
PUBLIC PROTECTOR
SOUTH AFRICA

"Allegations of maladministration by the Mpumalanga Office of the Premier for services rendered during the Mandela Memorial Service"

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REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF THE IRREGULAR APPOINTMENT OF CAROL BOUWER PRODUCTIONS AND UNCONSCIONABLE USE OF PUBLIC FUNDS BY THE MPUMALANGA OFFICE OF THE PREMIER TO RENDER EVENT MANAGEMENT SERVICES DURING THE FORMER PRESIDENT NELSON MANDELA MEMORIAL SERVICE
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Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and published in terms section 8(2A)(a) of the Public Protector Act, 1994.

(ii) The report relates to an investigation into allegations of irregular appointment of Carol Bouwer Productions to render event management services during the former President Nelson Mandela Memorial Service and the irregular payments to Carol Bouwer Productions.

(iii) I received a complaint from Ms. B Nkambule who alleged that a service provider known as Carol Bouwer Production was irregularly appointed to organize and facilitate the memorial service of the late former President Nelson Mandela. The complaint was based on a newspaper article published in the City Press newspaper dated 16 March 2014.

(iv) The Complainant alleged that the newspaper article stated that the Mpumalanga Office of the Premier had spent R70 million of which R39.8 million was paid to Carol Bouwer Production without following proper procurement procedures.

(v) The Complainant further alleged that Carol Bouwer Productions did not meet the required criteria to be appointed as a service provider for the event and therefore their appointment was unjustified.

(vi) She further stated that after payment was effected to Carol Bouwer Production, the Mpumalanga Office of the Premier had to shift funds from various Provincial Departments' service delivery budgets to cover government employee salaries and this conduct amounts to maladministration.

(vii) On analysis of the complaint, the following issues were identified and investigated:
(a) Whether the Mpumalanga Office of the Premier irregularly appointed Carol Bouwer Productions to render event management services during the Nelson Mandela Memorial Service; and

(b) Whether the Mpumalanga Office of the Premier irregularly spent R70 million during the Nelson Mandela Memorial Service and whether funds were shifted from compensation of employees budget to pay for the event.

(viii) The investigation process included an exchange of correspondence and conducting meetings and interviews with relevant officials of the Office of the Premier and officials of other relevant Provincial Departments as well as analysis of relevant documents and application of all relevant laws, policies and related prescripts.

(ix) Key laws and policies taken into account to determine if there had been maladministration and/or improper conduct by the Office of the Premier were principally those imposing administrative standards and procedures that should have been complied with when the services and or goods were procured by the Office of the Premier during the former president Nelson Mandela Memorial Service.

(x) Having considered the evidence and information obtained during the investigation and the regulatory framework setting the standard that should have been upheld by the Office of the Premier, my findings are as follows:

(a) Regarding whether the Mpumalanga Office of the Premier irregularly appointed Carol Bouwer Productions to render event management services during the Nelson Mandela Memorial Service:

(aa) The allegation that the Mpumalanga Office of the Premier irregularly appointed Carol Bouwer Productions to manage former President Nelson Mandela Memorial Service is substantiated.
(bb) Dr Mkhize, as the then accounting officer, failed to report the deviation process in the appointment of Carol Bouwer Productions and the amount involved to the Provincial Treasury and the Auditor-General. Her failure to report is in violation of section 25(4) of the PFMA, read with paragraphs 3.1 and 3.2 Practice Note 6 of 2007/08, paragraph 3.1.3 of Practice Note 8 of 2007/08 and paragraph 7.2.2.5 of the Supply Chain Management Policy of the Premier's Office.

(cc) Dr Mkhize's failure to report in terms of paragraph 6.1.3 above, renders the appointment of Carol Bouwer Productions irregular and should have been reported or disclosed to the Auditor General.

(dd) Dr Mkhize only approved the deviation memorandum on 10 December 2013 when Carol Bouwer Productions had already commenced with her work on the Mandela Memorial service event on 06 December 2013. This means that compliance with Treasury Regulation 16A.6.4 in appointing Carol Bouwer Productions by the Office of the Premier was also irregular.

(ee) The conduct of the Office of the Premier of Mpumalanga Province, particularly Dr Mkhize constitutes improper conduct as envisaged in section 182(1) of the Constitution, maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether the Mpumalanga Office of the Premier irregularly spent R70 million during the Nelson Mandela Memorial Service and whether funds were shifted from the compensation of employees budget to pay for the event.

(aa) The allegation that the Mpumalanga Office of the Premier irregularly spent R70 018 000.00 during the Nelson Mandela Memorial Service is substantiated.
(bb) The total amount paid to other service providers besides Carol Bouwer Productions could not be determined as the records I was furnished with were not accurate.

(cc) The Office of the Premier, did not have Supply Chain Committees in place which resulted in the whole amount of R70 018 000.00 to be an irregular expenditure. In terms of section 25(4) the approved budget should have been reported to the Provincial Treasury and the Auditor-General within fourteen (14) days after being authorized by the MEC for Finance. In addition, Dr Mkhize contravened section 38(1)(g) of the PFMA in that on discovery or on being alerted of the irregular expenditure, she did not immediately report in writing particulars of the expenditure to the Provincial Treasury. She basically failed to report or disclose the R70 018 000.00 as an irregular expenditure.

(dd) Dr Mkhize approved payments of suppliers to be made directly by the bank without going through the normal LOGiS and BAS systems that are used to record expenditures and keep records. She also failed to report to the Provincial Treasury and Auditor-General the goods and service procured in terms of the Treasury Regulation 16A6.4.

(ee) Dr Mkhize’s conduct was in violation of clauses 3.1 and 3.2 of Practice Note 6 of 2007/08, and sections 25(4) and 38(1) of the PFMA.

(ff) Such conduct also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(I) of the Public Protector Act.

(gg) The second part of the allegation that the Mpumalanga Office of the Premier shifted funds from the compensation of employees’ budget to pay for the event is not substantiated.

(hh) No evidence was found to substantiate the allegation. Information obtained from Ms Nkamba revealed that four different options, namely, funds from Provincial
Revenue Fund (14.876 million), small savings of transfers from National and Provincial Departments (R4.141 million), Provincial Treasury's own revenue that had remained in Govan Mbeki Local Municipality (R21 million) and funds from slow moving programmes during the 2013/14 financial year (R30 million), were explored to source the funds to pay for the event. The four options were added together to get a total of R70 018 000.00.

(xii) The appropriate remedial actions I am taking in terms of section 182(1)(c) of the Constitution are the following:

(a) The Premier of the Mpumalanga Provincial Government must:

(aa) Inform the Premier of the Kwazulu-Natal of the outcome of my investigation and request him to take appropriate action against Dr Mkhize within fourteen (14) working days from the date of this report; and

(b) The Director of Priority Crimes Investigation (DPCI) must:

(aa) Investigate any alleged criminal conduct against implicated parties for financial mismanagement in violation of the PFMA, specifically the incurring of R4.5 million additional expenses not supported by detailed documentation.

(c) The Director General of Mpumalanga Provincial Government must ensure that:

(aa) The officials responsible for procurement of goods and services in the Office of the Mpumalanga Premier must, at least once annually, attend refresher training and/or workshops on Supply Chain Management, particularly relating to the deviations; and

(bb) Within 90 working days from the date of this report, conduct an investigation in order to determine total amount paid out to the other service providers.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF THE IRREGULAR APPOINTMENT OF CAROL BOUWER PRODUCTIONS AND UNCONSCIONABLE USE OF PUBLIC FUNDS BY THE MPUMALANGA OFFICE OF THE PREMIER TO RENDER EVENT MANAGEMENT SERVICES DURING THE FORMER PRESIDENT NELSON MANDELA MEMORIAL SERVICE

1. INTRODUCTION

1.1. This is my report issued 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(2A)(a) of the Public Protector Act, 1994 (the Public Protector Act).

