

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



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NUMBER: 26 of 2022/23**

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**REPORT ON AN INVESTIGATION CONDUCTED INTO ALLEGATIONS OF  
MALADMINISTRATION, IMPROPER OR SUSPECTED IMPROPER CONDUCT  
BY FUNCTIONARIES OF THE SOUTH AFRICAN SOCIAL SECURITY AGENCY  
WITH REGARD TO THE APPOINTMENT OF SERVICE PROVIDERS FOR BID  
NO. SASSA: 40/15/BT - HEAD OFFICE AND BID NO. SASSA: 42/15/GA-  
MIKONDZO PROJECT**

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**LIST OF ACRONYMS**

BAC	Bid Adjudication Committee
BEC	Bid Evaluation Committee
CEO	Chief Executive Officer
Constitution	Constitution of the Republic of South Africa Act, No. 108 of 1996
GM: SCM	General Manager: Supply Chain Management
ICROP	Integrated Community Outreach Programme
OUTA	Organisation Undoing Tax Abuse
PFMA	Public Finance Management Act. No. 1 of 1999
PRECCA	Prevention and Combating of Corrupt Activities Act, No.12 of 2004
Public Protector Act 1994	Public Protector Act, 23 of 1994
SASSA	South African Social Security Agency
SCM	Supply Chain Management
ToR	Terms of Reference

## EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution 1996), and published in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act 1994).
- (ii) The report communicates the findings and appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution 1996, following an investigation into allegations of improper conduct and maladministration, by members of the Bid Evaluation Committee and Bid Adjudication Committees of the South African Social Security Agency (SASSA) who evaluated and adjudicated Bid No. SASSA: 40/15/BT-Head Office and Bid No. SASSA: 42/15/GA-Mikondzo Project.
- (iii) The complaint was lodged by Ms Dominique Msibi on behalf of the Organisation Undoing Tax Abuse (OUTA) on 14 June 2018 alleging maladministration, improper or suspected improper conduct in connection with the evaluation, adjudication and awarding of Bid No. SASSA: 40/15/BT-Head Office and Bid No. SASSA: 42/15/GA-Mikondzo Project by the Bid Evaluation Committee and Bid Adjudication Committee respectively alleging amongst others that:
  - a. SASSA invited proposals from service providers for the provision of the Action Research Project through door-to-door services to be performed as part of the Integrated Community Outreach Programme (ICROP) in targeted areas for a period of three (3) years in the nine (9) provinces of South Africa;
  - b. On or about 22 February 2016, Azande Consulting CC submitted its bid for tender No. SASSA: 40/15/BT-Head Office. In its bid submission, Azande Consulting CC described its principal business activity as “event management and exhibition”;

- c. On or about 9 May 2016, the Chairperson of SASSA's Bid Evaluation Committee made a submission to the Chairperson of the Bid Adjudication Committee recommending that Azande Consulting CC be appointed as the preferred service provider for Bid No. SASSA: 40/15/BT-Head Office;
- d. According to the scoring criteria, it is stated that any bidder that scored below 60 points on functionality would be disqualified. For the 23 bids received and evaluated, only Azande Consulting CC scored over 60 points. On price and B-BBEE evaluation, Azande Consulting CC was scored 90 points as it was the only company evaluated and scored a minimum of 60 points on functionality;
- e. It is therefore the Complainant's view that the Bid Evaluation Committee and the Bid Adjudication Committee acted contrary to the legislative framework and policy prescripts regulating supply chain management in government in relation to the evaluation and adjudication that resulted in the awarding of the bid to Azande Consulting CC;
- f. SASSA functionaries breached the provisions of National Treasury Instruction Note 4A of 2016/2017 by advertising for service providers to be accredited and listed on SASSA's database to render event management services as and when required for a period of three (3) years and failed to utilise the Central Supplier Database when accrediting Azande Consulting CC as the preferred bidder;
- g. On or about 23 June 2016, Ms Raphaahle Ramokgopa, the then Acting Chief Executive Officer of SASSA sent a Letter of Accreditation to Azande Consulting CC confirming that it had been listed on SASSA's database for a period of three (3) years to render event management services as and when required;
- h. SASSA's Accounting Officer failed to halt payments from being made to Azande Consulting CC after the irregularities relating to the bid

evaluation and adjudication were brought to her attention, resulting in financial prejudice to the state.

- i. The Complainant further stated that on 15 September 2017, the OUTA submitted a report detailing the irregularities relating to the appointment of Azande Consulting CC and Vee-el Promotions (Pty) Ltd to SASSA, the National Treasury, the Directorate of Priority Crime Investigation and the Parliamentary Committee on Social Development. On 3 October 2017, the then Acting CEO of SASSA Ms Pearl Bengu (Ms Bengu) responded to the report stating amongst others that she had already been made aware of alleged improprieties involving the two service providers relating to the tender and had initiated an investigation. No further feedback was received from SASSA or any of the other state institutions mentioned herein.
- j. The purpose of accrediting these companies is rendered moot due to the existence of the Central Supplier Database. The National Treasury Instruction Note 4A of 2016/2017 required that the use of the Central Supplier Database is mandatory for Schedule 2 and 3 Public Entities. Therefore, there was no reason for SASSA to advertise the tender and populate an unnecessary database as the Central Supplier Database could have been utilised to source potential service providers for this purpose.
- k. Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:
  - i. Whether Azande Consulting CC was awarded Bid No. SASSA: 40/15/BT-Head Office in contravention of the legislative framework and policy prescripts regulating supply chain management in government, if so, whether such conduct amounts to improper conduct and maladministration in terms of s182(1) of the Constitution and s6(5)(a) of the Public Protector Act; and

ii. Whether Azande Project was awarded Bid No. SASSA: 42/15/GA-Mikondzo Project in contravention of the legislative framework and policy prescripts regulating supply chain management in government and if so, whether such conduct amounts to improper conduct as contemplated in terms of s182(1) of the Constitution and maladministration as envisaged in s6(5)(a) of the Public Protector Act.

I. Having regard to the evidence and responses from the Bid Evaluation and Bid Adjudication Committees in relation to the notice issued in terms of section 7(9)(a) of the Public Protector Act, as well as the regulatory framework relating to supply chain management in determining the standard that should have been complied with by SASSA functionaries and/or other persons that were involved in the evaluation and adjudication of Bid No. SASSA: 40/15/BT-Head Office, and Bid No. SASSA:42/15/GA Mikondzo Project, the Public Protector makes the following findings:

(iv) **The allegation regarding whether Azande Consulting CC was awarded Bid No. SASSA: 40/15/BT-Head Office in contravention of the legislative framework and policy prescripts regulating supply chain management in government is substantiated.**

a. The ToR for the bid required potential bidders to submit amongst others; *“Three (3) contactable lists of references, supporting that a work of similar nature was undertaken in the past. Reference letters must include contracting period, number and value of projects undertaken and contact person”*. In its response to the bid, Azande Consulting CC (Azande) submitted two copies of letters for previous work done instead of three. Both copies of *Reference Letters* for previous similar work done were from the Department of Public Works and Infrastructure. The two *Reference Letters* were submitted for Bid No PT13/011 for the value of one million eighty thousand nine hundred and forty five rand and seventy two cents (R1 080 945,72) and Bid No PT13/026 for the value

of one million nine hundred thirty thousand seventy seven rand and fifty cents (R1 930 077,50). Azande Consulting submitted copies of invoices from SASSA dated 25 September 2013 to the value of eight hundred ten thousand three hundred and twelve rand and ten cents (R810 312,10) and 8 November 2013 to the value of eight hundred seventy three thousand four hundred rand (R873 400,00). Azande Consulting's non-compliance with the ToR did not enable the Bid Evaluation Committee (BEC) and Bid Adjudication Committee (BAC) to make an informed determination regarding Azande's capacity to provide the service. Azande Consulting CC should have been disqualified as it did not meet the requirements stipulated in the ToR for proof of previous work done;

- b. Both the Bid Evaluation and Adjudication Committees ignored the fact that Azande Consulting CC did not submit the required proof of similar work done. This is despite the fact that Azande Consulting CC alleged that it previously did similar work for SASSA itself, with one of the members of the BAC being the official responsible for the office where Azande Consulting CC allegedly provided a service to;
- c. The Bid Adjudication Committee failed to do due diligence on the recommendation for an appointment made by the Bid Evaluation Committee, prior to accepting and approving Azande Consulting CC as one of the preferred bidders;
- d. Both the BEC and BAC of SASSA, which constituted officials in senior management breached section 51(1)(a)(vii) and (b)(ii) of the PFMA by accepting the results of an incorrect *Pre-programmed Electronic Score Sheet* procurement system which miscalculated the actual points due for each bidder, and also breached the ToR which required bidders to submit three copies of *Reference Letters* for previous similar work done. The utilisation of the incorrect *Pre-programmed Electronic Score Sheet* procurement system and accepting two *Reference Letters* of previous



similar work done from Azande Consulting CC resulted in the bid being irregularly awarded to Azande Consulting CC;

- e. Both the Bid Evaluation Committee and Bid Adjudication Committee of SASSA, which were constituted by officials at senior management level, failed to implement controls during the evaluation and adjudication of the bid to avoid irregular, fruitless and wasteful expenditure as contemplated in section 51 of the PFMA;
- f. In paragraph 4.2.2 of the *Report on the review of the evaluation/award process for the ICROP Bid: SASSA 40/15BT dated 18 July 2018*, commissioned by SASSA, SASSA conceded that the Bid Evaluation Committee used an *Incorrect Electronic Score Sheet* during the evaluation process, which miscalculated the actual points due for each bidder resulting in the possible disqualification of bidders that scored below the stipulated 60% threshold, leading to the awarding of Bid No SASSA: 40/15/BT to Azande Consulting CC. Of concern is that the review of the evaluation/ award process report for the ICROP Bid was conducted by the General Manager: Supply Chain Management (GM: SCM), who is the highest ranking official within SCM at SASSA and who served on the BAC that adjudicated the same bid.
- g. In view of the above, the conduct of the Bid Evaluation Committee and the Bid Adjudication Committee was in breach of:
  - i. Section 217 of the Constitution 1996 read with sections 50 and 51 of the PFMA as well as Regulation 16A of the National Treasury Regulations of 2005 as the evaluation and adjudication of the bid did not constitute procurement of goods and services in accordance with a system that was fair, equitable, transparent, competitive and cost-effective as Azande Consulting CC was awarded the bid despite it not meeting all the requirements for the bid;

- ii. Regulation 168A of the National Treasury Regulation requires all officials and role players involved in supply chain management to comply with ethical standards and adherence to the National Treasury's Code of Conduct for Supply Chain Management Practitioners; and
  - iii. Paragraph 8.3(a) of the SASSA Procurement Policy which requires adherence to the ToR of the bid during the evaluation process of the bids. The ToR required bidders to submit three (3) letters of previous similar work done and instead, Azande Consulting CC submitted two (2) letters and should have therefore been disqualified from the bid. Azande Consulting CC did not comply with the ToR.
  - h. In view of the above, both the Bid Evaluation Committee and the Bid Adjudication Committee could not have been in a position to make a determination regarding the in/capacity of Azande to successfully do the work and therefore the conduct by members of both the Bid Evaluation Committee and Bid Adjudication Committee constitutes improper conduct as envisaged in section 182(1) of the Constitution, 1996 and maladministration as envisaged in section 6(5)(a) of the Public Protector Act, 1994.
  - i. The conduct of both the Bid Evaluation Committee and Bid Adjudication Committee resulted in SASSA incurring irregular expenditure in the amount of two hundred seventy eight million, seven hundred seventeen thousand, seven hundred fifty two rand (R278 717 752,00) as disclosed in the 2018/19 and 2019/20 Annual Financial Statements.
- (v) **The allegation regarding whether Azande Consulting CC was awarded Bid No. SASSA: 42/15/GA-Mikondzo Project in contravention of the legislative framework and policy prescripts regulating supply chain management in government is substantiated.**

- a. *The Terms of Reference to appoint one (1) or more service providers for the provision of the Action Research Project through door-to-door services to be performed as part of the Integrated Community Outreach Programme (ICROP) of the SASSA in targeted areas for a period of three (3) years in nine (9) provinces of the Republic of South Africa<sup>1</sup>* required bidders to amongst others submit the following: “Confirmation from the bank with regard to the credit worthiness of the service provider; Proof to indicate that similar services have been previously rendered in the form of a copy of the contract or copy of purchase order”. In its response to the bid, Azande Consulting CC submitted two (2) letters of previous work done instead of submitting a list of three (3) contactable references or letters supporting proof of similar previous work done. Further thereto, there is no record of Azande Consulting CC having submitted confirmation from the bank about its credit worthiness.
- b. Vee-el Promotions (Pty) Ltd did not submit copies of letters for previous work done but rather submitted copies of invoices for work supposedly done for SASSA North West Region.
- c. Both Azande Consulting CC and Vee-el Promotions (Pty) Ltd should have been disqualified as their bids did not meet the stipulated requirements in the ToR of the bid as well as the SASSA Procurement Policy.
- d. It would not have been possible for The Bid Evaluation Committee and Bid Adjudication Committee to ascertain the capacity/experience of Azande Consulting CC and/or Vee-el Promotion (Pty) Ltd to do the work without both companies submitting three (3) copies of letters for previous work done.

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<sup>1</sup> *Terms of Reference to appoint one (1) or more service providers for the provision of the Action Research Project through door-to-door services to be performed as part of the Integrated Community Outreach Programme (ICROP) of the SASSA in targeted areas for a period of three (3) years in nine (9) provinces of the Republic of South Africa 16.*

- e. Both the Bid Evaluation Committee and Bid Adjudication Committee overlooked this fact and approved the recommendation for the accreditation of service providers.
- f. Copies of *SBD4 Forms* of both Azande Consulting CC and Vee-el Promotions (Pty) Ltd do not reflect that Mr Nkosi the Director of Vee-el Promotions (Pty) Ltd is also an employee of Azande Consulting CC as reflected in the Business Profile of Azande Consulting CC.
- g. There is no indication of declarations in the copies of *SBD 9 Forms* for both Azande Consulting CC and Vee-el Promotions (Pty) Ltd that the companies are involved in joint ventures, are competitors or are submitting bids on behalf of each other or provide the same services, or are in consultation or been in communication with each other in relation to the bid.
- h. In view of the above, the conduct of both the Bid Evaluation Committee and the Bid Adjudication Committee was in breach of:
  - i. Section 217 of the Constitution 1996 read with sections 50 and 51 of the PFMA as well as the as Regulation 16A of the National Treasury Regulations of 2005 as the evaluation and adjudication of the bid was not in compliance with the legislative requirements that goods and services should be procured in accordance with a system that is fair, equitable, transparent, competitive and cost-effective, as Azande Consulting CC and Vee-el Promotions (Pty) Ltd were accredited despite them not meeting all the requirements for the bid;
  - ii. Paragraph 8.3(a) of the SASSA Procurement Policy which requires adherence to the ToR of the bid during the evaluation process. The ToR required bidders to submit three (3) letters of previous work done. However, Azande Consulting CC submitted two (2) letters of previous work done while Vee-el Promotions (Pty) Ltd did not submit any letters for previous work but rather submitted copies of invoices.

Both companies should have been disqualified from the bidding process for not meeting the requirements of the TOR as required by the SASSA Procurement Policy;

- iii. Section 51 of the PFMA by failing to implement controls during the evaluation and adjudication of the bid to avoid irregular, fruitless and wasteful expenditure, which could have been prevented; and
- iv. Both the Bid Evaluation Committee and Bid Adjudication Committee of SASSA failed to uphold Regulation 168A of the National Treasury Regulation requiring all officials and role players involved in supply chain management to comply with ethical standards and adherence to the National Treasury's Code of Conduct for Supply Chain Management Practitioners.
- i. Considering the above, the conduct of members of the Bid Evaluation Committee and Bid Adjudication Committee constituted improper conduct as envisaged in section 182(1) of the Constitution, 1996 and maladministration as envisaged in section 6(5)(a) of the Public Protector Act, 1994.

(vi) **REMEDIAL ACTION**

- a. The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution, 1996 with a view to remedy the maladministration and improper conduct referred to and holding those responsible persons accountable is as follows:

(vii) **The Chief Executive Officer of SASSA is to:**

- a. Take appropriate action within 120 working days of the issuing of this report, in terms of Clause 21 of SASSA Supply Chain Management Policy of 2016 against those employees of SASSA identified in this report as being implicated for failing/omitting to comply with Clause

8.3(a) of the SASSA Supply Chain Management Policy, for not adhering to the National Treasury's Code of Conduct for Supply Chain Management Practitioners and for breaching Chapter 2 of the Code of Conduct in the Public Service Regulations as well as Regulation 16.8A of the National Treasury Regulations, in relation to their roles/conduct during the process of evaluation and adjudication of the two bids namely, SASSA: 40/15/BT-Head Office and SASSA: 42/15/GA-Mikondzo Project, where same has not occurred yet;

- b. Review and enhance the supply chain management system to prevent future recurrence of circumventing the supply chain mechanisms in line with Treasury Regulations and SCM Prescripts within sixty (60) working days of issuing this report;
- c. Put mechanisms in place that would assist the Bid Adjudication Committee to verify and certify compliance with all relevant legislative framework and policy prescripts applicable to supply chain management by the Bid Evaluation Committee rather than accept information presented by the Bid Evaluation Committee at face value, in line with the applicable Treasury Regulations and Supply Chain Management (SCM) Prescripts within sixty (60) working days of issuing this report;
- d. Put mechanisms in place to hold members of the Bid Evaluation Committee and Bid Adjudication Committee accountable should they fail or omit to comply and apply all legislative framework, directives and policy prescriptions applicable to supply chain management processes in line with the applicable Treasury Regulations and SCM Prescripts within sixty (60) working days of issuing this report;
- e. Take appropriate action in respect of Azande Consulting CC and Vee-el Promotions (Pty) Ltd in terms of the PFMA-Government Procurement General Conditions of Contract section 23, read with clause 6 PFMA SCM Instruction Note 3 of 2021/22: Enhancing Compliance,

Transparency and Accountability in Supply Chain Management within one hundred and twenty (120) days of issuing this report.

- f. Within one hundred and twenty (120) days of issuing this report, ensure that all Bid Evaluation Committee members and other employees involved in supply chain management are trained on the legislation, regulations, policies and other relevant prescripts regulating procurement of goods and services; and
- g. Within one hundred and twenty (120) working days of issuing this report, take appropriate action to analyse ethics and corruption risks, including life style audits as part of the institution's system of risk management in terms of Regulation 22 of the Public Service Regulations as informed by part 3 of chapter 2 of the Regulations - on supply chain employees, Bid Evaluation Committee and Bid Adjudication Committee members as part of risk management and security vetting of employees involved in supply chain management processes to ensure that illicit activities are identified and action is taken to mitigate them early.

