

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



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**INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY BY MANGAUNG METRO  
MUNICIPALITY TO PAY OUTSTANDING INVOICES FOR SERVICES RENDERED  
BY VEMISANI SECURITY SERVICES**

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**LIST OF ACRONYMS AND ABBREVIATIONS**

<b>ACRONYMS / ABBREVIATIONS</b>	<b>DESCRIPTION</b>
<b>Constitution</b>	Constitution of the Republic of South Africa, 1996
<b>Company</b>	Vemisani Security Services
<b>MFMA</b>	Municipal Finance Management Act, 2003
<b>Municipality</b>	Mangaung Metro Municipality
<b>Public Protector</b>	Public Protector of the Republic of South Africa
<b>Public Protector Act</b>	Public Protector Act, 1994
<b>PSIRA</b>	Private Security Industry Regulatory Authority

## 1. INTRODUCTION

- 1.1 This is a report of the Public Protector issued in terms of section 8(1) of the Public Protector Act, 1994, which provides that “*The Public Protector may, subject to the provisions of subsection (3), in the manner he or she deems fit, make known to any person any finding, point of view or recommendation, in respect of a matter investigated by the Public Protector*”.
- 1.2 This report relates to an investigation into allegations of undue delay by the functionaries of Mangaung Metropolitan Municipality (the Municipality) to pay outstanding invoices for services rendered by Vemisani Security Services.
- 1.3 The report is submitted in terms of section 8(1) read with section 8(3) of the Public Protector Act, which empowers the Public Protector to make known the findings of an investigation, to affected parties for such persons to note the outcome of the investigation and to implement the recommendations, where applicable:
- 1.3.1 The City Manager, Mr S More; and
- 1.3.2 The Complainant, Mr T Khoarane.
- 1.4 The Public Protector’s mandate is derived from section 182(1) of the Constitution of the Republic of South Africa (the Constitution) and the Public Protector Act, 1994 (the Public Protector Act), to promote accountability, transparency and fairness in the public sector. The Public Protector continuously reviews and monitors the information gathered from complaints lodged with the office, with the view to identify the most probable underlying root causes of the problems, complaints and undesirable events within relevant public bodies or authorities.
- 1.5 The aim is to formulate and establish corrective action to at least mitigate, if not eliminate, those root causes and to produce significant long-term improvements in public administration.

1.6 The point of departure is that any complaint might be a symptom of an underlying organizational failure, *inter alia* in areas such as systems, procedures and human error. By addressing the underlying deficiencies in the systems that are the causes of complaints, the Public Protector aims to reduce the number of individual complaints, in turn, working collaboratively with stakeholders to get the problems resolved and to provide constructive feedback that will enable it to address the root causes of complaints and prevent recurrence.

## 2. THE COMPLAINT

2.1 The complaint was lodged with the Public Protector on 28 October 2022, by Mr Thabiso Khoarane (the Complainant).

2.2 In essence, the Complainant alleged, *inter alia*, that:

2.2.1 He is the director of Vemisani Security Services;

2.2.2 He entered into a two (02) year contract with the Municipality from 28 February 2019 to 28 February 2021, for the provision of security services. Following the expiry of the contract in February 2021, the agreement continued on a month-to-month basis;

2.2.3 In March 2022, the Municipality stopped paying Vemisani Security Services until September 2022;

2.2.4 There are other outstanding invoices that were not paid by the Municipality for services rendered in 2019 when Vemisani Security Services was still within the contract period with the Municipality;

2.2.5 The contract also stipulated that on a yearly basis when there is a salary adjustment for security guards, the Municipality would also adjust the payment rates according to Private Security Industry Regulatory Authority (PSIRA) standards, and

2.2.6 He tried to communicate with the Municipality regarding the payment of outstanding invoices and salary adjustments, but he was informed that the Municipality does not have money.

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

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

3.2 Section 182(1) of the Constitution provides that:

*“The Public Protector has the power, as regulated by national legislation-*

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action.”*

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

3.4 Section 6(4)(c)(ii) of the Public Protector Act provides that, the Public Protector *“shall be competent at any time prior to, during or after an investigation, if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting from or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.”*

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

3.6 The Municipality is an organ of state in terms of section 239 of the Constitution and its conduct amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(4) of the Public Protector Act.