1.2. The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation and implement remedial actions:

1.2.1. The Premier of the Mpumalanga Province, Honourable Ms R Mtshweni;

1.2.2. The Premier of the KwaZulu Natal Province, Honourable Mr W. Mchunu;

1.2.3. The Acting Director-General of the Mpumalanga Provincial Government, Mr KM Mohlasedi; and

1.2.4. The former Director-General of the Mpumalanga Provincial Government and the current Director-General of the KwaZulu Natal Provincial Government, Dr N Mkhize.

1.3. A copy of the report is also provided to the Complainant, to inform her about the outcome of the investigation.
1.4. The report relates to an investigation into allegations of maladministration by the Mpumalanga Provincial Government relating to the irregular appointment of Carol Bouwer Production to render event management services during the former late President Nelson Mandela Memorial Service.

2. THE COMPLAINT

2.1 On 20 May 2014, my office received a complaint from Ms B Nkambule (Complainant) who alleged that a service provider known as Carol Bouwer Production was irregularly appointed to organise and facilitate the memorial service of the late former President Nelson Mandela. The complaint was based on a newspaper article published in the City Press newspaper dated 16 March 2014.

2.2 The Complainant further alleged that the newspaper article stated that the Mpumalanga Office of the Premier had spent R70 million of which R39.8 million was paid to Carol Bouwer Production without following proper procurement procedures.

2.3 She also alleged that Carol Bouwer Production did not meet the required criteria to be appointed as a service provider for the event and therefore its appointment was unjustified.

2.4 She further stated that after payment was effected to Carol Bouwer Production, the Mpumalanga Office of the Premier had to shift funds from various Provincial Departments’ service delivery budgets to cover government employee salaries and this conduct amounts to maladministration.
3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

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

3.2 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."

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 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 power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 In the constitutional court, (in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11(5); 2016(5) BCLR 618 (CC); 2016(3) SA 580 (CC) (31 March 2016)), Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:
3.5.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

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

3.5.3 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 that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

3.5.4 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);

3.5.5 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);

3.5.6 The Public Protector's power to take appropriate 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);
3.5.7 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 these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (paragraph 71(a));

3.5.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d))

3.5.9 “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));

3.6 The Constitutional Court further held that the remedial action taken by the Public Protector has a binding effect, “When remedial action is binding, compliance is not optional, and 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.”

3.7 The Mpumalanga Office of the Premier is an organ of state and its conduct amounts to conduct in state affairs, and, as a result the matter falls within the ambit of the Public Protector’s mandate to investigate.

3.8 The Public Protector’s power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.
4. THE INVESTIGATION

4.1. Methodology

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

4.1.2. 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.

4.1.3. The investigation process included an exchange of correspondence with the former Mpumalanga Provincial Government’s Director General, Dr N Mkhize, and the Office of the Premier, analysis of relevant documentation, conducted research, and consideration and application of relevant laws, regulatory framework and jurisprudence.

4.1.4 Ms M Mhlabane, the Head of Department of Education; Mr KM Mohlasedi, the former Head of Department of Public Works, Roads and Transport; Ms N Nkamba, the Head of Department of Finance; Mr Dlamini, the former Chief Financial Officer (CFO) in the Office of the Premier; and Ms Carol Bouwer of Carol Bouwer Productions and the Nelson Mandela Memorial Event Manager, were interviewed during the investigation.

4.1.5 During the investigation process, notices in terms of section 7(9)(a) of the Public Protector Act (notice) were served on Dr Mkhize, Mr Mohlasedi and Ms Bouwer, dated 26 November 2018 to afford them an opportunity to respond to my provisional findings. The notices were also served on the Premier of Mpumalanga Provincial Government, Ms R Mtsweni and the Premier of KwaZulu Natal Provincial Government, Mr W Mchunu, respectively, for their information.
4.1.6 Both Ms Bouwer and Dr Mkhize responded to my notice, but raised concerns about the factual discrepancies therein. No additional evidence was provided to counter the evidence in my possession.

4.1.7 In his response, Mr Mohlasedi noted the contents of my notice and had no objection to the intended adverse findings against the implicated persons. Basically the responses were received from Mr Mohlasedi, Dr Mkhize and Ms Bouwer on 07 December 2018, 10 December 2018 and 02 April 2019, respectively and the submission contained therein have been factored in this report.

4.2 Approach to the investigation

4.2.4 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.4.1 What happened?

4.2.4.2 What should have happened?

4.2.4.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

4.2.4.4 In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.4.5 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. In this particular case, the factual enquiry principally focused on whether or not the Provincial Government acted improperly when it appointed Carol Bouwer Productions to render event management services during the former late President Nelson Mandela Memorial Service as well as the irregular expenditures incurred during the memorial service.
4.2.4.6 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Office of the Premier to prevent any improper conduct and maladministration.

4.2.4.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration. Where a complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the Department or organ of state complied with the regulatory framework setting the applicable standards for good administration.

4.3 On analysis of the complaint, the following issues were considered and investigated:

4.3.1 Whether the Mpumalanga Office of the Premier irregularly appointed Carol Bouwer Productions to render event management services during the Nelson Mandela Memorial Service; and

4.3.2 Whether the Mpumalanga Office of the Premier irregularly spent R70 million during the Nelson Mandela Memorial Service and whether funds were shifted from the compensation of employees budget to pay for the event.

4.4 The Key Sources of information

4.4.1 Documents

4.4.1.1 The Auditor General South Africa's Final Management Report dated 31 March 2014;

4.4.1.2 A list of service providers listed in the database of the Office of the Premier together with copies of their profiles;

4.4.1.3 Mpumalanga Provincial Plan for the Nelson Mandela Memorial Service;
4.4.1.4 A list of Mourning/Prayer sessions for the Memorial Service;
4.4.1.5 A list of Provincial Task Team and Sub-Committees;
4.4.1.6 Provincial Emergency Plan of Activities;
4.4.1.7 Identified Provincial prayer and mourning centers;
4.4.1.8 A memorandum requesting deviation from proper procurement procedures dated 10 December 2013;
4.4.1.9 A memorandum requesting approval from the Mpumalanga Member of the Executive Council for Finance for utilization of funds from various sources during an emergency situation, dated 06 December 2013;
4.4.1.10 A Service Level Agreement entered into between Office of the Premier and Carol Bouwer Productions, signed on 10 December 2013;
4.4.1.11 Tax Invoices submitted by Carol Bouwer Productions;
4.4.1.12 A list of service providers used by Carol Bouwer Productions;
4.4.1.13 Carol Bouwer Productions Financial Statements for the Nelson Mandela Memorial Service dated 17 March 2014;
4.4.1.14 Quotations and Invoices submitted by other service providers paid by the Office of the Premier.

