REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, IMPROPER CONDUCT AND IRREGULAR EXPENDITURE IN CONNECTION WITH THE APPOINTMENT OF GUARANTEE TRUST CORPORATE SUPPORT SERVICES (PTY) LIMITED TO PROVIDE SERVICES ON BEHALF OF THE FINANCE AND ACCOUNTING SERVICES SECTOR EDUCATION AND TRAINING AUTHORITY
## INDEX

**Executive Summary**

1. **INTRODUCTION**

2. **THE COMPLAINT**

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

4. **THE INVESTIGATION**

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

6. **OBSERVATIONS**

7. **FINDINGS**

7. **REMEDIAL ACTION**

8. **MONITORING**
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 Act, [Act No. 108 of 1996] (the Constitution) and published in terms of section 8(1) of the Public Protector Act, [Act No. 23 of 1994] (the Public Protector Act).

(ii) The report communicates the findings and appropriate remedial action that I am taking in terms of the provisions of section 182(1)(c) of the Constitution, 1996 following an investigation into allegations of maladministration, improper conduct, as well as irregular expenditure in connection with the appointment of Guarantee Trust Corporate Support Services (Pty) Limited (GTCSS) to provide services on behalf of the Finance and Accounting Services Sector Education and Training Authority (FASSET).

(iii) The investigation originates from a complaint lodged by Mr John Paul Ongeso of Tshisevhe Gwina Ratshimbilani Incorporated Attorneys (TGR Inc.) on behalf of the former Chairperson of FASSET's Board of Directors, Mr Shahied Daniels (Mr Daniels) on 16 February 2017, in connection with allegations of irregularities in the procurement of the services of GTCSS and payments made in connection therewith.

(iv) Mr Daniels based his complaint on the findings and recommendations made in the Ligwa Advisory Services (Ligwa) Forensic Investigation Report published on 22 August 2016, following an investigation into allegations of possible irregular expenditure relating to contracts awarded to GTCSS for the period of 2005 to 2016.
(v) In his complaint, Mr Daniels requested the office to investigate whether there were any irregularities in connection with the procurement of the services of GTCSS, whether GTCSS was unlawfully enriched as a consequence of maladministration on the part of senior officials of the FASSET relating to Bonani contracts awarded during the period of 2005 to 2016, and whether these senior officials received gratification from GTCSS.

(vi) Based on the analysis of the complaint and the allegations contained therein, the following issues were identified to inform and focus the investigation:

(a) Whether there were any irregularities in the extension of contract awarded to GTCSS, and if so, whether the extension thereof constituted maladministration and improper conduct;

(vii) The investigation process included correspondence and the exchange of documentation between the Public Protector and the former Chairman of the FASSET’s Board of Directors, Mr Shahied Daniels, the current Chief Executive Officer of FASSET, Ms Ayanda Mafuleka, the Human Resource Manager of FASSET, Mr Thokozani Nongauza, as well as the Chief Operating Officer of FASSET, Ms Elizabeth Thobejane.

(viii) Correspondence issued in terms of the provisions of section 7(4)(a) of the Public Protector, 1994, calling for a response to the allegations, as well as documentation pertinent to the investigation was issued to the former Acting Chief Executive Officer (ACEO) of the FASSET, Ms Lesego Lebuso (Ms Lebuso), however, for reasons unknown, the request was not complied with. Consequently, supplementary letters were issued to the Chief Executive Officer (CEO) of the FASSET and the Chief Operations Officer (COO), Ms Ayanda Mafuleka and Ms Elizabeth Thobejane respectively.
(ix) All relevant documents and correspondence were obtained and analysed, in particular a forensic investigation report following an investigation conducted by Ligwa, as well as contracts entered into between FASSET and GTCSS, and other information obtained were analysed. Relevant laws, policies and related prescripts were also considered and applied throughout the preliminary investigation.

(x) Key laws and policies taken into account to determine if there had been maladministration or improper conduct on the part of the FASSET were principally those imposing administrative standards that should have been complied with by the FASSET and/or its employees when dealing with the appointment of service providers to render services on its behalf. Those are the following:

(a) **The Constitution, 1996** which is the supreme law of the Republic. Section 1(c) thereof provides that “the Republic of South Africa is one, sovereign, democratic state founded on the supremacy of the Constitution and the rule of law”.

(aa) Section 2 of the Constitution, 1996 which provides that “the Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled”.

(bb) Section 182(1)(a) to (c) of the Constitution, 1996, which provides that “the Public Protector has the power, as regulated by national legislation 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; to report on that conduct; and to take appropriate remedial action”.

5
(cc) Section 217 of the Constitution, 1996, which is the basis upon which all procurement practices within the public sector are developed. The Constitution demands that when an organ of state contracts for goods and services it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

(b) The Public Protector Act, 1994 which gives effect to the provisions of section 182(1)(a) to (c) of the Constitution, 1996. Section 6(4)(a)(i) of the Public Protector Act, 1994 provides that “the Public Protector shall be competent to investigate, on his or her own initiative or receipt of a complaint, any alleged maladministration in connection with the affairs of government at any level”.

(aa) Section 6(9) of the Public Protector Act, 1994, which provides that “except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned”.

(c) The National Skills Development Act No. 97 of 1998, which provides that the SETA must be managed in accordance with the Public Finance Management Act, 1999.

(d) The Public Finance Management Act No. 1 of 1999, which is the key instrument regulating procurement in the public sector, the purpose of which is set out in the preamble to the Act, which reads as follows:

“To regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith.”
(aa) Section 56(a) and (b) of the PFMA, 1999 provides that "The accounting authority of a public entity may in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity; or instruct an official in that public entity to perform any of the duties assigned to the accounting authority in terms of this Act."

(bb) Section 57(b) of the PFMA, 1999 provides that "An official in a public entity is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility".

(cc) In addition, section 57(c) of the PFMA, 1999 provides that "An official in a public entity must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due."

(dd) Section 83(3) of the PFMA, 1999 which provides that "An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that public official wilfully or negligently fails to exercise that power or perform that duty."

(ee) Section 85(1)(a) of the PFMA, 1999 which provides that "The Minister must make regulations prescribing the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury, the relevant provincial and the Auditor-General, including particulars of the alleged financial misconduct and the steps taken in connection with such financial misconduct."
(e) The National Treasury Regulations of 15 March 2005; which advocates for a supply chain management system which is fair, equitable, transparent, competitive and cost effective and be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000); (c) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

(f) The National Treasury Practice Note No. 8 of 2007/2009; which seeks to regulate the threshold values within which accounting officers or authorities may procure goods, works and services by means of petty cash, verbal or written price quotations or competitive bids.

(g) The FASSET' Supply Chain Management Policy of October 2013 (FASSET SCM Policy), which provides for the efficient, effective and uniform planning for and procurement of all services and goods required for the proper functioning of FASSET, that conforms to constitutional and legislative principles whilst developing, supporting and promoting black economic empowerment, and local production and content for the applicable designated sectors.

(xi) Having considered the evidence obtained during the investigation weighed against the relevant regulatory framework as well as the complaint received when weighed against the standard that was expected to be upheld by the FASSET and/or its employees, I now make the following findings:

(a) Regarding whether there were any irregularities in the extension of contract awarded to GTCSS and if so, whether the extension thereof constituted maladministration and improper conduct;

(aa) The allegation that there were irregularities in the extension of a contract awarded to GTCSS to provide various bridging programmes aimed at Diplomates and Graduates (preferably in Commerce) which would lead to placement in employment or learnerships or internship, is substantiated.
(bb) In terms of section 56(a) and (b) of the PFMA, 1999 read with paragraph 7.2.2 of FASSET's SCM Policy of 2013, the accounting authority of a public entity may in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity; or instruct an official in that public entity to perform any of the duties assigned to the accounting authority in terms of this Act.

(cc) Furthermore, section 57(c) of the PFMA, 1999 read with paragraph 6.2.2 of FASSET' SCM Policy of 2013, provides that it is the responsibility of an official of a public entity to ensure that that public entity utilises its finances and other resources in an effective, efficient, economical and transparent manner, as well as to take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure.

(dd) According to the information obtained during the investigation, Ms Cheryl James (Ms James) was delegated by the FASSET accounting authority to establish and implement Supply Chain Management (SCM) procurement processes within the FASSET.

(ee) Her responsibilities, included but were not limited to, ensuring that when procuring goods and/or services with a monetary value exceeding R500 000.00, a competitive bidding process must be followed in line with provisions of section 217 of the Constitution, 1996 read with Paragraph 3.4.1 of the National Treasury Practice Note No. 8 of 2007/2008 and Paragraph 16.6 of FASSET's SCM Policy of 2013.

