
PUBLIC PROTECTOR SOUTH AFRICA

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Allegations of improper conduct and maladministration by the Eastern Cape Department of Health

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE Eastern Cape DEPARTMENT OF HEALTH RELATING TO THE PROCUREMENT OF CLEANING SERVICES FOR THE FRONTIER HOSPITAL IN QUEENSTOWN
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Executive Summary

(i) 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 (the Constitution), and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

(ii) The report relates to an investigation into allegations of improper conduct and maladministration by the Eastern Cape Department of Health (the Department) pertaining to the procurement of cleaning services for the Frontier Hospital, during the period 2007 to 2013.

(iii) The complaint was lodged on 10 January 2013 by Ms N C Jada (the Complainant), the owner of Velalanga Cleaning Services CC.

(iv) Based on an analysis of the complaint, the following issues were considered and investigated:

   (a) Whether the procurement by the Department of cleaning services during the period 2007 to 2013 for the Frontier Hospital was in accordance with the legislation and other prescripts regulating supply chain management; and if not

   (b) Whether the non-compliance was improper and constitutes maladministration.

(v) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Department, meetings with officials of the Department, analysis of the documents obtained during the investigation and application of the relevant laws and prescripts.

(vi) Having considered the evidence and information obtained during the investigation, the Public Protector makes the following findings:
(a) Regarding whether the procurement by the Department of cleaning services for Frontier Hospital during the period 2007 to 2013 was in accordance with the legislation and other prescripts regulating supply chain management.

(aa) The procurement by the Department of cleaning services for the Frontier Hospital during the period January 2009 to March 2013 was not in accordance with the legislation and other prescripts regulating supply chain management.

(b) Regarding whether non-compliance by the Department with the legislation and other prescripts regulating supply chain management was improper and constitutes maladministration

(aa) The allegation that the non-compliance by the Department with the legislation and other prescripts regulating supply chain management was improper and constitutes maladministration, is substantiated.

(bb) This failure by the Department 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.

(vii) The appropriate remedial action taken by the Public Protector in terms of section 182(1)(c) of the Constitution is the following:

(a) The Head of the Department to take urgent steps to ensure that:

(aa) The procurement process for goods and services by the Department is in compliance with the provisions of section 38(1) of the Public Finance Management Act, 1999 (PFMA), Sections 16A.3, 16A.5 and 16A.6 of the Treasury
Regulations and the Department’s Supply Chain Management Policy to ensure that

(bb) The department has an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective;

(cc) All employees of the Department dealing with supply chain management are properly qualified and trained to perform their functions; and

(dd) Disciplinary action for misconduct against employees violating the provisions of the PFMA, Treasury Regulations and the Department’s Supply Chain Management Policy is taken without delay.
1. INTRODUCTION

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

1.2. The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to:

1.2.1. The Member of the Executive Council of the Eastern Cape Provincial Government responsible for Health, Ms Helen Sauls-August; and

1.2.2. The Head of the Eastern Cape Department of Health, Dr T Mbengashe.

1.2.3. Copies of the report are also provided to Ms E S Tywabi, the Chief Executive Officer of the Frontier Hospital (the CEO) and Ms N C Jada, who lodged the complaint, to inform them of the outcome of my investigation.

1.3. The report relates to an investigation into allegations of improper conduct and maladministration by the Eastern Cape Department of Health (the Department) pertaining to the procurement of cleaning services for the Frontier Hospital during the period 2007 to 2013.
2. THE COMPLAINT

2.1 The complaint was lodged on 10 January 2013 by Ms N C Jada (the Complainant), the owner of Velalanga Cleaning Services CC.

2.2 It was investigated by the Eastern Cape Provincial Office of the Public Protector South Africa (PPSA).

2.3 The Complainant alleged that the CEO of Frontier Hospital in Queenstown awarded a three month contract for cleaning services to “a Nigerian national by the name of Joshua in 2006.” She further alleged that “the deal has been going on since then up until 2013 without any competitive bidding. At some point in 2007, she withdrew an award from a certain cleaning company and awarded it to Joshua.”

2.4 The Complainant further alleged that the prescribed supply chain management processes of the Department were not adhered to.

2.5 The essence of the complaint was that the procurement of cleaning services for the Frontier Hospital from 2007 to 2013 was improper and constitutes 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, advising the complainant regarding appropriate remedies, or any other means that may be expedient under the circumstances.

3.5 In 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 the 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”\(^2\).

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

3.7 The jurisdiction of the Public Protector to investigate this matter was not disputed by the parties.

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

\(^2\) Supra at para[73]
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.