4.4.2 Interviews conducted

4.4.2.1 A meeting held with officials from National and Provincial Treasury on 21 August 2015;
4.4.2.2 A meeting held with Office of the Premier Integrity Unit Manager, Ms Precious Ngwenya, and my investigation team on 26 April 2016 and 28 March 2017 respectively;
4.4.2.3 A meeting held between my investigation team and Mr Dlamini on 22 May 2017;
4.4.2.4 A meeting held between the myself and Dr Mkhize on 27 September 2017;
4.4.2.5 A meeting held between myself and Ms Bouwer on 23 June 2017 in Westin Hotel Cape Town; and
4.4.2.6 A meeting held between my team and Ms Nkamba, Mr Mohlasedi and Mrs Mhlabane.
4.4.3 Correspondence sent and received

4.4.3.1 A enquiry letter to Dr Mkhize dated 25 August 2014;
4.4.3.2 A response letter from the Director-General to my office dated 26 September 2014;
4.4.3.3 A letter from Dr Mkhize dated 18 December 2014;
4.4.3.4 A letter from the former HOD of Public Works, Roads and Transport, dated 14 December 2014;
4.4.3.5 An undated letter from the Director-General to the Office of the Public Protector;
4.4.3.6 A letter to Ms Bouwer requesting a meeting dated 19 June 2017;
4.4.3.7 A letter to Ms Bouwer requesting more information dated 17 July 207;
4.4.3.8 A letter to Ms Bouwer requesting more information dated 18 September 2017;
4.4.3.9 A letter to Ms Nkamba, the HOD of Finance dated, 27 November 2017;
4.4.3.10 A letter to Mr Mohlasedi the former HOD of Public Works, Roads and Transport, dated 27 November 2017;
4.4.3.11 A letter to Mrs Mhlabane, the HOD of Education dated 27 November 2017; and
4.4.3.12 A letter from the Head of Department of Public Works to my office dated 14 December 2017.
4.4.3.13 A letter received from the HOD of Finance dated 30 November 2017;
4.4.3.14 A letter from Ms Carol Bouwer dated 02 August 2017;
4.4.3.15 An e-mails from Carol Bouwer dated 02 April 2019 in response to the section 7(9) notice;
4.4.3.16 A letter from Dr Mkhize dated 10 December 2018 in response to the section 7(9) notice;
4.4.3.17 An email to Carol Bouwer dated 16 April 2019;
4.4.3.18 An email to the Acting Director-General, Mr Mohlasedi dated 17 April 2019;

4.4.4 Websites consulted/ electronic sources

4.4.5 Legislation and other prescripts

4.4.5.1 The Constitution;

4.4.5.2 The Public Finance Management Act, 1 of 1999 (PFMA);

4.4.5.3 The National Treasury Regulations, 2005 issued in terms of section 76 (1) of the PFMA;

4.4.5.4 The National Treasury Practice Note 6 of 2007/08; and

4.4.5.5 The Supply Chain Management Policy of the Office of the Premier adopted on 03 January 2015.

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

5.1. Regarding whether the Mpumalanga Office of the Premier irregularly appointed Carol Bouwer Productions to render event management services during the Nelson Mandela Memorial Service?

Common cause issues

5.1.1 The Mpumalanga Provincial Government appointed Carol Bouwer Productions on 10 December 2013 by using a memorandum to deviate from normal procurement processes which was approved by Dr Mkhize to render event management services for the Nelson Mandela Memorial event. Ms Bouwer was telephonically called by Dr Mkhize and informed about her appointment. No appointment letter was issued to Carol Bouwer Productions.
5.1.2 It is in dispute that Carol Bouwer Productions was irregularly appointed to manage the event for the former late President Nelson Mandela Memorial Service.

5.1.3 The Complainant alleged that Carol Bouwer Productions did not meet the required criteria to be appointed as a service provider for the event and therefore its appointment was unjustified.

5.1.4 On 26 September 2014 Dr Mkhize responded to my enquiry letter dated 25 August 2014 that, following the announcement of the passing of the former President, Mr Nelson Mandela, the South African Government announced a period of ten (10) days of national mourning that would end with a state funeral on 15 December 2013. Each Province had to compile its own plan of action and ensure that it was aligned with the overall plan of the country.

5.1.5 She initially stated in the said response that the former Premier of the Mpumalanga Province, Mr D.D. Mabuza (the former Premier) established a Provincial Political Task Team as well as the Technical Task Team on Friday 06 December 2013, to oversee the action plan. However, she later indicated in a letter dated 10 December 2018, that “Around June 2013, it became clear that former President Mandela’s health was deteriorating and provinces were advised to prepare themselves, and to convene prayers in support of President Mandela. The Premier of Mpumalanga therefore established two committees”. These committees were, “a technical committee comprising of heads of departments and chaired by the Director-General ("Technical Committee"); and a political committee comprising MEC for Finance (Madala Masuku), MEC for Community Safety and Liaison (Vusi Shongwe) and MEC for Education (Regina Mhaule), and chaired by the then MEC for Public Works and Transport, MEC Dikeledi Mahlangu ("Political Committee")."
5.1.6 She added that the need to source an events coordination and management service provider with the requisite technical expertise was also identified. However, no minutes regarding the identification of the service provider were provided. Primarily, the main responsibility of the service provider was to coordinate and facilitate the provision of facilities and numerous event-related items in respect of the provincial event as well as linking the Provincial to the National events as and when required. The Office of the Premier was tasked and responsible for the coordination and implementation of the provincial plan.

5.1.7 Dr Mkhize continued to state in her response of the 26 September 2014 that, in appointing the service provider to coordinate and facilitate the event, the Office of the Premier did not obtain three (3) quotations in respect of sourcing the services of managing the event considering that this was an emergency and the event could not have been foreseen to enable the Office of the Premier to plan and source three quotations. The entire event was time-bound and all activities needed to have happened by a particular and specific time.

5.1.8 The Office of the Premier stated through Dr Mkhize that Carol Bouwer Productions was appointed on the basis of being the only service provider existing on their database of suppliers with proven event management expertise that could handle such an event considering the nature, magnitude and scope thereof. Carol Bouwer Productions showed that they had the capacity to coordinate an event of such magnitude and also they had the critical technical expertise to link the Provincial events and activities to the national event being the funeral which was held on the 15 December 2013.

5.1.9 The Office of the Premier further indicated that the reason for deviating from proper procurement procedures was informed by the fact that the event was an emergency, unforeseen, and time-bound and none of the service providers in the database had the expertise to manage the event of such magnitude and within the constrained timelines that existed. The schedule as issued by the Office of
the Premier did not allow for any advertisement of the tender, which according to prescripts, must be advertised for at least twenty one (21) days. Even though legislation provides for advertising for a shorter period, this was not feasible considering the nature of the event.

5.1.10 Evidence in my possession suggests that the procedure to deviate from the normal Supply Chain Management processes was partially complied with when Carol Bouwer Productions was appointed. This is because no report by the Accounting Officer to Treasury or Auditor-General which included the description of goods or services rendered by Carol Bouwer Productions, the reasons for deviations from Supply Chain Management prescripts and the amount paid for the services, was provided within the stipulated ten (10) working days as required by Treasury regulations.

5.1.11 This is confirmed by the Auditor-General South Africa in his Final Management Report of the Office of the Premier dated 31 March 2014 that “The report must include the description of the goods or services, the names of suppliers, the amounts involved and the reasons for dispensing with the prescribed competitive bidding processes”.

5.1.12 Evidence gathered also suggested that there was an element of inadequate reporting relating to compliance with the deviation procedures. This is supported by the fact that the Office of the Premier drafted a deviation request memorandum and got it approved on 10 December 2013, which is the same day Carol Bouwer Productions was appointed, however, she commence her work on 06 December 2013 and this information was confirmed by Ms Bouwer during my meeting with me on 23 June 2017. She was appointed before the approval of the deviation memorandum which is highly irregular. However, it was not the service provider’s responsibility to ensure that the deviation is approved before commencement of work, but that of the former Director-General.
5.1.13 In a meeting held with me on 27 September 2017, Dr Mkhize indicated that the announcement of the death of former President Nelson Mandela by former President Jacob Zuma happened when she was in Gauteng Province attending the Forum of South African Directors General (FOSAD), but had to cut short her attendance because arrangements needed to be done. A special meeting of Premiers was called by the Minister in the Presidency, the late Minister Collins Chabane where they were informed about the ten (10) day mourning period. No date of the said meeting was provided by Dr Mkhize.