(ff) It was established during the investigation that, on 23 May 2014, FASSET published an advertisement, on its corporate website, bearing reference FAS/TL/PD/BP/CON0601/Y15, as well as in the Government Tender Bulletin on an even date and with a closing date set for 27 August 2014.
(gg) The purpose of the advertisement was to invite suitably qualified service provider(s) located in South Africa to submit bids to provide bridging programmes on National Qualification Framework (NQF) Level 4 and 5, aimed at Diplomates and Graduates (preferably in Commerce) who were on NQF Levels 6 to 7. Further thereto, it was expected that the programme would lead to placement in employment, learnerships or internships.

(hh) It was established that, following the evaluation process, the Bid Evaluation Committee (BEC) recommended to the Board Procurement Committee (BPC) that the contract should be awarded to all six (6) bidders who qualified based on the total marks awarded for pricing and Broad Based Black Economic Empowerment (B-BBEE) status and further that the remaining balance amounting to R7 510 109.24, should be allocated to the bidder who scored the highest points for price and functionality.

(ii) In addition, it was established that on 25 November 2014, following the resolution by the BPC to appoint GTCSS, the BPC held a meeting in which the utilisation of the remaining balance of R7 510 109.00 originating from the initial budget of R84 952 845.00, allocated for tender number FAS/TL/PD/BP/CON0601/Y15 was discussed.

(jj) The evidence indicates that, the BPC took a decision (with reservations) to expand the GTCSS project by making available additional funding on the following conditions:-

(a) That the extension of the tender was appropriate and in line with the SCM framework;

(b) Is rolled out to rural areas in partnership with emerging Black African service providers; and
(c) That GTCSS provides the full information of the delivery partner, a breakdown of the fee to be paid to the delivery partner and the portion to be retained by GTCSS and an upskilling schedule on a six-month intervals (sic).

(kk) I have established that following the assurance by Ms James that the extension was appropriate and in line with the SCM framework, the BPC approved the expansion of a contract to the value of R7 470 000.00, under reference number FAS/TI/AD/PD/BC/CON0601/Y15, and awarded same to GTCSS to provide bridging programmes on NQF level 4 and 5, aimed at Diplomates and graduates (preferably in commerce) who were on NQF levels 6 in the 2015/2016.

(ll) I could not find evidence indicating that an investigation into whether the extension of a tender awarded to GTCSS was in line with legislation and prescripts regulating procurement in the public service was ever conducted, following a resolution taken by the BPC in a meeting held on 25 November 2014, in connection with the extension of the GTCSS project, in order to give the Board the assurance that the award was conducted in accordance with SCM regulations.

(mm) Furthermore, I could not find any evidence indicating that it was impractical for FASSET, under the stewardship of Ms James as the custodian of the FASSET’s SCM Policy, to invite competitive bids to procure the required goods or services by any other means such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4.
The evidence further indicates that, following the failure by Ms James to ensure that competitive bids were invited in connection with the expansion of the contract awarded to GTCSS, with a view to exhausting the remaining balance of the initial budget of R84 952 845.00, allocated for the provision of various bridging programmes, in the 2015/2016 financial year the Auditor General South Africa (AGSA) made an adverse finding to the effect that the award or expansion of the contract awarded to GTCSS resulted in FASSET not complying with the provisions of section 51(1)(b)(ii) of the PFMA, 1999.

Therefore, the responsibility of ensuring that a public entity maintains an appropriate SCM system which is fair, equitable, transparent, competitive and cost-effective as envisaged in section 217(1) of the Constitution, 1996 read with the provisions of the PFMA, 1999, as well as National Treasury Regulations and Practice Notes resides with the accounting authority and/or a delegated official of such a public entity.

In the circumstances, I find that the extension of the contract awarded to GTCSS was inconsistent with a system which is fair, equitable, transparent, competitive and cost-effective, and thus constituted improper conduct as envisaged by section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged by section 6(4)(a)(i) of the Public Protector Act, 1994.

The appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying the maladministration and improper conduct referred to in this report is the following:
(a) **The Minister of Higher Education, Science and Technology to;**

(aa) Take cognisance of the findings on the irregularities identified in the report with a view to ensuring that the Accounting Authority of the FASSET considers the acts of maladministration and improper conduct referred to in this report to avoid a repeat of such occurrences;

(bb) Include in his oversight role over Sector Education and Training Authorities (SETA’s), in particular in relation to FASSET, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of the powers conferred under section 182(2)(c) of the Constitution, 1996.

(b) **The Accounting Authority of the FASSET to;**

(aa) Take cognisance of the findings on the improprieties identified in the report and ensure that such conduct is not repeated and appropriate corrective action is taken to prevent the recurrence of the improprieties referred to in the report;

(bb) Consider evaluating the effectiveness of FASSET’s internal controls on Supply Chain Management processes to identify deficiencies with a view to take corrective action to prevent a recurrence of the improprieties referred in the report.

(c) **The Chief Executive Officer of the FASSET to;**

(aa) Take cognisance of the findings of maladministration and improper conduct by the former CEO of the FASSET and ensure that such action is not repeated and appropriate corrective action is taken to prevent the improprieties identified in the report;
(bb) Consider strengthening the Supply Chain Management control environment by appointing suitably skilled and qualified heads of Supply Chain Management units where vacancies exist and with the assistance of the FASSET’s Human Resource Department, conduct regular training to improve skills;

(cc) Focus on preventing irregular expenditure and non-compliance and implement Supply Chain Management compliance checklists to supplement policies and procedures;

(dd) Make a follow-up with the National Treasury on an application for a condonation in connection with the identified financial misconduct and the steps taken in connection with such financial misconduct, as contemplated in section 54(1) of the PFMA.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, IMPROPER CONDUCT AND IRREGULAR EXPENDITURE IN CONNECTION WITH THE APPOINTMENT OF GUARANTEE TRUST CORPORATE SUPPORT SERVICES (PTY) LIMITED TO PROVIDE SERVICES ON BEHALF OF THE FINANCE AND ACCOUNTING SERVICES SECTOR EDUCATION AND TRAINING AUTHORITY

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

1.2. The report is submitted in terms of section 8 of the Public Protector Act to:

1.2.1. The Minister of Higher Education, Science and Technology, Mr. Bonginkosi Ntimande, MP;

1.2.2. The Chairperson of FASSET’s Board of Directors, Mr. Njabulo Ngwenya;

1.2.3. The Chief Executive Officer of the FASSET, Ms. Ayanda Mafuleka;

1.2.4. The former Chief Executive Officer of the FASSET, Ms. Cheryl James.

1.2.5. A copy of the report is also provided to the Complainant, Mr. Shahied Daniels to inform him about the outcome of the investigation.

1.3. The report communicates my findings and appropriate remedial action that I am taking in terms of the provisions of section 182(1)(c) of the Constitution, following an investigation into allegations of maladministration, improper conduct, as well as irregular expenditure in connection with the appointment of Guarantee Trust Corporate Support Services (Pty) Limited (GTCSS) to provide services on behalf of the Finance and Accounting Services Sector Education and Training Authority (FASSET).
2. **THE COMPLAINT**

2.1. The investigation originates from a complaint lodged by Mr John Paul Ongezo of *Tshisevhe Gwina Ratshimbilani Incorporated Attorneys* (TGR Inc.) on behalf of the former Chairperson of FASSET's Board of Directors, Mr Shahied Daniels (Mr Daniels) on 16 February 2017, in connection with allegations of irregularities in the procurement of the services of GTCSS and payments made in connection therewith.

2.2. Mr Daniels based his complaint on the findings and recommendations made in the Ligwa Advisory Services (Ligwa) Forensic Investigation Report published on 22 August 2016, following an investigation into allegations of possible irregular expenditure relating to contracts awarded to GTCSS for the period 2005 to 2016.

2.3. In his complaint, he requested the office to investigate whether there were any irregularities in connection with the procurement of the services of GTCSS, whether GTCSS was unlawfully enriched as a consequence of maladministration on the part of senior officials of the FASSET relating to Bonani contracts awarded during the period of 2005 to 2016, and whether these senior officials received gratification from GTCSS.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

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

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

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

¹[2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
²Supra at para [73].
3.6 In the above-mentioned constitutional matter, Mogoeng CJ, stated the following, when confirming the powers of the Public Protector:

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

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

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

3.6.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (Paragraph 69);

3.6.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (Paragraph 70);

3.6.6 The Public Protector's power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (Paragraph 71);
3.6.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in 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 the power that is by its nature of no consequence [Paragraph 71(a)];

3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation [Paragraph 71(d)]; and

3.6.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case [Paragraph 71(e)].