(viii) **The Head of the Directorate for Priority Crime Investigations (DPCI) is to:**

- (a) This matter is referred to the DPCI in terms of section 6(4)(c)(i) of the Public Protector Act to take note and consider conducting a criminal investigation in terms of section 34(1)(b) of Prevention of Corruption and Other Related Matters (PRECCA) for possible bid rigging and corruption relating to Bid No. SASSA: 40/15/BT-Head Office and Bid No. SASSA: 42/15/GA-Mikondzo Project by Azande Consulting CC and Vee-el Promotions (Pty) Ltd.

## 1 INTRODUCTION

- 1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution 1996), read with section 8(1) of the Public Protector Act, 1994 (the Public Protector Act 1994).
- 1.2 The report communicates the findings and appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution 1996, following an investigation into allegations of improper conduct and maladministration, by members of the Bid Evaluation Committee (BEC) and Bid Adjudication Committee (BAC) of the South African Social Security Agency (SASSA) who evaluated and adjudicated Bid No. SASSA: 40/15/BT-Head Office and Bid No. SASSA: 42/15/GA-Mikondzo as well as the then Acting Chief Executive Officer (CEO) who approved the award.
- 1.3 The report is submitted in terms of section 8(3) of the Public Protector Act, 1994 to the following:
- 1.3.1 The Minister of Social Development: Ms Lindiwe Zulu;
- 1.3.2 The Chief Executive Officer of SASSA: Ms Busisiwe Memela-Khambula;
- 1.3.3 Members of the BEC and BAC for **Bid No. SASSA: 40/15/BT-Head Office** listed in paragraphs 6.1.22.1 and 6.1.22.3 of this report;
- 1.3.4 Members of both the BEC and BAC for **Bid No. SASSA: 42/15/GA-Mikondzo Project**, listed in paragraphs 6.2.9.4 and 6.2.9.7 of this report; and
- 1.3.5 The Complainant, Ms Dominique Msibi.



## 2. THE COMPLAINT

- 2.1 The complaint was lodged by Ms Dominique Msibi on behalf of the Organisation Undoing Tax Abuse (OUTA) on 14 June 2018 alleging maladministration, improper or suspected improper conduct in connection with the evaluation, adjudication and awarding of Bid No. SASSA: 40/15/BT-Head Office and Bid No. SASSA: 42/15/GA-Mikondzo Project by the BEC and BAC respectively.
- 2.2 In the complaint regarding Bid No. SASSA: 40/15/BT-Head Office, it is alleged amongst others that:
- 2.2.1 SASSA invited proposals from service providers for the provision of the Action Research Project through door-to-door services to be performed as part of the Integrated Community Outreach Programme (ICROP) in targeted areas for a period of three (3) years in the nine (9) provinces of South Africa;
- 2.2.2 On or about 22 February 2016, Azande Consulting CC submitted its bid for tender Bid No. SASSA: 40/15/BT-Head Office. In its bid submission, Azande Consulting CC described its principal business activity as *“event management and exhibition”*;
- 2.2.3 On or about 9 May 2016, the Chairperson of SASSA’s BEC made a submission to the Chairperson of the BAC recommending that Azande Consulting CC be appointed as the preferred service provider for Bid No. SASSA: 40/15/BT-Head Office;
- 2.2.4 According to the scoring criteria it is stated that any bidder that scores below 60 points on functionality would be disqualified. For the 23 bids received and evaluated it was only Azande Consulting CC that scored over 60 points. On price and B-BBEE evaluation, Azande Consulting CC was scored 90 points as it was the only company evaluated and scored a minimum of 60 points on functionality;

- 2.2.5 It is therefore the Complainant's view that the BEC and the BAC acted contrary to the legislative framework and policy prescripts regulating supply chain management in government in relation to the evaluation and adjudication that resulted in the awarding of the bid to Azande Consulting CC.
- 2.3 In the complaint regarding Bid No. SASSA:42/15/GA-Mikondzo Project, it is alleged that:
- 2.3.1 SASSA functionaries breached the provisions of National Treasury Instruction Note 4A of 2016/2017 by advertising for service providers to be accredited and listed on SASSA's database to render event management services as and when required for a period of three (3) years and failed to utilise the Central Supplier Database when accrediting Azande Consulting CC as the preferred bidder;
- 2.3.2 On or about 23 June 2016, Ms Raphaahle Ramokgopa, SASSA's then Acting Chief Executive Officer sent a *Letter of Accreditation* to Azande Consulting CC confirming that it had been listed on SASSA's database for a period of three (3) years to render event management services as and when required;
- 2.3.3 SASSA's Accounting Officer failed to halt payments from being made to Azande Consulting CC after the irregularities relating to the bid evaluation and adjudication were brought to her attention, resulting in financial prejudice to the state;
- 2.3.4 On 15 September 2017, the OUTA submitted a report detailing the irregularities relating to the appointment of Azande Consulting CC and Vee-el Promotions (Pty) Ltd to SASSA, the National Treasury, the Directorate of Priority Crime Investigation and the Parliamentary Committee on Social Development. On 3 October 2017 the then Acting CEO of SASSA Ms Pearl Bengu (Ms Bengu) responded to the report stating amongst others that she had already been made aware of the alleged improprieties involving the two

service providers relating to the tender and had initiated an investigation. No further feedback was received from SASSA or any of the other state institutions mentioned herein;

- 2.3.5 The purpose of accrediting these companies is rendered *moot* due to the existence of the Central Supplier Database. The National Treasury Instruction Note 4A of 2016/2017 required that the use of the Central Supplier Database is mandatory for Schedule 2 and 3 Public Entities. Therefore there was no reason for SASSA to advertise the tender and populate an unnecessary database as the Central Supplier Database could have been utilised to source potential service providers for this purpose.

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

- 3.1 The investigation was conducted in terms of section 182(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution) which gives the Public Protector the powers to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, 23 of 1994 (Public Protector Act), which regulates the manner in which the powers conferred by section 182 of the Constitution may be exercised in respect of government at any level.

- 3.2 The South African Social Security Agency (SASSA) is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and sections 6(4) and (5) of the Act.

### **4. ISSUES IDENTIFIED FOR INVESTIGATION**

- 4.1 Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:

- 4.1.1 Whether Azande Consulting CC was awarded Bid No. SASSA: 40/15/BT-Head Office in contravention of the legislative framework and policy prescripts regulating supply chain management in government, if so, whether such conduct amounts to improper conduct in terms of s182(1) of the Constitution and maladministration as envisaged in s6(5)(a) of the Public Protector Act; and
- 4.1.2 Whether Azande Consulting CC was awarded Bid No. SASSA: 42/15/GA-Mikondzo Project in contravention of the legislative framework and policy prescripts regulating supply chain management in government if so, whether such conduct amounts to improper conduct in terms of s182(1) of the Constitution and maladministration as envisaged in s6(5)(a) of the Public Protector Act.

## **5. THE INVESTIGATION PROCESS**

### **5.1 The Investigation approach**

- 5.1.1 The investigation was conducted using an enquiry process that seeks to find out:
  - 5.1.1.1 What happened?
  - 5.1.1.2 What should have happened?
  - 5.1.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or improper conduct?
  - 5.1.1.4 In the event of maladministration or improper conduct, 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?

5.1.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the course of the investigation. In this particular case, the factual enquiry principally focused on whether the conduct of the SASSA’s functionaries was improper with regard to allegations of irregularities in the complaints.

5.1.3 The enquiry regarding what should have happened, focuses on the law, policy prescripts and/or rules that regulate the standard that should have been met by the SASSA’s functionaries to prevent maladministration or improper conduct from happening in the future.

5.1.4 The investigation process involved the exchange of documentation and correspondence between the Public Protector, SASSA and the Complainant, which were analysed and evaluated in line with applicable laws, policies and related prescripts throughout the investigation.

**5.2 Key sources of information and documentation**

5.2.1 Key sources of information and documentation obtained during the course of the investigation were analysed and assessed through the investigation process:

		<b>Dated</b>
1	Copy of memo to the Acting Public Protector	8 Feb 2021
2	Copy of draft section 7(9) notice addressed to the CEO, BEC and BAC of SASSA	Undated
3	Copy of the Complainant’s complaint in the form of a sworn affidavit	12 June 2018

REPORT OF THE PUBLIC PROTECTOR

4	Copy of letter addressed to Mr Abraham Mahlangu, acting CEO of SASSA	1 Oct 2018
5	Copy of SASSA's <i>response letter</i> signed by Mr Abraham Mahlangu	19 Oct 2018
	Copy of <i>Terms of reference for an expression of interest from potential service providers for the provision of project management event services to be performed for Project Mikhondzo for a period of 3 years in 9 provinces</i>	Undated
6	Copy of <i>Government Tender Bulletin, Number 2902;</i>	10 Feb 2016
7	Copy of <i>Register of Bids Received</i> for tender bid number SASSA/42/15/GA	26 Feb 2016
8	Copies of <i>Appointment Letters</i> for Bid Evaluation Committee members	17 May 2016
9	Copy of <i>Minutes of the Bid Adjudication Committee meeting;</i>	26 May 2016
10	Copies of <i>Compulsory Briefing Session Attendance Register;</i>	18 Feb 2016
11	Copy of the <i>Bid Evaluation Committee Recommendation: Accreditation of service providers of Project Mikondzo Event Management Services to be performed through Outreach Programmes for a period of three (3) years in the nine (9) provinces;</i>	24 May 2016
12	Copy of <i>Letter of Accreditation</i> for Azande Consulting CC;	23 June 2016
13	Copy of <i>Letter of Accreditation</i> for Vee-el Promotions (Pty) Ltd;	23 June 2016;
14	Copy of <i>Circular: Compliance with the audit findings on Mikondzo accreditation Vee-el Promotions and Azande Consulting, file No: 2017/12/15</i> to all Regional Managers;	15 Dec 2017
15	Copies of <i>SBD1, SBD2, SBD 3.1, SBD4, SBD6.1, SBD8,SBD9 Forms</i> for Azande Consulting CC	22 Feb 2016
16	Copy of <i>Central Supplier Database</i> for Azande Consulting CC	2 Sept 2016
17	Copy of the <i>Bid Evaluation Committee Report</i> to the Bid Adjudication Committee	10 May 2016

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18	Copies of <i>SBD1,SBD2,SBD3.1,SBD4,SBD6.1,SBD8,SBD9,SB D9 Forms</i> for Vee-el (Pty) Ltd,	24 Feb 2016
19	Copy of <i>National Treasury Circular No 3 of 2015/2016: National Central Supplier Database;</i>	21 Dec 2015
20	Copy of <i>National Treasury SCM Instruction No 4A of 2016/2017:Central Supplier Database;</i>	19 May 2016
21	Copy of <i>Central Supplier Database for Azande Consulting CC;</i>	14 April 2016
22	Copy of <i>Temporary Suspension of Mikondzo Accreditation SASSA/42/15/GA-Mikondzo Project letter</i>	undated
23	<i>Copy of Temporary Suspension of service for Azande with regard to Bid No SASSA:40/15/BT-Head Office signed by Mr Mahlangu</i>	19 Oct 2018
24	SASSA Annual Financial Statements	2018/2019; 2019/2020
	Copy of letter from the Auditor-General of South Africa to SASSA titled <i>Request for information for the audit of the South African Social Security Agency for the year ended 31 March 2017</i>	8 May 2017
25	Copy of notice issued in terms of section 7(9) of the Public Protector Act 1994 to Ms Busisiwe Memela-Khambula (Ms Mememla-Khambula) the Chief Executive Officer of SASSA	19 April 2021
26	Copy of response to the notice issued in terms of <i>section 7(9) of the Public Protector Act, 1994</i> from Ms Memela-Khambula	25 May 2021
27	Copy of s 7(9) notice served on Bid Evaluation Committee Members and Bid Adjudication Committee Members for Bid	8 March 2022
27	Copy of e-mail to SASSA CEO requesting a meeting with Bid Evaluation and Bid Adjudication Committee Members	14 March 2022

	Record of the meeting held between the PPSA team, the BEC, BAC members and their CEO discussing remedial action	18 March 2022
	Copy of e-mail from the SASSA CEO requesting an extended period to respond to the Notice by the Bid Evaluation and Bid Adjudication Committee Members	24 May 2022
29	Copy of e-mail granting the Bid Evaluation and Bid Adjudication Committee Members extended period to respond to the notice	25 May 2022
31	Copies of response to the notice received from the Bid Evaluation and Bid Adjudication Committee Members.	30 May 2022

### 5.3 Legislative framework and policy prescripts

5.3.1 The Constitution of the Republic of South Africa, 1996;

5.3.2 The Public Protector Act No 23 of 1994;

5.3.3 Public Finance Management Act No 1 of 1999;

5.3.4 Treasury Regulations For Departments, Trading Entities, Constitutional Institutions And Public Entities, (March 2005);

5.3.5 *National Treasury Circular No 3 of 2015/2016;*

5.3.6 *National Treasury SCM Instruction No 4A of 2016/2017;*

5.3.7 Practice Note 7 of 2009/10;

5.3.8 National Treasury SCM Instruction No 07 of 2017/18;

5.3.9 PFMA-Government Procurement General Conditions of Contract July 2010;



- 5.3.10 PFMA SCM Instruction Note 3 of 2021/22: Enhancing Compliance, Transparency and Accountability in Supply Chain Management;
- 5.3.11 National Treasury Regulation 16A6.2;
- 5.3.12 National Treasury Regulation 16A8.3 and 16A8.4;
- 5.3.13 National Treasury Practice Note 7 of 2009/10;
- 5.3.14 National Treasury Regulation 16A9.1(d);
- 5.3.15 National Treasury Instruction 07 of 2017/18;
- 5.3.16 National Treasury Instruction 4A of 2016/17; and
- 5.3.17 SASSA Supply Chain Management Policy of February 2016.

**6. DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSION MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS**

- 6.1 Whether Azande Consulting CC was awarded Bid No. SASSA: 40/15/BT Head Office in contravention of the legislative framework and policy prescripts regulating supply chain management in government.**

*Common cause issues*

- 6.1.1 SASSA advertised Bid No SASSA: 40/15/BT-Head Office in the Government Tender Bulletin of 29 January 2016 with a closing date of 23 February 2016. The bid was advertised in the e-Tender Publication Portal in compliance with National Treasury Instruction No.1 of 2015/16

on e-Tender Publication Portal par. 3.1. This bid was advertised for a minimum period of no less than 21 days before closure in compliance with Treasury Regulation 16A6.3(c);

6.1.2 Azande Consulting CC submitted its bid on 23 February 2016 as reflected in the Bid Register and SASSA Office Stamp (*Supply Chain Management Acquisition*) appearing on Azande Consulting CC's Business Profile of 23 February 2016. In this regard Azande Consulting CC's bid was received before the closing date and time determined for the bid, in compliance with Treasury Regulation 16A3.2;

6.1.3 Azande Consulting CC was awarded Bid No SASSA: 40/15/BT-Head Office as per a letter dated 23 June 2016. SASSA later suspended the execution of the contract through a letter dated 29 May 2018.

Issues in dispute

6.1.4 The issue for determination is whether the BEC negligently and failed to adhere to supply chain management legislation and policy prescripts and recommended to the BAC that Azande Consulting CC be appointed as the preferred service provider with regard to the bid.

Response from SASSA

6.1.5 In the response received from SASSA and signed by Mr Mahlangu, the then Acting Chief Executive Officer of SASSA dated 19 October 2018, it is stated amongst others that:

6.1.5.1 Bid No. SASSA: 40/15/BT-Head Office was advertised in the National Treasury Portal as well as in the Government Tender Bulletin of 29 January 2016 with a closing date of 23 February 2016;

6.1.5.2 The bid briefing session was held on 10 February 2016 and attended by eighty seven (87) prospective bidders. On the date of closure for

submission of bids, twenty three (23) bids were received. The bids were evaluated by a duly appointed BEC consisting of Mr Bonga Gcumisa, Mr Sonwabo Koluti, Mr Benzile Hadebe and Mr Mbulaheni Mulaudzi;

6.1.5.3 The BEC prepared a report, signed by all members on 10 May 2016 recommending Azande Consulting CC as the preferred bidder. The report from the BEC was considered on 12 May 2016 by the BAC and Azande Consulting CC was accepted as the preferred service provider based on the highest scores it obtained during the bid evaluation process. The awarding of the bid was subject to price negotiation with Azande Consulting CC and budget availability;

6.1.5.4 The price was negotiated with Azande Consulting CC from four hundred eighty seven million, nine hundred thirty three thousand, nine hundred eighty eight rand (R487 933 298,00) to three hundred ninety two million seven hundred twenty five thousand, nine hundred eighty eight rand (R392 725 988,00) in a meeting held on 9 June 2016. The BAC approved the award of the bid to Azande Consulting CC based on the negotiated price and budget availability. The *Letter of Award* was signed by the then Chief Executive Officer Ms Ramokgopa on 20 June 2016. A Service Contract and Service Level Agreement was signed by Ms Ramokgopa and Azande Consulting CC on 22 July 2016. The budget for the project was allocated from the surplus budget;

6.1.5.5 During the external audit process of the 2017/18 financial year, the Auditor-General raised an audit query relating to the scoring in the evaluation process of the bid. The query culminated in the suspension of the execution of the contract with Azande Consulting CC through a letter dated 29 May 2018 upon the outcome of the preliminary investigation that was conducted by SASSA. The suspension of the contract with Azande Consulting CC remained in place;

6.1.5.6 Azande Consulting CC sought to institute legal action in response to the suspension of the contract. SASSA advised Azande Consulting CC of its

intention to oppose the legal action regarding the suspension of the contract;

- 6.1.5.7 The General Manager: Supply Chain Management was requested to review the evaluation process to give effect to the query raised by the Auditor-General. As a result of the review outcome, SASSA declared and disclosed an irregular expenditure in this regard; and
- 6.1.5.8 A communication was sent to all provinces on the process to be followed to confirm whether a service was rendered prior to the signing of the Goods Receipt Voucher and payment made.
- 6.1.5.9 It is therefore the view of SASSA that upon receiving the query from the Auditor-General it acted accordingly in this regard.
- 6.1.5.10 Mr Mahlangu submitted a copy of a letter addressed to Ms Makhaye the sole director of Azande Consulting CC titled, *Suspension of ICROP Services Agreement: Bid No SASSA:40/15/BT* signed by Mr Mahlangu on 29 May 2018, in which it is stated amongst others that:
- 6.1.5.11 It was established from a preliminary investigation conducted by SASSA that Azande Consulting CC was awarded full points for the number of community based research/assessment programmes conducted during 2014 and 2015 in the North West Regional Office;
- 6.1.5.12 SASSA's North West Regional Office could not confirm that Azande Consulting CC conducted the research/assessment programmes rendering the points awarded unjustifiable and an act of possible misrepresentation by Azande Consulting CC;
- 6.1.5.13 Based on the information provided during bidding, SASSA believed that Azande Consulting CC possessed the necessary experience and expertise required as per the Terms of Reference for the bid. SASSA further stated that had the information been presented prior to the bid

evaluation process, Azande Consulting CC would not have been the successful bidder; and

- 6.1.5.14 SASSA, therefore, decided to suspend with immediate effect its contract for the provision of ICROP with Azande Consulting CC.

