

**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**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 05 OF 2024/2025

ISBN NUMBER: 978-1-0672387-2-8

**INVESTIGATION INTO ALLEGATIONS OF IRREGULAR APPOINTMENT OF C-
SQUARED CONSUMER CONNECTEDNESS (PTY) LTD AND RESULTANT
EXCESSIVE EXPENDITURE INCURRED FOR THE EVENTS LEADING UP TO AND
THE FUNERALS OF MR MAKGOE AND MR MDI, BY FUNCTIONARIES OF THE FREE
STATE OFFICE OF THE PREMIER**

TABLE OF CONTENTS		
ITEM	DESCRIPTION	PAGE NO
	LIST OF ACRONYMS AND ABBREVIATIONS	3
	EXECUTIVE SUMMARY	4
1.	INTRODUCTION	11
2.	THE COMPLAINT	12
3.	POWERS AND JURISDICTION OF PUBLIC PROTECTOR	14
4.	THE ISSUE CONSIDERED AND INVESTIGATED	15
5.	THE INVESTIGATION	15
6.	THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS	22
7.	FINDINGS	118
8.	REMEDIAL ACTION	120
9.	MONITORING	122

LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS / ABBREVIATIONS	DESCRIPTION
Constitution	Constitution of the Republic of South Africa, 1996
Email	Electronic mail correspondence
FSOP	Free State Office of the Premier
FSPT	Free State Provincial Treasury
Funeral Policy	State, Official and Provincial Funeral Policy Manual, July 2016
Public Protector	Public Protector of the Republic of South Africa
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	The Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended

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 (Constitution), which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice and section 8(1) of the Public Protector Act, 1994 (Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into the irregular appointment of irregular appointment of C-Squared Consumer Connectedness (Pty) Ltd (C-Squared) and resultant excessive expenditure incurred, in respect of the events leading up to and funerals of the late Member of the Executive Council Makgoe (Mr Makgoe) and the late Warrant Officer V Mdi (Mr Mdi), by the functionaries of the Free State Office of the Premier (FSOP).
- (iii) The investigation originates from a complaint lodged with the Public Protector by Dr Roy Jankielsohn (the Complainant), a Member of the Provincial Legislature and Leader of the Democratic Alliance (DA) in the Free State Province, on 31 May 2023.
- (iv) In the main, the Complainant alleged that:
 - (a) The Free State office of the Premier (FSOP) spent an amount of three million four hundred and thirty-two thousand six hundred and seventy-six rand (R3 432 676) for the funeral of the late Mr Makgoe, which expenditure included events leading up to the funeral;
 - (b) The costs incurred encompassed the following items:

- (aa) Food and beverages at a cost of one million two hundred and eighty thousand five hundred rand (R1 288 500);
 - (bb) Various performing artists at a cost of three hundred and fifty-five thousand rand (R355 000);
 - (cc) Couches for the family at a cost of twenty-eight thousand three hundred and eighty rand (R28 380);
 - (dd) A casket and funeral plot at a cost of one hundred and thirty thousand and nine hundred rand (R130 900); and
 - (ee) Various other items such as red carpets, stages, sound system, etc.
- (c) In terms of the State, Official and Provincial Funeral Policy Manual, dated July 2016 (the Funeral Policy), the late Mr Makgoe was entitled to and received a Provincial Funeral Category one (01);
- (d) The Funeral Policy outlines the cost implications of a Provincial Funeral Category 01 as follows:
- Paragraph 2.9(b) states that: *“In respect of a Provincial Official or Special Provincial Funeral, the relevant provincial department and entities shall be responsible for reasonable costs related to the services they are expected to offer (funeral undertaker costs including the coffin and limited catering for the family and State/Official guests)”*, and
- (e) Paragraph 2.9(c) states that: *“In the event of the cost of a funeral exceeding the budget of the said department, this expenditure must be provided for during the Adjustment Appropriation”*.
- (f) The FSOP appointed C-Squared as the events coordinator and event service provider in a short space of time, and it is unclear whether competitive bidding processes were followed;

-
- (g) C-Squared was implicated in the highly publicised “*Macufe tender case*” where the appointment was declared unlawful by the court and the matter is currently being investigated by the Directorate for Priority Crime Investigation (DPCI); and
- (h) The “*re-appointment*” of a company that has already embarrassed the Free State Provincial Government (FSPG) and tainted the image of the Mangaung Annual Cultural Festival (Macufe)¹, is very suspicious.
- (v) Based on the analysis of the complaint, the following issue was considered and investigated:
- (a) Whether the functionaries of the FSOP irregularly appointed C-Squared and incurred excessive expenditure relating to the events leading up to and funerals for Mr Makgoe and Mr Mdi, if so, whether such conduct is 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, 1994.
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.
- (vii) On 20 March 2024, notices in terms of section 7(9)(a) (section 7(9) Notice) of the Public Protector Act, were delivered to Ms P Baleni (Ms Baleni), the Director-General and Secretary of Cabinet, Mr M Dukwana (Mr Dukwana), the former Premier of the Free State Province, Mr K Ralikontsane (Mr

¹ MACUFE is an annual showcase of African arts, culture and various sports disciplines that takes place in Bloemfontein, South Africa accessed from <https://www.sacr.fs.gov.za/?p=4620> on 29 November 2023

Ralikontsane), the Director-General FSOP, Mr S Martins (Mr Martins), the Chief Financial Officer, Mr L Kokoana (Mr Kokoana), the SCM Demand and Acquisition Practitioner, Mr S Tsunke (Mr Tsunke), the Director Finance and SCM, and Ms P Tsimele (Ms Tsimele), the Head Supply Chain Manager.

- (viii) A response was received from Mr Dukwana on 10 April 2023 and a response was received from Mr Ralikontsane on 12 April 2023. One combined response received from Messrs Martins, Tsunke, Tsimele and Kokoana on 12 April 2023. The response from Ms Baleni was received on 23 April 2024. The information/evidence submitted in response to the section 7(9) Notices were duly considered by the Public Protector.
- (ix) Having regard to the evidence and regulatory framework determining the standard that the functionaries of the FSOP should have complied with, the following findings are made:
- (a) **Whether the functionaries of the FSOP irregularly appointed C-Squared and incurred excessive expenditure relating to the events leading up to and funerals for Mr Makgoe and Mr Mdi, if so, whether such conduct is 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**
- (aa) The allegation that the functionaries of the FSOP irregularly appointed C-Squared and incurred excessive expenditure for events leading up to and the funerals of Mr Makgoe and Mr Mdi, **is substantiated**.
- (bb) The functionaries of the FSOP proceeded to evaluate and adjudicate the quotation received from C-Squared despite the quotation including items that

were not listed on the specifications of the RFQ, in contravention of section 45(a) to (d) of the PFMA.

- (cc) The appointment of C-Squared and resultant expenditure was in violation of the provisions of sections 195(a),(b),(f) and 217(1) of the Constitution and in contravention of section 38(1)(a)(iii) of the PFMA and National Treasury Regulation 16A3.2(a), as the process was not conducted in accordance with a system that was fair, equitable, transparent, and cost effective as the quotation was not evaluated in terms of the criteria stated in the RFQ.
- (dd) The Public Protector takes cognisance that the circumstances under which funeral preparations were to be done required an urgent procurement process, however, it was still incumbent on the Accounting Officer and functionaries of the FSOP to adhere to the standards set out in section 217 of the Constitution read with sections 38(1)(a)(iii), 45(b) of the PFMA and National Treasury Regulations 16A3.2.
- (ee) There was no segregation of the functions that were performed by the officials in the drafting of the specifications, the evaluation of the quotations and the adjudication thereof, in line with the provisions of National Treasury Circular: Implementation of Supply Chain Management, 27 October 2004, which renders the procurement process in violation of section 217 of the Constitution.
- (ff) Even though the Funeral Policy does not define “*reasonable costs*”, cognisance must be taken that R 5.9 million rand for a funeral could have never been the intention of the policy. Reasonable costs should be understood within the ambit of “*funeral undertaker costs including the coffin and limited catering for the family and State/Official guests*”. In this instance, the functionaries went beyond same.