3.7 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:

3.7.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (paragraph 71);

3.7.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question (paragraph 82);

3.7.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (paragraph 100 and 101):

(a) Conduct an investigation;

19
(b) Report on that conduct; and
(c) To take remedial action.

3.7.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings (paragraph 104);

3.7.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (Paragraph 105 o);

3.7.6 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector’s observations constitute *prima facie* findings that point to serious misconduct (paragraph 107 and 108); and

3.7.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112).

3.8 FASSET 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.

3.9 The jurisdiction of the Public Protector to investigate this matter was not disputed by 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 relating to allegations of 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 amount to improper conduct or
maladministration?

4.2.1.4. In the event of improper conduct or 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?

4.2.2. The question regarding what happened is resolved through a factual enquiry
relying on the evidence provided by the parties and independently sourced
during the investigation. In this particular case, the factual enquiry principally
focused on whether or not proper procurement processes were adhered to by
the FASSET when extending a service contract awarded to GTCSS to provide
various bridging programmes aimed at Graduates (preferably in Commerce)
which would lead to placement in employment, learnerships or internships and
the payments in connection therewith.

4.2.3. The enquiry regarding what should have happened, focuses on the law or rules
that regulate the standard that should have been met by the FASSET and/or its
employees to prevent maladministration and improper conduct.
4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing consequences of the improper conduct or maladministration.

4.3. Based on the analysis of the complaint the following issue was identified to inform and focus the investigation

4.3.1. Whether there were any irregularities in the extension of contract awarded to GTCSS, and if not so, whether the extension thereof constituted maladministration and improper conduct.

4.4. The Key Sources of information

4.4.1. Documents

4.4.1.1. Copies of the Complainants' claim documents;

4.4.1.2. A copy of Ligwa Consulting Service's Forensic Investigation Report issued on 22 August 2016;

4.4.1.3. Copy of the Bid Evaluation Committee meeting dated 21 October 2014, in connection with the award of tender number FAS/TL/PD/BP/CON0601/Y15;

4.4.1.4. A copy of the Board Procurement Committee dated 25 November 2014, in connection with the approval of an extension of tender number FAS/TL/PD/BP/CON0601/Y15;

4.4.2. Correspondence sent and received

4.4.2.1. A copy of the Public Protector's letter dated 30 May 2017 addressed to the Acting Chief Executive Officer of the FASSET, Ms Lebuso;
4.4.2.2. A copy of the Public Protector’s letter dated 6 March 2019 addressed to the Chief Operations Officer of FASSET, Ms Elizabeth Thobejane;

4.4.2.3. A copy of Ms Elizabeth Thobejane’s response letter dated 16 April 2019;

4.4.2.4. A copy of FASSET’s CEO, Ms Ayanda Mafuleka letter dated 20 March 2019 addressed to Mr Willie Mathebula in the Office of the Chief Procurement Officer at National Treasury;

4.4.2.5. A copy of a response from Ms Cheryl James to a section 7(9)(a) Notice issued by the Public dated 14 September 2019;

4.4.3. **Websites consulted/ electronic sources**

4.4.3.1. [www.treasury.gov.za](http://www.treasury.gov.za);
4.4.3.2. [www.dhet.gov.za](http://www.dhet.gov.za);
4.4.3.3. [www.publicprotector.org](http://www.publicprotector.org);
4.4.3.4. [www.fasset.org.za](http://www.fasset.org.za);
4.4.3.5. [www.guaranteetrust.co.za](http://www.guaranteetrust.co.za);

4.4.4. **Legislation and other prescripts**

4.4.5. The Constitution of the Republic of South Africa, 1996;
4.4.6. The Public Protector Act, 1994 (Act 23 of 1994);
4.4.7. The Public Finance Management Act (Act 1 of 1999);
4.4.9. The National Treasury Regulations of 15 March 2005;
4.4.10. The National Treasury Practice Note No. 8 of 2007/2009; and
4.4.12. **Case law**

4.4.12.1. *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT143/15; CCT171/15) [2016] ZACC 11; (2016) (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016);

4.4.12.2. *Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)*

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. Whether there were any irregularities in the extension of contract awarded to GTCSS, and if so, whether the extension thereof constituted maladministration and improper conduct;

**Issues that are Common Cause**

5.1.1. Ms Cheryl James was appointed by the FASSET as its CEO on 1 May 2000, until she and the employer amicably concluded a Retrenchment Agreement on 24 August 2017, following the employer instituting disciplinary proceedings against her in connection with allegations of gross dishonesty and/or gross dereliction of duty and financial misconduct.
5.1.2. It is also not disputed that during the period of 2006 to 2016, under the stewardship of Ms. Cheryl James and as the custodian of FASSET SCM Policy, FASSET appointed GTCSS to provide various bridging programmes aimed at Graduates, which would lead to placement in employment, learnerships or internships.

**Issues in Dispute**

5.1.3. The issue for my determination was whether the extension of contract number FAS/TL/PD/BP/CON0601/Y15, awarded to GTCSS to provide various bridging programmes aimed at Graduates which would lead to placement in employment, learnerships or internships and the payments in connection therewith, were in accordance with legislative prescripts regulating procurement of goods and services applicable to FASSET, and if so, whether the extension thereof constituted maladministration or improper conduct.

5.1.4. Mr Daniels based his complaint on the findings made in the Ligwa Forensic Investigation Report published on 22 August 2016, following an investigation into FASSET’s procurement processes and contractual relationship with GTCSS. Further thereto, he stated that the findings made in the report demonstrated maladministration and improper conduct on the part of certain members of senior management, as well as unlawful enrichment of GTCSS.

5.1.5. On 30 May 2017, a document request letter was issued to the Acting Chief Executive Officer of the FASSET, Ms Lebuso, requesting the submission of documentation and information pertinent to the investigation, as well as a response to allegations made by the Complainant. However, for reasons unknown, the request was not complied with.
5.1.6. Consequently, supplementary letters were issued to the Chief Operations Officer (COO) of FASSET, Ms Elizabeth Thobejane and the Chief Executive Officer (CEO) of FASSET and Ms Ayanda Mafuleka on 6 March 2019 and 17 May 2019 respectively. On 16 April 2019, the COO responded to the request.

5.1.7. During the investigation, it was established that for the period of 2006 to 2016, thirteen (13) contracts were entered into between FASSET and GTCSS for the provision of, amongst others, learner registration, training, facilitation of bridging programmes and the placement of graduates or trainees into employment programmes. The table hereunder indicates the contracts and the total amount paid to GTCSS for the services rendered:-

<table>
<thead>
<tr>
<th>Contract</th>
<th>No of trainees</th>
<th>Contract Amount (R)</th>
<th>Average Cost per Learner (R)</th>
<th>Total Amount Paid (R)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TLO08</td>
<td>400</td>
<td>12 691 848,40</td>
<td>34 289,62</td>
<td>12 876 379,30</td>
</tr>
<tr>
<td>TL010</td>
<td>450</td>
<td>16 495 992,07</td>
<td>36 657,76</td>
<td>18 417 563,79</td>
</tr>
<tr>
<td>Amendment -31 Jan 2007 (NSF)</td>
<td>310</td>
<td>22 535 800,00</td>
<td>72 694,52</td>
<td></td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON011</td>
<td>500</td>
<td>23 103 280,00</td>
<td>46 206,58</td>
<td>23 254 627,68</td>
</tr>
<tr>
<td>Amendment -31 Jan 2007 (NSF)</td>
<td>500</td>
<td>24 435 272,00</td>
<td>48 870,54</td>
<td>32 595 606,46</td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON013/Y9</td>
<td>100</td>
<td>8 160 334,00</td>
<td>81 603,34</td>
<td></td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON014/Y10</td>
<td>460</td>
<td>25 804 092,00</td>
<td>56 095,85</td>
<td>28 818 952,65</td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON015/Y11</td>
<td>30</td>
<td>3 014 859,00</td>
<td>100 495,30</td>
<td></td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON016/Y12</td>
<td>400</td>
<td>23 247 868,00</td>
<td>58 199,67</td>
<td>23 247 867,64</td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON017/Y12</td>
<td>500</td>
<td>29 821 513,00</td>
<td>59 643,03</td>
<td>35 368 958,76</td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON018/Y13</td>
<td>100</td>
<td>3 519 477,51</td>
<td>55 194,78</td>
<td></td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON019/Y13</td>
<td>600</td>
<td>33 638 585,95</td>
<td>56 064,91</td>
<td>33 786 592,78</td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON020/Y13</td>
<td>100</td>
<td>5 281 223,00</td>
<td>52 812,21</td>
<td>5 281 223,31</td>
</tr>
<tr>
<td>FAS/TLPD/WRB/CON021/Y13</td>
<td>360</td>
<td>22 459 832,00</td>
<td>62 388,42</td>
<td>22 361 382,36</td>
</tr>
<tr>
<td>FAS/TLPD/FP/CON0601/Y15</td>
<td>1060</td>
<td>49 238 753,40</td>
<td>46 451,66</td>
<td>48 442 250,01</td>
</tr>
<tr>
<td>FAS/TLPD/FP/CON0716/Y16</td>
<td>1366</td>
<td>68 628 876,00</td>
<td>46 980,44</td>
<td>75 531 640,63</td>
</tr>
</tbody>
</table>