5.1.14 Dr Mkhize stated further that all Provinces were expected to mourn the death of the late former President. A meeting of all Mpumalanga Provincial Heads of Department (HODs) and Members of the Executive Council (MECs) was convened to start with the preparations. No minutes of such a meeting were made available and it was established that the chairperson of the Task Team was former MEC for Public Works, Roads and Transport, Mr DG Mahlangu. The South African Police Service (SAPS) already had a programme to deal with such events. A Joint Committee with the SAPS was formed and it was chaired by the MEC for Community Safety and Liaison. It was decided that one committee be formed because the event was an emergency and time-bound.

5.1.15 Dr Mkhize further indicated that disaster management in the Province is the function of Treasury, however, it was decided that the memorial service events be managed by the Director-General in the Premier's office. Initiation was first done at the Provincial Treasury led by both the Head of Department and the former MEC for Finance, Mr MB Masuku. Submissions were forwarded to the Office of the Premier declaring the event an emergency and a budget of R70 000 000.00 was agreed upon between former MEC Masuku, on behalf of the Provincial Treasury and the former Premier.

5.1.16 After submissions were made to the former Premier, meetings were held which led to the decision not to advertise the tender or go through the normal Supply
Chain Management processes to procure services because the event was declared an emergency. The Task Team decided to look through the supplier database for a service provider who had the expertise and ability to manage the event as soon as possible. They needed a service provider who would deliver a service of a high standard. It was further decided that transport and catering services would be provided by local service providers. However, the database in the Office of the Premier was not updated.

5.1.17 After going through the Office of the Premier's Supplier Database and in consultation with the MECs serving in the Task Team (though there are no minutes confirming this statement), they decided to appoint Carol Bouwer Productions as the ideal service provider to manage the event because she had previously managed events in the Province. Dr Mkhize insisted and indicated in her subsequent letter dated 10 December 2018 that "I confirm that, to the best of my knowledge, CBP had done work in the Province before this matter". However, this statement was contradicted by Ms Bouwer herself who indicated in her response dated 02 August 2017 that "I had a previous contract to host an event in the Province which was cancelled at the 11th hour. I incurred costs, which we later sought to recover, without success".

5.1.18 After confirmation was sought from the Office of the Premier, they stated in their letter dated 25 April 2019 that "the Department does not have information on work previously done by Carol Bouwer Productions..." This therefore means that Ms Bouwer had not done work for the Province prior to the Mandela Memorial event. However, be that as it may and given the nature of the event and it being an emergency and time bound, Dr Mkhize approved a request to deviate from the normal procurement procedures and processes to ensure that quality work was delivered and that procurement processes were transparent.

5.1.19 After the appointment of Carol Bouwer Productions, Dr Mkhize reported the deviation to the Provincial Treasury. No date of the reporting to Treasury was provided. She then instructed the State Law Advisors to draft a Service Level
Agreement (SLA) between the Provincial Government and Carol Bouwer Productions. She knew Ms Bouwer before the memorial service event, but had never worked with her. She later called Ms Bouwer to inform her about her appointment. Ms Bouwer accepted her appointment and indicated her willingness to perform the task ahead as long as she was given full support.

5.1.20 Dr Mkhize met with both the Head of Department and former MEC for Finance as well as Ms Bouwer. Ms Bouwer was taken through the scope of work and what was expected of her. Amongst the services she was supposed to render, were provision of sound systems, big screens, erection of stages, linkages, marquees and provision of T-shirts. The services excluded catering and transport for the public in all the different event venues. The Treasury Head of Department and Dr Mkhize were champions of the different centres.

5.1.21 Different sub-committees were formed and headed by different HODs and they were responsible for different functions such as, catering, logistics, transport, etc. They met daily and reported to the main Committee being the Task Team mainly constituted of the MECs. Regarding catering services, they decided to divide the services amongst the caterers to minimize risks and to ensure the fair distribution of work. This practice or decision was done or implemented in all four regions of the different municipal districts. On transport services, they went through the Department of Public Works and Transport’s Supplier Database to source service providers. They made use of both buses and taxis in all the different regions. They also had different sub-committees.

5.1.22 There were two events that did not take place at the initially agreed venues, and had to be moved to different venues because of a storm that flooded the marquees. This included an event in Mkhuhlu and Bushbuckridge, but had to be moved to other venues. This was confirmed by Ms Bouwer in her response of 02 August 2017 as follows “Both of these events took place and were a resounding success, despite the weather hampering the planning greatly. Both these venues had been set up with lighting, stage and decorations done when the storm meant
having to de-rig and set up anew once new venues had been provided by the respective principals.

5.1.23 Ms Bouwer also stated that all invoices were certified before payments were processed and added that this was done by someone from the Department of Finance who was located at the site. However, the name of the official was not provided. There was also someone tasked with verifying deliveries for catering whose name was also not provided.

5.1.24 Pertaining to the R4, 5 million which was invoiced for additional equipment/s by Ms Bouwer, Dr Mkhize explained that there were activities that were not part of the initial briefing, but had to be provided at a later stage. These included amongst others, the former Premier attending church events and the service provider had to provide sound, lights, video recording, etc. Ms Bouwer also confirmed that the amount was for additional work such as the replacement camera crew for unplanned visits, the hiring of additional personnel to edit recordings and deliver all tapes and etc.

5.1.25 However, the information pertaining to the invitations to the church events and the recordings could not be provided. The Office of the Premier, in their letter dated 25 April 2019, stated that the "Department does not have the recordings of the events" and that "No information is available on the Invitation of the Honourable Premier by the churches."

5.1.26 Regarding the payments of invoices, Dr Mkhize approved payments based on documents prepared by Mr Dlamini and Supply Chain Management. Mr Dlamini was part of the initial planning meeting and he would, from time to time, sign documents at the Operations Centre. Quotations and appointment letters could not be obtained and supplied because of the nature of the event being declared an emergency.
5.1.27 In a meeting held with me on 23 June 2017, Ms Bouwer said that she was called and told that her services were needed at Mpumalanga Provincial Government, at a time when she was on holiday outside the country. She mentioned that she rushed to and was available in Mpumalanga within 24 hours of receiving a call from Dr Mkhize. On arrival, she found her team already setting up and she was briefed on what was needed (some of her team members were there as soon as they could).

5.1.28 The first meeting she attended on her arrival was with the SAPS, Provincial Treasury, Dr Mkhize and MECs of the organising committee. She then asked how it was possible that she got appointed without any tender. She was told that she has been appointed through a deviation process and every Province followed the same process. Therefore, she should not worry about the manner in which she was appointed.

5.1.29 Ms Bouwer mentioned during our meeting of the 23 June 2017 that her company has been registered on most supplier databases. When asked how she knew Dr Mkhize, she stated that she dealt with her before when she attempted to get work in the Province. She then assumed that was how Dr Mkhize got her contact details. She later said that she met Dr Mkhize during her tenure at the Department of Women in her capacity as the Executive Producer of the Women Talk Show, Motswako and convener of various women issues platforms. She indicated that two (2) years prior to the Mandela Memorial event, she was invited to do some work for the Province, but the contract was later revoked and she thought of taking legal steps because she was not paid for work already performed.

