA to submit an action plan to the Public Protector **within thirty (30) working days** from the date of this report on the implementation of the remedial action referred to in paragraph 9.1 above.
- 10.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 31/03/2022

*Assisted by Mr Njabulo Mathabela, Senior Investigator,
Investigations Branch, Head Office*