Guarantee Trust Holding Phase 4
NSF Loan Account
Total

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7236</td>
<td>370 077 123,33</td>
<td></td>
<td>920 606 896,97</td>
<td></td>
</tr>
</tbody>
</table>

5.1.8. In addition, it was established that, following the receipt of complaints by the FASSET, Ligwa was appointed to conduct a forensic investigation and it found that there existed overlapping contractual awards, duplication of costs, inconsistent contract payments and monitoring of deliverables in connection with some of the contracts entered into between the parties.
5.1.9. According to documentation received and analysed during the investigation, on 
23 May 2014, FASSET published an advertisement, on its corporate website, 
bearing reference FAS/TL/PD/BP/CON0601/Y15, as well as in the Government 
Tender Bulletin on an even date and with a closing date set for 27 August 2014.

5.1.10. The purpose of the advertisement was to invite suitably qualified service 
provider(s) located in South Africa to submit bids to provide bridging 
programmes on NQF Level 4 and 5, aimed at Diplomates and Graduates 
(preferably in Commerce) who were on NQF Levels 6 to 7. Further thereto, it 
was expected that the programme would lead to placement in employment, 
learnerships or internships.

5.1.11. According to the information received during the investigation, the following 
entities submitted bids in response to the advertisement:-

<table>
<thead>
<tr>
<th>No.</th>
<th>Entity Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>AA Strategy Consulting and Associates</td>
</tr>
<tr>
<td>2</td>
<td>EOH Abantu (Pty) Ltd</td>
</tr>
<tr>
<td>3</td>
<td>Foundation for Professional Development (Pty) Ltd</td>
</tr>
<tr>
<td>4</td>
<td>The Language Connection CC t/a Future Creation (Free State Province);</td>
</tr>
<tr>
<td>5</td>
<td>The Language Connection CC t/a Future Creation (Gauteng Province);</td>
</tr>
<tr>
<td>6</td>
<td>Grant Thornton PS Advisory (Pty) Ltd</td>
</tr>
<tr>
<td>7</td>
<td>Guarantee Trust Corporate Support Services (Pty) Ltd</td>
</tr>
<tr>
<td>8</td>
<td>Hedge Fund Training Academy CC</td>
</tr>
<tr>
<td>9</td>
<td>Hill Accounting Income Tax and Financial Services CC</td>
</tr>
<tr>
<td>10</td>
<td>Interactive Tutor (Pty) Ltd t/a Media Works</td>
</tr>
<tr>
<td>11</td>
<td>LH Education and ExecuPrime Joint Venture</td>
</tr>
<tr>
<td>12</td>
<td>Madiba Bay Accountancy Training (Pty) Ltd and the Nelson Mandela Metropolitan University</td>
</tr>
<tr>
<td>13</td>
<td>Milimo Training (Pty) Ltd (Financial Management);</td>
</tr>
<tr>
<td>14</td>
<td>Madiba Bay Accountancy Training (Pty) Ltd (Generic Management);</td>
</tr>
</tbody>
</table>
5.1.12. In response thereto, GTCSS submitted the following bid document with a view to be considered as a prospective service provider;

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENT OF THE PASSET

BID NUMBER: PAS/UBA/2019/2020/18, 27 August 2014

CLOSING TIME: 17:00

DESCRIPTION: Building Framework for Assessment in Entrepreneurship BDE-P.

VALIDITY: Other than the validity for 90 days from the closing date of this bid.

The successful bidder will be required to fill in and sign a written Contract Form.

BID DOCUMENTS MAY BE:

DEPOSITED IN THE BID/TENDER BOX SITUATED AT

(Please provide street address)

OR

*POSTED TO:

(Please provide P.O. Box and street address)

OR

HANDED IN AT RECEPTION SITUATED AT

(Please provide street address)

Passet, Block A, Building 3, Ground Floor, 299
Pendoring Road, Bellville, Bellville

The Opera Function Manager, Passet, P.O. Box
6501, Cape Town, 2110, South Africa

Passet, Block A, Building 3, Ground Floor, 299
Pendoring Road, Bellville, Bellville

No faxed or e-mailed bids will be accepted

Bidders should ensure that bids are delivered to Passet before the closing date and time to the correct physical address.

"Refer to Paragraph 6 of the "Bid Submission Conditions of Bid and Instructions".

☐ Bid can be delivered and deposited into the box/tender box between 09:00 and 16:30, Mondays to Thursdays and 09:00 to 12:00 on Fridays, prior to the closing date, and between 09:00 and 11:00 on the closing day.

☐ All bids must be submitted on the official forms (not to be re-typed).

☐ This bid is subject to the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations, 2011, the General Conditions of Contract (GCC) and, if applicable, any other Special Conditions of Contract.

☐ Bids submitted that do not comply with the following may not be considered for evaluation:

1.1 A bid that is not in the format prescribed.
1.2 A bid without any or all of the required documents.
1.3 Pricing schedules not in the prescribed format.
1.4 Bids without the required number of copies.

☐ Any queries regarding bidding procedures and technical information may be directed to:

Name: Tattle Lwp
Tel: 0000000000
Fax: 0000000000
E-Mail: Tattle.Lwp@passet.gov.za

Page 23
5.1.13. It was established that bidders were assessed in accordance with their compliance to the requirements set out in the bid document, as well as an arithmetical check of cost proposals and the following bidders were eliminated for non-compliance for the reasons indicated hereunder:
<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Bidder</th>
<th>Reason for elimination</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>AA Consulting and Associates</td>
<td>The programme proposed was not at the correct NQF level.</td>
</tr>
<tr>
<td>2</td>
<td>Grant Thornton</td>
<td>The provider is proposing to recruit TVET learners instead of graduates – incorrect NQF Level.</td>
</tr>
<tr>
<td>3</td>
<td>Hill Accounting Income Tax and Financial Services</td>
<td>Programme not Pivotal; accreditation not clear.</td>
</tr>
<tr>
<td>4</td>
<td>Milimo Training Pty Ltd (Financial Management)</td>
<td>The programme proposed was not at the correct NQF level.</td>
</tr>
<tr>
<td>5</td>
<td>Milimo Training Pty Ltd (Generic Management)</td>
<td>The programme proposed was not at the correct NQF level.</td>
</tr>
<tr>
<td>6</td>
<td>North West University</td>
<td>The programme proposed was not Pivotal.</td>
</tr>
<tr>
<td>7</td>
<td>Zilwa Associates</td>
<td>Provider not accredited.</td>
</tr>
</tbody>
</table>

5.1.14. The information also indicates that the Bid Evaluation Committee (BEC) comprising of Mr Amos Nokoane, Ms Marlie Spencer, Ms Molly Rabalo, Ms Romaana McKinnnon and Ms Tania Lee (Secretariat function) met on 1 October 2014, to evaluate the bids submitted.

5.1.15. According to the BEC minutes, the evaluation criteria applied to the bids was based on functionality, experience of prospective service provider, technical approach and/or methodology, recruitment strategy, selection strategy, placement strategy, risk management strategy monitoring and evaluation strategy, and capability of staff to be used.
5.1.16. The minutes of the BEC indicates that GTCSS, Future Creations (Free State), Future Creations (Gauteng Province), EOH Abantu (Pty) Limited, NMMU/MBAT, Hedge Fund Academy, LH Education and Interactive Tutor t/a Media Works were recommended for appointment following evaluation on functionality.