- (gg) The costs incurred for the events leading up to and funerals of Mr Mdi were contrary to the provisions of section 38(1)(k) of the PFMA, which imposes an obligation in Accounting Officers to comply with National Treasury Regulation 21.1.1, when a department gives financial assistance to any person. Mr Ralikontsane failed to obtain the required approval for funds to be voted by the provincial legislature.
- (hh) The conduct of the functionaries of the FSOP constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- (x) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, are the following:

The Presidency

- (aa) Within **one hundred and twenty (120) calendar days** from the date of this report, in line with section 85(2)(b) of the Constitution and in consultation with the National Treasury review the Funeral Policy to determine the actual costs related to services that are expected to be offered per funeral category, in light of the deficiencies identified in this report.

The Director General - National Treasury

- (bb) Take cognisance of this report in line with powers contemplated in section 6(1)(f) and (g) of the PFMA and collaborate with the Presidency to determine the actual costs related to services that are expected to be offered per funeral category, in light of the deficiencies identified in this report as contemplated in paragraph (aa) above.

The Premier

- (cc) Within **ninety (90) calendar days** from the date of this report, in terms of section 84 of the PFMA, take disciplinary action against Mr Ralikontsane for failure to execute his duties in terms of section 38 of the PFMA relating to the events leading up to and funerals of Mr Makgoe and Mr Mdi.
- (dd) Within **ninety (90) calendar days** from the date of this report, in terms of section 84 of the PFMA, ensure that disciplinary action is taken by the Director General against the functionaries of the FSOP mentioned in paragraph 8.3.4 hereunder.

The Director General

- (ee) Within **sixty (60) calendar days** from the date of this report, in line with section 7(3)(b) of the Public Service Act, 1994, as amended and section 38(1)(h) of the PFMA, initiate disciplinary proceedings against Mr Martins, Mr Tsunke, Ms Tsimele and Mr Kokoana, for violating the provisions of the Constitution, contravening section 45(a) to (d) of the PFMA and paragraphs 2.2, 2.3, 2.4 and 2.5 of the SCM Policy, for their participation in the procurement process and appointment of C-Squared and appraise the Premier on the steps taken.

The Directorate for Priority Crimes Investigation (DPCI)

- (ff) A copy of this Report is provided to the DPCI as a referral in terms of section 6(4)(c)(ii) of the Public Protector Act, to consider this Report and to establish if any acts of impropriety identified herein amount to criminal conduct in terms of the Prevention and Combating of Corrupt Activities Act, 2004.

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) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2. This 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 remedial action, where applicable.
- 1.3. The report is submitted to the following persons:
 - 1.3.1. Ms Baleni, the Director-General and Secretary of Cabinet: The Presidency;
 - 1.3.2. Ms Maqueen Joyce Letsoha-Mathae, the Premier of the Free State;
 - 1.3.3. Mr M Dukwana, the former Premier of the Free State;
 - 1.3.4. Mr Ralikontsane, the Director-General of the office of the Premier;
 - 1.3.5. Mr Martins, the Chief Financial Officer;
 - 1.3.6. Mr Kokoana, the SCM Demand and Acquisition Practitioner;
 - 1.3.7. Mr Tsunke, the Director Finance and SCM;
 - 1.3.8. Ms Tsimele, the Supply Chain Manager;
 - 1.3.9. Lieutenant General Godfrey Lebeya, the National Head, Directorate of Priority Crime Investigations; and
 - 1.3.10. Dr R Jankielsohn, the Complainant.
- 1.4. The report relates to an investigation into the alleged irregular appointment of C-Squared Consumer Connectedness (Pty) Ltd and resultant excessive expenditure incurred for the events leading up to and funerals of Mr Makgoe and Mr Mdi, by functionaries of the Free State Office of the Premier.

2. THE COMPLAINT

- 2.1. The investigation originates from a complaint lodged with the Public Protector by Dr Roy Jankielsohn (the Complainant), a Member of the Provincial Legislature and Leader of the Democratic Alliance (DA) in the Free State Province, on 31 May 2023.
- 2.2. The Complainant alleged, *inter alia*, that:
- 2.2.1 The FSOP spent an amount of three million four hundred and thirty-two thousand six hundred and seventy-six rand (R3 432 676) for the funeral of the late Mr Makgoe, which expenditure included events leading up to the funeral;
- 2.2.2 The costs incurred encompassed the following items:
- 2.2.2.1 Food and beverages at a cost of one million two hundred and eighty thousand five hundred rand (R1 288 500);
- 2.2.2.2 Various performing artists at a cost of three hundred and fifty-five thousand rand (R355 000);
- 2.2.2.3 Couches for the family at a cost of twenty-eight thousand three hundred and eighty rand (R28 380);
- 2.2.2.4 A casket and funeral plot at a cost of one hundred and thirty thousand and nine hundred rand (R130 900); and
- 2.2.2.5 Various other items such as red carpets, stages, sound system, etc.
- 2.2.3 In terms of the State, Official and Provincial Funeral Policy Manual, dated July 2016 (the Funeral Policy), the late Mr Makgoe was entitled to and received a Provincial Funeral Category one (01);

- 2.2.4 The Funeral Policy outlines the cost implications of a Provincial Funeral Category 01 as follows:
- Paragraph 2.9(b) states that: *“In respect of a Provincial Official or Special Provincial Funeral, the relevant provincial department and entities shall be responsible for reasonable costs related to the services they are expected to offer (funeral undertaker costs including the coffin and limited catering for the family and State/Official guests)”*, and
- 2.2.5 Paragraph 2.9(c) states that: *“In the event of the cost of a funeral exceeding the budget of the said department, this expenditure must be provided for during the Adjustment Appropriation”*;
- 2.2.6 The FSOP appointed C-Squared as the events coordinator and event service provider in a short space of time, and it is unclear whether competitive bidding processes were followed;
- 2.2.7 C-Squared was implicated in the highly publicised *“Macufe tender case”* where the appointment was declared unlawful by the court and the matter is currently being investigated by the Directorate for Priority Crime Investigation (DPCI); and
- 2.2.8 The *“re-appointment”* of a company that has already embarrassed the Free State Provincial Government (FSPG) and tainted the image of the Mangaung Annual Cultural Festival (Macufe)², is very suspicious.
- 2.3. During the initial stages of the investigation process, the Public Protector came upon evidence that the FSOP also paid for the events leading up to and the funeral of the late Mr Mdi, who was a member of the South African Police

² MACUFE is an annual showcase of African arts, culture and various sports disciplines that takes place in Bloemfontein, South Africa accessed from <https://www.sacr.fs.gov.za/?p=4620> on 29 November 2023

Service (SAPS) and a Protector assigned to the late Mr Makgoe. Mr Mdi passed away in the same accident that claimed the life of the late Mr Makgoe on 05 March 2023. The process followed by the FSOP, and expenditure incurred for the events leading up to, and the funeral of the late Mr Mdi, falls within the broader ambit of the current investigation by the Public Protector and was therefore included in this investigation.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional institution established in terms of section 181(1)(a) of the Constitution of the Republic of South Africa, 1996 (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. The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

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

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 FSOP irregularly appointed C-Squared and incurred excessive expenditure relating to the events leading up to and funerals for Mr Makgoe and Mr Mdi, if so, whether such conduct is 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.

5. THE INVESTIGATION

5.1. Methodology

- 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 with due regard to the circumstances of each case.