4.2. Approach to the investigation

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

4.2.1.1. What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amounts to maladministration?
4.2.1.4 In the event of maladministration, what would it take to remedy the wrong or where appropriate, to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?
4.2.1.5 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 Department acted improperly in procuring cleaning services for the Frontier Hospital from 2007 to 2013.
4.2.1.6 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department or organ of state to prevent maladministration and prejudice.
4.2.1.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration.

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

4.3.1 Whether the procurement by the Department of cleaning services for the Frontier Hospital during the period 2007 to 2013 was in accordance with the legislation and other prescripts regulating supply chain management; and if not

4.3.2 Whether the non-compliance was improper and constitutes maladministration.

4.4 **The Key Sources of information**

4.4.1 **Documents**

4.4.1.1 A Memorandum from the CEO to the Head of the Department, dated 4 August 2007, under the heading: "Request for approval for a one year contract for cleaning services".

4.4.1.2 A letter, dated 30 November 2007 from the Manager: Supply Chain Management addressed to the CEO.

4.4.1.3 A letter from the Manager: Supply Chain Management to the CEO, dated 21 December 2007.

4.4.1.4 A Memorandum from the Chairperson of the Bid Adjudication Committee to the Senior Manager: Demand and Acquisition Management, dated 18 March 2009, under the heading: REQUEST FOR CANCELLATION OF BID NUMBER SCMU3-07/08-2093:
PROVISION OF CLEANING SERVICES AT FRONTIER HOSPITAL FOR A PERIOD OF 24 MONTHS.

4.4.1.5 Minutes of a Bid Adjudication Committee Meeting, held on 7 April 2009.

4.4.1.6 *Investigation Report: Alleged conflict of interests and irregular procurement procedures at Frontier Hospital*, issued by the Fraud Management Unit of the Department on 29 May 2017.

4.4.1.7 An undated *Report on Cleaning Services: Frontier Hospital*, issued by the Department.

4.4.1.8 Affidavit deposed by the CEO on 6 December 2016.

4.4.1.9 Affidavit deposed by Ms Julender Dyantyi, Assistant Director: Finance of the Department, on 1 December 2016.

4.4.1.10 Affidavit deposed by Mr Patrick Mashumi, Senior Manager: Contracts Management of the Department, on 26 May 2017.

4.4.1.11 Report on outsourced services by the CEO, submitted to the Public Protector, dated 21 April 2016.

4.4.2 **Meetings held**

4.4.2.1 Meeting with the Complainant on 16 September 2015.

4.4.2.2 Meeting with the CEO and Ms Gqabantshi of the Frontier Hospital on 16 September 2015.
4.4.3 Correspondence exchanged between the Public Protector and:

4.4.3.1 The CEO, dated 25 August 2015, 3 September 2015 and 11 February 2016; and

4.4.3.2 The Head of the Department, dated 22 March 2016, 23 May 2016 and 29 May 2017.

4.4.4 Legislation and other prescripts

4.4.4.2 The Public Protector Act No. 23 of 1994.
4.4.4.3 The Public Finance Management Act 1 of 1999.
4.4.4.4 Treasury Regulations, 2005.
4.4.4.5 The Supply Chain Management Policy of the Department.

4.4.5 Notice issued in terms of section 7(9) of the Public Protector Act

4.4.5.1 On 7 December 2018, a Notice in terms of section 7(9) of the Public Protector Act was issued, affording the Head of the Department an opportunity to respond to the evidence obtained during the investigation that implicates it. However, the Head of the Department failed to respond.

4.4.6 Case law considered

4.4.6.1 The Department of Public Works, Roads and Transport v Motshoso & Others,³

³ [2005] 10 BLR 957 (LC)
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 procurement by the Department of cleaning services for the Frontier Hospital during the period 2007 to 2013 was in accordance with the legislation and other prescripts regulating supply chain management.

Common cause or undisputed facts

5.1.1 In his response to the complaint, the Head of the Department, Dr T D Mbengashe, advised on 23 May 2016 that the Department would be instituting a forensic investigation “to understand the circumstances that led to the contract extensions beyond the original contract periods”.

5.1.2 The Head of the Department provided the PPSA with a copy of the forensic report on the investigation that was conducted by the Fraud Management Unit of the Department, on 26 May 2017.

5.1.3 The findings and recommendations of the Fraud Management Unit were submitted to the General Manager of the Office of the Head of the Department, on 26 May 2017. The Head of the Department approved the report on 29 May 2017.

5.1.4 The Fraud Management Unit reported that the Department could not provide all the procurement documents in respect of cleaning services contracts that were awarded from February 2007 to March 2013 by Frontier Hospital.