5.1.30 In the first meeting she attended with the organizing committee, she was informed that she was appointed because of the level and quality of her work. She was also told in the meeting that the other suppliers that were approached could not manage an event of such magnitude.
5.1.31 In the meeting, she was briefed on what was expected of her though it was not in writing. She did not submit any quotations beforehand, but provided quotations as she was performing the task i.e. as she went along. Though she felt that some suppliers were overcharging her, she had to proceed with the procurement because of the nature of the event. In some instances where she felt that prices were inflated, she consulted Dr Mkhize to obtain permission to proceed.

5.1.32 She admitted that after she had already started with her work, she was formally appointed on 10 December 2013 as her first event was done on 06 December 2013. She stated that she arrived in the country from Malaysia immediately after being called by Dr Mkhize. She confirmed that the memorandum requesting approval to deviate from normal Supply Chain Management procedures to appoint her was approved days after she had started working.

5.1.33 Ms Bouwer stated that the reason she submitted a quotation for two (2) events to be held at Middelburg and Mbombela on 11 December 2013 and further submitted an invoice on the same day was that they wanted to be paid as soon as possible. She did not want the payment to be delayed. She refuted the allegations that the events in Bushbuckridge and Mkhulhu did not materialise. She submitted that because of stormy weather they had to move the events to different venues.

5.2.1 Ms Bouwer initially mentioned that she did not remember submitting an invoice on 17 December 2013 claiming payment for additional equipment. As far as she could remember, all invoices submitted were for work performed and completed. However, in her response dated 02 August 2017, she stated as follows: "This invoice was for all technical work done by CBP across the province for the production resulting in hours of footage delivered to the province- this is not including the live crossing to FNB". However, she did not specify the technical work she was referring to. However, the amount on the invoice, R4 500 000.00 was covered in the audited Financial Statements of Carol Bouwer Productions
which included the total amount of R44,296,258.00 paid to Carol Bouwer Productions.

*Application of the relevant law*

5.1.34 Section 217(1) of the Constitution provides that when an organ of state (which includes a provincial sphere of government), contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

5.1.35 The above section is supported by section 38(1)(a)(iii) of the PFMA which also provides, *inter alia*, that the accounting officer of a department must ensure that the department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

5.1.36 In addition to section 217(1) of the Constitution and section 38(1)(a)(iii) of the PFMA, the Office of the Premier has a valid Supply Chain Management Policy adopted on 03 January 2015, which clearly outlines the processes to be followed when goods and services are procured. The purpose of the policy is also aimed at setting guidelines in respect of which the acquisitioning of goods and services is done in a manner that is fair, equitable, transparent, competitive and cost-effective.

5.1.37 Therefore, in promoting good governance relating to the procurement of goods and services, the Mpumalanga Provincial Government, represented by the Office of the Premier in this particular matter, had a legal and moral obligation to ensure that goods and services were procured in a manner which was fair, equitable, transparent, competitive and cost-effective. However, as found by the Auditor-General and confirmed by Dr Mkhize, the database was not updated. In the period that Dr Mkhize was in Mpumalanga as the Director-General it was only renewed or updated once. This may have excluded those who could qualify.
5.1.38 Evidence in my possession shows that the process followed by the Office of the Premier in the appointment of Carol Bouwer Productions was in contravention of section 217 of the Constitution and section 38(1)(a) of the PFMA which required that procurement processes to be transparent, fair, equitable and cost effective in that, even though Carol Bouwer Productions was said to be the only one with proven event management expertise that existed on their database to handle such an event, failed to provide any proof that other service providers on the database of the Office of the Premier such as Mzimari Trading and others, for instance, were also considered. There are no minutes of meetings that confirmed the process. Therefore, there was no evidence before me that pointed to the fact that the other companies on the database of the Office of the Premier were ever considered. The argument by Dr Mkhize that Carol Bouwer Productions had done work in the Province before was also not correct.

5.1.39 National Treasury Regulation 16A 6.4 states 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".

5.1.40 In appointing Carol Bouwer Productions, the Mpumalanga Provincial Government opted to deviate from the normal Supply Chain Management prescripts given the nature and magnitude of the memorial service event. The deviation memorandum was drafted and approved on the same day i.e. the 10 December 2013 and this was done close to five (5) days after Carol Bouwer Productions had commenced with the event management work. The Service Level Agreement was also signed on the 10 December 2013 after Carol Bouwer Productions had already commenced with the event management work as well.
5.1.41 Dr Mkhize was expected to approve the deviation report that included a description of the goods or services, names of the suppliers, the reasons for dispensing with the prescribed competitive bidding processes as well as the amount/s involved, as provided by paragraph 3.1.3 of Practice Note no. 8 of 2007/08. The budget of R70 018 000.00 was approved by former MEC Masuku on the 06 December 2013, a few days before the deviation report was approved.

5.1.42 The decision to procure the goods and services by means of a deviation did not take away the state organ’s obligation to ensure that the procurement processes were done in a manner that was fair, equitable, transparent and cost effective. The said obligation is placed upon all state organs at all levels by the Constitution and the PFMA. Therefore, the Office of the Premier was still required to comply with all legislative frameworks to ensure that the procurement processes followed were economical, fair, transparent, equitable, and cost effective.

5.1.43 National Treasury Practice Note 6 of 2007/08 states as follows:

"3.1 With effect from the date on which this practice note takes effect, accounting officers and accounting authorities are 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 included) were procured in terms of Treasury Regulation 16A6.4.

3.2 The report must include the description of the goods or services, the names of the suppliers, the amounts involved and the reasons for dispensing with the prescribed competitive bidding processes."

5.1.44 Evidence gathered shows that Treasury Regulation 16A6.4 was partially complied with when Carol Bouwer Productions was appointed. This is because section 3.2 of the Treasury Practice Note 6 read with Practice Note 8 of 2007/08, was not adhered to after the appointment was made. No report to the Provincial
Treasury or Auditor-General which included the description of goods or services rendered by Carol Bouwer Productions, the reasons for deviations from the supply chain Management prescripts and the amount paid for the services, was provided within the stipulated period of ten (10) working days.

5.1.45 Paragraph 7.2.2.5 of the Supply Chain Management Policy states that in some instances emergency procurement may be performed by the Department. If it is impractical to invite competitive bidders, procurement by means of written or verbal quotations must be performed and reported to the Provincial Treasury within 10 working days after the finalization of the procurement transaction. I could not find any evidence of such a report to the Provincial Treasury or Auditor-General.

Conclusion

5.1.46 Based on the evidence gathered, particularly the Auditor General’s report, it can be concluded that the decision not to report to the Provincial Treasury and the Auditor-General, all the goods and services procured in terms of Treasury Regulation 16A6.4 was not in compliance with Practice Note 6 of 2007/08 and paragraph 7.2.2.5 of the Supply Chain Management Policy of the Office of the Premier.

5.1.47 It can also be concluded that the decision not to include in the deviation report, the amount/s involved was not in compliance with Practice Note 8 of 2007/08. It can further be concluded that the decision to approve the deviation report and the Service Level Agreement (which also did not include the amounts involved) five (5) after the service provider had commenced work was not in line with the principles of good governance.
5.2. Regarding whether the Mpumalanga Office of the Premier irregularly spent R70 million during the late former President Nelson Mandela Memorial Service and whether funds were shifted from the compensation of employees budget to pay for the event.

*Common Cause Issues*

5.2.2 The Mpumalanga Provincial Government had spent close to R70 018 000.00 to fund the memorial service of the late former President Nelson Mandela.

5.2.3 It is also common cause that R39.8 million with an additional R4.5 million was paid to Carol Bouwer Productions for services rendered during the Mandela Memorial Service.