5.2. Approach to the investigation

- 5.2.1 The approach to the investigation included an exchange of documents between the Public Protector, the FSOP, Free State Provincial Treasury (FSPT) and the Auditor General South Africa (AGSA) interviews with functionaries of the FSOP, an analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework, and prescripts.
- 5.2.2 The investigation was approached using an enquiry process that seeks to determine:
- (a) What happened?
 - (b) What should have happened?
 - (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, abuse of power, improper conduct or resulted in prejudice?
 - (d) In the event of a deviation amounting to maladministration, abuse of power, improper conduct or resulting in prejudice, what action should be taken?
- 5.2.3 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. Evidence is evaluated and a determination is made on what happened based on a balance of probabilities. In this particular case, the factual enquiry principally focused on whether the alleged conduct was inconsistent with the applicable prescripts.

5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standards that should have been met by the functionaries of the FSOP in the appointment of C-Squared and the use of public funds for the events leading up to and funerals of Mr Makgoe and Mr Mdi.

5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration.

5.3 **The Investigation Process**

5.3.1 The investigation process included correspondence exchanged with the FSOP and the Free State Provincial Treasury (FSPT). Meetings were also held with functionaries of the FSOP, and the Auditor General South Africa (AGSA) and documents obtained during the investigation were analysed and evaluated, including the consideration and application of the relevant law and prescripts.

5.4 **Key sources of information**

5.4.1 **Documents**

5.4.1.1 Revised Provincial Funeral Policy from the FSPT to the FSOP, dated 01 August 2022;

5.4.1.2 Memorandum titled "*Request for the Designation: Provincial Official Funeral Category 1: for the late Mr Pule Herbert Isak 'Tate' Makgoe*" from Mr Ralikotsane to the Free State Executive Council, dated 06 March 2023;

5.4.1.3 Letter from Mr Dukwana to Mr Ramaphosa titled "*Request for the Designation: Provincial Official Funeral Category 1: for the late Mr Pule Herbert Isak 'Tate' Makgoe*", dated 06 March 2023;

5.4.1.4 Letter from Ms Baleni to Mr Ralinkotsane titled "*Provincial Official Funeral: MEC Mr Pule Herbert Isak 'Tate' Makgoe*", dated 06 March 2023;

-
- 5.4.1.5 Letter from Mr Ralikontsane to Mr Martins titled “*Appointment as Free State Provincial Government Special Aide: MEC, Mr PHI Makgoe Funeral*”, dated 06 March 2023;
 - 5.4.1.6 Memorandum from Mr Martins to Mr Ralikontsane titled “*To obtain Approval for specifications of Memorial Service and Funeral Arrangements of late MEC Tate Makgoe*” dated 06 March 2023;
 - 5.4.1.7 “*Request for Quotation*” sent via email from Mr Kokoana, the SCM Demand and Acquisition official to service providers on 06 March 2023;
 - 5.4.1.8 Quotations from C Squared, Bokhiba Trading CC and Nasty Events Management and Entertainment dated 06 March 2023;
 - 5.4.1.9 Memorandum from Mr Tsunke, Director Finance and SCM to Mr Martins titled “*Quotation Recommendation/Adjudication*”, dated 07 March 2023;
 - 5.4.1.10 Minutes of the Bid Adjudication Committee titled “*Quotation Adjudication Committee: Appointment of the service providers for memorial service and Special Official Provincial Funeral Service of the late MEC Tate Makgoe and his Protector Warrant Officer Vuyo Mdi*” dated 07 March 2023;
 - 5.4.1.11 Memorandum from Mr Martins to Mr Ralikontsane titled “*To obtain approval to appoint service provider and incur costs for memorial service and Special Official Provincial Funeral Service of the late MEC Tate Makgoe and his Protector Warrant Officer Vuyo Mdi*”, dated 07 March 2023;
 - 5.4.1.12 “*Appointment Letter*” to C-Squared signed by Mr Tsunke, dated 07 March 2023;
 - 5.4.1.13 Minutes of the PROVJOC meeting, dated 07 March and 08 March 2023;
 - 5.4.1.14 Email titled “*Funeral Cost*” from Ms Nicoline Jordaan, Acting Deputy Director General (Financial Governance), FSPT to Mr Martins, dated 08 March 2023;
 - 5.4.1.15 Proof of payment to C-Squared titled “*Payment Advice*”, dated 27 March 2023;
 - 5.4.1.16 Two (02) undated WhatsApp messages from Ms Sesing to Ms Gadija Brown (Ms Brown) the Member of Executive Council FSPT, and Mr Ralikontsane;

-
- 5.4.1.17 Complaint letter from Dr Jankielsohn to the Public Protector, dated 31 May 2023;
- 5.4.1.18 Print out from Internet search on Restricted Supplier and Tender Defaulter Report from the National Treasury website, accessed on 01 November 2023 from <http://ocpo.treasury.gov.za/RestrictedSupplier/RestrictedSuppliersReport.pdf> ;
- 5.4.1.19 “Office of the Premier Annual Performance Plan for 2022/2023” received from FSOP on 30 November 2023;
- 5.4.2 **Correspondence exchanged**
- 5.4.2.1 Letters from the Public Protector to Mr K Ralikontsane, dated 09 June 2023, 28 June 2023 and 02 August 2023, respectively;
- 5.4.2.2 Letter from the Public Protector to the Head of Department for FSPT, Ms M Sesing (Ms Sesing) requesting for information and evidence regarding the investigation, dated 09 June 2023;
- 5.4.2.3 Letter from Ms Sesing to the Public Protector responding to the request for information, dated 21 June 2023;
- 5.4.2.4 Letter from Mr Ralikontsane to the Public Protector responding to the allegations, dated 07 July 2023 and 18 August 2023;
- 5.4.2.5 Letter from the Public Protector to Mr O Duda, the Business Unit Leader for AGSA in the Free State, requesting information relating to the AGSA audit, dated 25 October 2023;
- 5.4.2.6 Response letter from AGSA to the Public Protector, dated 28 November 2023; and
- 5.4.2.7 Email titled “Annual Report” from the Public Protector to the FSOP on 30 November 2023.

5.4.3 **Meetings held**

5.4.3.1 Meeting held between the Public Protector Investigation Team (Investigation Team) and Mr Martins, Mr Tsunke, Mr Kokoana, and Ms Tsimele on 06 September 2023; and

5.4.3.2 Meeting held between the Investigation Team and the AGSA on 23 October 2023.

5.4.4 **Legal Framework**

5.4.4.1 Constitution of the Republic of South Africa, 1996;

5.4.4.2 Public Protector Act, 1994;

5.4.4.3 Public Finance Management Act, 1999;

5.4.4.4 National Treasury Regulations, 2005;

5.4.4.5 National Treasury PFMA SCM Instruction Note 3 of 2021/2022;

5.4.4.6 Preferential Procurement Policy Framework Act, 2000;

5.4.4.7 Preferential Procurement Regulations, 2022;

5.4.4.8 Provincial Treasury Instruction Note Number 31 (Amendment 2);

5.4.4.9 Implementation Guide: Preferential Procurement Regulations 2022;

5.4.4.10 Supply Chain Management Policy of the Office of the Premier, 30 July 2021;

5.4.4.11 The Code of Conduct for Supply Chain Management Practitioners Practice Note Number SCM 4 of 2003;

5.4.4.12 State, Official and Provincial Policy Manual, July 2016;

5.4.4.13 Public Service Act, 1994, as amended; and

5.4.4.14 Provincial Treasury Instruction Note Number 31 (Amendment 2), 26 September 2018.

5.4.5 **Case Law**

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

5.4.6 **Notices issued in terms of section 7(9)(a) of the Public Protector Act**

5.4.6.1 Section 7(9)(a) of the Public Protector Act enjoins the Public Protector, during the course of an investigation, to afford any person being implicated in a matter under investigation and where such implication may be to the detriment and/or interest of that person or that an adverse finding and/or remedial action pertaining to that person may result, an opportunity to respond in connection thereto.

5.4.6.2 On 20 March 2024, a section 7(9)(a) notice (Notice) was hand delivered to Mr Dukwana, Mr Ralikontsane, Mr Martins, Mr Kokoana, Mr Tsunke and Ms Tsimele to provide them with an opportunity to respond to the likely adverse findings and proposed remedial action.