*Azande Consulting*

- 6.1.6 In the copy of *Azande Consulting CC Business Profile of 19 February 2016: Integrated Community Outreach Programmes (ICROP): National Proposal Tender Ref: SASSA 40/15/BT*, it is stated, amongst others, that:<sup>2</sup>

- 6.1.6.1 The nature of Azande Consulting CC’s business was amongst others event management, décor, marquees, sound and visuals, catering, flooring, project management and training;

- 6.1.6.2 The company had more than five (5) years’ experience in managing projects similar to the Integrated Community Outreach Programmes that included mini-action research, data collection and event management as reflected in the table below:

Year/Date	Number of events	Client	Cost
2012	5	Dept of Public Works	R5.500.000
2014	9	Dept of Social Development	R4,500.000
2015	5	Dept of Arts Culture & Sports	R4,000,000
2015	1	Office of the Presidency	R5,000,000
Total			R19,000,000

- 6.1.7 It is further stated that Azande Consulting CC had skills, knowledge and experience with regard to conducting community outreach programmes stretching as far back as 2008;<sup>3</sup>

<sup>2</sup> Azande Business Profile of 19 February 2016 pg 6.

<sup>3</sup> Azande Business Profile of 19 February 2016 pg 14.

- 6.1.8 A copy of the *Central Supplier Database* dated 6 May 2016 reflects that Azande Consulting CC was registered in the Central Supplier Database on 14 April 2016;
- 6.1.9 A copy of the letter from the Department of Public Works signed by Ms Nyeleti Makhubele, Pretoria Regional Manager on 20 March 2013 addressed to Ms Makhaye of Azande Consulting CC and titled *Re: Tender Award No: PT13/011: Prestige: Appointment of a Service Provider for the China visit at the Sefako Makgato Presidential Guesthouse Period 26 March 2013*, reflects, amongst others, that Azande Consulting CC was awarded a tender in the amount of one million eighty thousand, nine hundred, forty five rand and seventy two cents (R1 080 945.72) including 14% VAT;
- 6.1.10 Another copy of a letter from the Department of Public Works signed by Ms Nyeleti Makhubele, Pretoria Regional Manager on 25 June 2013 addressed to Ms Makhaye of Azande Consulting CC and titled *Re: Tender Award No: PT13/028: Prestige: Appointment of a Service Provider for the United States of America Visit at the Presidential Guesthouse Period 29 June 2013*, reflects, amongst others, that Azande Consulting CC was awarded a tender in the amount of one million nine hundred thirty thousand seventy seven rand and fifty cents (R1 930 077.50) including 14% VAT;
- 6.1.11 Considering the value of the tenders awarded to Azande Consulting CC by the Department of Public Works for the events of 26 March 2013 and 29 June 2013 against what is reflected in table 5.1.6.2 above, as well as in the *Letters of Award*, the total value of the two projects add up three million eleven thousand and twenty three Rand and twenty-two cents (R3 011 023, 22);
- 6.1.12 The total value of work conducted for institutions reflected in the above table except for the Department of Public Works and Infrastructure cannot be quantified as the Public Protector is not in possession of

information to support what is reflected in its Business Profile of 19 February 2016;

- 6.1.13 Further thereto, the work supposedly done in SASSA North West was found to have not been done and it influenced the bid evaluation committee to award full points to Azande Consulting CC as reflected in the response from Mr Mahlangu and in the report commissioned by SASSA;
- 6.1.14 A copy of the *SBD1 form* for Azande Consulting CC reflects that the total bid price for Bid No. SASSA: 40/15/BT-Head Office was four hundred and eighty seven million nine hundred and thirty three thousand, two hundred and ninety-eight rand (R487 933 298.00) and the total number of items to be offered was thirteen (13). This effectively means that each item was to cost approximately thirty-seven million, five hundred thousand rand (R37, 5 m);
- 6.1.15 A copy of the *SBD6.1 Form* reflects that Azande Consulting CC has been in business for sixteen (16) years;<sup>4</sup> and
- 6.1.16 A copy of the *Certificate issued by the Registrar of Companies & Close Corporation* on 25 September 2013 reflects amongst others that Azande Consulting CC was registered with the Companies and Intellectual Property Commission on 27 January 2000 as a Close Corporation and the description of its principal business is consulting. Its sole director is Ms Makhaye.
- 6.1.17 There are glaring material discrepancies in relation to the above information in comparison to what was submitted for the bid process as follows:

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<sup>4</sup> Copy of SBD6.1 Form pg 6.

- 6.1.17.1 The copy of the *SBD6.1 Form* signed by Ms Makhaye on 22 February 2016 reflects Azande Consulting CC as a company and not a Close Corporation<sup>5</sup> and its business track record stretches as far back as 2008. It is highly improbable that at the time of submitting its bid it had sixteen (16) years' experience in business without substantiating the claim with reliable information and/or documentation of previous work conducted. It is unknown why Ms Makhaye would refer to Azande Consulting CC as a company while it was registered as a close corporation. The BEC and the BAC don't seem to have considered this aspect as material as it is not reflected in the submission dated 9 May 2016 from the Chairperson of the BEC to the Chairperson of the BAC recommending Azande Consulting CC as the preferred bidder;
- 6.1.17.2 It is not disputed that Azande Consulting CC has been in existence for more than sixteen (16) years, (*established since 2000*) as this has been established from records of the Companies and Intellectual Property Commission;
- 6.1.18 What is a glaring material discrepancy is that there is no substantive evidence presented to support the claim reflected in the *SBD6.1 Form* that Azande Consulting CC is a company and not a close corporation that has been doing business for sixteen (16) years. In fact, its *Business Profile of 19 February 2016* reflects that it had five (5) years' experience in the business of event management;
- 6.1.19 The copy of *Register: Bids Received; Bid Number SASSA: 40/15/BT* dated 23 February 2016 reflects that on the closing date for the submission of bids, twenty three (23) companies had responded to the bid and Ms Makhaye signed Azande Consulting CC's bid documentation; and

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<sup>5</sup> Copy of SBD6.1 Form pg 5.



6.1.20 The copy of the *Administrative Compliance Register* reflects, amongst others that, the *SBD3.1 Forms* for all twenty three (23) companies were “*not fully completed*”.

6.1.21 The copy of a submission dated 9 May 2016 from the Chairperson of the BEC prepared for the Chairperson of the BAC titled, *Appointment of service provider for the provision of the Action Research Project through door-to-door services to be performed as part of the Integrated Community Outreach Programme (ICROP) of SASSA in targeted areas for a period of three years in nine provinces of the Republic of South Africa*, states amongst others that:

6.1.21.1 The Chief Financial Officer appointed officials listed in the table below as BEC members on 17 March 2016 as reflected in individual letters of “*Appointment to serve as member of SASSA Bid Evaluation Committee for the accreditation of potential service providers for the provision of project Mikondzo Management Services Bid*”. The appointment letters, read amongst others that; “*This appointment is done in terms of Treasury Regulation 16A 6.2, issued in accordance with the Public Finance Management Act of 1999, section 76(4)(c) and the SASSA Supply Chain Management Policy, Delegations, Treasury SCM Guide for Accounting Officer and Circular on Supply Chain Management Implementation; and*

Name	Position	Role in committee
Sonwabo Koliti	General Manager: Grants Administration	Chairperson
Mbulaheni Mulaudzi	Senior Manager: Dept. of Social Development	Member
Bonga Gcumisa	Senior Manager: SCM	Member
Benzile Hadebe	Manager: SCM	Member
Thamo Mzobe	Senior Manager: Dept of Social Development	Member

6.1.21.2 The names of the BEC members in the above table correlated with the names that appear in the letter of response from Mr Mahlangu dated 19 October 2018. It is noted from the table above that Mr Mbulaheni Mulaudzi and Ms Thamo Mzobe are employees of the Department of

Social Development. SASSA accounts to the Minister of Social Development as the Executive Authority.

6.1.21.3 The table below shows the composition of the BAC members.

Name	Position	Role in committee
Tsakeriwa Chauke	Acting Chief Financial Officer	Chairperson
Themba Matlou	Regional Executive Manager: Gauteng	Deputy Chairperson
Dumisile Ndlovu	General Manager: SCM	Member
Zodwa Mvulane	General Manager: NW	Member
Caesar Vundule	Acting Chief Information Officer	Member
Dianne Dunkerley	Executive Manager: Grants & Policy	Member
Sindisiwe Sibankulu	General Manager: HR	Member

6.1.22 The copy of the submission dated 30 May 2016 from the Chairperson: BEC prepared for the Chairperson of the BAC states that, Azande Consulting CC was recommended for approval as a preferred service provider for the provision of ICROP in the nine provinces for a period of three (3) years. The recommendation was approved by members of the BAC as reflected in the submission dated 17 June 2016.

6.1.23 A copy of the *Letter of Award* for the attention of Ms Makhaye of Azande Consulting CC confirming that it has been the successful bidder for the tender was signed on 20 June 2016 by Ms Ramokgopa, the then Acting Chief Executive Officer for SASSA.

6.1.24 A copy of the *Services Contract* was entered into between SASSA represented by Ms Raphaahle Ramokgopa and Azande Group represented by Ms Maqu was signed on 22 July 2016. A *Service Level Agreement* was also entered into by the same representatives and signed on 1 July 2016. The date for the Project Close out report is stated as 30 June 2019.

6.1.25 The copy of the Auditor-General South Africa (AGSA) letter titled, *Request for information for the audit of the South African Social Security*

*Agency for the year ending 31 March 2017*, dated 8 May 2017 for the attention of Mr T Chauke, Mr K Mowa, Mr T Twala, Mr P Mabula and Ms M Mogari requested submission to the AGSA, information and documentation relating to amongst others Bid No. SASSA: 40/15/BT awarded to Azande Consulting CC.

- 6.1.26 The copy of the letter from SASSA addressed to Ms Makhaye titled *Re: Suspension of ICROP Services Agreement: Bid No: SASSA: 40/15/BT* signed by Mr Mahlangu on 29 May 2018 informed Azande Consulting CC of the decision to suspend the contract relating to the provision of ICROP with immediate effect following the outcome of a preliminary investigation conducted by SASSA which uncovered amongst others that:
- 6.1.26.1 Azande Consulting CC was awarded full points for the number of community based research/assessment programmes conducted during the 2014/2015 financial year for SASSA North West province;
- 6.1.26.2 SASSA North West province could not confirm that Azande Consulting CC had conducted the research/assessment programmes rendering the allocation of the full points unjustifiable and that could also probably amount to the possibility of misrepresentation by Azande Consulting CC;
- 6.1.26.3 Based on the information submitted during the bidding process SASSA believed that Azande Consulting CC possessed all the necessary experience and expertise required for the bid;
- 6.1.26.4 Had the information provided by Azande Consulting CC during the bidding process been presented prior to the evaluation process, Azande Consulting CC would not have been a successful bidder for the bid.
- 6.1.27 Having considered the above information in the letter, it is concerning that:

- 6.1.27.1 The letter from SASSA addressed to Ms Makhaye titled *Re: Suspension of ICROP Services Agreement: Bid No: SASSA: 40/15/BT* was sent on 29 May 2018 which was 21 days after the Auditor-General sent a request for information on this contract. This was also sent about eight (8) months after the Complainant alerted SASSA of the possible existence of the irregularity.
- 6.1.27.2 Both the BEC and BAC omitted to verify the authenticity and correctness of the information submitted by Azande Consulting CC relating to previous work purportedly conducted for SASSA in the North West province despite SASSA's own functionary, Ms Mvulane the General Manager of North West Province, serving as a member of the BAC and not being able to confirm that the work had been done.
- 6.1.27.3 It could not have been difficult for either member of the BEC or the BAC to make the effort to verify the information submitted or cause the verification and authentication of the information submitted by Azande Consulting CC regarding the work done in SASSA North West, in particular when Azande Consulting CC was found to be the only successful bidder to have scored the highest points for the bid.
- 6.1.27.4 When adjudicating a bid, the BAC is not entirely bound by the recommendations made by the BEC. It has an obligation to conduct due diligence on the information submitted by the BEC and to satisfy itself that the process followed was due and that the information submitted is correct; before it takes a decision on whether to accept or reject the recommendation of the BEC.
- 6.1.28 A copy of *the Report on the review of the evaluation/award process for the ICROP Bid: SASSA 40/15BT* signed by Ms Dumisile Ndlovu, General Manager: Supply Chain Management on 18 July 2018 states amongst others that:

- 6.1.28.1 The objective of the report was, *“To review the evaluation and award process for the ICROP tender to determine whether there was any non-compliance with SCM processes, procedures, policy, regulations and any other applicable legislation and further recommend the correct classification of the expenditure thereof”*;
- 6.1.28.2 In paragraph 4.2.2 of the Report, it is stated that the BEC used an incorrect electronic score sheet template during the evaluation process which allowed for a reduction of points due for each bidder resulting in the possible disqualification of bidders that scored below the stipulated 60% threshold;
- 6.1.28.3 The miscalculation was not a conscious human error as BEC members did not do the calculation manually rather it was an automated calculation from the template used;
- 6.1.28.4 Paragraph 4.2.2.2 of the Report provides that SASSA reviewed its policy in line with the Treasury Regulations of 2005 to align it with Treasury Practice/Instruction Notes and Guidelines for Accounting Authorities;
- 6.1.28.5 Paragraph 4.2.6 provides that the ToR of the bid required that experience and track record was to be determined by submission of three (3) letters of reference. However, Azande Consulting CC submitted two (2) reference letters from the Department of Public Works and Infrastructure.
- 6.1.29 The conclusion of the report is recorded as follows in paragraph 5:
- 6.1.29.1 *“There had been contravention of the Preferential Procurement Regulations 2011, par 11.1.9 which requires that the percentage of each panel member should be added and divided by the number of panel members to establish the average obtained by each bidder for functionality. In this case, five (5) instead of four (4) was used as the number of panel members, resulting in all bidder’s points being reduced*

*and therefore incorrect. To that effect, this transaction is classified as irregular;*

6.1.29.2 *There had been a contravention of the mandatory requirements of the SASSA TOR. The bidder was required to submit three (3) reference letters of track record and the bidder did not meet this requirement as only two letters were submitted with the bid/proposal. The two (2) letters are both from the Department of Public Works for the projects to the value of R1 930 077.50 and R1 080 945.72 respectively; and*

6.1.29.3 *The bidder admitted in its letter dated 1 August 2017 that it made an error by presenting twelve (12) projects/events to have been undertaken in the North West instead of other SASSA regions. The bidder, therefore, clarified the issue of projects in its letter in terms of action research and events which was duly verified against the bid proposal and therefore this error by the bidder should not be used against the bidder as per the Practice Note 4 of 2003.*

6.1.30 The report recommended that:

6.1.30.1 *The contract awarded to Azande Consulting CC be deemed irregular and the expenditure of R278 717 752,00 which is expenditure prior to the suspension of the contract be disclosed as irregular expenditure; and*

6.1.30.2 *All matters raised in the internal audit report be procedurally concluded through a process deemed appropriate by the then Acting Chief Executive Officer of SASSA.*

6.1.31 Of cardinal importance from the report is that:

6.1.31.1 Ms Dumisile Ndlovu who signed the report also served as a member of the BAC which approved the recommendation from the BEC that Azande Consulting CC be appointed as the preferred bidder for the bid in question;

- 6.1.31.2 SASSA conceded that the electronic template used to calculate points for each bid evaluated by a BEC member did not bear the desired result as the calculator template miscalculated the total points for the bid. However, it is still not explained how this calculator template could adversely affect other bidders to the benefit of Azande Consulting CC. In other words, the calculator template used for Bid No. SASSA 40/15BT assisted Azande Consulting to score above the threshold of 60% for the bid evaluated while scoring other bidders below the 60% threshold; and
- 6.1.31.3 SASSA conceded that even if the calculator template could have miscalculated the points awarded to other bidders, Azande Consulting CC did not comply with the ToR requirements stipulating that three (3) reference letters/copies of invoices should accompany the bid.

SSA Annual Reports of 2018/2019 and 2019/2020

- 6.1.32 The SASSA Annual Report for 2018/2019 reflects amongst others a disclosure of irregular, fruitless and wasteful expenditure in relation to Bid No. SASSA:40/15/BT as follows:
- 6.1.32.1 *“An amount of two hundred and seventy nine million one hundred forty two thousand eighty hundred and twelve rand (R279, 142,812) relating to the Integrated Community Outreach Programme (ICROP) contract which is said to have been previously disclosed as possible irregular expenditure in the year 2016/17;*
- 6.1.32.2 *The amount was subsequently confirmed and disclosed as irregular expenditure in the 2017/18 Annual Financial Statements;*
- 6.1.32.3 *The irregularities giving rise to the irregular expenditure were confirmed through the audit by Internal Audit and Supply Chain Management;*

- 6.1.32.4 *This contract has been suspended, however, the service provider is litigating against SASSA. The matter will be finalised in consideration once the outcome of the litigation process is concluded;*<sup>6</sup>
- 6.1.32.5 *Azande Consulting CC was claiming an amount of one hundred and seventy million rand (R170,000,000) for an alleged termination of the contract it concluded with SASSA for the provisioning of Integrated Community Registration Outreach Programme (ICROP) services. SASSA's stance is that the contract was not terminated but suspended to investigate the allegations that Azande Consulting CC has misrepresented its experience regarding the provision of action research services for the SASSA's North West Regional Office. It transpired that such services were not rendered as Azande Consulting CC claimed. SASSA is defending this matter. A special plea was filed arguing that the matter is premature since the contract was not terminated but suspended. Azande Consulting CC filed a replication (replying to SASSA's plea) on 30 April 2019. A court date for the special hearing has been applied for and awaiting a date to be allocated;*<sup>7</sup>and
- 6.1.32.6 *The Agency takes the issue of non-compliance to SCM legislation, prescripts and policy with the seriousness it requires. In the year under review, the Acting Chief Executive Officer and Chief Financial Officer took upon themselves to engage all regional management and head office senior managers to emphasize a need to strengthen internal controls and consequence management to be implemented against any official who failed to prevent irregular, fruitless and wasteful expenditure and/or incur damages and losses. During the period under review, there were a number of officials who were taken through disciplinary process as a result of financial misconduct committed."*<sup>8</sup>

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<sup>6</sup> SASSA Annual Report 2018/2019 pg 12-14.