5.2.4 Neither of the involved parties disputed the above allegation nor did any of them raise any counter allegation.

*Issues in dispute*

5.2.5 What was in dispute is whether the R70 018 000.00 allocated for the funding of the late former president Nelson Mandela Memorial Service, was irregularly expended.

5.2.6 On 05 December 2013, Ms Nkamba compiled and signed a memorandum and forwarded it to former MEC Masuku for approval. The purpose of the memorandum was to request approval from former MEC Masuku that R70 018 000.00 be utilised for the funding of expenditures to be incurred in an emergency situation in line with section 25 of the PFMA. The emergency situation was the funding of the late former president Nelson Mandela Memorial Service.
5.2.7 Evidence obtained has proven that the Office of the Premier paid R44 296 258.00 to Carol Bouwer Productions to enable them to ensure the success of the event. This amount was paid to the service provider in two instalments of R39 796 258.00 and R4 500 000.00 respectively. The service provider also made use of other subcontractors who were assisting her in the coordination and success of the event. For the management services provided, Carol Bouwer Productions charged a project management fee which was equivalent to 15% of the gross project funding income.

5.2.8 Although the invoice for the R 4 500 000.00 only referred to "Additional equipment provided for mourning centres", the amount was covered in the audited Financial Statements which included the total amount paid to Carol Bouwer Productions.

5.2.9 Apart from the payments made to Carol Bouwer Productions, the Office of the Premier did not provide my investigation team with the statements of all the payments made to these service providers to able me to determine the exact amount paid to these service providers. The Auditor General’s findings only referred to those service providers who were paid over R 500 000.00.

5.2.10 No evidence could be found in support of the allegation that funds had to be shifted to pay employees’ salaries because the budget for compensation of employees was utilised to fund the memorial event. Evidence in my possession shows that the submissions made by Ms Nkamba that the R70 018 000.00 used to fund the memorial service was sourced after exploring four different options and none of the given options affected the budget for compensation of employees. Instead, there was underspending for the compensation budget because of vacant positions that were not filled at the time.

5.2.11 In a meeting held with my investigation team on 15 December 2017, Ms Nkamba stated that whenever they develop budgets for the Provincial Government they are always guided by a needs analysis which informs them how much exactly
is to be allocated. However, with the Nelson Mandela memorial she was only informed that R70 million was needed to fund the event, but no document was provided to her outlining the process on how the amount of R70 million was arrived at. She attempted to obtain such information from the Office of the Premier, but none could be provided to her. As a result, the lack of such information always opened a gap which could not be accounted for or substantiated by facts.

5.2.12 She further explained where the amount of R70 018 000.00 was sourced from, by stating that since the memorial event was classified as an emergency, a submission was made to former MEC Masuku and approval was granted in line with section 25 of the PFMA for expenditure to be incurred during the emergency situation. The funds to make up the total of R70 018 000.00 were identified from various sources of government.

5.2.13 Four different options were explored to source the funds and at the end, the four options were added together to get a total of R70 018 000.00. The first option Ms Nkamba suggested was funds that were ring-fenced in the Provincial Revenue Fund. An amount of R14.876 million from the fund was appropriated to be utilised.

5.2.14 The second option was the accumulation of the small savings which had an amount of R4.141 million. These savings are made up of transfers from National and Provincial Departments and other stakeholders. The account comprises of equitable shares, conditional grants, agency funds and own revenue.

5.2.15 The third option was Treasury’s own revenue that had remained in Govan Mbeki Local Municipality. The amount is generated from licensing of vehicles. Municipalities are appointed by government as registering authorities for vehicle licenses and Govan Mbeki Local Municipality is one of the registering authorities. An amount of R21 million was available for utilization.
5.2.16 The last option was to re-schedule funds from slow moving programmes during the 2013/14 financial year. An amount of R30 million was then earmarked for re-scheduling. After all these options were explored, it was then decided by the Executive to take all the four amounts from the different options and allocate them to fund the event. The above mentioned amounts combined identified from the different sources was R70,018,000.00. (herein also referred to as the R70 million)

5.2.17 Ms Nkamba refuted the allegation that funds had to be shifted to cover employees’ salaries. She stated that funds to cover salaries were always available and the budget for compensation of employees was underspent because of positions not filled by the Provincial Government. The total of R70,018,000.00 was sourced from the four different options as explained above and the whole amount was transferred to the Office of the Premier as instructed, to be utilised to fund the memorial service event.

5.2.18 In the normal cause of events, the Provincial Treasury has a role to play in terms of section 18 of the PFMA regarding budget development and implementation. It has control measures in place to ensure that allocated budgets are utilised effectively and efficiently. However, during the Nelson Mandela Memorial event no control measures whatsoever were put in place by Treasury because they had to ensure the success of the event within 10 days. The Office of the Premier, unlike other Departments, did not have control measures in place. It did not have Supply Chain Committees in place which resulted in the whole amount of R70,018,000.00 to be an irregular expenditure.

5.2.19 After the R70,018,000.00 was utilised, Ms Nkamba approached Dr Mkhize and explained the need to report or disclose the irregular expenditure to Treasury and the Auditor-General, but her advice was neither taken nor heeded. She also suggested that if disclosing the irregularity was not an option then they should disclose it in their financial statements. Dr Mkhize then agreed that the amount
would be disclosed in their financial statements. The Auditor General then discovered at a later stage that the R70 018 000.00 was not disclosed.

5.2.20 Ms Nkamba reiterated her stance that Dr Mkhize and Mr Dlamini were advised to report the irregularity to the relevant departments. She further stated that all the payments emanating from the memorial service event were sent directly to the bank for payment without going through the normal procedure of capturing invoices on the LOGiS and BAS systems. This was done by a letter written to the bank instructing them to process the payments. A circular titled "Provincial Circular no. 5 of 2014" was circulated reprimanding officials from writing letters to the bank.

5.2.21 The LOGiS and BAS are systems that are used for capturing and to issue an order. An expenditure is then recorded and the two systems are interlinked. The R70 million transactions are not on both systems; these transactions appear only on the bank statements because payments were made directly by the bank to service providers. The payments were recommended by Mr Dlamini and approved by Dr Mkhize. Ms Nkamba has on several occasions requested supporting documents from the Premier's office to reconcile her systems, but none was provided to her. The coönduct of Mr Dlamini and Dr Mkhize contravened section 38(h)(ii) and 40 (1)(a) of the PFMA.

5.2.22 She further indicated that Treasury does not have any guidelines to validate an invoice. She said it becomes easier with infrastructure because it is easy to go on site to evaluate and conduct an inspection and also to use reports to process the payments. It becomes a challenge when services such as consumables are procured because it is not easy to conduct a physical inspection. Therefore, it became difficult with the memorial service event to validate invoices that were submitted for catering and transport. It was therefore not possible to check if all service providers appointed on the day delivered according to their mandate.
5.2.23 My office was informed by Mr Dlamini during a meeting held with my investigation team on 22 May 2017 that the Department of Public Works procured transport services during the memorial event.

5.2.24 However, in his response Mr Mohlasedi, the then Head of Department, indicated in a meeting held with my investigation team on 15 December 2017, that his Department was requested by the Office of the Premier to obtain quotations for transport services. This was because his Department had three (3) databases containing transport service providers and they were also responsible for the bus subsidy contract as mandated by the National Department of Transport. They had a total of six (6) contracts on subsidized bus services and that was the first database they looked at. The second database was made up of scholar transport for school children and the last one was a database specifically for sub-contractors per region in the Province.