5.4.6.3 On 20 March 2024 and 25 March 2024, a copy of the Notice was emailed to Ms Baleni to provide the Presidency an opportunity to respond to the likely adverse findings and proposed remedial action.

5.4.6.4 Responses to the Notices were received from the following parties:

- (a) Mr Dukwana on 10 April 2024;
- (b) Combined response of Mr Martins, Mr Tsunke, Ms Tsimele and Mr Kokoana on 11 April 2024;
- (c) Mr Ralikontsane on 12 April 2024; and
- (d) Ms Baleni on 23 April 2024.

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

6.1 Whether the functionaries of the FSOP irregularly appointed C-Squared and incurred excessive expenditure relating to the events leading up to and funerals for Mr Makgoe and Mr Mdi, if so, whether such conduct is 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

Common cause

6.1.1 The late Mr Makgoe and Mr Mdi passed away on 05 March 2023.

6.1.2 The company, C-Squared Consumer Connectedness (Pty) Ltd, was appointed as the event coordinator and event service provider for the events leading up to and the funerals of Mr Makgoe and Mr Mdi.

Issue in dispute

6.1.3 The issue for the Public Protector's determination is whether the appointment of C-Squared was undertaken in accordance with the applicable prescripts and approved procedures governing the FSOP's procurement and whether the resultant expenditure was in accordance with the applicable prescripts.

The Complainant's version

6.1.4 The Complainant contended that C-Squared was appointed as the events coordinator and event service provider in a short space of time, without any

vetting processes being conducted and that it was unclear whether competitive bidding processes were followed.

- 6.1.5 The FSOP incurred exorbitant expenditure in respect of the funeral of the late Mr Makgoe.

The FSOP's version dated 27 June 2023 and 07 July 2023

- 6.1.6 On 09 June 2023, the Public Protector raised the matter with Mr K Ralikontsane (Mr Ralikontsane), the Director-General in the FSOP requesting, documents relating to the processes followed in appointing C-Squared, as well as the expenditure incurred relating to the appointment for the funeral of Mr Makgoe.

- 6.1.7 On 27 June 2023, Mr Ralikontsane replied by submitting documents to the Public Protector regarding the matter.

- 6.1.8 On 28 June 2023, further correspondence was sent to Mr Ralikontsane requesting a detailed response to the allegations, to which he responded on 07 July 2023, stating *inter alia* the following:

- 6.1.8.1 National Treasury Regulation 16A6.1 makes provision for the procurement of goods and services by way of price quotations or through a bidding process within the threshold values as determined by the National Treasury. National Treasury last reviewed the prescribed procurement threshold values in November 2007;

- 6.1.8.2 National Treasury Regulation 16A6.4 provides that in a specific case, if it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means and the

reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority;

- 6.1.8.3 Supply Chain Management (SCM) followed the Request for Quotation (RFQ) process as per the Public Finance Management Act, 1999 (PFMA) and SCM Instruction Note 2 of 2021/2022 for the procurement of goods and services for the funeral of the late Mr Makgoe;
- 6.1.8.4 The FSOP also conducted market research on pricing using the 2019/2020 Free State Provincial Treasury Events Management Service Contract (FSPT001/17/18) pre-pricing, which ended on 31 March 2020;
- 6.1.8.5 Quotations were requested from five (05) Events Management Service Providers whose details were obtained from the Central Supplier Database (CSD) based on the competency of the service providers;
- 6.1.8.6 The following three (03) Event Management companies responded to the RFQ:
- a. C-Squared;
 - b. Bokhiba Trading CC; and
 - c. Nasty Events Management and Entertainment.
- 6.1.8.7 The FSOP verified the status of the 03 suppliers on the National Treasury Restricted Supplier Database and CSD and all suppliers were found to be in good standing and compliant to be used by any government entity or department;
- 6.1.8.8 There is nothing in law prohibiting the FSPG from doing business with C-Squared, if the necessary SCM processes have been followed; and

- 6.1.8.9 C-Squared is not a restricted service provider on the National Treasury Restricted Supplier Database and CSD.

The Public Protector's enquiry relating to Mr Mdi's funeral expenses

- 6.1.9 Upon examination of the response and documents received from the FSOP, the Public Protector established that the FSOP also paid for the events leading up to and the funeral of Mr Mdi, who was a member of the SAPS and a Protector of the late Mr Makgoe. Mr Mdi passed away in the same accident that claimed the life of the late Mr Makgoe.
- 6.1.10 On 02 August 2023, the Public Protector submitted a further letter to Mr Ralikontsane, requesting a response relating to the processes and policies relied upon for the expenditure incurred for the events leading up to and the funeral of Mr Mdi.
- 6.1.11 On 18 August 2023, a response was received from Mr Ralikontsane stating that:
- 6.1.11.1 The FSOP relied on National Treasury Regulation 21.1.1 for the events leading up to and the funeral of Mr Mdi;
- 6.1.11.2 Apart from the approval granted by him as the Accounting Officer, further approval from the Provincial Legislature will be sought for the associated expenditure; and
- 6.1.11.3 The donation/sponsorship was approved based on humanitarian grounds *"supported, amongst others, by the fact that the late W/O Mdi passed away in the execution of his duties, protecting a valuable asset of the FSPG, going beyond the call of duty given the time at which the accident occurred"*.

Documents received from the FSOP on 27 June 2023

Memorandum from Mr Ralikontsane to the Free State Executive Council

- 6.1.12 On 06 March 2023, Mr Ralikontsane submitted a memorandum to the Free State Executive Council (EXCO) requesting approval for the designation of the Provincial Official Funeral Category 01 for Mr Makgoe. The memorandum recommended that EXCO approve, *inter alia*, the following:
- 6.1.12.1 The President, of the Republic of South Africa, Mr MC Ramaphosa (Mr Ramaphosa) to grant approval for a Provincial Official Funeral Category 01, in terms of the provisions of the Funeral Policy, July 2016;
- 6.1.12.2 To determine, in consultation with the family, the funeral date on Sunday 12 March 2023, at the University of the Free State (UFS) South Campus;
- 6.1.12.3 To determine the official memorial service on 09 March 2023, at UFS South Campus; and
- 6.1.12.4 To approve that the FSOP should use minimum government resources to defray the costs for the official memorial services and official funeral.
- 6.1.13 On 06 March 2023, the former Premier of the Free State, Mr MA Dukwana, (Mr Dukwana) approved the memorandum.

Letter from Mr Dukwana to the President

- 6.1.14 In a letter dated 06 March 2023, Mr Dukwana requested approval from the President for the designation of Provincial Official Funeral Category 01 for Mr Makgoe.

Letter from Ms P Baleni, Director-General and Secretary of Cabinet to Mr Dukwana

- 6.1.15 In a letter dated 06 March 2023, Ms Baleni, confirmed that the late Mr Makgoe was at the time of his demise a Member of the Executive Council and therefore qualified for a Provincial Official Funeral Category 01.

Letter from Mr Ralikontsane to Mr Sello Martins, Chief Financial Officer

- 6.1.16 In a letter dated 06 March 2023, Mr Ralikontsane appointed Mr Sello Martins (Mr Martins), the Chief Financial Officer, as the FSPG Special Aide, to work with the Funeral Planning Committee and liaise with the family of the late Mr Makgoe regarding the funeral arrangements.

Memorandum from Mr Martins to Mr Ralikontsane

- 6.1.17 On 06 March 2023, Mr Martins submitted a memorandum to Mr Ralikontsane requesting approval of the specifications for the memorial service and the funeral arrangements of Mr Makgoe. The submission indicated, *inter alia*, the following:
- 6.1.17.1 EXCO agreed to write to the President regarding the funeral of Mr Makgoe;

-
- 6.1.17.2 EXCO noted that a collaborative effort will be engaged to provide space to SAPS, to also show their respects to the late Mr Mdi, during the Provincial Memorial Service;
- 6.1.17.3 The joint Provincial Memorial Service for Mr Makgoe and Mr Mdi was to take place on 09 March 2023, at UFS South Campus, Bloemfontein;
- 6.1.17.4 The funeral of Mr Makgoe was to be held on 12 March 2023, also at the UFS South Campus, Bloemfontein; and
- 6.1.17.5 The submission was approved by Mr Ralikontsane on 06 March 2023.