5.1.5 However, the Fraud Management Unit obtained affidavits from CEO, Ms J Dyantyi, an Assistant Director who was previously employed as an Administrative Assistant at the Frontier Hospital, and Mr P Mashumi, Senior Manager: Contracts of the
Department. Copies of these affidavits were obtained and considered during the investigation.

5.1.6 It is not in dispute that cleaning services for the Frontier Hospital were procured by the Department, as follows:

<table>
<thead>
<tr>
<th>Duration</th>
<th>Date</th>
<th>Awarded to</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 months bid</td>
<td>February 2007 to</td>
<td>Perfumes and General</td>
</tr>
<tr>
<td></td>
<td>April 2007</td>
<td></td>
</tr>
<tr>
<td>3 months bid</td>
<td>May 2007 to July</td>
<td>Velalanga</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td></td>
</tr>
<tr>
<td>3 months bid</td>
<td>August 2007 to</td>
<td>Perfumes and General</td>
</tr>
<tr>
<td></td>
<td>October 2007</td>
<td></td>
</tr>
<tr>
<td>4 months bid</td>
<td>November 2007 to</td>
<td>Perfumes and General</td>
</tr>
<tr>
<td></td>
<td>February 2008</td>
<td></td>
</tr>
<tr>
<td>3 months bid</td>
<td>April 2008 to June</td>
<td>Perfumes and General</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td></td>
</tr>
<tr>
<td>3 months bid</td>
<td>July 2008 to</td>
<td>Perfumes and General</td>
</tr>
<tr>
<td></td>
<td>September 2008</td>
<td></td>
</tr>
<tr>
<td>3 months bid</td>
<td>October 2008 to</td>
<td>Perfumes and General</td>
</tr>
<tr>
<td></td>
<td>December 2008</td>
<td></td>
</tr>
<tr>
<td>Monthly extensions</td>
<td>January 2009 to</td>
<td>Perfumes and General</td>
</tr>
<tr>
<td></td>
<td>March 2013 (more</td>
<td></td>
</tr>
<tr>
<td></td>
<td>than four years)</td>
<td></td>
</tr>
</tbody>
</table>

*Issues in dispute*

5.1.7 In her affidavit deposed on 6 December 2016, the CEO stated that she was appointed as CEO of Frontier Hospital on 1 September 2006. On her arrival, the appointed cleaning company on site was *Superclean.*
5.1.8 On expiry of Superclean’s contract, a bid for a three month contract for cleaning services was advertised for the period May 2007 to July 2007 and was awarded to Velalalanga Cleaning Services.

5.1.9 Subsequently, three month contracts were awarded to Perfumes and General.

5.1.10 The CEO submitted a Memorandum to the Head of the Department on 4 August 2007, requesting approval of a one year contract as the three months contracts were "too much of an administrative burden."

5.1.11 The Memorandum recommended that: "...approval be granted for a one year contract for cleaning services from November 2007 to October 2008."

5.1.12 The Memorandum was approved on 17 August 2007. However, according to the CEO, "there were numerous challenges in the process of advertising and awarding the contract which was initiated by the Supply Chain Management at Head Office."

5.1.13 In a letter dated 30 November 2007 addressed to the CEO, the Manager: Supply Chain Management advised her to obtain a quotation for a short period for cleaning services as the Bid Adjudication Committee would be considering the bid for cleaning services shortly.

5.1.14 The CEO further stated that the bid specification in respect of cleaning services at the Frontier Hospital was amended in March 2009. This resulted in the cancellation of the previous bid and the advertising of a new bid, which was again awarded to Perfume and General. She further explained that:

"We (the Department) then continued extending the contract of Perfume and General on month to month basis until the (new) contract was awarded on the 1st of April 2013."
5.1.15 In a Memorandum to the Senior Manager: Demand and Acquisition Management dated 18 March 2009, the Chairperson of the Bid Adjudication Committee requested the cancellation of the bid for the provisioning of cleaning services at the Frontier Hospital for a period of 24 months. The Memorandum stated that the Frontier Hospital had requested the Supply Chain Management Unit to advertise the bid, which was done on 21 October 2008. However, after the budget allocation for 2009/2010 was made, the Frontier Hospital requested that the bid be cancelled as there was a shortfall and the hospital management wanted to amend the specification in order to cut costs.

5.1.16 This request was approved.

5.1.17 In a report that she provided to the PPSA during the investigation, dated 21 April 2016, the CEO stated that at the time when the contract was extended, the monthly payment for cleaning services amounted to R307 536.00.