<sup>7</sup> See SASSA Annual Report 2018/2019 pg 145.

<sup>8</sup> See SASSA Annual Report 2018/2019 pg 16.



- 6.1.33 In the SASSA Annual Report of 2019/2020 an amount of two hundred and eighty one million one hundred and seventy three thousand seven hundred and forty three Rand (R281 173 743,00) was disclosed as irregular, fruitless and wasteful expenditure in relation to the Integrated Community Outreach Programme (ICROP).<sup>9</sup>
- 6.1.34 Having considered the information in the SASSA 2018/19 and 2019/20 Annual Reports including the evidence presented it is established that:
- 6.1.34.1 No evidence was presented by SASSA reflecting that reference checks with regard to previous work conducted by Azande Consulting CC were done to determine the correctness of the information supplied by Azande during the bidding process;
- 6.1.34.2 While it is stated in the Annual Reports that *“During the period under review there were a number of officials who were taken through the disciplinary process as a result of financial misconduct committed”*, this statement does not clearly state whether the officials that were taken through disciplinary processes included members of the Bid Evaluation Committee as well as members of the Bid Adjudication Committee;
- 6.1.34.3 Azande Consulting CC submitted proof of previous work done with regard to the tender awarded by the Department of Public Works and Infrastructure, no further evidence was presented with regard to work purportedly to have been done with other institutions reflected in its Business Profile of 19 February 2019, including SASSA itself;
- 6.1.34.4 It is improbable and suspect that of the 23 companies that submitted bids, only Azande Consulting CC was found to have met all the requirements, despite it having submitted conflicting information in relation to its experience and skill with regard to previous work done. It is

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<sup>9</sup> SASSA Annual Report 2019/20 pg 11.

equally concerning that both the BEC and BAC chaired by senior officials responsible for SCM overlooked the conflicting information;

- 6.1.34.5 The value of previous work purportedly to have been done by Azande Consulting CC with the Department of Public Works and Infrastructure does not add up to five million five hundred thousand Rand (R5, 5 million) as reflected in Azande's Business Profile of 19 February 2019. The value for the work conducted could not be quantified as no proof was presented to that effect. The BEC and the BAC proceeded with the evaluation and adjudication process nevertheless, omitting to consider the material effect of this information on the bid;
- 6.1.34.6 SASSA acted on the matter and suspended the execution of its contract with Azande Consulting CC upon being made aware of the irregularities with regard to the evaluation and adjudication of the bid. The contract between SASSA and Azande Consulting CC was suspended and remains suspended and came to an end due to effluxion of time as it was for a period of three (3) years from the date of contracting in June 2016;
- 6.1.34.7 SASSA admits that there were irregularities with regard to the process followed leading to the awarding of Bid No. SASSA: 40/15/BT to Azande Consulting CC to the extent that it even disclosed an irregular, fruitless and wasteful expenditure in relation to Bid No. SASSA: 40/15/BT as reflected in the 2018/19 and 2019/20 Annual Reports. The disclosure was a result of the audit conducted by the AGSA in relation to the bid in question;
- 6.1.34.8 No evidence was presented reflecting that SASSA conducted an investigation into the matter after being informed about the irregularities relating to the bidding process by the Complainant on 15 September 2017. SASSA also did not provide evidence that the then Acting CEO of SASSA, Ms Bengu who acknowledged on 3 October 2017 that she had already been made aware of the alleged improprieties involving the two service providers relating to the tender, initiated an investigation prior to

8 May 2018 when the AGSA requested the information on the contract;  
and

6.1.34.9 A copy of the *Payment Remittance Advice* reflects that the last payment made to Azande Consulting CC was on 29 June 2018 for ICPROP011 of 30 May 2018. No further evidence was found that payments were made to Azande Consulting CC after 29 June 2018.

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

6.1.35 Section 7(9)(a) 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 that 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”*.

6.1.36 In view of the above provisions of the Public Protector Act, a notice dated 19 April 2021 was served on the Chief Executive Officer of SASSA, Ms Memela-Khambula (Ms Memela-Khambula) to respond to the preliminary adverse findings. A response was received on 25 May 2021 stating amongst others that:

6.1.36.1 Services of Azande Consulting CC and Vee-el (Pty) Ltd were suspended by the former Acting CEO, Ms Pearl Bengu pending an investigation into the alleged tender rigging, however, there was no proof that the two companies received the letters informing them that their services were suspended and later terminated;

6.1.36.2 It was confirmed that the names of officials that appeared in the bid documentation served as either members of the BEC and/or BAC for the two bids in question;

- 6.1.36.3 SASSA was of the view that Paragraph 2.4 of the National Treasury Note 4A of 2016/2017 meant that the implementation date for the Note was moved from 1 April 2016 to 1 July 2017 and therefore at the time when the bid was awarded to Azande Consulting CC the compulsory requirements for registration in the Central Supplier Database had been extended;
- 6.1.36.4 The Bid committees had no obligation to interact with information reflected in the business profiles of the two companies as submitted by the AGSA because the business profile information was not returnable information;
- 6.1.36.5 The bids were correctly evaluated and adjudicated and it could not have been easy for the bid members to detect the relationship between the two companies.
- 6.1.37 On analysis, the response from the CEO was found to lack critical factual information relating to how each member of the bid participated in the process. It also did not address the information relating to how the bids were evaluated and adjudicated without critically considering the information supplied by the service providers. Nothing from the response suggests that the members of the bids verified or attempted to verify the authenticity of the information supplied by the bidders to prevent fraudulent bids from being considered and/or awarded. As a result, it was necessary for the Public Protector to issue a supplementary section 7(9) notice to afford the bid committee members the opportunity to respond to the preliminary findings made as the CEO's response was not sufficient and was generic.
- 6.1.38 A supplementary notice dated 27 April 2022 was also served on Ms Memela-Khambula, as well as members of the BEC and BAC, listed in paragraphs 5.1.21.1 and 5.1.21.3 above, for **Bid No. SASSA: 40/15/BT Head Office** awarded to Azande Consulting CC and **Bid No. SASSA: 42/15/GA-Mikondzo Project** relating to the accreditation of Azande

Consulting CC and Vee-el Promotions (Pty) Ltd respectively. The recipients of the notices were requested to respond to the preliminary adverse findings and remedial action within ten (10) working days of receipt thereof.

6.1.39 In her response to the notice dated 25 May 2021 pertaining to both **Bid No. SASSA: 40/15/BT Head Office** and **Bid No. SASSA: 42/15/GA-Mikondzo Project**, Ms Memela-Khambula stated that:

6.1.39.1 In the advertisements for both **Bid No. SASSA: 40/15/BT Head Office** and **Bid No. SASSA: 42/15/GA-Mikondzo Project**, SASSA encouraged service providers to register their companies in the Central Supplier Database, although at the time of the advertisement for **Bid No. SASSA: 40/15/BT-Head Office**, registration in the Central Supplier Database was not compulsory as this requirement was to be effective from 1 April 2016;

6.1.39.2 SASSA's understanding and interpretation of Paragraph 2.4 of the National Treasury Instruction Note 4A of 2016/2017 which advised the accounting officers/authorities of the extension of the implementation date from 1 April 2016 to 1 July 2016, was that registering in the Central Supplier Database was not a requirement when **Bid No. SASSA: 40/15/BT-Head Office** was awarded to Azande Consulting CC on 23 June 2016;

6.1.39.3 In relation to **Bid No. SASSA: 42/15/GA-Mikondzo Project** Azande Consulting CC was already registered in the Central Supplier Database at the time when the bid process was finalised. Azande Consulting CC was registered in Central Supplier Database on 14 April 2016 prior to accreditation by SASSA on 20 June 2016 as reflected in the *Letter of Accreditation*;

6.1.39.4 The then Acting Chief Executive Officer, Ms Pearl Bengu, informed Azande Consulting CC and Vee-el Promotions (Pty) Ltd in writing about the suspension of their services pending an investigation into their

alleged bid rigging conduct in relation to **Bid No. SASSA: 42/15/GA-Mikondzo Project**. The services of Azande Consulting CC and Vee-el Promotions (Pty) Ltd were not requested or utilised subsequent to SASSA having been made aware of possible bid rigging, therefore the services were implicitly terminated;

6.1.39.5 SASSA did not exercise the discretion provided for in paragraph 23.3 of National Treasury: Government Procurement; General Conditions of Contract (July 2010), as no restriction penalty was imposed on the two companies;

6.1.39.6 The supply chain management process requires service providers to declare their interest and relationship in *SBD4 and SBD9 Forms*. Such interest is declared by shareholders/trustees/members in paragraph 3 of the said form. They are further expected to declare if they are employees of the state, but are not required to declare their employees on the forms. In this regard, the forms were fully completed in terms of the information required. On the alleged non-disclosure of conflicted parties, SASSA was not in any position to make such a determination;

6.1.39.7 When bids are evaluated, the noting of declarations by all bidders is contained in the two forms. Both Azande Consulting CC and Vee-el Promotions (Pty) Ltd did not declare any interest or relationship between each other in the forms as the forms do not require such declaration. It would, therefore, not have been easy for the members of the Evaluation and Adjudication Committees to detect the relationship between the two companies or between any of the other bidders who submitted their bids; and

6.1.39.8 The AGSA detected the individual in question on the Business Profile of the Company. This was not a returnable document in terms of the SASSA ToR/Specifications and therefore was not a document to be used for evaluation. The BEC had no obligation to interact with this document,

therefore it could not have picked up this name on a document it did not consider.

6.1.40 Upon analysis and evaluation of the above response of Ms Memela-Khambula it was established that:

6.1.40.1 Despite proof of registration in the Central Supplier Database for Azande Consulting CC and Vee-el Promotions (Pty) Ltd having been submitted with her response, the National Treasury Practice Note required institutions to use the current and existing service providers, it did not make provision for institutions to create their own databases for service providers through an accreditation process;

6.1.40.2 Both Azande Consulting CC and Vee-el Promotions (Pty) Ltd did not declare their relationship. The Business Profile of Azande Consulting CC submitted during the bidding process reflects that Mr Nkosi, the sole Director of Vee-el Promotions (Pty) Ltd was an employee of Azande Consulting CC but this was not declared by both companies in their *SBD Forms*. However, the information was available to the BEC to make a determination even though, according to the understanding of Ms Memela-Khambula, the Business Profile information was not returnable information, which is not a correct assertion. The Auditor-General of South Africa detected the suspicious relationship/conflict based on the information in the Business Profile of Azande Consulting CC. If the Business Profile information that was used by the Auditor-General of South Africa was not returnable why would it concern the Auditor-General in this regard? Ignoring or omitting to consider the information in the Business Profile of a service provider on a basis that it was not returnable information during the bidding process creates doubt as to whether the BEC conducted its *duties diligently, efficiently, honestly with integrity and in the best interest of the state and the general public as stipulated in Paragraphs 1 and 2 of the Bid Evaluation Committee Code of Conduct Declaration signed by all Bid Evaluation Committee members*;

- 6.1.40.3 The BEC is required to, amongst others, evaluate the correctness of the information and documentation supplied by bidders and not accept all documentation at face value. The assertion by Ms Memela-Khambula that the BEC had *“no obligation to interact with the Business Profile of the companies beyond what is declared on SBD4 and SBD9 Forms”* is disingenuous. The question is why the Supply Chain Management process would require the completion of forms and service providers to submit profiles of their businesses if there was no need for the BEC to consider the information in the *SBD Forms* as well as the information in the Business Profile of the bidders;
- 6.1.40.4 Companies submitting bids should possess the required number of years' experience and must have conducted previous similar work of the same value or above. This information must be verified by the BEC as it forms the basis of implementing a procurement process system that conforms to sections 217 of the Constitution, sections 50 and 51 of the PFMA as well as Regulation 16A of the National Treasury Regulations; and
- 6.1.40.5 Paragraph 5 of the BEC Code of Conduct requires employees to comply with the Code of Conduct for the Public Service as stipulated in Chapter 2 of the Public Service Regulations. One of the requirements stipulated in the Code of Conduct is that *“An employee gives honest and impartial advice based on all available relevant information, to higher authority when asked for assistance of this kind”*. Considering this provision, it is the understanding of the Public Protector that the BEC was entrusted with the duty to provide honest advice to the Bid Adjudication Committee relating to all information available, including information contained in the Business Profiles submitted by Azande Consulting CC as well as Vee-el Promotions (Pty) Ltd to enable the BAC to make an informed decision relating to the bids. Withholding such information amounts to denying the BAC honest and impartial advice based on all available information.



- 6.1.40.6 Ms Memela-Khambula responded on behalf of SASSA as the accounting officer of the institution however it was prudent that individual members of the BEC and BAC also be afforded the opportunity to respond to the adverse findings and remedial action. In this regard, it was important that a supplementary section 7(9)(a) notice was served on the Bid Evaluation and Bid Adjudication Committee members. Further thereto, Ms Memela-Khambula's response did not contest the provisional remedial action taken by the Public Protector.
- 6.1.41 A supplementary section 7(9) notice dated 30 April 2022 was served on Ms Memela-Khambula, the Bid Evaluation; and the BAC members affording them the opportunity to respond to the preliminary adverse findings in relation to both Bid No. SASSA: 40/15/BT Head Office and Bid No. SASSA: 42/15/GA-Mikondzo Project.
- 6.1.42 Although the section 7(9) notice was served to all the BEC members for Bid No. SASSA: 40/15/BT-Head Office only two responses were received from Mr Bonga Gcumisa, Senior Manager: SCM as well as from Ms Benzile Hadebe, Manager SCM. No responses were received from Ms Thamo Mzobe, Mr Sonwabo Koluti and Mr Mbulaheni Mulaudzi. The two responses received from Mr Bonga Gcumisa and Ms Benzile Hadebe dated 30 May 2022 were analysed and found to be similar in content and form, therefore, they shall be collectively referred to as responses by the *Bid Evaluation Committee*, in which it is stated amongst others that:
- 6.1.42.1 The BEC did not receive copies of the requested documentation in the possession of the Public Protector namely, copies of the *Bid Proposal* for the appointed bidder as well as the *Incorrect Electronic Template Score Sheet* which were referred to in the notice dated 30 April 2022, issued in terms of section 7(9)(a) of the Public Protector Act;
- 6.1.42.2 During the evaluation of the bid, there were three (3) *Reference Letters* attached to the Azande Consulting CC bid proposals from the

Department of Arts for the work done in 2011 and the Department of Public Works for the work done in 2012. The *Reference Letters* were inspected therefore it is the view of the BEC that Azande Consulting CC and Vee-el Promotions (Pty) Ltd were found to have complied with the mandatory requirements for the submission of three (3) *Reference Letters* as proof of similar work done previously; and

- 6.1.42.3 In response to the preliminary finding that SASSA conceded in its response to the *Allegations Letter* from the Public Protector that the BEC used an *Incorrect Electronic Template Score Sheet* during the evaluation process, which miscalculated the actual points due for each bidder resulting in the possible disqualification of bidders that scored below the stipulated 60% threshold, leading to the awarding of Bid No. SASSA: 40/15/BT to Azande Consulting CC, it was submitted that; during the bid evaluation process SASSA was in possession of the *Pre-programmed Technical Evaluation Score Sheet* that had a minimum number of five Bid Evaluation Committee members. On the day of the evaluation of the bid in question, one of the BEC members was not present (*name not provided*) reducing the number of Bid Evaluation Committee members from five to four. The BEC meeting proceeded as the absence of one member did not affect its quorum. The reduced number of BEC members from five to four was below the pre-programmed number of members as per the *Pre-programmed Technical Evaluation Score Sheet*. The BEC requested a correct *Technical Evaluation Score Sheet* with four members from National Treasury through the SASSA SCM unit, however the *Technical Evaluation Score Sheet* with four members could not be obtained. The result of the available *Pre-programmed Technical Evaluation Score Sheet* was then used to calculate the scores for each bidder by converting the five members into four members that actually scored the bidders. The scoring of the four members in a *Pre-programmed Technical Evaluation Score Sheet* with five members was incorrectly reflecting the reduced final points for all bidders. The Bid Evaluation Committee members present converted the *Technical Evaluation Score Sheet* resulting in an increased number of points for all

bidders that were evaluated under the functionality criteria. The manual converting of scores of four members to five members did not benefit Azande Consulting CC only but all scores were increased by this conversion.