Memorandum from Mr Martins to Mr Ralikontsane

- 6.1.18 In a memorandum dated 06 March 2023, Mr Martins requested approval from Mr Ralikontsane to assist with the funeral arrangements of Mr Mdi. The submission indicated, *inter alia*, the following:
- 6.1.18.1 Mr Mdi was a close protector of the late Mr Makgoe from 2010 until his untimely death whilst on duty and that his death left many people with sadness;
- 6.1.18.2 Special Programme in Programme 03 within the FSOP, aimed at dealing with all activities that need intervention of the Premier Special Projects, which includes but is not limited to making the necessary funeral arrangements for anyone as **per the mandate of the programme**, was identified to motivate for the FSOP to assist with the funeral arrangements of Mr Mdi (own emphasis added);

- 6.1.18.3 The high-level objective of Programme 03 (Policy and Governance) is to align, integrate and coordinate the activities of all National and Provincial Departments, Municipalities and State-Owned Entities towards the goals and priorities of government;
- 6.1.18.4 The objective of the Special Programme within Programme 03 is to coordinate and implement Premier Special Projects as identified by the Premier, as well as mainstreaming the rights of vulnerable groups; and
- 6.1.18.5 The memorandum was approved by Mr Ralikontsane on 06 March 2023.

Request for Quotations

- 6.1.19 On 06 March 2023, Mr L. Kokoana (Mr Kokoana), the SCM Demand and Acquisition official sent the RFQ to five (05) service providers via email, with specifications for the events leading up to and the funerals of Mr Makgoe and Mr Mdi.
- 6.1.20 Three (03) service providers responded to the RFQ. The below table indicates the specifications of the RFQ and quotations received from the 03 service providers:

SPECIFICATIONS FOR SPECIAL PROVINCIAL OFFICIAL FUNERAL	QUOTATION RECEIVED FROM C-SQUARED	QUOTATION RECEIVED FROM NASTY EVENTS MANAGEMENT	QUOTATION RECEIVED FROM BOKHIBA TRADING CC
Groceries, prayers & support during the week for Mr Makgoe and Mr Mdi	R30 000.00	R10 000.00	R30 000.00

Joint Main Memorial Services Date: 10/03/2023 Venue: Southern Campus							
Specific ation	Requested Quantity	C SQUARED		NASTY EVENTS		BOKHIBA TRADING	
		Quantity	Price quoted	Quantity	Price quoted	Quantit y	Price quoted
Décor (flowers, candles stands, picture)	1	1	R70 500	1	R8000	1	R17 453
Plastic Chairs - (3000 floor & there are already 1000 chairs on top)	3000	2000	R20 000	3000	R36 000	3000	R30 000
Sound: Indoors with Backline for 4000 people capacity	1	Sound Backline	R140 000	1	R60 000	1	R160 844
Stage for the front part of the hall	1	Not quoted	Not quoted	1	R15 000	0	0
Disability Ramp and stairs	2	Not quoted	Not quoted	1	R750	2	R6 800
Generato r (125kva)	1	2	R17 000	1	R15 000	1	R19 800
Podium	1	Not quoted	Not quoted	1	R850.00	1	R1 000
Red Carpet	1	8	R6 000	1	R1 000	1	R800
Chairs Covers for 3000 Chairs	3000	2000	R24 000	3000	R30 000	3000	R36 000
Couches for the families (Ten for each family)	20	20	R13 000	20	R14 000	20	R18 000
Small Tables for water	8	4	R1 068	10	R2 500	8	R2 400
Big Stage Screens (Left & Right)	2	2	R55 000	2	R20 000	2	R28 500

Data Projector	1	1	R3 900	1	R1 200	1	R3 500
Bottled Water Bloem Water to provide (8000 Memorial Service)	24000	2000	R20 000	8000	R120 000	Not quoted	Not quoted
Catering (Finger Lunch for Families, Members of Legislature, Executive Council)	500	500	R97 500	500	R105 000	500	R110 000
Aircons	4	Not quoted	Not quoted	10	R65 000	4	R6 000
Security to guard the infrastructure	10	10	R12 000	10	R5 000	10	R15 000
Ablution Facilities	20	20	R13 000	20	R10 000	20	R16 000
VIP Toilets (3 Males & 3 Females)	6	Not quoted	Not quoted	6	R18 000	6	R18 000
Disability Toilets	4	Not quoted	Not quoted	Not quoted	Not quoted	4	R18 000
Marquee Tent at Vista for 500 guests (Tent, Flooring & Carpet) 6x21	1	Not quoted	Not quoted	1	R23 000	1	R132 500
Chairs	500	200	R2 000	500	R6 000	Combined with Round Tables and Decor	R22 000
Round Tables	10	20	R1 200	10	R600	Combined with Chairs	
Décor (Centre Piece, Runners,		200 Chair cover 2 400	R7 800	1	R23 000	Combined with Chairs	

Tablecloths & Chair Covers)		20 Tables Cloths 1 500					
		20 Centre Pieces 3 900					
TOTALS			R503 968		R579 900		R662 597

Funeral Parlour – Mr Mdi							
Specification	Requested Quantity	C SQUARED		NASTY EVENTS		BOKHIBA TRADING	
		Quantity	Price quoted	Quantity	Price quoted	Quantity	Price quoted
Transportation (Hearse & Family Cars)	5	1	R22 224	5	R15 000	5	R15 000
Mortuary Fee (Tent - Graveyard, water, décor etc.)	1	1	R26 618	1	R15 000	1	R8 500
Coffin/Casket (Mr Mdi)	1	1	R42 000	1	R150 000	1	R65 000
Burial Plot/Area	1	1	R13 800	1	R95 000 Burial plot and Tombstone	1	R2 000
Tombstone (Mr Mdi)	1	1	R48 380		Combined with Burial Plot	1	R110 000
Tent - Home	2	150 sq	R10 350	2	R12 000	2	R6 000
Chairs - Home	100	150	R1 500	100	R1 200	100	R1 000

VIP - Toilets (1x Male & 1x Female)	2	2	R5 560	2	R6 000	2	R6 000
TOTAL			R170 432		R294 200		R213 500

Funeral Day Warrant Officer Mdi Date: 11/03/2023							
Venue: UFS - Southern Campus Time: 08:00							
Specification	Requested Quantity	C SQUARED		NASTY EVENTS		BOKHIBA TRADING	
		Quantity	Price quoted	Quantity	Price quoted	Quantity	Price quoted
Décor (flowers, candles stands, picture)	1	1	R9 000	1	R8 000	1	R17 453
Plastic Chairs - (3000 floor & there are already 1000 chairs on top)	3000	1200	R12 000	3000	R36 000	3000	R30 000
Sound: Indoors with Backline for 4000 people capacity	1	1	R65 000	1	R60 000	1	R160 844
Stage for the front part of the hall	1	Not quoted	Not quoted	1	R15 000	0	0
Disability Ramp and stairs	2	Not quoted	Not quoted	1	R1 200	2	R6 800
Generator (125kva)	1	2	R17 180	1	R15 000	1	R19 800