5.1.17. Hereunder a table indicating the scores awarded to the entities by the BEC based on the number of learners to be trained, proposed budget and cost per learner:-

<table>
<thead>
<tr>
<th>Bidder’s Name</th>
<th>Functionality Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Functionality Score</td>
</tr>
<tr>
<td>GTCSS</td>
<td>72,95%</td>
</tr>
<tr>
<td>Future Creations (FS)</td>
<td>71,70%</td>
</tr>
<tr>
<td>Future Creations (GP)</td>
<td>70,65%</td>
</tr>
<tr>
<td>EOH Abantu (Pty) Ltd</td>
<td>70,55</td>
</tr>
<tr>
<td>NMMU/MBAT</td>
<td>70,50</td>
</tr>
<tr>
<td>Hedge Fund Academy</td>
<td>70,30</td>
</tr>
<tr>
<td>LH Education</td>
<td>62,25</td>
</tr>
<tr>
<td>Interactive Tutor t/a Media Works</td>
<td>58,30</td>
</tr>
</tbody>
</table>

5.1.18. Furthermore, it was established that bidders were to provide a detailed breakdown of the total cost per learner per week for academic and/or bridging programme costs with a view to ensuring that the providers were evaluated on an equal basis. With regard to pricing, GTCSS submitted the following breakdown,
PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: 

OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID

| BID DESCRIPTION: | Fasset requires the services of one or more suitably qualified service providers who are located in South Africa, to provide Bridging Programmes on NQF level 4/5, aimed at Diplomates and/or Graduates (preferably Commerce) who are on NQF levels 6 – 7. The programme should lead to placement in employment / on learnerships / internships. Ideally, the programme should be concluded by 31st March 2016 |

- Period required for commencement with project after acceptance of bid:  
  Immediate

- Estimated duration for completion of the project:  
  November 2014 to March 2016

- Confirm whether proposed rates are firm for the full period of the contract:  
  Confirmed, these rates are firm for the period of the contract

- If not firm for the full period, provide details of the basis on which adjustments will be applied for (e.g. consumer price index xxx):  
  Not Applicable

- Clearly state any pricing assumptions, excluded costs and/or unknown costs:  
  There are none

Bid No:  \textit{FASITUPD/BP/CON0601/Y15} Fasset Development Projects  
Section B2 Part 6: Pricing Schedule

Please note:  
All Administrative Costs, including project management, related to the delivery of the project must not exceed 7% of the overall budget proposed.

The accompanying information must be used for the formulation of costing of proposals. Providers only need to use line items below \textit{as applicable to the specific project being proposed}:  

32
### Table 1: Price point calculation after elimination of bidders scoring less than 70% for functionality:

<table>
<thead>
<tr>
<th>Bidder’s name</th>
<th>Total Bid price</th>
<th>Total Point (Maximum 80 or 90)</th>
<th>TOTAL POINTS (Maximum 100)</th>
<th>Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>EOH</td>
<td>57 601.06</td>
<td>49.59</td>
<td>49.59</td>
<td>7</td>
</tr>
<tr>
<td>Foundation for Professional Development</td>
<td>132 814.26</td>
<td>-119.78</td>
<td>-119.78</td>
<td>12</td>
</tr>
<tr>
<td>The Language Connection cc Future Creation - Tshepong</td>
<td>68 763.38</td>
<td>22.54</td>
<td>22.54</td>
<td>11</td>
</tr>
<tr>
<td>The Language Connection cc Future Creation - Thembu III</td>
<td>56 794.18</td>
<td>45.05</td>
<td>45.05</td>
<td>9</td>
</tr>
<tr>
<td>Guarantee Trust Corporate Support Services (Pty) Ltd</td>
<td>46 431.84</td>
<td>75.20</td>
<td>75.20</td>
<td>4</td>
</tr>
<tr>
<td>Hedge Fund Training Academy CC</td>
<td>64 453.75</td>
<td>34.52</td>
<td>34.52</td>
<td>10</td>
</tr>
<tr>
<td>Interactive Tutor Via Media Works</td>
<td>42 712.71</td>
<td>83.59</td>
<td>83.59</td>
<td>2</td>
</tr>
<tr>
<td>LHEducation</td>
<td>48 798.33</td>
<td>69.86</td>
<td>69.86</td>
<td>5</td>
</tr>
<tr>
<td>Madiba Bay Accountancy Training (Pty) Ltd &amp; NMMU</td>
<td>49 864.60</td>
<td>67.18</td>
<td>67.18</td>
<td>6</td>
</tr>
<tr>
<td>PC Training and Business College</td>
<td>46 154.45</td>
<td>75.82</td>
<td>75.82</td>
<td>3</td>
</tr>
<tr>
<td>Stanley Hutcherson &amp; Associates</td>
<td>58 030.04</td>
<td>46.76</td>
<td>46.76</td>
<td>8</td>
</tr>
<tr>
<td>The Academy of Commerce and Accounting</td>
<td>30 874.17</td>
<td>90.00</td>
<td>90.00</td>
<td>1</td>
</tr>
</tbody>
</table>
Table 2: Price point calculation after elimination of bidders scoring less than 70% for functionality:

<table>
<thead>
<tr>
<th>Bidder’s name</th>
<th>Total Bid price</th>
<th>Total Point (Maximum 80 or 90)</th>
<th>TOTAL POINTS (Maximum 100)</th>
<th>Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>EOH</td>
<td>57 609.06</td>
<td>68.35</td>
<td>77.35</td>
<td>3</td>
</tr>
<tr>
<td>The Language Connection cc t/a Future Creation – Tshepong</td>
<td>69 763.38</td>
<td>44.78</td>
<td>44.78</td>
<td>6</td>
</tr>
<tr>
<td>The Language Connection cc t/a Future Creation – Ithembam III</td>
<td>59 791.18</td>
<td>64.11</td>
<td>64.11</td>
<td>4</td>
</tr>
<tr>
<td>Guarantee Trust Corporate Support Services (Pty) Ltd</td>
<td>46 431.84</td>
<td>90.00</td>
<td>90.00</td>
<td>1</td>
</tr>
<tr>
<td>Hedge Fund Training Academy CC</td>
<td>64 453.75</td>
<td>55.67</td>
<td>55.67</td>
<td>5</td>
</tr>
<tr>
<td>Madiba Bay Accountancy Training (Pty) Ltd &amp; NMMU</td>
<td>49 684.00</td>
<td>83.11</td>
<td>92.11</td>
<td>2</td>
</tr>
</tbody>
</table>

5.1.20. Following the evaluation process it was recommended that the contract should be awarded to all six (6) bidders who qualified based on the total marks awarded for pricing and B-BBEE status and further that the remaining R7 510 109.24 should be allocated to the bidder who scored the highest points for price and functionality. Hereunder a table indicating the rankings after evaluation:

<table>
<thead>
<tr>
<th>Service Provider</th>
<th>Rank</th>
<th>Budget</th>
<th>Support Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guarantee Trust Corporate Support Services (Pty) Ltd</td>
<td>1</td>
<td>R41 788 654.16</td>
<td>R60 000</td>
</tr>
<tr>
<td>Madiba Bay Accountancy Training (Pty) Ltd &amp; NMMU</td>
<td>2</td>
<td>R9 996 800.00</td>
<td>R60 000</td>
</tr>
<tr>
<td>EOH Abantu (Pty) Ltd</td>
<td>3</td>
<td>R7 430 536.60</td>
<td>R60 000</td>
</tr>
<tr>
<td>The Language Connection cc t/a Future Creation – Ithembam III</td>
<td>4</td>
<td>R8 968 677.00</td>
<td>R40 000</td>
</tr>
<tr>
<td>Hedge Fund Training Academy CC</td>
<td>5</td>
<td>R5 429 899.00</td>
<td>R60 000</td>
</tr>
<tr>
<td>The Language Connection cc t/a Future Creation – Tshepong</td>
<td>6</td>
<td>R3 488 169.00</td>
<td>R60 000</td>
</tr>
<tr>
<td><strong>Total Budget Requested</strong></td>
<td></td>
<td><strong>R77 102 735.76</strong></td>
<td><strong>R340 000</strong></td>
</tr>
<tr>
<td><strong>Total Budget Available</strong></td>
<td></td>
<td><strong>R84 952 845.00</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Variance</strong></td>
<td></td>
<td><strong>R7 510 109.24</strong></td>
<td></td>
</tr>
</tbody>
</table>
5.1.21. The information further indicates that following the evaluation process, on 21 October 2014, the Board Procurement Committee (BPC) of FASSET comprising of Ms Mopo Mushwana (Chairperson); Ms Kate Hlongwane; and Mr Corné Karsten held a meeting in which the approval of bids recommended by the BEC were discussed and a resolution to appoint the successful service providers was taken.