6.1.43 The response by the BEC above was considered, however, the following material discrepancies lift the lid on the response presented above as follows:

6.1.43.1 The contention by the BEC that it was not provided with a copy of the *Bid Proposal* for the appointed bidder is false. A copy of Azande Consulting CC bid proposal was forwarded to the BEC as reflected in subparagraph 3.1.3 of the letter signed by the Public Protector on 12 May 2022. Azande Consulting CC submitted the same bid documentation for Bid No. SASSA: 40/15/BT-Head Office and Bid No. SASSA: 42/15/GA-Mikondzo Project;

6.1.43.2 The allegation that the Public Protector was in possession of the *Incorrect Electronic Template Score Sheet* is incorrect. It is plainly reflected in the section 7(9)(a) notice that the *Incorrect Electronic Template Score Sheet* was alleged to exist and utilised by the BEC during the evaluation process as per the response from SASSA. It is also reflected in the same letter signed by the Public Protector in response to the BEC stating that the Public Protector was not provided with a copy of the *Incorrect Electronic Template Score Sheet*. This is stated in 3.1.8 of the Public Protector's letter dated 12 May 2022. The Public Protector reflected further that the *Incorrect Electronic Template Score Sheet* was referenced by SASSA in its response as stated in the report titled: *Report on the Review of the Evaluation/Award Process for the ICROP Bid: SASSA 40/15/BT* which was made available to BEC;

6.1.43.3 It is not disputed that Azande Consulting CC provided copies of *Reference Letters* for previous work done at the Department of Arts and Culture as well as the Department of Public Works, as listed in the table

reflected in paragraph 5.1.6.2. The values of the work purportedly done by Aznade Consulting CC for the Department of Arts and Culture cannot be quantified as no values were provided in the Reference Letters. Further thereto the Bid Evaluation Committee did not take the Public Protector into confidence with regard to the status of the previous work purportedly done by Azande Consulting CC for SASSA in North West Province in 2013 and 2014. It is concerning that *Reference Letters* issued by the Departments of Arts and Department of Public Works for work done in 2011 and 2012 are said to have been inspected while the Bid Evaluation Committee could not inspect and confirm the previous work done by Azande Consulting CC for 2013 and 2014 for SASSA which was the most recent work. It is Azande Consulting CC's alleged previous work done at the North West province that could not be verified resulting amongst others in a dispute between Azande Consulting CC and SASSA's former Acting Chief Executive Officer, Ms Pearl Bengu;

6.1.43.4 The BEC was aware that the *Pre-programmed Technical Evaluation Score Sheet* required five members for scoring of bids and requested the correct template with a reduced number of bid evaluation committee members from the National Treasury, however, there was no response and the evaluation process nevertheless proceeded to utilise the *Incorrect Electronic Template Score Sheet*. Nothing in the response provided, demonstrates the existence of an emergency or special circumstances compelling the BEC to proceed with the evaluation of the bids utilising the *Incorrect Electronic Template Score Sheet* knowing that the outcome would likely be incorrect;

6.1.43.5 The BEC does not demonstrate why SASSA utilised the *Pre-programmed Technical Evaluation Score Sheet* with five members instead of four members and why another member could not have been appointed to replace the fifth member if there was urgency in the evaluation of the bids;

- 6.1.43.6 The BEC is able to demonstrate in the response how the *Incorrect Electronic Template Score Sheet* was utilised to score bidders despite the Bid Evaluation Committee not having received a copy of the *Incorrect Electronic Template Score Sheet* from the Public Protector as stated in the opening of its response that it was not provided with a copy of the *Incorrect Electronic Template Score Sheet*; and
- 6.1.43.7 It is therefore the case of the Public Protector that the response by the BEC is not sustainable and does not materially alter the findings reflected in the notice issued in terms of section 7(9)(a) of the Public Protector dated 30 April 2022 and served on the Bid Evaluation Committee.
- 6.1.44 The responses received from BAC members dated 30 April 2022 in relation to the adjudication of Bid No. SASSA: 40/15/BT-Head Office is discussed in the paragraphs below.
- 6.1.45 In the response received from Mr Themba Matlou (Mr Matlou) Regional Executive Manager: Gauteng and who was also a Deputy Chairperson of the BAC it is stated amongst others that:
- 6.1.45.1 Copies of documents provided to him by the Public Protector were not of assistance in providing a response as he was of the view that there could be other sources of information that could assist to bring light to the discussion as time had elapsed between the period during which the event occurred and the time that he was responding to the findings;
- 6.1.45.2 Clause 8.7.1 of the SASSA SCM policy signed on 03/02/2016 reads that, *“The Bid Adjudication Committee members must not evaluate and adjudicate a bid. The Bid Adjudication Committee is restricted only to adjudicating whether the process of acquisition was fair, equitable, transparent, competitive and cost effective.”* This Clause of the SASSA SCM policy is further supported by the National Treasury Code of Conduct for Bid Adjudication Committees of 2006 which states; *“The Bid Adjudication Committee must consider the recommendations/reports of*

*the Bid Evaluation Committee and depending on the delegated powers make: a final award; or a recommendation to the accounting officer/authority to make the final award; or make another recommendation to the accounting officer/authority on how to proceed with the relevant procurement”;*

- 6.1.45.3 The responsibility of the BAC is limited to making a recommendation for the approval which rests with the Accounting Officer, meaning the recommendation cannot be final until approved by the delegated authority; and
- 6.1.45.4 The assertion by the Public Protector that the BAC should have performed the duties of the BEC by evaluating the bid and still perform its own role of adjudicating the bid is not compliant with the SASSA policy (2016) and the National Treasury Code of Conduct for Bid Adjudication committees is not correct. The administrative compliance of any bid is checked by the SCM Unit in the SASSA, while the merits of the bid is the responsibility of the evaluation committee.
- 6.1.46 Considering the above response from Mr Matlou the Public Protector's case is that:
- 6.1.46.1 Copies of all documentation requested by Mr Matlou in his letter requesting information/copies of documentation in the possession of the Public Protector to enable him to respond were forwarded to him. At no point did Mr Matlou indicate that the copies of documentation or information forwarded to him were insufficient to enable him to formulate a response. Further thereto, the Public Protector was always willing and amenable to afford the affected parties access to the documentation in its possession, and at no point did Mr Matlou request physical access to copies of documentation in the possession of the Public Protector. The contention by Mr Matlou that there could be other sources of information available that could have assisted him in formulating a response is disturbing as it may be viewed as if the Public Protector withheld certain

information/documentation in her possession, which denied Mr Matlou the ability to exercise his right of response;

- 6.1.46.2 In the meeting held on 18 March 2022 with the affected parties, the Public Protector indicated that if anyone of the affected parties requests access to documentation in possession of the Public Protector, they can make arrangements for such access. No request was made for access to documentation in possession of the Public Protector by either of the affected parties;
- 6.1.46.3 Cognisance is taken of the fact that the bid adjudication process took place in 2016 and a period of about five years has lapsed and his recollection of the events could have faded, however, the documentation relating to the process were made available to him at his request;
- 6.1.46.4 It is correct that “*The Bid Adjudication Committee is restricted only to adjudicating whether the process of acquisition was fair, equitable, transparent, competitive and cost effective*”. Mr Matlou did not take the Public Protector into his confidence with regard to how the Bid Adjudication Committee ensured that the Bid Evaluation Committee evaluated the bid in accordance with the required legislative prescripts. His submission does not reflect how the Bid Adjudication Committee ensured that the process followed by the Bid Evaluation Committee *was fair, equitable, transparent, competitive and cost effective* in particular that the Bid Evaluation Committee admitted to having used an *Incorrect Electronic Pre-programme Template* for scoring of bids and the fact that SASSA functionaries could neither verify nor confirm whether Azande Consulting CC previously did work for SASSA in the North West province; and
- 6.1.46.5 While the responsibility of the BAC is to amongst others recommend to the Accounting Officer the preferred supplier for a decision, it would be irresponsible of the BAC members to not satisfy themselves that the recommended supplier qualified in all respects by accepting the

recommendation of the BEC at face value. Verification and checking of information submitted by the BEC for correctness and compliance with the procurement process do not amount to re-evaluation of a bid, rather it amounts to strengthening the procurement process and ensuring that errors that could have been committed by the BEC are identified before submitting a recommendation to the Accounting Officer to take a decision on the bid.

6.1.47 Ms Dianne Dunkerley (Ms Dunkerley) Executive Manager: Grants & Policy stated amongst others that:

6.1.47.1 Clause 8.7.1 of the approved SASSA SCM policy signed by the Chief Executive Officer on 3 February 2016 provides that, *“The Bid Adjudication Committee members must not evaluate and adjudicate a bid. The Bid Adjudication Committee is restricted only to adjudicating whether the process of acquisition was fair, equitable, transparent, competitive and cost effective”*;

6.1.47.2 Clause 8.3 of the same policy sets out the roles and responsibilities for the bid evaluation committee by outlining the responsibilities of the BEC as amongst other that;

*“This committee is responsible for the evaluation of bids received in accordance with the criteria specified in the bid documentation, which includes the verification of:*

*(a) The specifications/Terms of Reference against the proposals or bids received from the service provider;*

*(b) The BEC must ensure that the requirements of the terms of reference are being addressed and that the recommended service provider has proven beyond doubt that it will be able to deliver to the satisfaction of the SASSA. That includes presentations and site visits to assess infrastructure eg, human resources, physical*



*existence and location of the company, assets etc, (due diligence).  
An original and valid tax clearance certificate issued and validated  
by the SARS;*

(c) *A declaration of interests;*

(d) *Whether all forms and declarations are signed;*

(e) *Whether the bidders/service provider's names are not appearing on  
the list of restricted bidders.”*

6.1.47.3 She further contends that given the above, the Public Protector's assertion that the BAC should have evaluated the bids received from the BEC is unacceptable. She further submitted that BAC rely on the *due diligence done* by officials in the Supply Chain Management Unit that administrative compliance has been confirmed. The BEC would have taken all factors into account when evaluating the bids and the BAC would then have confirmed the information provided, and ensured that due procurement processes had indeed been followed.

6.1.48 Having considered the above response from Ms Dunkerley the case of the Public Protector is that:

6.1.48.1 Ms Dunkerley has not demonstrated in her response how the BAC ensured that the BEC and other supply chain management officials conducted *due diligence* with regard to the information supplied by the bidder, to ensure that it does not accept the work by other units at face value; and

6.1.48.2 The Public Protector's findings relate to amongst others that the BAC failed/omitted to ensure that the information submitted by the BEC is correct, in other words, that the BAC could not be in a position to attest that the BEC and other officials in the supply chain management did *due diligence* with the information supplied. By relying on other units that

they will do *due diligence*, the BAC abdicated its responsibility to ensure that the bid complied with provisions of the legislative and policy framework. This does not amount to the re-evaluation of the bids rather it is aimed at ensuring that all information submitted is correct and verified.

6.1.49 Ms Tsakeriwa Chauke who was then Acting Chief Financial Officer and Chairperson of the BAC stated in her response that:

6.1.49.1 She was a member of the Bid Adjudication Committee (BAC) for Bid No. SASSA 40/115/BT-Head Office and Bid No. SASSA: 42/15/ GA-Mikondzo;

6.1.49.2 The SCM policy signed on 03/02/2016 clause **8.7.1** reads, *“The Bid Adjudication Committee members must not evaluate and adjudicate a bid. The Bid Adjudication Committee is restricted only to adjudicating whether the process of acquisition was fair, equitable, transparent, competitive and cost effective;”*

6.1.49.3 The evaluation of any bid is evaluated by a duly appointed BEC. There is a clear separation of functions between the BEC and BAC in terms of SASSA SCM policy and the appointment letters of these committees indicate such responsibilities; and

6.1.49.4 To the best of her knowledge, the BAC considered the BEC report based on the set evaluation criteria and it was not expected of the Bid Adjudication Committee to re-evaluate the bids.

6.1.50 Having considered the response from Ms Chauke the case of the Public Protector is that:

6.1.50.1 While SASSA has a supply chain management policy in place and members are of the view that Clause 8.7.1 restricts them from evaluating a bid, the Public Protector’s findings in the notice do not require them to

re-evaluate bids. Rather, the findings identified a gap caused by the omission of failure by the Bid Adjudications Members to verify and ensure that the information provided to them by the BEC is correct in so far as the evaluation process and capacity of the recommended service provider is concerned; and

6.1.50.2 The Adjudication Committee does not appear to question any information submitted by the BEC implying that it rubber stamps the information provided. This resulted in acceptance of information that resulted in the awarding of the bid to Azande Consulting CC. The Bid Evaluation Committee also submitted information sourced from an *Incorrect Electronic Score Sheet* which was also accepted by the Bid Adjudication Committee. It could also not be confirmed that Azande Consulting CC indeed rendered services in the North West Province as it claimed.

6.1.51 Mr Caesar Vundule, Acting Chief Information Officer who was also a member of the BAC stated that he did not attend the Bid Adjudication meeting held on 9 June 2016 that recommended that Bid No. SASSA 40/15/GA be awarded to Azande Consulting CC. His absence is also reflected in the report prepared by the BAC for consideration by the Accounting Officer.

6.1.52 Having considered and evaluated the response from the BEC members and the BAC members it is of utmost importance to reflect that:

6.1.52.1 *Due diligence* with regard to the evaluation and adjudication of the bid was not done as it should have been. The BAC relied on the *due diligence* assumed to have been done by the BEC; and

6.1.52.2 Reliance on Clause 8.7.1 by the BAC that it is restricted from re-evaluating a bid is misplaced because the clause does not prevent the BAC from doing *due diligence* of the bid submitted before submitting recommendations to the Account Officer for decision.

*Application of the relevant law and prescripts*

**The Constitution of South Africa 1996**

- 6.1.53 Section 217(1) of the Constitution 1996 provides as follows with regard to procuring goods and services by an organ of state or any other identified state institution:

*When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.*

- 6.1.54 Considering the above provision of the Constitution 1996 it is submitted that:

- 6.1.54.1 SASSA being *any other institution identified in national legislation namely the Public Finance Management Act*, advertised *Bid No. SASSA: 40/15/BT* in the *Government Tender Bulletin* calling for interested potential service providers to submit their bids on or before the closing date of 26 February 2016 at 11H00;

- 6.1.54.2 The conduct by SASSA functionaries of advertising *Bid No. SASSA: 40/15/BT* and *Bid No. SASSA: 42/15/GA-Mikondzo Project* in the *Government Tender Bulletin* constitutes one of the initiatives to acquire goods and services through amongst others a transparent process that should be fair and equitable to all prospective service providers;

- 6.1.54.3 The evidence submitted further shows that by developing a Supply Chain Management Policy and by appointing the BEC as well as the BAC, SASSA was partially complying with the requirement of acquiring goods and services in accordance with a system that *is fair, equitable, transparent, competitive and cost-effective*;

- 6.1.54.4 The evidence submitted further indicates that the bids were evaluated by the BEC and a recommendation was made to the BAC to accept Azande Consulting CC as the preferred bidder. The BAC accepted the recommendation of the BEC that Azande Consulting CC is the preferred bidder despite the use of the *Incorrect Electronic Score Sheet* which favoured Azande Consulting CC. This was a deviation from the requirement stated in the Constitution 1996 that goods and service be acquired in accordance with a system that *is fair, equitable, transparent, competitive and cost-effective*;
- 6.1.54.5 In the response to the section 7(9) notice the BEC members could not explain why it failed to verify and merely relied on the claim from Azande Consulting CC that it did similar work for SASSA in North West province in addition to the *Reference Letters* obtained from the Department of Arts and Culture as well as the Department of Public Works;
- 6.1.54.6 SASSA conceded that the calculator template used to add up the points for each BEC member was incorrect as it miscalculated the points allocated to the bidders and resulted in points that favoured Azande Consulting CC. However the BEC tried to correct this material fact by submitting that a request for the correct template was made to the National Treasury and when no response was received, the committee proceeded to use the incorrect template; and
- 6.1.54.7 To ensure that the bidding process was fair, equitable, transparent, competitive and cost-effective it was prudent for both the BEC and the BAC to ensure that all information submitted by the bidders was verified for correctness and evaluated so that all companies were evaluated on correctly corroborated information. It is also prudent to ensure that the results of the calculation template are auditable to prevent prejudice or identify discrepancies and fix them early.

- 6.1.55 Having considered the above, it has been established in evidence and through SASSA's own concession in the Annual Report of 2018/19 and 2019/20 that:
- 6.1.55.1 The information submitted by Azande Consulting CC in relation to its previous work conducted at SASSA North West was neither verified nor corroborated during the evaluation process to ensure that the bidding process is fair and equitable to all bidders;
- 6.1.55.2 The admission that the bid evaluation process had material shortcomings that favoured Azande Consulting CC as the preferred bidder, while it should not have been the case is also reflected in the response received from Mr Mahlangu (former Acting CEO) as well as in the report signed by Ms Dumisile Ndlovu, the GM: SCM; and
- 6.1.55.3 In this regard SASSA's procurement system and process relating to the evaluation and adjudication of the bid could not be referred to as wholly *fair, equitable, transparent, competitive and cost-effective* in conformity with section 217 of the Constitution, 1996.

#### **Public Finance Management Act 1999**

- 6.1.56 Section 38 of the Act provides as follows:

- (1) *The accounting officer for a department, trading entity or constitutional institution—*
- (b) *is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;*

- 6.1.57 Section 45 of the Act provides as follows:

*An official in a department trading entity or constitutional institution—*

*(b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;*

6.1.58 Section 50 of the Act provides as follows:

*(1) The accounting authority for a public entity must-*

*(a) Exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;*

*(b) Act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;*

*(c)...;*

*(d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.*

*(2) A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not-*

*(a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or*

*(b) use the position or privileges of, or confidential information obtained as accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.*

6.1.59 Section 51(1) of the Public Finance Management Act, 1999 provides as follows:

*(1) An accounting authority for a public entity-*

*(a) must ensure that the public entity has and maintains-*

- (i) effective, efficient and transparent systems of financial and risk management and internal control;*
- (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of section 76 and 77; and*
- (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective*
- (iv) a system for properly evaluating all major capital projects prior to a final decision on the project.*

*(b) must take effective and appropriate steps to-*

- (i) collect all revenue due to the public concerned; and*
  - (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and*
  - (iii) manage available working capital efficiently and economically;*
- (c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;*

6.1.60 PFMA SCM Instruction No 03 of 2021/22: Enhancing Compliance, Transparency and Accountability in Supply Chain Management.