Podium	1	Not quoted	Not quoted	1	R850	1	R1 000
Red Carpet	1	4	R3 000	1	R1 000	1	R800
Chairs Covers for 3000 Chairs	3000	1 200	R14 400	3000	R30 000	3000	R36 000
Couches for the families (Ten for each family)	10	12	R7 800	20	R14 000	10	R9 000
Small Tables for water	4	4	R1 068	4	R1 200	4	R1 200
Big Stage Screens (Left & Right)	2	2	R45 000	2	R20 000	2	R28 500
Data Projector	1	2	R5 800	1	R1 200	1	R3 500
Bottled Water Bloem Water to provide (8000 Memorial Service)	8000	3000	R30 000	8000	R120 000	Not quoted	Not quoted
Aircons	4	Not quoted	Not quoted	4	R30 000	4	R6 000
Security to guard the infrastructu re	5	5	R6 000	5	R5 000	10	R15 000
Ablution Facilities	20	10	R7 500	20	R10 000	20	R16 000
VIP Toilets (3 Males & 3 Females)	6	Not quoted	Not quoted	6	R18 000	6	R18 000

Disability Toilets	4	Not quoted	Not quoted	4	R16 000	4	R18 000
Existing Marquee Tent at Vista for Mass Catering "Grab and Go" (Tent, Flooring & Carpet) 6x21)	1	Not quoted	Not quoted	1	R23 000	1	R4 500
Chairs	0			0	0	0	0
Serving Points	5	10	R450	10	R500	Not quoted	
Collapsible Fence		Not quoted	Not quoted	1	R21 000	Not quoted	
Media							
SABC	1	Not quoted	Note quoted	Note quoted	R80 000	1	R140 000
Community Radio Stations	1	Not quoted	Note quoted	Note quoted	R65 000	1	R80 000
Live Streaming	1	Note quoted	Note quoted	1	R15 000	1	R25 000
Totals			R224 198		R606 950		R637 397

Catering Dr Petrus Molemela Stadium Indoor Centre (WO Mdi's Funeral)							
Date: 11/03/2023							
	Requested Quantity	C SQUARED		NASTY EVENTS		BOKHIBA TRADING	
		Quantity	Price quoted	Quantity	Price quoted	Quantity	Price quoted
Guests	3000	1 300	R253 500	3000	R600 000	3000	R660 000
Families (WO)	1000	Not quoted	Not quoted	1000	R200 000	1000	R220 000

Water (Bloem Water to be engaged)	8000	Not quoted	Not quoted	8000	R120 00 0	Not Quoted	
Round Tables		Not quoted	Not quoted	Not quoted	Not quoted	Not quoted	Not quoted
TOTALS			R253 500		R920 000		R880 000

Funeral MEC Makgoe 12/03/2023 Funeral Parlour							
	Requested Quantity	C SQUARED		NASTY EVENTS		BOKHIBA TRADING	
		Quantity	Price quoted	Quantity	Price quoted	Quantity	Price quoted
Transport ation (Hearse & Family Cars)	5	1	R22 224	5	R15 000	5	R15 000
Mortuary Fee (Tent - Graveyard , water, décor etc.)	1	1	R39 850	1	R7 000	1	R8 500
Coffin/Cas ket (MEC)	1	1	R84 900	1	R240 00 0	1	R98 000
Burial Plot/Area	1	1	R46 000	1	R150 00 0 combine d with tombston e	1	R2 000
Tombston e (MEC)	1	1	R95 000	Combined with burial plot	Combine d with burial plot	1	R185 00 0
Tombston e (WO)	1	Not quoted	Not quoted	Not quoted	Not quoted	Not quoted	Not quoted

Tent Home	- 1	150	R10 350	1	R10 000	2	R6 000
Chairs Home	- 100	300	R33 000	Not quoted	Not quoted	100	R1 000
VIP Toilets (2x Male & 2x Female)	- 4	2	R5 500	Not quoted	Not quoted	4	R12 000
TOTALS			R336 824		R422 000		R327 500

Funeral MEC Makgoe Date: 12/03/2023							
Venue: UFS Southern Campus Time: 08:00							
Infrastructure							
	Requested Quantity	C SQUARED		NASTY EVENTS		BOKHIBA TRADING	
		Quantity	Price quoted	Quantity	Price quoted	Quantity	Price quoted
Décor (flowers, candles stands, picture)	1	1	R66 000	1	R8 000	1	R45 550
Plastic Chairs - (3000 floor & there are already 1000 chairs on top)	3000	2000	R20 000	3000	R36 000	3000	R30 000
Sound: Indoors with Backline for 4000 people capacity	1	1 Stage 95 000.0 0 1 Backline 45 000	R140 000	1	R60 000	1	R220 000.67

Stage for the front part of the hall	1	Not quoted	Not quoted	1	R15 000	0	0
Disability Ramp and stairs	2	1	R6 000	1	R1 200	2	R6 800
Generator (125kva)	1	2	R17 140	1	R15 000	2	R39 600
Podium	1	Not quoted	Not quoted	1	R850	1	R1 000
Red Carpet	1	8	R6 000	1	R1 000	1	R800
Chairs Covers for 3000 Chairs	3000	2000	R24 000	3000	R30 000	3000	R36 000
Couches for the families (Ten for each family)	20	20	R15 380	20	R14 000	20	R18 000
Small Tables for water	8	4	R1 068	4	R1 200	8	R2 400
Big Stage Screens (Left & Right)	2	2	R50 000	2	R9 000	2	R28 500
Data Projector	1	2	R7 800	1	R800	1	R3 500
Bottled Water Bloem Water to provide (8000)	8000	3000	R30 000	8000	R120 000	Not quoted	Not quoted

Memorial Service)							
Aircons	4	Not quoted	Not quoted	4	R30 000	4	R6 000
Security to guard the infrastructure	10	6	R7 200	10	R10 000	10	R15 000
Ablution Facilities	20	Not quoted	Not quoted	20	R10 000	20	R16 000
VIP Toilets (3 Males & 3 Females)	6	Not quoted	Not quoted	6	R18 000	6	R18 000
Disability Toilets	4	Not quoted	Not quoted	4	R16 000	4	R18 000
Existing Marquee Tent at Vista for Mass Catering (Tent, Flooring & Carpet) 6x21)	1	Unclear		1	R23 000	1	R4 500
Chairs	0	Not quoted	Not quoted				
Serving Points	10	Not quoted	Not quoted	10	R500	Not quoted	Not quoted
Collapsible Fence		Not quoted	Not quoted	1	R15 900	Not quoted	Not quoted
Media							
SABC	1	Not quoted	Not quoted	1	R120 000	1	R140 000
Community Radio Stations	1	Not quoted	Not quoted	1	R65 000	1	R80 000

Live Streaming	1	Not quoted	Not quoted	1	R15 000	1	R25 000
TOTALS			R390 588		R646 250		R754 650.67

Dr Petrus Molemela Stadium Indoor Centre							
Date: 11/03/2023							
Catering							
	Requested	C SQUARED		NASTY EVENTS		BOKHIBA TRADING	
	Quantity	Quantity	Price quoted	Quantity	Price quoted	Quantity	Price quoted
Guests	3000	3300	R643 500	3000	R600 000	3000	R720 000
Families (MEC)	500	Not quoted		500	R120 000	500	R140 000
Families (WO)	500	Not quoted		500	R200 000	Not quoted	Not quoted
Water (Bloem Water to be engaged)	8000	3 300	R33 000	8000	R120 000	Not quoted	Not quoted
Round Tables		50	R3 000	10	R6 000	Not quoted	Not quoted
TOTALS			R679 500		R104 6000		R860 000

Quotation Recommendation / Adjudication dated 07 March 2023

6.1.21 According to the submission titled “*quotation recommendation/adjudication*” compiled by Mr Tsunke, Director Finance and SCM and approved by Mr Martins on 07 March 2023, the quotations received from the service providers were evaluated by Mr Kokoana, the Demand and Acquisition Specialist, Ms Tsimele, the Head SCM and Mr Tsunke, as follows:

Company Name	C-Squared	Nasty Events Management	Bokhiba Trading CC
Total Price (VAT included)	R 5 961 260	R 6 362 375	R 6 081 672.65
Points for price out of 80	80	74.62	78.38
B-BBEE Status Level of contribution claimed	20	20	20
TOTAL POINTS SCORED FOR ALL GOALS	100	94.62	98.38

6.1.22 It is indicated in the submission that C-Squared was recommended as the cheapest service provider, it scored the highest and was found to be tax compliant on the CSD. Its quotation was accepted at the value of R 5 961 260.

