



**REPORT NO: 30 OF 2020/21**

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## **CLOSING REPORT**

### **CLOSING REPORT ON AN OWN INITIATIVE INVESTIGATION RELATING TO THE PROCUREMENT OF COVID 19 RELATED ITEMS FROM ALFREHUTCH TRADING AND MAVUKA 010115 TRADING BY THE KWAZULU-NATAL DEPARTMENT OF EDUCATION:**

#### **1 INTRODUCTION**

- 1.1. This report is issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution), and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).
- 1.2. The report relates to an own initiative preliminary investigation into information that came to the attention of the Public Protector that two of the companies from which COVID-19 related products were procured by the Kwazulu-Natal Department of Education (Department), namely Alfrehutch Trading (Alfrehutch) and Mavuka 010115 Trading (Mavuka), might not have been registered on the National Treasury Central Supplier Database (CSD), as required by National Treasury Instructions.
- 1.3. The investigation commenced on 18 August 2020.

1.4 The report is submitted to the Head of the KwaZulu-Natal Department of Education, Dr E V Nzama.

## 2. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

2.1 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.

2.2 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”*

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

2.4 The Public Protector is further mandated by the Public Protector Act 23 of 1994 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 and advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

2.5 Section 7(1)(a) of the Public Protector Act provides that the Public Protector shall have the power, on his or her own initiative, or on receipt of a complaint or allegation or on the ground of information that has come to his or her knowledge and which points to improper conduct and maladministration, to conduct a

preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.

- 2.6 The Department is an organ of state and therefore falls within the jurisdiction of the Public Protector.

### **3 THE ISSUES CONSIDERED AND INVESTIGATED**

- 3.1 On basis of the information that came to the attention of the Public Protector, the following issue was investigated:

- 3.1.1 Whether the Department procured Covid-19 related equipment from Alfrehutch and Mavuka; and if so whether Alfrehutch and Mavuka were registered on the CSD at the time of the procurement; and if not whether the conduct of the Department was improper and constitutes maladministration.

### **4 THE INVESTIGATION**

#### **4.1 The Investigation Process**

- 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, 1994. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

- 4.1.2 The investigation process included correspondence with the KwaZulu-Natal Provincial Treasury and the Department, consideration of the relevant documents and analysis and application of the relevant laws and prescripts.

- 4.1.3 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to establish:

4.1.3.1 What happened?

4.1.3.2 What should have happened?

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

4.1.3.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong occasioned by the said maladministration or improper conduct?

## **5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS**

**5.1 Regarding whether the Department procured Covid-19 related equipment from Alfrehutch and Mavuka; and if so whether Alfrehutch and Mavuka were registered on the CSD at the time of the procurement; and if not whether the conduct of the Department was improper and constitutes maladministration.**

### *Common cause or facts not in dispute*

5.1.1 It is common cause that the Department procured spray pumps from Alferhutch (order no: E 012683) and disinfectants from Mavuka (order no: E0125501). The purchase order for Alfrehutch was in the amount of R34 003 476.00 and for Mavuka, R 37 039 200.00. Alfrehutch was paid R 6 060 790.05. The balance was not paid to Alfrehutch as the order was cancelled due to failure on its part to deliver. Mavuka was paid R 37 039 200.00.

5.1.2 This was confirmed by the Head of the Department, Dr E V Nzama, (HOD) in a statement dated 5 November 2020 and a letter dated 14 December 2020.

### Issues in dispute

- 5.1.3 The main issue for determination was whether Alfrehutch and Mavuka were registered on the CSD, as required by the National Treasury Instructions.
- 5.1.4 It was established from the correspondence dated 11 September 2020 received from the Acting Head of Department of the KwaZulu-Natal Provincial Treasury, Mrs N Shezi that Alfrehutch was registered as a Close Corporation by the Companies and Intellectual Property Commission (CIPC) on 20 June 2008 and is registered on the CSD under supplier no: MAAA0148860. Mavuka was registered as a private company by the CIPC on 14 March 2017 and is registered on the CSD under supplier no: MAAA051611.
- 5.1.5 This was also confirmed by the HOD in his statement of 5 November 2020.
- 5.1.6 The HOD further indicated that the Department procured Personal Protective Equipment (PPE) from Alfrehutch and Mavuka in terms of the National Treasury Instructions that regulated emergency procurement in response to the National State of Disaster.

### Application of the relevant legal framework

- 5.1.7 National Treasury Supply Chain Management (SCM) Instruction No 4A of 2016/2017: Central Supplier Database was issued in terms of section 76 of the Public Finance Management Act 01 of 1999 (PFMA) on 9 May 2016. Paragraph 3.1 of this Treasury Instruction provides that that Accounting Officers of organs of state must ensure that price quotations are invited and accepted from prospective suppliers listed on the CSD and must not award any bid for price quotations to a bidder that is not registered on the CSD, excluding transactions through petty cash, sundry payments and foreign suppliers with no local registered entity.

- 5.1.8 Following the declaration by the President of a National State of Disaster in terms of section 27 of the Disaster Management Act 57 of 2002 on 15 March 2020, *National Treasury Instruction No 08 of 2019/2020: Emergency Procurement in Response to National State of Disaster* was issued on 19 March 2020. It was subsequently replaced by *National Treasury Instruction 3 of 2020/2021* on 15 April 2020, *National Treasury Instruction 5 of 2020/2021* on 28 April 2020. The National Treasury Instructions provided for the emergency procurement of goods, such as PPE, to deal with the Covid-19 pandemic. PPE could be procured via transversal contracts, and where not possible, through emergency procurement prescripts. Institutions were also allowed to approach any other supplier for quotes and could procure from them on condition, *inter alia* that the supplier is registered on the CSD.
- 5.1.9 The Department procured PPE from Alfrehutch and Mavuka through quotations in in May 2020, in terms of the National Treasury Instructions regulating emergency procurement as set out above, this was in response of the National State of Disaster.
- 5.1.10 It was a requirement that suppliers of PPE had to be registered on the CSD. The investigation confirmed that both Alfrehutch and Mavuka were registered on the CSD at the time when the Department procured PPE from them.

Conclusion:

- 5.1.11 In conclusion, no wrong doing could be established on the part of the Department in respect of the procurement process followed as both Alfrehutch and Mavuka were registered on the CSD.

6. **REASONS FOR CLOSURE**

6.1. The reasons for closing this matter are as follows:

6.2. It was determined from the preliminary investigation that Alfrehutch and Mavuka were registered on the CSD when the Department procured PPE from them in terms of the emergency procurement measures issued by the National Treasury in response to the National State of Disaster.

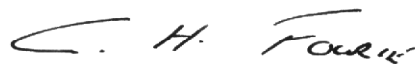
6.3. No complaint was lodged with or allegation made to the Public Protector South Africa in connection with the procurement by the Department from Alfrehutch and Mavuka.



**ADV. KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 08 February 2021

Assisted by: Adv. C H Fourie –PII Coastal



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