6.1.60.1 Clause 6 of the PFMA SCM Instruction on the restriction of a person doing business with government provides that:

*“6.1 The AO/AA must, in writing, notify a person of –*

- (a) the intention to restrict the person from doing business with the State;*



- (b) *the grounds for the restriction;*
- (c) *the intended period of restriction which may not exceeding 10 years; and*
- (d) *the right to make representations within 4 days as to why the person should not be restricted.*

6.2 *The AO/AA must-*

- (a) *consider the reasons provided by the person on why the person should not be restricted; and*
- (b) *if, after considering the reasons referred to in paragraph (a), the AO/AA intends to restrict the person, in writing, consult the National Treasury by submitting the notification envisaged in paragraph 6.1 and the reasons referred to in paragraph (a).”*

6.1.61 PSR Regulation 22 Anticorruption and ethics functions states that:

*“A head of department shall –*

- a) *analyse ethics and corruption risks as part of the department’s system of risk management;*
- b) *develop and implement an ethics management strategy that prevents and deters unethical conduct and acts of corruption;*
- c) *establish a system that encourages and allows employees and citizens to report allegations of corruption and other unethical conduct, and such system shall provide for*
  - (i) *confidentiality of reporting; and*
  - (ii) *the recording of all allegations of corruption and unethical conduct received through the system or systems;*
- (d) *establish an information system that-*
  - (i) *records all allegations of corruption and unethical conduct;*
  - (ii) *monitors the management of the allegations of corruption and unethical conduct;*
  - (iii) *identifies any systemic weaknesses and recurring risks; and*
  - (iv) *maintains records of the outcomes of the allegations of corruption and unethical conduct; and*

- (v) *refer allegations of corruption to the relevant law enforcement agency and investigate whether disciplinary steps must be taken against any employee of the department and if so, institute such disciplinary action”*

### **National Treasury Regulations of 2005**

6.1.62 Regulation 16A of the National Treasury Regulations provides as follows:

6.1.62.1 National Treasury Regulation 16A.3.1 provides as follows:

*The accounting officer or accounting authority of an institution to which these Regulations apply must develop and implement an effective and efficient supply chain management system in his or her institution for-*

- (a) *acquisition of goods and services;*

6.1.62.2 National Treasury Regulation 16A.3.2 provides as follows:

*A supply chain management system referred to in paragraph 16A.3.1 must-*

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

6.1.62.3 National Treasury Regulation 16A6.2 provides as follows:

*A supply chain management system must, in the case of procurement through a bidding process, provide for –*

- (a) *the adjudication of bids through a bid adjudication committee;*
- (b) *the establishment, composition and functioning of bid specification, evaluation and adjudication committees;*
- (c) *the selection of bid adjudication committee members;*
- (d) *bidding procedures; and*
- (e) *the approval of bid evaluation and/or adjudication committee recommendations.*

6.1.62.4 National Treasury Regulation 16A6.3(c) provides as follows:

*The accounting officer or accounting authority must ensure that –*

*(c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine;*

6.1.62.5 National Treasury Regulation 168A provides as follows in relation to compliance with ethical standards:

*16A8.1 All officials and other role players in a supply chain management system must comply with the highest ethical standards in order to promote –*

*(a) mutual trust and respect; and*

*(b) an environment where business can be conducted with integrity and in a fair and reasonable manner.*

*16A8.2 The National Treasury's Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management.*

6.1.62.6 National Treasury Regulation 16A9.1(d) provides as follows:

*The accounting officer or accounting authority must –*

*(d) reject any bid from a supplier who fails to provide written proof from the South African Revenue Service that that supplier either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations;*

- 6.1.63 Having established that the procurement system of SASSA in relation with the evaluation and adjudication of the bid did not fully conform to section 217 of the Constitution 1996, such non-conformity has caused prejudice to the financial interests of the state. It has further been established in evidence that the state suffered financial prejudice resulting in SASSA disclosing irregular, fruitless and wasteful expenditure in relation to Bid No. SASSA: 40/15/BT as reflected in its Annual Reports for 2018/19 and 2019/2020 respectively.
- 6.1.64 Only one bidder was found to be compliant with the bid requirements. This meant that the element of competitiveness of bids could not be applied therefore the procurement process followed could not be regarded as fair, equitable, transparent, competitive and cost-effective in conformity with the above provisions of the Act.

#### **SASSA Supply Chain Management Policy of February 2016**

- 6.1.65 The SASSA Supply Chain Management Policy (Supply Chain Policy) provides amongst others the following with regard to the process to be followed when procuring services and goods as well as the conduct of the members of both the Bid Evaluation and Bid Adjudication Committees:

- 6.1.65.1 Paragraph 4: Code of Conduct provides as follows:

*In any procurement related negotiations, evaluations, adjudications and any other procurement related activities, all employees must adhere to the Code of Conduct which is contained in Chapter 2 of the Public Service Regulations, 2011, Code of Conduct for SCM Practitioners as well as any other applicable prescripts.*

- 6.1.65.2 Subparagraph 8.3(a) provides that the BEC must ensure that the requirements of the Terms of Reference (ToR) are addressed and the

recommended service provider has proven beyond doubt that it will be able to deliver the service to the satisfaction of SASSA.

6.1.65.3 Subparagraph 8.7.3 reads, *“the Compliance Unit must check the National Treasury’s database on the website prior to the awarding any contract to ensure that no recommended bidders nor any of its Directors are listed as companies or persons prohibited from doing business with the Public Sector. If listed on the National Treasury database as “restricted” the contract must not be awarded to that specific bidder.*

6.1.65.4 Paragraph 21.1: Non-Compliance provides as follows:

*Any employee of the SASSA who fails to comply with this Policy (including attached Annexures), may be guilty of financial misconduct. The Accounting Authority must ensure that disciplinary steps are taken against such employee in accordance with the applicable disciplinary procedures.*

6.1.66 Having considered the above provisions of the Supply Chain Policy it is submitted that the ToR for the bid required bidders to submit three (3) letters of reference of previous work conducted and Azande Consulting CC submitted only two (2) letters of work undertaken at the Department of Public Works and Infrastructure. This aspect was also identified as an irregularity that could not be ignored in the *Report on the review of the evaluation/award process for the ICROP Bid: SASSA 40/15BT.*

6.1.67 In the response submitted by the BEC it is stated amongst others that Azande Consulting CC submitted three *Reference Letters*, two from the Department of Public Works and one from the Department of Arts and Culture. The two *Reference Letters* submitted from the Department of Public Works and Infrastructure was in relation to work conducted to the value of R1 930 077 and R1 080 945.72 respectively. The Public Protector is not in possession of copies of *Reference Letters* from the Department of Arts except having to make reference to the information

obtained from the Business Plan of Azande Consulting as already stated in the table above.

6.1.68 In its response, the BAC distanced itself from conducting verification of information submitted by the BEC contending that such a process would amount to a re-evaluation of a bid. It was also submitted that the BAC relied on the BEC to have done *due diligence* on the bid. In other words should the BEC fail or omit to do *due diligence* during the evaluation process, it is likely that the BAC will not find out. This submission by the BAC amounts to failure to exercise oversight and failure to determine whether all processes and procedures were followed prior to the matter being brought for adjudication. Verification of information does not amount to the re-evaluation of a bid rather it should be part of the adjudication process to confirm whether all provisions of the legislative and policy framework were followed prior to making any recommendation to the Accounting Officer.

6.1.69 While the Public Protector may not prescribe how the supply chain process and system of SASSA must be arranged, it is of benefit to mention that the Compliance Unit is required to check the National Treasury's database on the website for restricted suppliers before the awarding of a contract is made after the BAC has made a decision. It would be of benefit if the Compliance Unit is placed in a position where it can conduct the checks before the bid is submitted to the BAC. In this way omissions and non-adherence to legislative framework by the BEC and other prescripts can be identified and mitigated early.

6.2 **Regarding whether Azande Consulting CC was awarded Bid No. SASSA: 42/15/GA-Mikondzo Project in contravention of the legislative framework and policy prescripts regulating supply chain management in government**

Common cause issues

- 6.2.1 SASSA advertised *Bid No. SASSA: 42/15/GA-Mikondzo Project* on 5 February 2016, with a closing date of 26 February 2016 for the accreditation of service providers in all nine (9) provinces of South Africa as reflected in the *Government Tender Bulletin* of 5 February 2016. This bid was advertised for a minimum period of no less than 21 days before closure in compliance with Treasury Regulation.16A6.3(c); and
- 6.2.2 On 23 June 2016, the Bid Adjudication Committee approved the accreditation of four (4) service providers with regard to *Bid No. SASSA: 42/15/GA-Mikondzo Project* namely; Azande Consulting CC, Judy Magwaza Trading Enterprise, Molite Productions and Vee-EI Promotions (Pty) Ltd as reflected in the *Accreditation Letters*. The bids submitted by the bidders that were eventually accredited as winning bidders were received by SASSA before the closing date and time determined for the bid in compliance with Treasury Regulation 16A3.2.

Issues in dispute

- 6.2.3 It is the Complainant's contention that the BEC failed to evaluate Azande Consulting CC's bid in a manner that was fair, equitable, transparent, competitive and cost-effective, resulting in the irregular approval of accreditation for Azande Consulting CC by the BAC.
- 6.2.4 It is the Complainant's further contention that after being informed of the alleged irregular evaluation and adjudication leading to the accreditation of Azande Consulting CC, SASSA did not put measures in place to remedy the alleged irregular accreditation of Azande Consulting CC including stopping making further payments to Azande Consulting CC.

6.2.5 The issues for determination, therefore is whether:

6.2.5.1 The BEC failed to evaluate Azande Consulting CC's bid in a manner that was fair, equitable, transparent, competitive and cost-effective, resulting in the irregular approval of accreditation for Azande Consulting CC by the BAC;

6.2.5.2 The BAC failed to do due diligence on the recommendation for accreditation made by the Bid Evaluation Committee prior to approving Azande Consulting CC as one of accredited service providers; and

6.2.5.3 The Accounting Officer failed to stop further payments from being made to Azande Consulting CC after she was informed of the irregularities relating to evaluation and adjudication process leading to the accreditation of Azande Consulting CC.

*Response from Mr Mahlangu*

6.2.6 In his response dated 19 October 2018 Mr Mahlangu, stated amongst others that correct supply chain management processes were followed in that:

6.2.6.1 SASSA openly invited proposals from all possible service providers to be accredited by publication in the *National Treasury Portal* and *Government Tender Bulletin* of 5 February 2016 with a closing date of 26 February 2016;

6.2.6.2 All potential bidders were advised to register their businesses in the Central Supplier Database as all organs of state were required with effect from 1 April 2016 to utilise the Central Supplier Database when procuring goods and services;

6.2.6.3 The *National Treasury Circular No.3 of 2015/2016* advised accounting officers/authorities that with effect from 1 April 2016, they may not award



any bid to a supplier who was not registered as a prospective supplier in the Central Supplier Database;

6.2.6.4 The *National Treasury Circular Note 4A of 2016/2017* advised accounting officers/authorities of the extension of the implementation date for *National Treasury Circular No.3 of 2015/2016* from 1 April 2016 to 1 July 2017. The extension of the implementation date of *National Treasury Circular No. 3 of 2015/2016* to 1 July 2017 by *National Treasury Circular Note 4A of 2016/2017* implied that registration in the Central Supplier Database was no longer a requirement at the time when Bid No. SASSA: 42/15/GA-Mikondzo Project was finalised and accreditation for Azande Consulting CC and other service providers was concluded and communicated in the *Letter of Accreditation* dated 23 June 2016;

6.2.6.5 During the financial year 2016/2017, the Auditor-General communicated to SASSA in a letter titled, *Request for information for the audit of the South African Social Security Agency for the year ended 31 March 2017* dated 8 May 2017<sup>10</sup> a possible bid rigging by Azande Consulting CC and Vee-EI Promotions (Pty) Ltd based on the profiles of the two companies wherein it was discovered that the Director of Vee-EI Promotions (Pty) Ltd appeared to be an employee of Azande Consulting CC as stated in Azande Consulting CC's Business Profile. However, neither Vee-EI Promotions (Pty) Ltd nor Azande Consulting CC declared their relationship in their respective *SBD4 Forms*. It was the view of the Auditor-General that the information relating to the alleged relationship between Azande Consulting CC and Vee-EI Promotions (Pty) Ltd should have been identified by the BEC members during the bid evaluation process;

6.2.6.6 Ms Bengu issued a Circular to all SASSA offices suspending<sup>11</sup> the utilisation of Azande Consulting CC and Vee-EI Promotions (Pty) Ltd and

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<sup>10</sup> Reference: Request No. 62 of 2016/17 (HO: Final)

<sup>11</sup> Treasury Regulation 16A9.1 provides that:  
The accounting officer or accounting authority must –

advised that services should be procured through normal applicable procurement processes; and

6.2.6.7 Payments made to Azande Consulting CC related to services already rendered prior to the suspension of its services upon receipt of the communication from the Auditor-General.(sic)

6.2.6.8 In substantiating his response, Mr Mahlangu submitted copies of documents which were assessed and evaluated against the alleged maladministration, improper or suspected improper conduct by the BEC and BAC with regard to Bid No. SASSA: 42/15/GA-Mikondzo Project.

6.2.6.9 *Government Tender Bulletin, No. 2902 of 5 February 2016* shows that Bid No. SASSA: 42/15/GA-Mikondzo Project was published in the *Government Tender Bulletin, No. 2902 of 5 February 2016*, with a closing date of 26 February 2016 at 11H00 stipulating amongst others the following:

*“By 1<sup>st</sup> of April 2016 all suppliers doing business with government should be registered on the Central Supplier Database (CSD) and all organs of the state need to utilise the suppliers registered on the Central Supplier Database when procuring goods and services. Kindly register your business on National Treasury Central Supplier Database. For registration on the CSD visit [www.ced.gov.za](http://www.ced.gov.za)”.*

*Further evidence analysed*

6.2.7 The copy of *Terms of Reference for an expression of interest from potential service providers for the provision of Project Management Event Services to be performed for the Project Mikondzo for a period of*

- 
- (a) take all reasonable steps to prevent abuse of the supply chain management system;
  - (f) cancel a contract awarded to a supplier of goods or services –
  - (i) if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract; or

*three (3) years in nine (9) provinces* (Terms of Reference) stated amongst others the following information:

- 6.2.7.1 Paragraph 2: The purpose of these Terms of Reference is to provide guidance to interested parties that will respond to SASSA's call for the expression of interest supporting project Mikondzo. SASSA seeks to accredit three (3) to five (5) service providers per region that will be accredited to perform this role for a period of three (3) years.
- 6.2.7.2 Paragraph 4: The accredited service providers will be required to do work in the following areas of expertise:
  - 6.2.7.2.1 Recruit, train, manage youth workers that will be utilised in the identified wards;
- 6.2.8 The Government *Tender Bulletin, No. 2902 of 5 February 2016*, reflects amongst others the following information with regard to Bid No. SASSA: 42/15/GA-Mikodzo Project;
  - 6.2.8.1 *"The South African Social Security Agency hereby invites proposals from potential service providers to be accredited for the provision of Project Mikondzo Event Management Services to be performed through outreach programs for a period of three (3) years in the nine (9) provinces"*.
- 6.2.9 The *Compulsory Briefing Session Attendance Register* dated 15 February 2016 reflects that tender briefing sessions were held by SASSA and potential bidders on 15,18 and 26 February 2016. Azande Consulting CC was represented by Ms Makhaye while Mr Nkosi represented Vee-el Promotions (Pty) Ltd.
- 6.2.10 Copies of *Appointment to serve as a member of SASSA Bid Evaluation Committee for the accreditation of potential service providers for the provision of Project Mikondzo Event Management services bid*, signed by Mr Tsakeriwa Chauke the Chief Financial Officer for SASSA on 19 April

2016, confirm the appointment of persons reflected in the table below to serve in the Bid Evaluation Committee for Bid No. SASSA 42/15/GA-Mikondzo Project. The appointment letters, read amongst others that; *“This appointment is done in terms of Treasury Regulation 16A 6.2, issued in accordance with the Public Finance Management Act of 1999, section 76(4)(c) and the SASSA Supply Chain Management Policy, Delegations, Treasury SCM Guide for Accounting Officer and Circular on Supply Chain Management Implementation.*

Name	Position/Unit/Region	Role
1. Ms Z Mvulane	REM: North West & Acting Executive Manager: Special Projects Office	Chairperson
2. Mr P Netshipale	Deputy Director General: integrated Development: DSD	Member
3. Ms N Vilakazi	Acting Chief Executive Officer: National Development Agency	Member
4. Ms Ramokgopa	Executive Manager: Strategy & Business Development	Member
5. Mr Makgolane	Senior Manager: Supply Chain Management, Limpopo Region	Member

6.2.11 Ms Zodwa Mvulane was also a BAC member in relation to Bid No. SASSA: 40/15/BT that was awarded to Azande Consulting CC on 23 June 2016. Further it is noted from the table above that Mr P Netshipale is an employee of the Department of Social Development.

6.2.12 It is worth noting that of the five members of the Committee, only one was a SASSA Head Office employee. It is also worth noting the high level of representation of the BEC, which was at the level of Deputy Directors-General to accredit potential service providers.

6.2.13 The table below lists the members of the Bid Adjudication Committee in relation to Bid No: SASSA: 42/15/GA-Mikondzo Project:

Name	Role
Mt T Chauke	Chairperson (Present)
T Matlou	Deputy Chairperson (Present)
Ms D Ndlovu	Member (Present)
Ms Z Mvulane	Member (Recused)
Mr C Vundule	Member (Present)

Ms D Dunkerley	Member (Present)
Dr W Terblanche	Alternate Member
Ms P Bengu	Alternate Member (Apology)
Mr M Nmutshili	Alternate Member (Apology)

6.2.14 A copy of the “*Bid Evaluation Committee Recommendation: Accreditation of Service Providers for the Provision of Project Mikondzo Event Management Services to be Performed Through Outreach Programmes for a Period of three (3) Years in the nine (9) provinces*”, further indicates that:

6.2.14.1 Forty-six (46) bids were received and there was no late bid submitted; and

6.2.14.2 The Bid Evaluation Committee conducted bid evaluations on 11<sup>th</sup>, 12<sup>th</sup>, 17<sup>th</sup>, 23<sup>rd</sup> and 24<sup>th</sup> of May 2016.

6.2.15 The BEC identified Azande Consulting CC, Judy Magwaza Trading Ent, Milontji-Khayamandi, Molite Productions and Vee-EI Promotions (Pty) Ltd as bidders that met all administrative compliance requirements for the bid and qualified to be evaluated on functionality requirements. In order for bidders to be accredited they must score a minimum of 70 points on functionality requirements. The table below depicts the functionality scores for each of the bidders as follows:

Name of Bid	Technical Points	Tax Status	Regulation 16A9.1(c) Status of Bidders	Decision
Azande Consulting	100	Valid	Not restricted	Recommended
Judy Magwaza Trading Ent	84	Expired	Not restricted	Recommended
Milontji-Khayamandi	66	?	Not restricted	Disqualified
Molite Productions	76	Invalid	Not restricted	Recommended
Vee-EI Promotions	76	Valid	Not restricted	Recommended

6.2.16 The BEC found that Milontji-Khayamandi scored below 70 points on the basis that the monetary value of events conducted was below one million rand, it had no sufficient experience in events management, had less than

two years' experience in event management and training and was therefore disqualified. It is further stated in paragraph 4.3.5 of the submission that bidders were not evaluated on price and BBB-EEE Preference Points as this was an Expression of Interest for accreditation.