Minutes of the Bid Adjudication Committee

6.1.23 On 07 March 2023, the Bid Adjudication Committee (BAC) considered the submission from SCM. The following was noted from the minutes of the BAC:

6.1.23.1 The members present at the BAC meeting included Mr Martins, as the Chairperson, Mr Tsunke, Mr Kokoana and Ms Tsimele;

6.1.23.2 The RFQ was issued on 06 March 2023 and closed on 07 March 2023;

6.1.23.3 The BAC considered the evaluation of the Demand and Acquisition Unit and verified the following:

- (a) The RFQs were in compliance with the SCM prescripts (Preferential Procurement Regulations, 2011) and confirmed the existence of suppliers on the CSD;
- (b) The status of suppliers on the CSD and their tax compliance status;
- (c) The method of evaluation of suppliers in terms of Preferential Procurement Regulations 2011; and

- (d) The applicable preference points system as envisaged in Preferential Procurement Regulations 2011(80/20) and all supporting documents.

6.1.23.4 The Demand and Acquisition Unit requested a minimum of 03 quotations from suppliers registered on CSD as required by Treasury Regulation 16A6.1 and SCM Instruction Note 2 of 2021/22 and paragraph 3.2.4 (a);

6.1.23.5 On 06 March 2023, a RFQ was sent to the following suppliers:

- (a) C-Squared;
- (b) Bokhiba Trading CC;
- (c) Nasty Events Management;
- (d) Dots Design Agency; and
- (e) Monge Events.

6.1.23.6 Three (03) suppliers responded to the RFQ, and the scoring of the suppliers is recorded as follows:

Name of Supplier	Total Points Scored
C-Squared	100%
Bokhiba Trading CC	98.38%
Nasty Events Management	94.62%

6.1.23.7 The BAC recommended C-Squared for appointment based on the evaluation scoring points obtained. The BAC meeting adjourned at 15h00.

Memorandum from Mr Martins, Chairperson of the BAC to Mr Ralikontsane

6.1.24 On 07 March 2023, the BAC submitted a memorandum to Mr Ralikontsane requesting approval for the appointment of C-Squared and approval to incur

costs for the memorial service as well as the provincial special funeral of Mr Makgoe and Mr Mdi. The memorandum indicated, *inter alia*, the following:

- 6.24.1 EXCO noted that a collaborative effort will be engaged to provide space to SAPS to also show their respect to Mr Mdi during the Provincial Memorial Service;
- 6.24.2 A joint Provincial Memorial Service for Mr Makgoe and Mr Mdi was to take place on 09 March 2023, at the UFS, South Campus;
- 6.24.3 The funeral service of Mr Mdi was to take place on Saturday 11 March 2023, at UFS, South Campus;
- 6.24.4 The funeral service of Mr Makgoe was to take place on Sunday 12 March 2023, at UFS, South Campus;
- 6.24.5 The request for approval to deviate was based on Treasury Regulation 16A6 and PFMA SCM Instruction Note 2 of 2021/22;
- 6.24.6 The reason for deviation was indicated in the memo as “*The demise of Tate Makgoe and his protector has accumulated worldwide attention as a result this tragic and sudden demise cost will be taken by the government as the family is surely not in the state to handle this immense pain...*”; and
- 6.24.7 The BAC recommended that Mr Ralikontsane grants approval to the Unit Woman, Older Persons, People with disabilities and Youth, to pay C-Squared an amount of five million nine hundred sixty-one thousand two hundred and sixty rand (R 5 961 260) for the memorial service and provincial special funeral

service of Mr Makgoe and Mr Mdi. Mr Ralikontsane approved the recommendation on 07 March 2023.

Appointment Letter

- 6.1.25 On 07 March 2023, Mr Tsunke, submitted a letter to C-Squared confirming its appointment as a service provider for the memorial service and funerals of Mr Makgoe and Mr Mdi.

Minutes of meeting held by Provincial Joint Operational and Intelligence Structure (PROVJOC), 07 March 2023

- 6.1.26 The FSOP provided the Investigation Team with a copy of the minutes of the PROVJOC meeting held on 07 March 2023. The minutes recorded that C-Squared was appointed as the service provider and that the funeral of Mr Mdi was to be held on 11 March 2023 and details thereof would be further communicated. Furthermore, the funeral procession of Mr Makgoe would proceed to Bainsvlei Cemetery. The minutes of this meeting recorded that the meeting commenced at 14:00 and terminated at 15:15.

Minutes of meeting held by PROVJOC, 08 March 2023

- 6.1.27 The minutes of the meeting held on 08 March 2023, recorded that Mr Khumbulani Khonco and Mr Vusi Twala formed part of the meeting representing C-Squared. The venue for Mr Mdi's funeral was changed from UFS South Campus to Tsoseletso High School.

Payment advice

- 6.1.28 On 27 March 2023, the FSOP processed and made a payment to C-Squared in the amount of R 5 961 260.

Version of the Free State Provincial Treasury (FSPT)

- 6.1.29 On 09 June 2023, the Investigation Team wrote a letter to the Head of Department for FSPT, Ms M Sesing (Ms Sesing), in connection with the allegations and requesting information and evidence in connection with the expenditure incurred for the funeral of Mr Makgoe.
- 6.1.30 On 21 June 2023, Ms Sesing responded to the allegations and submitted the following:
- 6.1.30.1 There were no requests for approval of budgets, requests of confirmation of budget and/or any deviation request received from the FSOP relating to the events leading up to and the funeral of Mr Makgoe;
- 6.1.30.2 Provincial Treasury Instruction Note 31 (Amendment 2) dealing with cost containment measures was issued on 26 September 2018 to all Accounting Officers/Authorities of departments, Public Entities and Trading Entities;
- 6.1.30.3 Annexed to her response was an email dated 08 March 2023 from Ms Nicoline Jordaan, Acting Deputy Director General (Financial Governance) sent to Mr Martins stating the following:

“Just a recap of what was discussed this morning.

- 1) *Ms Riddles indicated that you should send (here) the procurement documents so that PT can do a probity assessment to assist FSOP to avoid possible irregular expenditure.*

- 2) *The State, Official and Provincial Official Funeral Policy (July 2016) indicates that in respect of a Provincial Official Funeral, the relevant provincial department and entities shall be responsible for **reasonable cost** related to the services they are expected to offer (funeral undertaker cost including the coffin and **limited catering for the family and official guests**).*

Please let us know if you need any assistance, clarity, or guidance regarding the procurement processes...”

- 6.1.31 Ms Sesing also annexed to her response two (02) undated *WhatsApp* messages from her, to the MEC of FSPT, Ms Gadija Brown (Ms Brown) and Mr Ralikontsane, showing a screenshot of the above email and stating:

“Greetings ntate DG and MEC

The big thing on the above is that we are still waiting for the procurement documents from Mr. Martins so we can assist with probity tests to ensure he complied with prescripts. To date he had not shared any documents with us. We thought we can quickly share.”

- 6.1.32 Lastly, Ms Sesing attached to her response a draft “*Revised Provincial Funeral Policy*” which was forwarded with inputs from the FSPT to the FSOP, on 01 August 2022.