3.7 The Public Protector's powers and jurisdiction to investigate this matter, was not disputed by the Municipality.

#### **4. ISSUE IDENTIFIED FOR INVESTIGATION**

4.1 Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

4.1.1 Whether the functionaries of the Municipality unduly delayed to pay outstanding invoices for services rendered by Vemisani Security Services, if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994.

#### **5. THE INVESTIGATION**

##### **5.1 The Investigation Process**

5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution read with sections 6 and 7 of the Public Protector Act.

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation.

5.1.3 The investigation process included the exchange of documents, analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

## 5.2 **The approach to the investigation**

5.2.1 The investigation was approached using an enquiry process that seeks to determine:

5.2.1.1 What happened?

5.2.1.2 What should have happened?

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

5.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the alleged conduct of the functionaries of the Municipality was consistent with the applicable legal prescripts.

## 5.3 **Key sources of information**

5.3.1 Complaint received from Mr Khoarane (the Complainant), dated 28 October 2022;

5.3.2 Allegations letter from the Public Protector to Mr T Motlashuping, the then Acting Municipal Manager, dated 18 January 2023;

5.3.3 Letter from the Municipality to the Public Protector, dated 24 March 2023;

5.3.4 Unpaid invoices submitted by the Complainant to the Public Protector;

5.3.5 Letter from the Municipality to the Public Protector dated, 22 December 2023 received on 28 December 2023; and



5.3.6 Email from the Complainant to the Public Protector, dated 18 January 2024.

#### **5.4 Meeting**

5.4.1 A meeting between the Investigation Team and Adv. Charlie Naidoo, General Manager, Legal Services from the Municipality held on 12 December 2023.

#### **5.5 Legislation and other prescripts**

5.5.1 Constitution of the Republic of South Africa;

5.5.2 Public Protector Act, 1994; and

5.5.3 Municipal Financial Management Act, 2003.

### **6. THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSION MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS**

**6.1 Whether the functionaries of the Municipality unduly delayed to pay outstanding invoices for services rendered by Vemisani Security Services, if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994**

#### *Common cause*

6.1.1 Vemisani Security Services entered into a two (02) year agreement for guarding services with the Municipality with effect from 28 February 2019 to 28 February 2021.

6.1.2 The agreement was subsequently extended on a month-to-month basis until the end of July 2022.

*Issue in dispute*

- 6.1.3 The issue for the Public Protector's determination is whether the functionaries of the Municipality paid the invoices for services rendered by Vemisani Security Services.

*Complainant's version*

- 6.1.4 The Complainant alleged that Vemisani Security Services provided security services to the Municipality as per the agreement, but the Municipality failed to pay some of the invoices for services rendered.
- 6.1.5 The Complainant further alleged that the Municipality also failed to pay the adjusted rates in line with the determination by the Private Security Industry Regulatory Authority (PSIRA).

*Documentation provided by the Complainant*

- 6.1.6 The Complainant furnished the Public Protector with copies of the following unpaid invoices in support of his complaint indicating the amount due and payable by the Municipality:
- 6.1.6.1 Invoice no IN100127, dated 25 November 2019;
- 6.1.6.2 Invoice no IN100141, dated 25 December 2019;
- 6.1.6.3 Invoice no IN100486, dated 28 April 2021; and
- 6.1.6.4 Invoice no IN100487, dated 28 April 2021.

*The Municipality's version*

- 6.1.7 On 18 January 2023, the Public Protector sent an allegations letter to Mr T Motlashuping (Mr Motlashuping), the then Acting City Manager. Mr Motlashuping responded to the allegations through a letter dated 24 March 2023, stating that:
- 6.1.7.1 The Municipality entered into a contract with Vemisani Security Services for the provision of guarding services by appointing private security companies in terms of Bid 439 -2017/2018;
  - 6.1.7.2 The contract ended on 28 February 2021 and was extended on a month-to-month basis until the procurement of new security services was finalised;
  - 6.1.7.3 Compensation for work executed in the agreement was that the Municipality will pay the contractor as per PSIRA pricing structure for 2019 for Grade C and D Security Guard on a 24-hour basis;
  - 6.1.7.4 The Municipality was supposed to pay the amount prescribed by PSIRA, excluding Value-Added Tax (VAT), after satisfactory completion of work and submission of monthly invoices for services discharged per guard;
  - 6.1.7.5 Clause 5 of the Agreement prescribes that the escalation shall be on the PSIRA annual increase; and
  - 6.1.7.6 The Contract Management Section advised the City Manager that a submission for approval for a price increase must be prepared by the Project Manager. According to the Project Manager, the Sub Directorate Public Safety was inundated with requests from security companies for price increases as per their contract, however, the increases could not be implemented as approvals were awaited after submissions were made for tariff increase.