- 6.2.17 The Evaluation Committee recommended to the Bid Adjudication Committee to accredit all bidders who scored a minimum of 70 points and all members of the BEC signed the submission on 24 May 2016.
- 6.2.18 Copies of the *SBD4 Forms* for both Azande Consulting CC and Vee-el Promotions (Pty) Ltd do not reflect the details of any trustees, shareholders, members or employees, except for the names of their directors, Ms Makhaye and Mr Nkosi respectively. In this regard the *SBD4 Forms* of both Azande Consulting CC and Vee-el Promotions (Pty) Ltd do not reflect that Mr Nkosi, the Director of Vee-el Promotions (Pty) Ltd, is also an employee of Azande Consulting CC as reflected in the Business Profile of Azande Consulting CC.
- 6.2.19 Part 9.7 of the *SBD6.1 Form* for Azande Consulting CC, stated that the company has a total of 16 years' experience in business. This information correlated with information reflected in the *SBD6.1 Form* submitted for *Bid No. SASSA: 40/15/BT-Head Office* already discussed under issue 5.1 above.
- 6.2.20 The copy of the *Recommendation by the Bid Adjudication Committee* signed by Mr Mahlangu on 23 June 2016 reflects amongst others that:
- 6.2.20.1 The BAC approved the accreditation of four (4) service providers for the provision of Mikondzo Project, for a period of three (3) years in all nine (9) provinces, namely; Azande Consulting CC, Judy Magwaza Trading Enterprise, Molite Productions and Vee-el Promotions (Pty) Ltd;
- 6.2.20.2 The BAC placed the following condition with regard to Judy Magwaza Trading Enterprise, and Molite Productions:

*“The accreditation is subject to receipt of the valid tax clearance certificates from Judy Magwana Trading Enterprise and validation for the one from Molite Productions before formal accreditation and communication is issued to the service providers. Should SARS invalidity of the tax clearance certificate, Molite Productions will be disqualified”.*

6.2.21 A copy of the *Letter of Accreditation* for Azande Consulting CC reflects that it was signed on 23 June 2016 by Mr Mahlangu.

6.2.22 A copy of the *National Treasury Circular No. 3 of 2015/2016*, signed on 21 December 2015 by Schalk Human, the then Acting Chief Procurement Officer stipulates amongst others that:

6.2.22.1 *“The purpose of this circular is to inform departments, constitutional institutions and public entities in Schedule 2 and 3 of the Public Finance Management Act (PFMA), 1999 about National Treasury’s single platform, the Central Supplier Database (CSD), for the registration of prospective suppliers including the verification functionality of key supplier information. This circular is also aimed at informing accounting officers and accounting authorities of the current transitional arrangements prior to the mandatory application of the CSD with effect from 1<sup>st</sup> April 2016”;*

6.2.22.2 *“In terms of section 38(1)(a)(iii) and 51(1)(iii) of the PFMA, the accounting officer of a department of constitutional institution and the accounting authority of a public entity listed in Scheduled 2 and 3 to the PFMA must ensure that their respective institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective”;*

6.2.22.3 *“In the transitional period until 31 March 2016, accounting officers and accounting authorities are required to commence with the migration of*

*their current supplier database to ensure accuracy and validity of information prior to mandatory implementation to the CSD”;*

6.2.22.4 *“Taking cognisance of paragraph 3.1 above, it would not be necessary for institution to renew their own lists of prospective suppliers as per paragraph 5 of National Treasury Practice Note No 8 of 2007/2008 dated 29 November 2007”;*

6.2.22.5 *“However, institutions may invite and accept price quotations from their current existing lists of prospective suppliers and utilise the CSD for the verification of key information related to bids received until 31 March 2016 when complete registration and verification will be performed on the CSD”; and*

6.2.22.6 *“The CSD is available already, therefore, accounting officers/authorities of institutions are encouraged to invite and accept price quotations from the list of prospective suppliers listed on the CSD and verify key information for bids received from prospective suppliers from the CSD”.*

6.2.23 Accordingly, accounting officers/authorities were required to start with migration or transferring of their supplier database to the Central Supplier Database to ensure accuracy and validity of information prior to mandatory cut-off date of 1<sup>st</sup> April 2016. Institutions were also required to use the Central Supplier Database for the verification of key information about a prospective supplier regardless of whether they are listed in the Central Supplier Database or in the institution’s own supplier database.

6.2.24 The Practice Note further provided that in a case where a prospective supplier was not registered on the Central Supplier Database during the transitional period, institutions may verify the prospective supplier’s key information manually until 31 March 2016.



- 6.2.25 A Copy of *National Treasury Circular Note 4A of 2016/2017* signed on 19 May 2016 by Mr Kenneth Brown, the Chief Procurement Officer stipulated amongst others that:
- 6.2.25.1 *“National Treasury Circular No 3 of 2015/2016 informed Accounting Officers and Accounting Authorities of Departments, Constitutional Institutions and all Schedule 2 and 3 Public Entities of the transitional arrangement prior to the mandatory application of the CSD on 1 April 2016. Through this SCM Instruction, the date is extended to 1 July 2016”.*
- 6.2.25.2 *“In order to give effect to the mandatory requirements of this SCM Instruction Accounting Officers and Accounting Authorities must ensure that:*
- 6.2.25.3 *“The current supply chain management system and policies of their respective organs of state are aligned with the provisions of this SCM Instruction Note;*
- 6.2.25.4 *“Price quotations are invited and accepted from prospective suppliers listed on the CSD;*
- 6.2.25.5 *“Key information of prospective suppliers is verified on the CSD in line with PFMA and regulatory requirements”;*
- 6.2.25.6 *“Accounting Officers/Accounting Authorities must not award any bid for price quotations for a bidder(s) not registered on the CSD excluding transactions mentioned in paragraph 3.3”;*
- 6.2.25.7 *“Organs of state must ensure that existing systems integrate with CSD to ensure systemic verification of supplier records. In case where system integration is not possible, organs of state must verify supplier records through the online CSD search function and attach a copy of the verification report to the procurement transection”;* and

- 6.2.25.8 *“Organs of state must ensure that suppliers awarded business with the state, excluding instances mentioned in paragraph 3.3, are registered on the CSD prior to award letter/purchase order/signed contract being issued.*
- 6.2.26 The understanding of the Public Protector of the above provisions of the Practice Note is that:
- 6.2.26.1 The cut-off date to implement *National Treasury Circular No. 3 of 2015/2016* was extended from 1<sup>st</sup> April 2016 to 1 July 2016;
- 6.2.26.2 Accounting officers/authorities were prohibited from awarding bids to a bidder(s) not registered on the CSD, they were to procure services from their current and existing suppliers however, SASSA appointed new service providers. Azande Consulting CC was only registered with the CSD on 14 April 2016 prior to accreditation by SASSA; and
- 6.2.26.3 At the time when Bid No: SASSA: 42/15/GA-Mikondo Project was advertised and closed the *National Treasury Circular No. 3 of 2015/2016* was still applicable. In this regard, prospective suppliers were afforded the opportunity to be registered in the Central Supplier Database until 31 March 2016 and not for accounting officers to create their own database in the form of an accreditation process.
- 6.2.26.4 At the time when the BAC approved the accreditation of the four (4) service providers on 23 June 2016, the cut-off date of 1<sup>st</sup> April 2016, as stipulated in *National Treasury Circular No. 3 of 2015/2016* was extended to 1<sup>st</sup> July 2016 in terms of *National Treasury Circular Note 4A of 2016/2017*.
- 6.2.27 A copy of circular signed by Ms Bengu titled, *“Circular: Compliance with the audit findings on Mikondzo accreditation Vee-el Promotions (Pty) Ltd and Azande Consulting CC, file No: 2017/12/15”* on 15 December 2017 informed SASSA regions about the findings by the Auditor-General of

possible bid rigging by Azande Consulting CC and Vee-el Promotions (Pty) Ltd with regard to Bid No: SASSA: 42/15/GA. (*sic*) advising that:

- 6.2.27.1 The Bid Evaluation Committee may not have taken all reasonable steps to prevent the possibility of bid rigging by Azande Consulting CC and Vee-el Promotions (Pty) Ltd with regard to Bid No: SASSA:42/15/GA-Mikondzo Project;
- 6.2.27.2 Provinces should not use the services of Azande Consulting CC and Vee-el Promotions (Pty) Ltd with regard to Bid No: SASSA:42/15/GA-Mikondzo Project; and
- 6.2.27.3 Management have initiated the process of inviting more service providers to be considered for appointment to continue with the Mikondzo Project.
- 6.2.28 Copies of undated letters signed by Ms Bengu addressed to Mr L Nkosi of Vee-El Promotions (Pty) Ltd and Ms M Makhaye of Azande Consulting CC titled *Temporary suspension of Mikondzo Accreditation: SASSA: 42/15/GA* reflect that the services of the two companies were suspended with immediate effect on the basis of possible bid rigging.
- 6.2.29 The copies of *Confirmation of Services Rendered by Service Provider*, reflect that prior to an invoice being paid out, confirmation of services rendered is received from the local manager responsible for SASSA in the area, district, and ward where the service was rendered. The copy of *Confirmation of Services Rendered by Service Provider for Azande Consulting CC and copies of invoices* reflect payment was made for the services that were rendered for the period of March 2017 to May 2017. This was the period before SASSA received communication from the Auditor-General relating to a possible bid rigging by Azande Consulting CC and Vee-el Promotions (Pty) Ltd.
- 6.2.30 No conclusive evidence or information could be found reflecting that SASSA utilised the services of Azande Consulting CC and Vee-el

Promotions (Pty) Ltd after 30 June 2017, after receipt of the letter from the Auditor-General relating to possible bid rigging by the two services providers. Neither was there evidence reflecting that further payments were made to the service providers after their services were suspended by SASSA save for payments relating to work already done.

*Azande Consulting CC Business Profile for the bid*

6.2.31 Azande Consulting CC's Business Profile of 26 February 2016 states, amongst others, that:

*"Lamie Nkosi has been with the company for over three years now. Young and energetic, reliable and honest, he handles all the admin and logistics, and also attends to clients";<sup>12</sup> and*

6.2.32 Azande Consulting CC submitted copies of previous work conducted with the Department of Public Works and Infrastructure which were also submitted for Bid No. SASSA 40/15/BT-Head Office discussed above.

6.2.33 In addition to the above, Azande Consulting CC also submitted copies of Purchase Orders from SASSA North West Regional Office which were also discussed in issue 5.1 above as follows:

6.2.33.1 Purchase Order Number 2334 dated 8 November 2013 for an amount of nine hundred twenty three thousand, seven hundred fifty five rand and eighty cents (R923 755,80);

6.2.33.2 Purchase Order Number 3034 dated 25 September 2013 for an amount of nine hundred ninety five thousand, six hundred seventy rand (R995 670,00);

6.2.33.3 Purchase Order Number 3075 dated 16 October 2013 for an amount of nine hundred eighty thousand, four hundred rand (R980 400, 00); and

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<sup>12</sup> Azande Consulting Business Profile 26 February 2016.

- 6.2.33.4 Purchase Order Number 3181 dated 18 November 2013 for an amount of R915 566,50. The dates on which the Purchase Orders were generated reflect that Azande Consulting CC did not conduct work for SASSA in 2013.
- 6.2.34 Azande Consulting CC could not have conducted work for SASSA and fail to produce proof of contracts in the form of *Letters of Award* but be able to submit copies of invoices. The information was also found to be not authentic and not credible resulting in SASSA suspending its contract relating to Bid No. SASSA 40/15/BT-Head Office. There is no evidence reflecting that the BEC and BAC verified or queried the information submitted, notwithstanding that one of the BAC members was the Regional Executive Manager (REM) of SASSA North West province where Azande Consulting CC was previously contracted.
- 6.2.35 Further thereto, in the information submitted by Azande Consulting CC with regard to Bid No. SASSA 40/15/BT-Head Office in its Business Profile of 19 February 2016 it did not mention that it previously conducted work for SASSA in 2013 as reflected in the Purchase Orders mentioned above.
- 6.2.36 Nothing is mentioned in the submission prepared to the Bid Adjudication Committee that all information supplied by bidders relating to similar previous work conducted was verified. The glaring information discrepancies submitted by Azande Consulting CC should have been verified in the normal course of evaluating and adjudicating the bid.

*Vee-el Promotions (Pty) Ltd Business Profile for the bids*

- 6.2.37 The following information and copies of documentation formed part of the Business Profile of 22 February 2016 submitted by Vee-el Promotions (Pty) Ltd in response to the bid:

6.2.37.1 Copy of *Certificate Issued by the Companies and Intellectual Property Commission* dated 26 July 2013 states that, Vee-el Promotions (Pty) Ltd was registered as a private company on 26 July 2013 and Mr Nkosi is its sole director. This information is also confirmed in Vee-el Promotions' Business Profile of 22 February 2016 in which it is stated that Mr Nkosi is the Project Manager and founder of the Vee-el Promotions (Pty) Ltd;

6.2.37.2 The *SBD6.1 Form* signed by Mr Nkosi reflects that Vee-el Promotions (Pty) Ltd is a company specialising in event management.<sup>13</sup> It further reflected that the company had been in business for three years<sup>14</sup>;

6.2.37.3 The table below reflects the number of years' experience of the company in relation to events management similar to Mikodzo initiative:

Year	Project Name	Client	Project Value	Contacts (contact numbers are withheld for POPIA)
2009	National Orders for the Presidency	Bus Zone 843 cc	R2.5 m	S Buthelezi
2010	The Media House	Re-launch of Refugee Reception Centres	R1,9 m	L Khumalo
2012	Rand Show	Pre-launch Event	R1,5m	K Maake
2013	The Media House	Cabinet Lekgotla	R2m	L Khumalo
2014	Ndile Productions	Farming handover event to communities	R2.4m	S Ngubo
2014	Limpopo-Mikondzo	SASSA	R480 000,00	M Mokgolo
2014-2015	KZN-Mikondzo	SASSA	R450 000,00	S Jabavu

6.2.38 As Vee-el Promotions (Pty) Ltd was registered as a private company on 26 July 2013, it is highly improbable that it could have conducted previous work in 2009, 2010, 2012 and part of 2013 as this was the

<sup>13</sup> Vee-el Promotions Business Profile of 22 February 2016 pg 5.

<sup>14</sup> SBD6.1 Form pg 6.

period before it was registered with the Companies and Intellectual Property Commission.

- 6.2.39 No tangible evidence or information could be found supporting that Vee-el Promotions (Pty) Ltd conducted previous work in 2009, 2010, 2012 and 2013.
- 6.2.40 It is highly improbable that it could have conducted work for SASSA in Limpopo, and KwaZulu-Natal for the Mikondzo Project in 2014-2015 just one year after it was registered and before the Mikondzo Project tender could be finalised. It has already been established in evidence that Bid No. 42/15/GA-Mikodzo Project was for accreditation of service providers and Vee-el Promotions (Pty) Ltd submitted its bid to be accredited as a potential service provider.
- 6.2.41 Copies of the Purchase Orders submitted by Vee-el Promotions (Pty) Ltd from SASSA North West Regional Office reflect as follows:
- 6.2.41.1 Purchase Order Number 5169 dated 14 August 2015 for an amount of four hundred eighty eight thousand and seventy rand (R488 070,00); and
- 6.2.41.2 Purchase Order Number 6477 of 27 October 2015 for an amount of four hundred and eight, five hundred and fifty rand (R408 550,00).
- 6.2.42 No tangible evidence/information could be found supporting that Vee-el Promotions (Pty) Ltd conducted previous work for SASSA in KwaZulu-Natal in 2014/2015 for the value of R450 000,00m as reflected in the above table. Both the Bid Evaluation Committee and the Bid Adjudication Committee omitted to verify the credibility of the information submitted by Vee-el Promotions (Pty) Ltd relating to previous work done and therefore accepted same at face value.

Response by the Bid Evaluation and the Bid Adjudication Committee members to the section 7(9)(a) notice

6.2.43 Ms R Ramokgopa, the Executive Manager: Strategy and Business Development stated amongst others that:

6.2.43.1 She was a member of the BEC of SASSA: 42/15/GA-Mikondzo and to the best of her knowledge the BEC used the information and documentation at its disposal and guidance from the Supply Chain Management expert to fulfil its responsibility. The evaluation of the bid was guided by the requirements as stipulated in the SASSA Supply Chain Management policy and the Terms of Reference, and therefore the omissions or errors that could have occurred were not intentional.

6.2.44 Mr Makgolane, Senior Manager: Supply Chain Management, Limpopo Region Member stated amongst others that:

6.2.44.1 He was a BEC member and participated in the evaluation of Bid No. SASSA: 42/15/GA-Mikondzo Project. The BEC was prohibited from amending the evaluation criteria or any aspect of the Terms of Reference after the closure of the bids and no additional evaluation criteria could be added to those originally stated in the bid documentation nor could the evaluation criteria be amended or omitted after the closing of the bid;

6.2.44.2 The Evaluation Committee was restricted to the evaluation process in relation to documents stipulated in the Terms of Reference. In this regard bidders for Bid 42/15/GA were not required to submit company profiles and it is therefore incorrect to have expected the Bid Evaluation Committee to have evaluated the company profiles of the bidding companies. The BEC focused only on information specifically stipulated in the Terms of Reference as provided by bidders;

6.2.44.3 The BEC considered the *SBD Forms* for Azande Consulting CC and Vee-el Promotions (Pty) Ltd in terms of the Administrative Compliance phase



of the Terms of Reference and it was found that no declarations were made by either company about any form of relationship between them or any other company whether they were bidding or not. The forms were completed and met the requirements that they are designed for therefore the Public Protector erred in asserting that the BEC did not interact with the forms;

- 6.2.44.4 There was no other disclosures or declarations that formed part of the information required for evaluation that would have led the BEC to establish that the two bidders were related, had it been the case, appropriate steps would have been taken;
- 6.2.44.5 The subsequent discovery of the relationship as contained in the company profiles should be acted upon in terms of provisions of National Treasury in dealing with misrepresentations by bidders;
- 6.2.44.6 In page 16 of the Terms of Reference it is stated that, "*Bidders must submit the following: Proof to indicate that similar services have been previously rendered (i.e. copy of the contract or copy of purchase order) as well as copy of confirmation of credit worthiness of the service provider from the bank*". The BEC admitted and evaluated the purchase orders submitted by Azande Consulting CC and Vee-el Promotions (Pty) Ltd, however, no information was submitted or referenced in the response reflecting that the credit worthiness of the service providers was confirmed with the bank;
- 6.2.44.7 At the closing date and time of the bid, Azande Consulting CC and Vee-el Promotions (Pty) Ltd had been in business for more than five years as supported by its documents. The information was used to evaluate their experience to do the work in the bid;
- 6.2.44.8 As part of the bid evaluation process a bidder is required to complete the *SBD 9 Form* which is a certificate of independent bid determination. This form is considered as a mandatory assurance of the bidder's

independence therefore if the information is found to be false then the bidder would have misrepresented itself and such should be dealt with in terms of the due supply chain management prescripts and any criminal procedure, and therefore it should not be attributed to the BAC;

6.2.44.9 When the Auditor-General South Africa raised a factual finding, the Accounting Officer was requested to appoint the internal audit department to review and/or investigate or validate the experience of Azande Consulting Services CC for the ICROP bid. It is further submitted that Azande Consulting Services CC was requested to clarify the issue of its experience and the response was also forwarded to be part of the work to be done by internal audit. It could not be determined if Mr Lamie Nkosi referred to in Azande Consulting CC business profile was the same Lamie Nkosi named as the director of Vee-el and whether Mr Nkosi was still an employee of Azande Consulting CC or not at the time of bidding. If he was no longer an employee then there was no basis for any alleged irregularity; and

6.2.44.10 To the best of his knowledge, the BEC and the BAC considered the reports based on the set evaluation criteria and it was not expected to re-evaluate the said bids. The attention of the Public Protector is also drawn to the fact that an *accreditation* process takes place in order to evaluate bidders capacity and capability on services that may be required from time to time and thereafter allow the bidders to compete on price and preference points to fast track the procurement as the functionality assessment would have been done from the onset.