5.1.22. According to the BPC minutes, the following bids as recommended by the BEC were approved:

5.1.22.1. GTCSS was appointed at a total cost of approximately R41 788 654.00 to support 900 learners in the nine provinces of South Africa;

5.1.22.2. Future Creation (FS) was appointed in connection with the Tshepong Bridging Programme at a total cost of approximately R3 488 169.00 to support 50 learners in the Free State Province;

5.1.22.3. Future Creations (GP) was appointed in connection with the Ithemba III Bridging Programme at a total cost of approximately R8 968 677.00 to support 150 learners in the Gauteng Province;

5.1.22.4. EOH Abantu (Pty) Limited was appointed in connection with the Graduate Bridging Programme at a total cost of approximately R7 430 536.00 to support 129 learners in the Gauteng, KwaZulu-Natal, Western Cape and Limpopo Provinces;

5.1.22.5. NMMU and Madiba Bay Accountancy Training was appointed in connection with the Hlumba Bridging Programme at a total cost of approximately R9 996 800.00 to support 200 learners from three universities across the Eastern Cape Province; and
5.1.22.6. Hedge Fund Academy was appointed in connection with the Financial Markets Bridging Programme at a total cost of approximately R5 429 899.00 to support 80 candidates in both the Gauteng and Western Cape Provinces.

5.1.23. In addition, it was established that on 25 November 2014, the BPC held a meeting in which the utilisation of the remaining balance of R7 510 109.00, originating from the budget of R84 952 845.00 allocated for tender number FAS/TL/PD/BP/CON0601/Y15 was discussed.

5.1.24. It was also established from the BPC minutes that, following the assurance by the CEO, that the extension was appropriate and in line with the SCM framework, the BPC took a decision (with reservations) to extend the GTCSS project by making available the additional funding, however, on the following conditions:-

5.1.24.1. The extension of the tender is rolled out to rural areas in partnership with emerging Black African service providers;

5.1.24.2. GTCSS provides the full information of the delivery partner; and

5.1.24.3. A breakdown of the fee to be paid to the delivery partner and the portion to be retained by GTCSS and an upskilling schedule on a six-month intervals.

5.1.25. According to the minutes of the BPC, Ms Mopo Mushwana was requested to conduct a full investigation into the extension of the GTCSS project, in order to give the Board the assurance that the award was conducted in accordance with SCM regulations. Hereunder an extract from the BPC minutes of 25 November 2014, in connection therewith:-
5.1.26. It was further established from the information obtained during the investigation that, on 20 March 2019, FASSET wrote a letter to the National Treasury in which it requested a condonation of the irregular expenditure which originated from the award or the extension of the contract to GTCSS to the amount of approximately R7 470 000.00 without following proper procurement processes.
5.1.27. In the letter referred to above, FASSET conceded through the current Chief Executive Officer, Ms Ayanda Mafuleka, that it was in contravention of Paragraph 3.4.1 of the National Treasury Practice Note No. 8 of 2007/2008, however, it equated the indiscretion on personnel who have since resigned from its employ, as well as to the unavailability of a SCM Unit whose purpose was to ensure that proper procurement processes and procedures are at all relevant times were adhered to.

20 March 2019

To: Mr Willie Methebula
Office of the Chief Procurement Officer
National Treasury
E-mail: willie.methebula@treasury.gov.za

Cc:
Ms Esgendi Nanaken
Office of the Chief Procurement Officer
National Treasury
E-mail: esgendi.nanaken@treasury.gov.za

Mr Sibusiso Nene
Office of the Chief Procurement Officer
National Treasury
E-mail: sibusiso.nene@treasury.gov.za

Dear Mr Willie Methebula,

RE: REQUEST FOR CONDONATION OF IRREGULAR EXPENDITURE OF R7 470 000

PURPOSE

The purpose of this letter is to request the National Treasury to consider condonation of irregular expenditure which have not been condoned or removed from the Fasset annual financial statements. This request should be read in conjunction with the accompanying Irregular Expenditure Checklist and Lead Schedule.

As the Chief Executive Officer of the Finance and Accounting Services Sector Education and Training (FASSET), I have commissioned investigation from Internal auditor UBAC as guided by the Framework for Irregular Expenditure that came into effect on 01 December 2018.

INTRODUCTION

The Auditor General of South Africa during their audit for 2015/2016 financial year have indicated that amount of R7 470 109 was awarded to Guarantee Trust corporate services without following proper SCM processes. It resulted in non-compliance of Section 51(1) (b) (ii) of PFMA.

BACKGROUND

Fasset initially awarded an amount of R41 758 654.16 to Guarantee Trust Corporate Support Services (GTCSS) for the Delivery of Bridging Programme into Employment on NQF level 4, 5 or higher, because GTCSS scored the highest points for price and functionality. GTCSS was awarded a further R7 470 109.00 for the same project and no competitive bidding processes was followed in awarding the extra R7 470 000.00 this resulted in Irregular Expenditure.
Fasset was therefore in contravention of paragraph 3.4.1 of the National Treasury Practice Note No 8 of 2007/2008 as they did not follow the competitive bidding process for the awarding of the extra R7 470 109.00 to GTCGS.

FASSET did not have SCM unit which created a challenge to be able to keep up to date and follow proper procedures in all procurements and as a result not all processes were followed to the core.

A determination test work was done by appointed internal auditors for the 2015/2016 irregular expenditure (see UBAC Report) for determination test as per new Irregular expenditure framework and based on the assignment it was noted that no losses were incurred and no fraud/corrupt or misconduct indicators were evident in the assessments

The personnel identified to have caused the Irregular Expenditure was suspended at the time and resigned and is no longer at the employ of Fasset, and therefore disciplinary action cannot be taken against the former employee.

**FINANCIAL IMPLICATION**

<table>
<thead>
<tr>
<th>Description of IE</th>
<th>IE Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>FASSET/TPD/CON601/Y16: FASSET</td>
<td>R7 470 109.00</td>
<td>Refer to UBAC internal audit report Annexure A number 1 on page 4-5, awarded an additional amount to an approved training provider without following normal SCM processes</td>
</tr>
</tbody>
</table>

**CORRECTIVE STEPS TAKEN TO PREVENT RE-OCCURRENCE**

Management has disclosed the full amount paid without contract as Irregular Expenditure in the Annual Financial Statements.

The Accounting Authority subsequently approved the new organogram that has a full finance and SCM unit in the entity that will have the expertise to do proper procurement for effective and efficient use of the funds received by FASSET to implement its mandate.

**SUPPORTING DOCUMENTS**

For this transaction consist of the following:

1. An approved memo by the Chief Executive Authority
2. Contract
3. Final report indicating completion of project with total actual cost spend
4. UBAC Report

**RECOMMENDATION**

- A request for condonation is requested from the National Treasury for Irregular Expenditure of R 7 470 109.00 in accordance with the Framework for Irregular Expenditure.
- Fasset did not suffer any financial loss as a result of the Irregular Expenditure.

Yours sincerely,

Avanda Mafuleka
CEO

---

**Application of relevant legislation and prescripts**

5.1.28. The Constitution, 1996 is the supreme law of the Republic. Section 1(c) thereof provides that “The Republic of South Africa is one, sovereign, democratic state founded on the values of supremacy of the Constitution and the rule of law”. 

39
5.1.29. Section 2 of the Constitution, 1996 provides that the “Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled”.

5.1.30. The Constitution, 1996 is the basis upon which all procurement practices within the public sector are developed. Section 217(1) provides that “When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective”.

The National Skills Development Act No. 97 of 1998 (NSDA)

5.1.31. Section 14(4) of the NSDA, provides that “A SETA must be managed in accordance with the Public Finance Management Act”.

The Public Finance Management Act No.1 of 1999 (PFMA)

5.1.32. The PFMA, 1999 was enacted to regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith.

5.1.33. Section 1 of the PFMA, 1999, defines irregular expenditure “as expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation”.

40
5.1.34. Section 56(a) and (b) of the PFMA, 1999 provides that "The accounting authority for a public entity may in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity; or instruct an official in that public entity to perform any of the duties assigned to the accounting authority in terms of this Act.

5.1.35. Section 57(b) of the PFMA, 1999 provides that "An official in a public entity is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official’s area of responsibility”.

5.1.36. In addition, section 57(c) of the PFMA, 1999 provides that “An official in a public entity must take effective and appropriate steps to prevent, within that official’s area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due”.

5.1.37. Section 83(3) of the PFMA, 1999 provides that “An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty”.

The National Treasury Regulations of 15 March 2005 (NT Regulations)

5.1.38. NT Regulation 16A3.2 provides that “A supply chain management system referred to in paragraph 16A.3.1 must-

(a) be fair, equitable, transparent, competitive and cost effective;

(b) be consistent with the Preferential Procurement Policy Framework Act, 2000(Act No. 5 of 2000);

(c) be consistent with the Broad Based Black Economic Empowerment Act, 2003(Act No. 53 of 2003); and
(d) provide for at least the following:

(i) demand management;
(ii) acquisition management;
(iii) logistics management;
(iv) disposal management;
(v) risk management; and
(vi) regular assessment of supply chain performance.