*Meeting between the Municipality and the Public Protector Investigation Team, 12 December 2023*

- 6.1.8 The Public Protector Investigation Team (Investigation Team) requested a meeting with the newly appointed City Manager in order to address the issues pertaining to the complaint, with a view to expediting the resolution thereof.
- 6.1.9 The meeting was subsequently held on 12 December 2023 by the Investigation and the Municipality which was represented by Adv Naidoo from the Legal Services Unit.
- 6.1.10 During the meeting, an undertaking was made by the Municipality to look into the matter and provide the Public Protector with a response by 15 January 2024.

*Further correspondence from the Municipality*

- 6.1.11 On 28 December 2023, Adv Naidoo on 28 December 2023 made a written to the Public Protector stating, *inter alia*, that:
- 6.1.11.1 On 13 December 2022, Vemisani Security Services issued summons against the Municipality for the sum of eleven million five hundred and six thousand three hundred and sixty-seven rand and forty seven cents (R 11 506 367.47). Following the payment arrangement which the Municipality had already entered into, the Municipality proceeded to instruct the attorneys to defend the action proceedings;
- 6.1.11.2 On 18 December 2023, the Municipality met with the representatives of Vemisani Security Services to obtain clarity about the origin of their persistent demand for payment of the debt;
- 6.1.11.3 During the meeting, it was brought to the attention of the Municipality that the continued non-payment of the outstanding invoices attracted interest; and
- 6.1.11.4 on 22 December 2023, calculations were done and the total amount of six million one hundred and fifty thousand two hundred and thirty-seven rand and twenty-nine cents (R6 150 237.29), which included the capital amount and

the interest thereon, was paid by the Municipality to Vemisani Security Services.

*Email correspondence from the Complainant*

- 6.1.12 On 17 January 2024, the Investigation Team enquired telephonically from the Complainant whether he had received payment from the Municipality. On 18 January 2024, the Complainant confirmed through email receipt of payment in the amount of R6 150 237.29.

*Application of the relevant law*

**Municipal Financial Management Act, 2003**

- 6.1.13 Section 65 of the MFMA provides that:

- “(1) The accounting officer of a municipality is responsible for the management of the expenditure of the municipality.*
- (2) The accounting officer must for the purpose of subsection (1) take all reasonable steps to ensure -*
- (a) that the municipality has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds;*
  - (b) that the municipality has and maintains a management, accounting and information system which-*
    - (i) recognises expenditure when it is incurred;*
    - (ii) accounts for creditors of the municipality; and*
    - (iii) accounts for payments made by the municipality;*
  - (c) That the municipality has and maintains a system of internal control in respect of creditors and payments.*

- (d) *That payments by the municipality are made-*
  - (i) *directly to the person to whom it is due unless agreed otherwise for reasons as may be prescribed; and*
  - (ii) *either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only, and only up to a prescribed limit;*
  - (e) *that all money owing by the municipality be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure..;*

**Agreement between the Municipality and Vemisani Security Services, dated 28 February 2019**

6.1.14 Clause 5 of the agreement provides for compensation and states the following:

*“5.1 For the work executed in terms of this agreement, the Municipality will pay compensation to the Contractor as per the Private Security Industry Authority (PSIRA) contract pricing structure which came into effect from 01 November 2018 and more set out in the attached Annexure B for the provision of a grade C and D Security Guard on a twenty-four (24) hour basis as set out in attached Annexure A. The Municipality will pay the minimum amount as prescribed by PSIRA excluding VAT, per guard per month and a further payment for a firearm armed guard per Annexure B, excluding VAT, after the satisfactorily completion of the specified piece of work and the submission of approved invoice.*

*5.2 The pricing for the escalation period must be according to the standard pricing as prescribed by PSIRA minimum regulated tariffs, which*