*Application of the relevant law and prescripts*

**The Constitution of South Africa 1996**

6.2.45 Section 217 of the Constitution 1996 provides as follows with regard to procuring goods and services by an organ of state or any other identified state institution:

(1) *When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.*

6.2.46 SASSA advertised *Bid No. SASSA: 40/15/BT* in the *Government Tender Bulletin* calling for interested potential service providers to submit their bids on or before the closing date of 26 February 2016 at 11H00. Advertising a bid constitutes an initiative to acquire goods and services through amongst others a transparent process that should be fair and equitable to all prospective service providers.

6.2.47 The bids were evaluated on both administrative compliance and technical functionality by a duly appointed BEC. Bids that met the administrative compliance were evaluated on their technical functionality to score a minimum of 60 points.

6.2.48 To ensure that the bidding process was fair, equitable, transparent, competitive and cost-effective it was prudent for the BEC to ensure that all information submitted by the bids is verified and evaluated to determine its correctness so that all companies' are evaluated on correctly corroborated information.

6.2.49 It is also prudent that the BAC ensure that the information submitted is correct and the evaluation process conformed to all legislative and policy prescripts prior to it accepting the recommendation of the BEC of rejecting or altering it.

6.2.50 Having considered the above, it has been established in evidence and through SASSA's own concession in the Annual Report of 2018/19 and 2019/20 that the information submitted by Azande Consulting CC in relation to its previous work conducted at SASSA North West was

neither verified nor corroborated during the evaluation and adjudication process to ensure that the bidding process is fair and equitable to all bidders. In this regard the SASSA's procurement system could not be referred to as fair, equitable, transparent, competitive and cost-effective to conform to section 217 of the Constitution, 1996.

### **Public Protector Act**

- 6.2.51 Section 6(4)(c)(i) of the Act provides that *“the Public Protector shall, be competent at a time prior to, during or after an investigation if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions”*.

### **Public Finance Management Act 1999**

- 6.2.52 Section 50 of the Act provides as follows:

*(3) The accounting authority for a public entity must-*

*(e) Exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;*

*(f) Act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;*

*(g) ...;*

*(h) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.*

*(4) A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not-*

*(e) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or*

- (f) *use the position or privileges of, or confidential information obtained as accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.*

6.2.53 Section 51(1) of the Public Finance Management Act, 1999 provides as follows:

(2) *An accounting authority for a public entity-*

(a) *must ensure that the public entity has and maintains-*

- (v) *effective, efficient and transparent systems of financial and risk management and internal control;*
- (vi) *a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of section 76 and 77; and*
- (vii) *an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective*
- (viii) *a system for properly evaluating all major capital projects prior to a final decision on the project.*
- (b) *must take effective and appropriate steps to-*
  - (i) *collect all revenue due to the public concerned; and*
  - (ii) *prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and*
  - (iii) *manage available working capital efficiently and economically;*

(g) *is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;*

6.2.54 Considering the provision of section 51(2)(b)(ii) of the PFMA and taking into account the seniority of both the BAC and BEC, it is unlikely that the award to these companies was a mere oversight.

### **National Treasury Regulations**

6.2.55 Regulation 16A of the National Treasury Regulations provides as follows:

6.2.55.1 National Treasury Regulation 16A.3.1 provides as follows:

*The accounting officer or accounting authority of an institution to which these Regulations apply must develop and implement an effective and efficient supply chain management system in his or her institution for-*

(a) *acquisition of goods and services;*

6.2.55.2 National Treasury Regulation 16A.3.2 provides as follows:

*A supply chain management system referred to in paragraph 16A.3.1 must-*

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

6.2.55.3 National Treasury Regulation 16A.6.2 provides as follows:

*A supply chain management system must, in the case of procurement through a bidding process, provide for –*

(a) *the adjudication of bids through a bid adjudication committee;*

- (b) the establishment, composition and functioning of bid specification, evaluation and adjudication committees;*
- (c) the selection of bid adjudication committee members;*
- (d) bidding procedures; and*
- (e) the approval of bid evaluation and/or adjudication committee recommendations.*

6.2.55.4 National Treasury Regulation.16A6.3(a) provides as follows:

*The accounting officer or accounting authority must ensure that –*

- (a) bid documentation and the general conditions of a contract are in accordance with –*
  - (i) the instructions of the National Treasury; or*
  - (ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;*

6.2.55.5 National Treasury Regulation 168A provides as follows in relation to compliance with ethical standards:

*16A8.1 All officials and other role players in a supply chain management system must comply with the highest ethical standards in order to promote –*

- (a) mutual trust and respect; and*
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.*

*16A8.2 The National Treasury's Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management.*

6.2.55.6 National Treasury Regulation.16A9.1 provides as follows:

*The accounting officer or accounting authority must –*

*(e) reject a proposal for the award of a contract if the recommended bidder has committed a corrupt or fraudulent act in competing for the particular contract; or*

6.2.56 Having established that the procurement system of SASSA in relation with the evaluation and adjudication of bids did not conform to section 217 of the Constitution 1996, such non-conformity has caused prejudice to the financial interests of the state. It has further been established in evidence that the state suffered financial prejudice resulting in SASSA disclosing irregular, fruitless and wasteful expenditure in relation to Bid No. SASSA: 40/15/BT as reflected in its Annual Reports for 2018/19 and 2019/2020 respectively.

#### **SASSA Supply Chain Management Policy of February 2016**

6.2.57 Subparagraph 8.3(a) of the Policy provides that the Bid Evaluation Committee must ensure that the requirements of the terms of reference are addressed and the recommended service provider has proven beyond doubt that it will be able to deliver the service to the satisfaction of SASSA.

6.2.57.1 Paragraph 21.1: Non Compliance provides as follows:

*Any employee of the SASSA who fails to comply with this Policy (including attached Annexures), may be guilty of financial misconduct. The Accounting Authority must ensure that disciplinary steps are taken against such employee in accordance with the applicable disciplinary procedures.*

6.2.58 Having considered the above provisions of the Supply Chain Policy it is submitted that:

6.2.58.1 The terms of reference for the bid required bidders to submit three (3) letters of reference on previous work conducted and Azande Consulting



CC submitted on two (2) reference letters of previous work conducted with the Department of Public Works Infrastructure. Vee-el Promotions (Pty) Ltd submitted copies of Purchase Orders purportedly generated from previous work conducted at SASSA North West Regional Office;

6.2.58.2 Further thereto the ToR required potential service providers to submit a copy of confirmation from the bank reflecting the credit worthiness of the service provider, the Public Protector is not in possession of same; and

6.2.58.3 It is improbable that a member of the BAC, Ms Mvulane, who was the responsible Manager for the North West region could not have known that Azande Consulting CC and Vee-el Promotions (Pty) Ltd did not do any work in her province.

## 7. FINDINGS

7.1 Having regard to the evidence and responses from the Bid Evaluation and the Bid Adjudication Committees in relation to the notice issued in terms of section 7(9)(a) of the Public Protector Act as well as the regulatory framework relating to supply chain management in determining the standard that should have been complied with by the SASSA functionaries and/or any other persons that were involved in the evaluation and adjudication of Bid No. SASSA: 40/15/BT-Head Office, and Bid No. SASSA:42/15/GA Mikondzo Project the findings are as follows:

7.1.1 The allegation regarding whether Azande Consulting CC was awarded Bid No. SASSA: 40/15/BT-Head Office in contravention of the legislative framework and policy prescripts regulating supply chain management in government is substantiated.

7.1.2 The ToR for the bid required potential bidders to submit amongst others; *“Three (3) contactable lists of references, supporting that a work of similar nature was undertaken in the past. Reference letters must include*

*contracting period, number and value of projects undertaken and contact person*". In its response to the bid Azande Consulting CC submitted two instead of three letters as proof of similar previous work done;

7.1.3 Both the Bid Evaluation and the Bid Adjudication Committees failed to determine that Azande did not submit the required proof of similar work done;

7.1.4 The BAC failed to do due diligence and satisfy itself that Azande Consulting qualified in terms of the requirements of the bid, as recommended for appointment by the BEC prior to accepting and recommending Azande Consulting CC for approval; and

7.1.5 Both the Bid Evaluation and the Bid Adjudication Committees of SASSA, which constituted officials at senior management breached section 51(1)(a)(vii) and (b)(ii) of the PFMA by accepting the results of an incorrect *Pre-programmed Electronic Score Sheet* procurement system which miscalculated the actual points due for each bidder, and breached also the ToR which required bidders to submit three copies of *Reference Letters* for previous similar work done. The utilisation of the incorrect *Pre-programmed Electronic Score Sheet* procurement system and accepting two *Reference Letter* of previous similar work done from Azande Consulting CC resulted in the bid being irregularly awarded to Azande Consulting CC.

7.1.6 In view of the above, the conduct of the Bid Evaluation and the Bid Adjudication Committees were in breach of:

7.1.6.1 Section 217 of the Constitution 1996 read with sections 50 and 51 of the PFMA as well as Regulation 16A of the National Treasury of 2005 as the evaluation and adjudication of the bid did not constitute the procurement of goods and services in accordance with a system that was fair, equitable, transparent, competitive and cost-effective as Azande Consulting CC was awarded the bid despite it not meeting all the requirements for the bid;

- 7.1.6.2 National Treasury Regulation 168A requiring all officials and role players involved in supply chain management to comply with ethical standards and adherence to the National Treasury's Code of Conduct for Supply Chain Management Practitioners; and
- 7.1.6.3 Paragraph 8.3(a) of the SASSA Procurement Policy which requires adherence to the ToR of the bid during the evaluation process of the bids. The ToR required bidders to submit three (3) letters of previous similar work done and Azande Consulting CC submitted two (2) letters of previous work done and should have been disqualified from the bid.
- 7.1.7 The conduct of both the Bid Evaluation and the Bid Adjudication Committees resulted in SASSA incurring irregular expenditure in the amount of two hundred and seventy eight million, seven hundred and seventeen thousand, seven hundred and fifty two rand (R278 717 752,00).
- 7.1.8 Accordingly, the conduct by members of both the Bid Evaluation Committee and the Bid Adjudication Committee constitutes improper conduct as envisaged in section 182(1) of the Constitution, 1996 and maladministration as envisaged in section 6(5)(a) of the Public Protector Act, 1994.
- 7.2 The allegation regarding whether Azande Consulting CC was awarded Bid No. SASSA: 42/15/GA-Mikondzo Project in contravention of the legislative framework and policy prescripts regulating supply chain management in government is substantiated.
- 7.2.1 Azande Consulting CC submitted two (2) copies of letters for previous work done while it was required to submit copies of three (3) letters as proof of previous work done.

- 7.2.2 Neither Azande Consulting CC nor Vee-el Promotions (Pty) Ltd submitted information from the bank relating to its credit worthiness as part of the bid documentation required for bidding as stipulated in the ToR.
- 7.2.3 Vee-el Promotions (Pty) Ltd did not submit copies of letters for previous work done, rather it submitted copies of invoices for work supposedly done for SASSA North West Regions. The invoices were not verified by either of the Committees.
- 7.2.4 Both Azande Consulting CC and Vee-el Promotions (Pty) Ltd should have been disqualified as their bids did not meet the stipulated requirements in the ToR of the bid as well as the SASSA Procurement Policy.
- 7.2.5 The BEC and BAC could not ascertain the capacity/experience of Azande Consulting CC and/or Vee-el Promotion (Pty) Ltd to do the work without both companies submitting three (3) copies of letters for previous work done.
- 7.2.6 Both the BEC and the BAC overlooked this fact and approved the recommendation for the accreditation of service providers.
- 7.2.7 In view of the above the conduct of both the Bid Evaluation and the Bid Adjudication Committees was in breach of:
- 7.2.7.1 Section 217 of the Constitution 1996 read with sections 50 and 51 of the PFMA as well as the as Regulation 16A of the National Treasury of 2005 as the evaluation and adjudication of the bid was not in compliance with the legislative requirements that goods and services should be procured in accordance with a system that is fair, equitable, transparent, competitive and cost-effective, as Azande Consulting CC and Vee-el Promotions (Pty) Ltd were accredited despite them not meeting all the requirements for the bid;

- 7.2.7.2 Paragraph 8.3(a) of the SASSA Procurement Policy which requires adherence to the ToR of the bid during the evaluation process. The ToR required bidders to submit three (3) letters of previous work done. Azande Consulting CC submitted two (2) letters of previous work done while Vee-el Promotions (Pty) Ltd did not submit copies of letters for previous work rather it submitted copies of invoices. Both companies should have been disqualified from the bidding process for not meeting the requirements of the TOR as required by the SASSA Procurement Policy;
- 7.2.7.3 Both the BEC and BAC of SASSA constituted at senior management level failed to implement controls during the evaluation and adjudication of the bid to avoid irregular, fruitless and wasteful expenditure as contemplated in section 51 of the PFMA;
- 7.2.7.4 Accordingly, the conduct by both members of the BEC and the BAC constitutes improper conduct as envisaged in section 182(1) of the Constitution, 1996 and maladministration as envisaged in section 6(5)(a) of the Public Protector Act, 1994; and
- 7.2.7.5 National Treasury Regulation 168A requiring all officials and role players involved in supply chain management to comply with ethical standards and adherence to the National Treasury's Code of Conduct for Supply Chain Management Practitioners.

## **8. REMEDIAL ACTION**

- 8.1 In *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* 2016 (5) BCLR (CC) at paragraph 76, the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held at paragraph 73 that:

- 8.1.1 *“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.”*
- 8.2 The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution, 1996 with a view to remedying the maladministration and improper conduct referred to and hold those responsible persons accountable are as follows:

**The Chief Executive Officer for SASSA is to:**

- 8.2.1 Take appropriate action **within 120 working days** of issuing this report, in terms of Clause 21 of the SASSA Supply Chain Management Policy of 2016 against those employees of SASSA identified in this report as being implicated for failing/omitting to comply with Clause 8.3(a) of the SASSA Supply Chain Management Policy, for not adhering to the National Treasury’s Code of Conduct for Supply Chain Management Practitioners and for breaching Chapter 2 of the Code of Conduct in the Public Service Regulations as well as Regulation 16.8A of the National Treasury Regulations, in relation to their roles/conduct during the process of evaluation and adjudication of the two bids namely, SASSA: 40/15/BT-Head Office and SASSA: 42/15/GA-Mikondzo Project, where same has not occurred yet in relation to the following SASSA employees:
- (e) Mr Tsakeriwa Chauke; (Former Acting Chief Financial Officer);
  - (f) Mr Temba Matlou (Regional Executive Manager: Gauteng);
  - (g) Ms Dumisile Ndlovu (General Manager: Supply Chain Management);
  - (h) Ms Zodwa Mvulane (General Manager: North West);

- (i) Ms Dianne Dunkerley (Executive Manager: Grants & Policy);
- (j) Ms Ramokgopa (Executive Manager: Strategy & Business Development);
- (k) Mr Makgolane (Senior Manager: Supply Chain Management, Limpopo Region);
- (l) Mr Sindisiwe Sibankulu (General Manager: Human Resource);
- (m) Ms Sonwabo Koluti (General Manager: Grants Administration);
- (n) Mr Bonga Gcumisa (Senior Manager: Supply Chain Management); and
- (o) Mr Benzile Hadebe (Manager: Supply Chain Management).

8.2.2 Adopt a plan to review and enhance the supply chain management system with the intention of preventing future recurrence of circumventing the current supply chain mechanisms in line with Treasury Regulations and SCM Prescripts **within sixty (60) working days** of issuing this report.

8.2.3 Take appropriate action in respect of Azande Consulting CC and Vee-el Promotions (Pty) Ltd in terms of the PFMA-Government Procurement General Conditions of Contract section 23, read with clause 6 PFMA SCM Instruction Note 3 of 2021/22: Enhancing Compliance, Transparency and Accountability in Supply Chain Management **within one hundred and twenty (120) days** of issuing this report.

8.2.4 **Within one hundred and twenty (120) days** of issuing this report, ensure that all Bid Evaluation Committee and Bid Adjudication Committee members and other employees involved in supply chain management are trained on the legislation, regulations, policies and other relevant prescripts regulating procurement of goods and service.

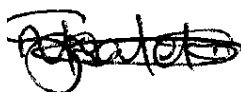
8.2.5 **Within one hundred and twenty (120) working days** of issuing this report, consider conducting periodic life style audits in terms of Regulation 22 of the Public Service Regulations as informed by part 3 of chapter 2 of the Regulations - on supply chain employees, Bid Evaluation Committee and Bid Adjudication Committee members as part of risk management and security vetting of employees involved in supply chain management processes to ensure that illicit activities are identified and action taken to mitigate them early.

**The Head of the Directorate for Priority Crime Investigations is to:**

8.2.6 In terms of section 6(4)(c)(i) of the Public Protector Act this matter is referred to the DPCI to take note and consider conducting criminal investigation in terms of section 34(1)(b) of PRECCA for possible bid rigging and corruption relating to Bid No. SASSA: 40/15/BT-Head Office and Bid No. SASSA: 42/15/GA-Mikondzo Project by Azande Consulting CC and Vee-el Promotions (Pty) Ltd.

**9. MONITORING**

9.1 The Chief Executive Officer must submit an Implementation Plan to the Public Protector within thirty (30) working days from the date of this report indicating how the remedial action referred to in paragraph 8 above will be implemented.



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

**DATE: 30 SEPTEMBER 2022**

*Assisted by: Mr Mulao Lamula*

*Provincial Representative: Western Cape*