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

National Treasury Practice Note No. 8 of 2007/2008 (Practice Note)

5.1.40. The NT Practice Note No, 8 of 2007/2008 issued in terms of section 76(4)(c) of the PFMA, 1999, seeks to regulate the threshold values within which accounting officers or authorities may procure goods, works and services by means of petty cash, verbal or written price quotations or competitive bids.

5.1.41. Paragraphs 3.4.1 and 3.4.2 of the Practice Note provides for a process to be followed in connection with transactions with the value above R500 000 (VAT included), and provides that;

3.4.1. Accounting officers/authorities should invite competitive bids for all procurement above R 500 000.
3.4.2. Competitive bids should be advertised in at least the Government Tender Bulletin and in other appropriate media should an accounting officer/authority deem it necessary to ensure greater exposure to potential bidders. The responsibility for advertisement costs will be that of the relevant accounting officer/authority;

5.1.42. Paragraph 3.4.3 of the Practice Note provides that "Should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, the accounting officer/authority may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4.

The reasons for deviating from inviting competitive bids should be recorded and approved by the accounting officer/authority or his/her delegate. Accounting officers/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 inclusive) were procured in terms of Treasury Regulation 16A6.4. The report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the prescribed competitive bidding process".

**FASSET Supply Chain Management Policy of October 2013 (the Policy)**

5.1.43. The Policy provides for the efficient, effective and uniform planning for and procurement of all services and goods required for the proper functioning of FASSET, that conforms to constitutional and legislative principles whilst developing, supporting and promoting black economic empowerment, and local production and content for the applicable designated sectors.
5.1.44. Paragraphs 6.1.1 to 6.1.4 of the Policy provides as follows:

6.1.1. All SCM activities shall be executed in accordance with pre-established levels of authority through delegations to ensure control and division of responsibility.

6.1.2. Delegations shall be in writing to a specific individual or the holder of a post and shall be in line with the Accounting Authority’s delegated powers.

6.1.3. A delegation shall be subject to such limitations and conditions as the Accounting Authority may impose in a specific case.

6.1.4. The Accounting Authority is entitled to confirm, vary or revoke any decision taken in consequence of a delegation, provided that no such variation or revocation of a decision should detract from any rights that may have accrued as a result of the decision.

5.1.45. Paragraphs 6.2.1 and 6.2.2 of the Policy provides that;

6.2.1. Each official shall carry out their activities within their area of responsibility.

6.2.2. Each official shall take appropriate steps to prevent any unauthorised, irregular, fruitless and wasteful expenditure in their area of responsibility.

5.1.46. Paragraph 7.2.1 of the Policy provides that “The Accounting Authority must establish a separate SCM Function within the office of the CFO to implement its SCM system”.

5.1.47. Sub-paragraph 7.2.2 of the Policy further provides that “The Accounting Authority has designated the functions of the CFO to the CEO of FASSET”.

44
5.1.48. Paragraph 8 of the Policy provides for the roles and responsibilities of the structures pertaining to the SCM processes. Paragraph 8.5 thereof provides for the roles and responsibilities of the CEO as it pertains to SCM.

5.1.49. Paragraphs 8.5.1.1 to 8.5.1.5 provides that the CEO is:

8.5.1.1. Charged with duties and responsibilities in terms of the Treasury Regulations.

8.5.1.2. Responsible for recommendations/awards on bids in accordance with specified threshold values contained in the Delegation of Authority Document.

8.5.1.3. Responsible for signing off on invoices, in her absence the COO is delegated to sign off the invoices.

8.5.1.4. Responsible for sound budgeting and budgetary control measures as part of the CFO function.

8.5.1.5. Responsible for operation of internal controls”.

5.1.50. Paragraphs 10.12.1 to 10.12.6 of the Policy provides that;

10.12.1. In terms of Section 51 (1) (f) and 54 (1) of the PFMA, and National Treasury Practice Note 4 of 2008/09, all cases of irregular expenditure involving the procurement of goods and services must immediately be reported to the National Treasury.

10.12.2. An irregular expenditure register must be maintained.
10.12.3. Fasset must take appropriate disciplinary steps in cases of irregular expenditure.

10.12.4. Fasset may forward submissions to the National Treasury or the relevant authority to request condonation for non-compliance with the PFMA or other legislation respectively where good reasons exist and where steps can be highlighted to avoid reoccurrence of this type of irregular expenditure.

10.12.5. In instances where irregular expenditure is not considered relevant for condonation or where National Treasury or the relevant authority does not condone the irregular expenditure, immediate steps must be taken to recover the irregular expenditure from the responsible employee, if he/she is liable in law.

10.12.6. All irregular expenditure incurred must be forwarded to the finance division to disclose as a note to the annual financial statements.

5.1.51. Paragraph 16.6.3 of the Policy provides that “If, in a specific case it is impractical to invite competitive bids, Fasset may procure the required goods or services by other means such as through limited bidding, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the Accounting Authority or delegate”.

5.1.52. Paragraph 16.7 of the Policy provides for the procurement of goods and/or services through a competitive bidding process. Sub-paragraph 16.7.3 thereof provides that, “Bids shall be advertised in at least the Government Tender Bulletin and in any other appropriate media to reach the target market, should the Accounting Authority or the delegate deem it necessary”.

46
Response to the section 7(9)(a) Notice:

5.1.53. Section 7(9) of the Public Protector Act provides that: "If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances". (Emphasis)

5.1.54. On 12 September 2019, a Notice issued in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994, was issued to Ms. James with a view to affording her the opportunity to respond to the preliminary findings made during the investigation. In response thereto, Ms. James stated as follows;

- I acknowledge receipt of your letter and request to respond within 10 working days of receipt thereof
- I hereby wish to place on record my response to your investigation.

During the Bid Procurement Committee meeting held on 25 November 2014 I was requested to provide input into the recommendation that had been made by the Bid Evaluation Committee that "the remaining R7 501 109.24 should be allocated to the bidder who scored the highest points for price and functionality".

In good faith, and based on my understanding of the SCM Policy and principles in place at Fasset at the time, the amount of R7 501 109.24 was with the 15% variation allowed by SCM principles (R84 962 845 x 15% = R12 742 926.75) and I therefore provided input to the committee that I was of the opinion that it was within the limits allowed to extend the contract. I did not believe that this could result in irregular expenditure as it was within the 15% extension limit.

It was my understanding, and based on the extract provided in your report, pg. 15, that the Board had agreed to and ratified this decision. I have no knowledge of whether or not the full investigation into the process was conducted by MM or not.

Having read your report I note that the conclusion reached is that the extension of the contract amounted to irregular expenditure and should therefore be treated as such. Respecting your finding I would just like to place on record that I was acting in good faith at the time, and based on my knowledge and understanding of the SCM policy and principles at Fasset that it did not constitute irregular expenditure and that is why I provided the advice I did to the BPC.
5.1.55. The evidence discussed above indicates that, in procuring goods and services with monetary value exceeding R500 000.00 by the FASSET, a competitive bidding process must be followed in line with the provisions of section 217 of the Constitution, 1996 read with Paragraph 3.4.1 of the National Treasury Practice Note No. 8 of 2007/2008 and Paragraph 16.6 of FASSET’s SCM Policy of 2013.

5.1.56. In addition, the evidence indicates that it was the responsibility of Ms. James, as a delegated official, in ensuring that the FASSET maintained an appropriate SCM system which is fair, equitable, transparent, competitive and cost-effective as envisaged in section 217(1) of the Constitution, 1996 read with the provisions of the PFMA, 1999, as well as National Treasury Regulations and Practice Notes.

5.1.57. The principle of fair, equitable, transparent, competitive and cost-effective procurement was expressed in the case of *Allpay Consolidated Investment Holdings (Pty)Ltd v Chief Executive Officer of the South African Social Security Agency*\(^3\) where the court held per Justice Froneman that,

"It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner."

---

\(^3\) (1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)
5.1.58. The Court held further that:

"...deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences."

**Conclusions**

5.1.59. Based on the evidence and information obtained during the investigation, as well as the application of the relevant legislative prescripts to the facts of the matter, it is concluded that the extension of the contract awarded to GTCSS was inconsistent with a system that is fair, equitable, transparent, competitive and cost-effective, and thus caused the FASSET to incur irregular expenditure to an amount of approximately R7 470 000.00.