*escalation shall be on the month following the successful sector salary negotiations each year, and annual increase for the firearm armed guards shall escalate by CPI percentage.*

*5.3 Payments shall be made promptly by the Municipality, but in no case later than thirty (30) days after submission of an invoice or claim by the Contractor...”*

### *Analysis*

- 6.1.15 The MFMA emphasises the importance of timely payments to suppliers and specifically requires that all money owed by municipalities be settled within 30 days of receiving the relevant invoice or statement.
- 6.1.16 Evidence at the Public Protector’s disposal indicates that the Vemisani Security Services entered into an agreement with the Municipality for guarding services from 28 February 2019 until 28 February 2021. The agreement thereafter continued on a month-to-month basis. In terms of clause 5 of the agreement concluded between the parties the Municipality was required to pay the amount prescribed by PSIRA, excluding VAT after satisfactory completion of work with the submission of monthly invoices for services discharged per guard. Furthermore, payments were to be made no later than thirty (30) days after the submission of an invoice or claim by Vemisani Security Services.
- 6.1.17 Documentary evidence before the Public Protector indicates that the Municipality either failed to pay some of the invoices in full whilst others were not paid at all. The Municipality also conceded that there were invoices amounting to R 5 509 545.76 including VAT, that were due and payable to Vemisani Security Services. Furthermore, the Municipality confirmed that interest that has accrued on the outstanding invoices amounts to R 640 691.53.

- 6.1.18 In this instance, the conduct of the Municipal functionaries in not paying Vemisani Security Services timeously was not only in conflict with clause 5 of the agreement concluded between the parties, but also contravened the provisions of section 65(2)(e) of the MFMA.
- 6.1.19 The Municipality attributed the delay in settling Vemisani Security Services' invoices to the Sub Directorate Public Safety being inundated with requests from security companies for price increases as per their contract as well as late approval for the implementation of the tariff increases. However, the Public Protector noted that some of the outstanding invoices pertained to the period when the contract had not yet expired, that is, invoices for November and December 2019.
- 6.1.20 The City Manager as the accounting officer is required to ensure that the Municipality settles all contractual obligations and pays money owing within the prescribed or agreed period. Furthermore, he must ensure that the Municipality has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds as stipulated in section 65(1) of the MFMA. In the circumstances, the City Manager did not ensure that there is an effective system of expenditure control in place to address timeous payment of service providers.

### *Conclusion*

- 6.1.21 Based on the evidence at the Public Protector's possession, it is concluded that the functionaries of the Municipality unduly delayed to pay outstanding invoices for services rendered by Vemisani Security Services, despite the Complainant having raised the matter since 2022.
- 6.1.22 Through the intervention of the Public Protector, communication between the Municipality and Vemisani Security Services was established. This intervention ultimately resulted in the Municipality paying an amount of R6 150 237.29, including interest to Vemisani Security Services.



- 6.1.23 The Complainant as the Director of Vemisani Security Services confirmed that the Municipality has settled the outstanding in full.

## **7. OBSERVATIONS**

- 7.1 The Municipality unduly delayed to pay Vemisani Security Services for services rendered as per the agreement entered into on 28 February 2019.
- 7.2 Furthermore, systems could have been in place to ensure timeous approval of the tariff increases as pronounced by PSIRA and the resultant adjustments to service provers claims.
- 7.3 The Complainant suffered prejudice as a result of undue delay by the Municipality to pay for services rendered.

## **8. INTERVENTION**

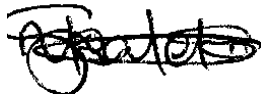
- 8.1 It is recommended in terms of section 6(4)(c)(ii) of the Public Protector Act, that:

### **The Municipal Manager**

- 8.1.1 Within thirty (30) calendar days from the date of this report, put systems in place to ensure that payments are made to service providers within thirty (30) days of receiving the relevant invoices or statements in line with section 65(2)(e) of the MFMA.

**9. CONCLUSION**

9.1 The Public Protector considers this matter as finalised and cannot take the matter any further.



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**ADV. KHOLEKA GCALEKA  
PUBLIC PROTECTOR  
REPUBLIC OF SOUTH AFRICA  
DATE: 28 MARCH 2024**

*Assisted by: Ms N Motsitsi  
Executive Manager: PII Inland*