5.2.25 He further elaborated that the criteria used to obtain quotations was, firstly they took into cognisance the fact that the matter was an emergency, therefore they did not have the luxury of going around and getting the quotes. They relied on the pick-up points provided to them by the Office of the Premier and obtained quotations from the suppliers in the particular area of the pick-up points. These quotations were then forwarded to the Office of the Premier for further processing. They did not have any further role to play other than sourcing quotations.

5.2.26 Mr Mohlasedi reiterated that there was no formal request from the Office of the Premier as the coordinating department when they were told to obtain quotations. All this happened in a meeting that he had attended at Ehlanzeni District Office with the Provincial Task Team. After the service providers were appointed, his Department would, from time to time, be contacted to add more contractors as the number of mourners rose at different pick-up points. According to him, there were no officials from his Department that were at the different pick-up points to ensure that contractors were indeed transporting
people. His Department relied on information received from coordinators that were tasked to deal with transport issues.

5.2.27 My office had been informed by Mr Dlamini during a meeting held with my investigation team on 22 May 2017 that the Department of Education was responsible for the procurement of catering services for the memorial service of the late Nelson Mandela.

5.2.28 However, Ms M Mhlabane, in a meeting held with my investigation team on 15 December 2017, indicated that her department was not delegated to deal with matters relating to catering. She never received any instruction from the Members of the Executive Council delegating her department to perform any role related to catering. She was there as part of the team of HOD’s.

5.2.29 The Office of the Premier appointed the catering service providers and she was part of the technical committee members that dealt with catering through communications with the appointed service providers. Her role was further to assist with briefing the service providers regarding the catering specifications and report back to the Political Committee. These service providers were sourced from the Office of the Premier’s database of suppliers and they also processed the payments.

The Auditor-General’s Report

5.2.29 The Auditor-General audited the acquisition of Carol Bouwer Productions services and the payment of R44 2962 58.

5.2.30 The Audit finding is stated as follows:

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

PN 6 of 2007/08-

31. With effect from the date on which this practice note takes effect, accounting officers and accounting authorities are 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 R 1 million (VAT included) were procured in terms of Treasury regulations 16A6.4.

3.2 The report must include the description of the goods or services, the name of the suppliers, the amount involved and the reasons for dispensing with the prescribed competitive bidding processes.

An additional invoice for R4 500 000 were paid on 17 December 2014 to Carol Bouwer. The invoice only state additional equipment and it is not clear what was procured through this payment to determine if payments is justifiable.

No deviation were obtained for the additional amount and the treasury approval were not evident in the supporting documentation.

A list of subcontractors and their tax clearance were not provided to audit.

PN 8 of 2007/08par 3.3.1

3.3.1 Accounting officer / authorities should 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 list of prospective suppliers.
TR16A.6.1 Procurement of goods and services, either by way of quotation or through a bidding process, must be within the threshold values as determined by National Treasury.

TR16A.3.2 A supply chain management system referred to in paragraph 16A.3.1 must – (a) be fair equitable, transparent, competitive and cost effective;

Even through the OTP opted to deviate from competitive bidding at least 3 quotations should have been obtained to ensure fairness to similar suppliers on the database. Three quotations were not obtained in the following instances where OTP choose to deviate.

Other services were not listed in the SLA such as candles, umbrellas and flags that was supplied to mourners.

Non compliance with TR and PN 6 of 2007/08 3.2"

"Internal control deficiency"

Financial and performance management – Management did not review and monitor compliance with applicable laws and regulations.

Recommendation

A deviation report that including the description of the goods and services, the names of the suppliers, the amounts involved and the reasons for dispensing with the prescribed competitive bidding processes should be approved by the accounting officer and submitted to Treasury and the Auditor-General.

Management response
The work done by Carol Bouwer was part of the Mandela Memorial Services and the original deviation was submitted to the Provincial Treasury and the Auditor-General.

With reference to the services providers for the Mandela memorial, OTP deviated because it was an emergency which could not allow for competitive bidding. In terms of TR 16 A 6.4 “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 account authority.”

Auditor’s conclusion

Management response noted, the deviation original deviation letter submitted, does not specify the amount, therefore it is not clear where the extension of services were approved. Findings will remain for reporting as deviation is not in accordance with PN 6 of 2007/8.

R 44 296 258 should be disclosed as irregular expenditure.

We also did not receive sufficient documentation regarding the sub-contractors that was used by the service provider”.

Application of the relevant law

5.2.31 The National Treasury Practice Note 6 of 2007/08 states as follows:

“3.1 With effect from the date on which this practice note takes effect, accounting officers and accounting authorities are 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 included) were procured in terms of Treasury Regulation 16A6.4.

3.2 The report must include the description of the goods or services, the names of the suppliers, the amounts involved and the reasons for dispensing with the prescribed competitive bidding processes."

5.2.32 Dr Mkhize was responsible, in terms of Practice Note 3.1, to report, within ten (10) working days to Treasury and the Auditor-General, all cases where goods and services were procured through Treasury Regulation 16A6.4. Failure to do so would be in contravention of the PFMA. In the absence of the said report, Dr Mkhize also lost the opportunity as required by Practice Note 3.2 to provide the description of the goods or services, the names of the suppliers, the amounts involved and the reasons for dispensing with the prescribed competitive bidding processes. Failure to comply with Practice Note 3.1 and 3.2 would be highly irregular.

5.2.33 The Office of the Premier further procured the services of Buscor (Pty) Ltd, Putco (Pty) Ltd, Ishashalazi Production cc, Dunozi Trading, Afroshine Holdings, Mhayile (Pty) Ltd, Myboet Trading, TGM Business, Zamakhwani Catering and Zithoko Trading without following proper procurement procedures. Some did not have Service Level Agreements and with regard to others, the date of deviation is after services were commenced.

5.2.34 Section 25(4) of the PFMA states that:

(a) the amount spent in an emergency situation must be reported to the Provincial Legislature and Auditor-General within 14 days;

5.2.35 The Office of the Premier was expected to report the R70 018 000.00 that was approved by the MEC for Finance for the emergency situation of the Mandela
memorial to the Auditor-General as provided for in section of 25(4) of the PFMA. Failure to do so would be a violation of the PFMA provisions.

5.2.36 Section 38(1)(a) of the PFMA provides that the accounting officer for a department, the Office of the Premier included: "must ensure that that department has and maintains—

(i) effective, efficient and transparent systems of financial and risk management and internal control;"

5.2.37 According to the above section, Dr Mkhize was expected to ensure that control measures were put in place to ensure that public funds were utilized effectively and efficiently. However, in this case all the payments emanating from the memorial service event were sent directly to the bank for payment without going through the normal procedure of capturing invoices on the LOGIS and BAS systems. These transactions appear only on the bank statements because payments were made directly by the bank to service providers.

5.2.38 Section 38(1)(b) and (c) of the PFMA states the accounting officer for a department:

"(b) is responsible for the effective, efficient, economical and transparent use of the resources of the department…

(c) must take effective and appropriate steps to-

(ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and

(iii) manage available working capital efficiently and economically."
5.2.39 In terms of section 38(1)(a)(i)(ii) of the PFMA, Dr Mkhize was expected to ensure that the Office of the Premier used the resources effectively, efficiently, economically and transparently during the procurement of the services for the Mandela Memorial. Failure to do so would be a violation of the PFMA provisions. It was also expected of Dr Mkhize to also take appropriate steps to prevent unauthorised, irregular and fruitless expenditure. Also, failure to do so including failure to report to Treasury and the Auditor-General in terms of Practice Note 3.1 and 3.2 would also lead to an irregular expenditure.

5.2.40 The Office of the Premier, where the funds for the Mandela Memorial were transferred, unlike other Departments, did not have control measures in place. It did not have Supply Chain Committees in place and payments to service providers were made directly by the bank which is in violation of section 38(1)(a)(iii) of the PFMA.