6. **OBSERVATIONS**

6.1. The FASSET, with a view to remedy the infraction ensuing from the failure to adhere to proper procurement processes by the erstwhile CEO, had since applied for a condonation of the irregular expenditure from the National Treasury, which originated from the award or the extension of the contract to awarded to GTCSS to the amount of approximately R7 470 000.00.
7. FINDINGS

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

7.1. Regarding whether there were any irregularities in the extension of contract awarded to GTCSS to provide services on behalf of the FASSET, and if so, whether the extension thereof constituted maladministration and improper conduct;

7.1.1. The allegation that there were irregularities in the extension of a contract awarded to GTCSS to provide various bridging programmes aimed at Diplomates and Graduates (preferably in Commerce) which would lead to placement in employment or learnerships or internship, is substantiated.

7.1.2. In terms of section 56(a) and (b) of the PFMA, 1999 read with paragraph 7.2.2 of FASSET’s SCM Policy of 2013, the accounting authority of a public entity may in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity; or instruct an official in that public entity to perform any of the duties assigned to the accounting authority in terms of this Act.

7.1.3. Furthermore, section 57(c) of the PFMA, 1999 read with paragraph 6.2.2 of FASSET’ SCM Policy of 2013, provides that it is the responsibility of an official of a public entity to ensure that that public entity utilises its finances and other resources in an effective, efficient, economical and transparent manner, as well as to take effective and appropriate steps to prevent, within that official’s area of responsibility, any irregular expenditure and fruitless and wasteful expenditure.
7.1.4. Therefore, the responsibility of ensuring that a public entity maintains an appropriate SCM system which is fair, equitable, transparent, competitive and cost-effective as envisaged in section 217(1) of the Constitution, 1996 read with the provisions of the PFMA, 1999, as well as National Treasury Regulations and Practice Notes resides with the accounting authority and/or a delegated official of such a public entity.

7.1.5. According to the information obtained during the investigation, Ms. Cheryl James was delegated by the FASSET accounting authority to establish and implement SCM procurement processes within the FASSET.

7.1.6. Her responsibilities, included but were not limited to, ensuring that when procuring goods and/or services with a monetary value exceeding R500 000.00, a competitive bidding process must be followed in line with provisions of section 217 of the Constitution, 1996 read with Paragraph 3.4.1 of the National Treasury Practice Note No. 8 of 2007/2008 and Paragraph 16.6 of FASSET's SCM Policy of 2013.

7.1.7. It was established during the investigation that, on 23 May 2014, FASSET published an advertisement, on its corporate website, bearing reference FAS/TL/PD/BP/CON0601/Y15, as well as in the Government Tender Bulletin on an even date and with a closing date set for 27 August 2014.

7.1.8. The purpose of the advertisement was to invite suitably qualified service provider(s) located in South Africa to submit bids to provide bridging programmes on NQF Level 4 and 5, aimed at Graduates (preferably in Commerce) who were on NQF Levels 6 to 7. Further thereto, it was expected that the programme would lead to placement in employment, learnerships or internships.
7.1.9. It was established that, following the evaluation process, the Bid Evaluation Committee (BEC) recommended to the Board Procurement Committee (BPC) that the contract should be awarded to all six (6) bidders who qualified based on the total marks awarded for pricing and Broad Based Black Economic Empowerment (B-BBEE) status and further that the remaining balance amounting to R7 510 109.24, should be allocated to the bidder who scored the highest points for price and functionality.

7.1.10. In addition, it was established that on 25 November 2014, following the resolution by the BPC to appoint GTCSS, the BPC held a meeting on an even date, in which the utilisation of the remaining balance of R7 510 109.00 originating from the initial budget of R84 952 845.00, allocated for tender number FAS/TL/PD/BP/CON0601/Y15 was discussed.

7.1.11. The evidence indicates that, the BPC took a decision (with reservations) to expand the GTCSS project by making available additional funding on the following conditions:-

(a) That the extension of the tender was appropriate and in line with the SCM framework;

(b) Is rolled out to rural areas in partnership with emerging Black African service providers; and

(c) That GTCSS provides the full information of the delivery partner, a breakdown of the fee to be paid to the delivery partner and the portion to be retained by GTCSS and an upskilling schedule on a six-month intervals (sic).
7.1.12. I have established that following the assurance by Ms James that the extension was appropriate and in line with the SCM framework, the BPC approved the expansion of a contract to the value of R7 470 000.00, under reference number FAS/TL/PD/BP/CON0601/Y15, and awarded same to GTCSS to provide bridging programmes on NQF level 4 and 5, aimed at Diplomats and graduates (preferably in commerce) who were on NQF levels 6 in the 2015/2016.

7.1.13. I could not find evidence indicating that an investigation into whether the extension of a tender awarded to GTCSS was in line with legislation and prescripts regulating procurement in the public service was ever conducted, following a resolution taken by the BPC in a meeting held on 25 November 2014, in connection with the extension of the GTCSS project, in order to give the Board the assurance that the award was conducted in accordance with SCM regulations.

7.1.14. Furthermore, I could not find any evidence indicating that it was impractical for FASSET, under the stewardship of Ms. James as the custodian of the SCM Policy, to invite competitive bids to procure the required goods or services by any other means such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4.

7.1.15. The evidence further indicates that, following the failure by Ms. James to ensure that competitive bids were invited in connection with the expansion of the contract awarded to GTCSS, with a view to exhausting the remaining balance of the initial budget of R84 952 845.00, allocated for the provision of various bridging programmes, in the 2015/2016 financial year the Auditor General South Africa (AGSA) made an adverse finding to the effect that the award or expansion of the contract awarded to GTCSS resulted in FASSET not complying with the provisions of section 51(1)(b)(ii) of the PFMA, 1999.
7.1.16. In the circumstances, I find that the extension of the contract awarded to GTCSS was inconsistent with a system which is fair, equitable, transparent, competitive and cost-effective, and thus constituted improper conduct as envisaged by section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged by section 6(4)(a)(i) of the Public Protector Act, 1994.

8. REMEDIAL ACTION

The appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying maladministration, improper conduct and the abuse of power referred to in this report is the following:

8.1. The Minister of Higher Education, Science and Technology to;

8.1.1. Take cognisance of the findings on the irregularities identified in the report with a view to ensuring that the Accounting Authority of the FASSET considers the acts of maladministration and improper conduct referred to in this report to avoid a repeat of such occurrences;

8.1.2. Include in his oversight role over SETA’s, in particular in relation to FASSET, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of the powers conferred under section 182(2)(c) of the Constitution, 1996.

8.2. The Accounting Authority of the FASSET to;

8.2.1. Take cognisance of the findings on the improprieties identified in the report and ensure that such conduct is not repeated and appropriate corrective action is taken to prevent the recurrence of the improprieties referred to in the report;
8.2.2. Consider evaluating the effectiveness of FASSET's internal controls on Supply Chain Management processes to identify deficiencies with a view to take corrective action to prevent a recurrence of the improprieties referred in the report.

8.3. **The Chief Executive Officer of the FASSET to:**

8.3.1. Take cognisance of the findings of maladministration and improper conduct by the former CEO of the FASSET and ensure that such action is not repeated and appropriate corrective action is taken to prevent the improprieties identified in the report;

8.3.2. Consider strengthening the Supply Chain Management control environment by appointing suitably skilled and qualified heads of Supply Chain Management units where vacancies exist and with the assistance of the FASSET's Human Resource Department, conduct regular training to improve skills;

8.3.3. Focus on preventing irregular expenditure and non-compliance and implement Supply Chain Management compliance checklists to supplement policies and procedures;

8.3.4. Make a follow-up with the National Treasury on an application for a condonation in connection with the identified financial misconduct and the steps taken in connection with such financial misconduct, as contemplated in section 54(1) of the PFMA.
9. MONITORING

9.1. The Accounting Authority of the FASSET must, within thirty (30) days from the date of the issuing of this Report and for approval of the Public Protector, submit an Implementation Plan to the Public Protector indicating how the remedial action referred to in paragraphs 7.1 and 7.2 of this Report will be implemented;

9.2. The Chief Executive Officer of the FASSET must, within thirty (30) days from the date of the issuing of this Report and for approval of the Public Protector, submit an Implementation Plan to the Public Protector indicating how the remedial action referred to in paragraph 7.3 of this Report will be implemented; and

9.3. All actions directed in this report as part of a remedial action taken in terms of the Public Protector's powers under section 182(2)(c) of the Constitution, 1996 must be finalised within six (6) months from date of the report.

10. In line with the Constitutional Court decision in Economic Freedom Fighters v Speaker of the National Assembly and Others; 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 action prescribed in this Report is legally binding on the FASSET, unless a Court Order directs otherwise.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 07/11/2019