5.1.18 Ms Julender Dyantyi, Assistant Director of the Department also deposed an affidavit in connection with this matter on 1 December 2016, stating that during the period under investigation she was employed as an Administrative Assistant at the Frontier Hospital.

5.1.19 According to her, the bid for the period February 2007 to April 2007 was advertised and properly awarded to Perfume and General. When the contract expired the same process was followed in respect of the next three months and the contract was then awarded to Velalanga.

5.1.20 Ms Dyantyi further stated that “the work was advertised every three months and due processes were followed. The company Perfume and General was being awarded the contracts. In June 2008, there was an advertisement for cleaning contract for Frontier Hospital through Supply Chain in Bhisho for a period of three years. In January 2009, our office received correspondence from Bhisho that our cleaning contract will be costly for the department and therefore it is cancelled”.

16
5.1.21 According to Ms Dyantyi, the Frontier Hospital then received a directive from Mr Mashumi of Contract Management that they should continue with “cleaning and security on a month to month basis until further directive” (emphasis added). The Hospital followed this directive from January 2009 to February 2013. She explained in this regard that: “the reasons why we did not advertise the contract from January 2009 till March 2013, was that we were promised by the supply chain management in Bisho that the process of awarding the contract is underway. My office was given the impression that the process will be finalized soon”.

5.1.22 She further stated that a three year contract was eventually awarded to a different service provider, on 1 April 2013.

5.1.23 Mr Mashumi, Senior Manager: Contract Management of the Department confirmed in his affidavit, dated 26 May 2017, that “during the 2009 financial year, the department was busy with the advertising, adjudication and awarding of the security and cleaning tenders across the province. The Frontier Hospital was one of the Regional Hospitals that were going to be allocated service providers in that sphere”.

5.1.24 According to Mr Mashumi, the CEO of the Frontier Hospital was authorized by the Department to extend the contract of the service provider for cleaning services.

5.1.25 It was noted that the Fraud Management Unit concluded that the CEO was authorised by the Department to extend the contract that was awarded to Perfume and General on a month to month basis.

5.1.26 It further concluded that the extension of the contract was allowed because of capacity constraints that hampered the Department to enter into longer term contracts with service providers at the time.
5.1.27 The report of the Fraud Management Unit recommended that no action be taken against the CEO for the irregular procurement procedures that were followed in relation to the contracts for cleaning services that were awarded to Perfume and General.

5.1.28 It was also recommended that, going forward, the Department should commence with the procurement process for contracts timeously to avoid extension of contracts beyond their original period.

*Application of relevant law*

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

5.1.30 Section 38(1) of the Public Finance Management Act, 1999 (PFMA) provides that the accounting officer for a department must ensure that the department has and maintains an appropriate procurement provisioning system which is fair, equitable, transparent, competitive and cost effective.

5.1.31 The accounting officer of a department may, in terms of section 44(1) of the PFMA delegate any of the powers entrusted to him/her by the Act to an official. However section 44(2) (d) provides that such delegation does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

5.1.32 Treasury Regulation 16A.3.1 of the Treasury Regulations obliges the accounting officer of a department to develop and implement an effective and efficient supply chain management system for the acquisition of goods and services. This system must be fair, equitable, transparent, competitive and cost effective.
5.1.33 The Supply Chain Management policy of the Department provides that the procurement of goods and services from R30 000, but not exceeding R500 000 must be done by means of three written quotations. Procurement of goods and services with a value of more than R500 000 has to be done in terms of a competitive bidding process.

5.1.34 There is no provision in the Supply Chain Management Policy of the Department in terms of which a short term contract could be extended on a month to month basis for an indefinite period, or as in this case for a period of more than four years.

**Conclusion**

5.1.35 The Department failed go out on tender for the procurement of cleaning services at the Frontier Hospital when the contract that was awarded in October 2008 expired, despite having been requested by the CEO, to do so.

5.1.36 It allowed the contract that was awarded in October 2008 to be continuously extended on a month to month basis for a period of more than four years, until February 2013, which is in contravention of 16A.8.3 of the Treasury Regulations.

5.1.37 It also resulted in an abuse of the supply chain management system as the value of a contract of more than a month exceeded R500 000 and the procurement thereof had to follow an open bidding process.

5.1.38 The procurement process was not transparent, competitive and cost effective as other prospective service providers could not compete for the service contract.

5.1.39 The Department therefore acted in violation of section 217 of the Constitution and section 38(1) of the PFMA.
5.1.40 The conduct of the Department was also in violation or Treasury Regulation 16A3 and the Department's Supply Chain Management Policy.