5.2.41 The total allocated budget of R70 018 000.00 that was wholly spent to fund the event was not disclosed to the Auditor-General or Provincial Treasury as required by the relevant prescripts which resulted in the whole amount of R70 018 000.00 to be an irregular expenditure. The Auditor-General’s findings in relation to the R44 296 258 were that it should be disclosed as irregular expenditure.

5.2.42 Chapter 10 of the PFMA regulates the financial misconduct committed by the officials in departments. Section 81(1)(b) of the PFMA states as follows:

"the accounting authority of a department commits an act of financial misconduct if that accounting officer wilfully or negligently-

makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure."

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5.1.43 Dr Mkhize who authorised and approved the deviation of from the normal procurement processes for the Mandela memorial was expected to ensure firstly that the deviation report also include the amounts and secondly that the reports in terms of Practice Note 3.1, 3.2 and section 25(4) of the PFMA were complied with. Failure to do so would amount to financial misconduct.

5.1.44 Section 85 of the PFMA empowers the Minister of Finance to make regulations on financial misconduct procedures.

5.1.45 Paragraph 4.1.3 of the Treasury Regulations issued in terms of the PFMA provides that:

“If an accounting officer is alleged to have committed financial misconduct, the relevant treasury, as soon as it becomes aware of the alleged misconduct, must ensure that the relevant executive authority initiates an investigation into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts applicable and the agreements applicable in the public service.”

Conclusion

5.2.46 Based on the evidence gathered, together with the findings of the Auditor-General, it can be concluded that the decision not to include the amounts involved in the deviation report and failure to report within ten (10) working days to Treasury and the Auditor-General all goods and services procured in terms of the deviation process, was not in compliance with the applicable prescripts.

5.2.47 It can also be concluded from the gathered that the decision to replace the normal LOGIS and BAS payment systems with the direct payment of service providers through the bank, was also not in compliance with the applicable prescripts.
6. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework determining the standard the Office of the Premier should have complied with, I therefore make the following findings:

6.1 Regarding whether the Mpumalanga Office of the Premier irregularly appointed Carol Bouwer Productions to render event management services during the Nelson Mandela Memorial Service:

6.1.1 The allegation that the Mpumalanga Office of the Premier irregularly appointed Carol Bouwer Productions to manage former President Nelson Mandela Memorial Service is substantiated.

6.1.2 Dr Mkhize, as the then accounting officer, failed to report the deviation process in the appointment of Carol Bouwer Productions and the amount involved to the Provincial Treasury and the Auditor-General. Her failure to report is in violation of section 25(4) of the PFMA, read with paragraphs 3.1 and 3.2 Practice Note 6 of 2007/08, paragraph 3.1.3 of Practice Note 8 of 2007/08 and paragraph 7.2.2.5 of the Supply Chain Management Policy of the Premier's Office.

6.1.3 Dr Mkhize's failure to report in terms of paragraph 6.1.3 above, renders the appointment of Carol Bouwer Productions irregular and should have been reported or disclosed to the Auditor General.

6.1.4 Dr Mkhize only approved the deviation memorandum on 10 December 2013 when Carol Bouwer Productions had already commenced with her work on the Mandela Memorial service event on 06 December 2013. This means that compliance with Treasury Regulation 16A 6.4 in appointing Carol Bouwer Productions by the Office of the Premier was also irregular.
6.1.5 The conduct of the Office of the Premier of Mpumalanga Province, particularly Dr Mkhize constitutes improper conduct as envisaged in section 182(1) of the Constitution, maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.2 Regarding whether the Mpumalanga Office of the Premier irregularly spent R70 million during the Nelson Mandela Memorial Service and whether funds were shifted from the compensation of employees budget to pay for the event.

6.2.1 The allegation that the Mpumalanga Office of the Premier irregularly spent R70 018 000.00 during the Nelson Mandela Memorial Service is substantiated.

6.2.2 The total amount paid to other service providers besides Carol Bouwer Productions could not be determined as the records I was furnished with were not accurate.

6.2.3 The Office of the Premier, did not have Supply Chain Committees in place which resulted in the whole amount of R70 018 000.00 to be an irregular expenditure. In terms of section 25(4) the approved budget should have been reported to the Provincial Treasury and the Auditor-General within fourteen (14) days after being authorized by the MEC for Finance. In addition, Dr Mkhize contravened section 38(1)(g) of the PFMA in that on discovery or on being alerted of the irregular expenditure, she did not immediately report in writing particulars of the expenditure to the Provincial Treasury. She basically failed to report or disclose the R70 018 000.00 as an irregular expenditure.

6.2.4 Dr Mkhize approved payments of suppliers to be made directly by the bank without going through the normal LOGIS and BAS systems that are used to record expenditures and keep records. She also failed to report to the Provincial
Treasury and Auditor-General the goods and service procured in terms of the Treasury Regulation 16A6.4.

6.2.5 Dr Mkhize's conduct was in violation of clauses 3.1 and 3.2 of Practice Note 6 of 2007/08, and sections 25(4) and 38(1) of the PFMA.

6.2.6 Such conduct also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.2.7 The second part of the allegation that the Mpumalanga Office of the Premier shifted funds from the compensation of employees' budget to pay for the event is not substantiated.

6.2.8 No evidence was found to substantiate the allegation. Information obtained from Ms Nkamba revealed that four different options, namely, funds from Provincial Revenue Fund (14.876 million), small savings of transfers from National and Provincial Departments (R4.141 million), Provincial Treasury's own revenue that had remained in Govan Mbeki Local Municipality (R21 million) and funds from slow moving programmes during the 2013/14 financial year (R30 million), were explored to source the funds to pay for the event. The four options were added together to get a total of R70 018 000.00.

7. REMEDIAL ACTION

In light of the above, and having taken into account evidence before me, the fact that honesty and integrity are paramount for the execution of duties by the Director-General of a Province and all the relevant facts before me, the appropriate remedial actions I am taking in terms of section 182(1)(c) of the Constitution are the following:
7.1 The Premier of the Mpumalanga Provincial Government must:

7.1.1 Inform the Premier of the KwaZulu-Natal of the outcome of my investigation and request him to take appropriate action against Dr Mkhize within fourteen (14) working days from the date of this report; and

7.2 The Director of Priority Crimes Investigation (DPCI) must:

7.2.1 Investigate any alleged criminal conduct against implicated parties for financial mismanagement in violation of the PFMA, specifically the incurring of R4, 5 Million additional expenses not supported by detailed documentation.

7.3 The Director General of Mpumalanga Provincial Government must ensure that:

7.3.1 The officials responsible for procurement of goods and services in the Office of the Mpumalanga Premier must, at least once annually, attend refresher training and/or workshops on Supply Chain Management, particularly relating to the deviations; and

7.3.2 Within 90 working days from the date of this report, conduct an investigation in order to determine total amount paid out to the other service providers.

8. MONITORING

8.1 The Head of Department of the Mpumalanga Provincial Treasury and the Director General of the Mpumalanga Provincial Government must, within fifteen (15) working days from the date of this Report, submit to my office their respective implementation plans indicating how the remedial actions referred to in paragraph 7 will be implemented.
8.2 I wish to bring to your attention that in line with the Constitutional Court judgement in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Other; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11, and in order to ensure the effectiveness of the Office of the Public Protector, the remedial actions prescribed in this Report are legally binding on the Premier and the Acting Director-General of Mpumalanga Province, unless they obtain a Court order directing otherwise.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 09/05/2019