5.1.41 The Head of the Department who was the Accounting Officer at the time has left the Department. The current Head of the Department was appointed in 2013, after a new long term contract for the provision of cleaning services was awarded to a different service provider.

5.1.42 It is trite that disciplinary action against any official must be taken within a reasonable time. In the case of the *Department of Public Works, Roads and Transport v Motshosoa & Others*, for example, the Court found unconscionable and unfair a three year delay in instituting disciplinary action against an employee.

5.1.43 In this matter, the delay is a period of between five and ten years and some of the senior officials who may have given instructions or made certain approvals may have left the employ of the Department. However, if they are still in the employ of the Public Service, the Department should request the HoDs or Accounting Officers to take disciplinary action against them if there is a need to do so.

5.1.44 Furthermore, it was clear from the investigation that a large number of documents are missing. The Head of Department should in terms of section 40 (1)(a) take appropriate steps to keep full and proper records of the financial affairs of the department.

5.1.45 A further reason for the holding of the disciplinary hearings within a reasonable time is that the employer may be deemed to have waived its right to dismiss for the alleged transgression.

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4 [2005] 10 BLLR 957 (LC)
5 Union of Municipal Workers and Another v Stadsraad van Pretoria (1992) 13 ILJ 1563 (IC); Ranburg Town Council v National Union of Public Service Workers (1994) 15 ILJ 129 (LAC)
5.2 Regarding whether non-compliance by the Department with the legislation and other prescripts regulating supply chain management was improper and constitutes maladministration

Common Cause or undisputed facts

5.2.1 It is not disputed that the Department continuously extended the contract for the provision of cleaning services at the Frontier Hospital from January 2009 to March 2013, on a month to month basis.

Application of the relevant law

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

5.2.3 Section 38(1) of the Public Finance Management Act, 1999 (PFMA) provides that the accounting officer for a department must ensure that the department has and maintains an appropriate procurement provisioning system which is fair, equitable, transparent, competitive and cost effective.

5.2.4 Regulation 16A3 of the Treasury Regulations obliges the accounting officer of a department to develop and implement an effective and efficient supply chain management system for the acquisition of goods and services. This system must be fair, equitable, transparent, competitive and cost effective.

5.2.5 The Supply Chain Management Policy of the Department provides that the procurement of goods and services from R30 000, but not exceeding R500 000, must be done by means of three written quotations. Procurement of goods and services
with a value of more than R500 000 has to be done in terms of a competitive bidding process.

5.2.6 There is no provision in the Supply Chain Management Policy of the Department in terms of which a short term contract could be extended on a month to month basis for an indefinite period, or as in this case for a period more than four years.

Conclusion

5.2.7 By continuously extending the contract of Perfumes and General for the provisioning of cleaning services at the Frontier Hospital for a period of more than three years, the Department acted in violation of the provisions of section 217 of the Constitution, section 38(1) of the PFMA, Treasury Regulation 16A3 and the Department’s Supply Chain Management Policy.

5.2.8 The non-compliance by the Department was improper and constitutes maladministration.

6 FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

6.1 Regarding whether the procurement by the Department of cleaning services for the Frontier Hospital during the period 2007 to 2013 was in accordance with the legislation and other prescripts regulating supply chain management.
6.1.1 The procurement by the Department of cleaning services for the Frontier Hospital during the period January 2009 to March 2013 was not in accordance with the legislation and other prescripts regulating supply chain management.

6.2 Regarding whether non-compliance by the Department with the legislation and other prescripts regulating supply chain management was improper and constitutes maladministration

6.2.1 The allegation that non-compliance by the Department with the legislation and other prescripts regulating supply chain management was improper and constitutes maladministration, is substantiated.

6.2.2 This failure by the Department 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.

7. REMEDIAL ACTION

7.1 The Head of the Department to take urgent steps to ensure that:

7.1.1 The procurement process for goods and services by the Department is in compliance with the provisions of section 38 the PFMA and sections 16A.3,16A.5 and 16A.6 of the Treasury Regulations and the Departments Supply Chain Management Policy to ensure that

7.1.2 The Department has an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective;

7.1.3 All employees of the Department dealing with supply chain management are properly qualified and trained to perform their functions; and
7.1.4 Disciplinary action for misconduct against employees violating the provisions the PFMA, Treasury Regulations and the Department's Supply Chain Management Policy is taken without delay.

8. MONITORING

8.1 The Head of the Department to submit an action plan within 30 days of the date of this report, indicating how the remedial action referred to in paragraph 7.1 above is being implemented.

ADV BUSISWE MKHWEBANE
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 15/03/2019