Meeting between the Investigation Team and functionaries of the FSOP

- 6.1.33 On 06 September 2023, the Investigation Team held a meeting with functionaries of the FSOP namely Mr Martins, Mr Tsunke, Mr Kokoana, and Ms Tsimele.
- 6.1.34 During the meeting, the functionaries of the FSOP submitted the following:
- 6.1.34.1 On 06 March 2023, RFQs were sent out to the compliant service providers registered on the CSD;
- 6.1.34.2 On 06 March 2023, Mr Martins made a submission to Mr Ralikontsane requesting approval to assist with the funeral arrangements and approval of the specifications for the funeral of Mr Mdi;
- 6.1.34.3 The FSOP had no existing policy governing, regulating and/or guiding it in assisting with funeral arrangements of SAPS Members serving as Protectors;
- 6.1.34.4 The FSOP has a Special Programme Directorate and within Programme 03 of the Special Programme, the Premier may identify a Special Project and mainstreaming the rights of vulnerable groups. It is from Programme 03 that the FSOP funded the funeral of Mr Mdi as a Premier's Special Programme;
- 6.1.34.5 Quotations from three (03) of the five (05) service providers were received and attended to for evaluation and adjudication by the functionaries of the FSOP on 07 March 2023;
- 6.1.34.6 After the receipt of quotes on 07 March 2023, the functionaries of the FSOP made no contact with any of the service providers regarding amending and/or changing items on the approved specifications submitted with RFQ; and

- 6.1.34.7 The Provincial Funeral Policy was circulated for inputs but has not yet been approved.

Meeting with functionaries of the Auditor General South Africa

- 6.1.35 On 23 October 2023 the Investigation Team held a meeting with the officials of the AGSA. During the meeting, AGSA officials submitted the following:
- 6.1.35.1 AGSA audited the expenditure incurred by the FSOP for the funerals of Mr Makgoe and Mr Mdi;
- 6.1.35.2 The total cost for the funerals was disclosed as irregular expenditure by the FSOP; and
- 6.1.35.3 The quotation from C-Squared detailed more items compared to quotes submitted by other service providers and the specifications issued by the FSOP.

Submission from the AGSA

- 6.1.36 On 25 October 2023, the Investigation Team wrote a letter to Mr O Duda, the Business Unit Leader, for AGSA in the Free State, requesting information at its disposal relating to the matter. On 28 November 2023, the Public Protector received confirmation from the AGSA that the FSOP has already disclosed the expenditure incurred for the funerals as irregular expenditure in terms of section 1 of the PFMA.

Independently sourced information

- 6.1.37 On 01 November 2023, the Investigation Team obtained the Restricted Supplier and Tender Defaulter Report from the National Treasury website³, which confirmed that C-Squared was not listed as a restricted supplier or tender defaulter at the time of its appointment.

Additional Information from FSOP

- 6.1.38 On 30 November 2023, the Investigation Team requested a copy of the Annual Performance Plan (APP) for the 2022/2023 financial year for the FSOP.
- 6.1.39 On 01 December 2023, the FSOP submitted a copy of the APP which indicated the following:
- 6.1.39.1 According to page 40 of the APP, dealing with the Institutional Programme Performance Information, Programme 3 relates to Policy and Governance. The purpose of the programme is to align, integrate and coordinate the policies, strategies, plans and programmes of national, provincial departments, municipalities and state-owned entities towards the achievement of the goals and priorities of the government;
- 6.1.39.2 The sub-programme Special Programmes provides that the purpose of the programme is to coordinate and implement Premier Special Projects as identified by the Premier as well as mainstreaming the rights of vulnerable groups;

³ Obtained from <http://ocpo.treasury.gov.za/RestrictedSupplier/RestrictedSuppliersReport.pdf> on 01 November 2023.

6.1.39.3 The six (06) output indicators are as follows:

- (a) Report on the government building assessed complying with disability access guidelines and intervention measures recommended;
- (b) Reports on the implementation of the National Strategic Plan on Gender Based Violence and Femicide;
- (c) Report on multi-sectoral coordination and reports to reduce and prevent HIV/TB and STI infections;
- (d) Report on international and national calendar of activities to advance the rights of women, youth, people with disabilities and older persons;
- (e) Report the provincial forum meetings and on transversal issues to advance the rights of women, youth, people with disabilities and older persons; and
- (f) Report on measures for the empowerment of women, youth, people with disabilities, older persons and military veterans.

Response to the section 7(9) Notice: Mr Dukwana

6.1.40 On 20 March 2024, the Notice was hand-delivered to the FSOP for the attention of Mr Dukwana, and an acknowledgment of receipt was signed by Mr T Poni. On 10 April 2024, Mr Dukwana responded to the Public Protector stating *inter alia* that:

6.1.40.1 The funerals of the Mr Makgoe and Mr Mdi were very traumatic events for the Provincial Government;

6.1.40.2 Mr Makgoe was accorded official funeral status by Mr Ramaphosa and assistance for the funeral and memorial services costs for Mr Mdi were extended on humanitarian grounds;

- 6.1.40.3 *“Although I do not want to enter the fray as to whether the procurement processes that were followed were, in all respects, irregular or not, and whether the costs expended were justifiable or not, I am confident that from a moral perspective it was necessary to accord these two servants of the state dignified send-offs”;*
- 6.1.40.4 This objective had to be achieved, but not necessarily at any cost and any price. The weakness in these matters, lie with the lack of a uniform guiding policy. He agrees with the Public Protector’s proposed remedial action that the President must develop a guiding policy for the official funerals, but added that the policy should include funerals of officials who perish with their political principals in the line of duty;
- 6.1.40.5 It seems immoral that the funeral of the political principal will be at state cost, with all *“prompt and ceremony, but the one of the officials who perished with them is left to the measly means of their families”* (sic); and
- 6.1.40.6 He stated that he will abide by any final report and remedial action of the Public Protector.

Response to the section 7(9) Notice: Mr Martins, Mr Tsunke, Ms Tsimele and Mr Kokoane

- 6.1.41 On 20 March 2024, Notices were hand delivered to the FSOP for the attention of Mr Martins, Mr Tsunke, Ms Tsimele and Mr Kokoana, and were acknowledged by Ms P Poole. On 11 April 2024, a combined response signed by Mr Martins, Mr Tsunke, Ms Tsimele and Mr Kokoana (Mr Martins and others) was received by the Public Protector stating *inter alia* that:
- 6.1.41.1 The BAC recommended C-Squared for appointment based on the evaluation of the scoring points obtained. The BAC meeting adjourned at 15h00. The

announcement of the appointed service provider at the PROVJOC meeting was made whilst the BAC was concluding its business. The rush to make the announcement at the PROVJOC meeting was to comply with the order of the PROVJOC to name the winning bidder and subcontractors for vetting purposes. The matters which the BAC were still working on by 15h00, related to the compilation of the submission to be signed off by the Accounting Officer;

- 6.1.41.2 The funeral service of Mr Mdi was to take place on Saturday, 11 March 2023. Based on the appointment of the Chief Financial Officer (CFO) as Family Aide regarding the logistical arrangements on the event, Mr Martins engaged/communicated with the family of Mr Mdi on the evening of 06 March 2023, to discuss the funeral logistics. It was agreed that the venue needs to be changed from University of the Free State to Tsoseletso High School, due to the reduced anticipated number of mourners from three thousand (3000) to one thousand five hundred (1500);
- 6.1.41.3 The Budget Process is approved from the National Treasury. The FSOP had available budget to deal with the issue of the events leading up to the funerals. It is highly impossible and impractical that if the request was submitted to the FSPT for additional funding, there could have been additional budget approved for the FSOP to handle the funeral arrangements.
- 6.1.41.4 The process of sourcing for the budget takes place during the bilateral engagements leading up to the Adjustment Budget, Special Adjustment and the finalisation of the budget for the new financial year, not during the financial year when there are pressures that was not anticipated from the beginning. The FSOP had the additional budget to be reprioritized and shifted towards the delivery of the events leading up to the funeral. If it was during the year and funding was not available, the funds would have been requested through the normal Adjustment Appropriation Budget process;

-
- 6.1.41.5 Cost containment measures were in place to monitor or control the spending of the department, however, there is no section or clause on the cost containment measures that prohibit or caution the various departments on funeral expenditure as this is managed in terms of the Funeral Policy;
- 6.1.41.6 The FSOP ensured that all expenditure items leading to the funeral are consistent with the Event Management Transversal Contract prices which ended the 2020/21 Financial Year. The expenditure was not unusual compared to the previous Provincial Official Funerals coordinated by the FSOP;
- 6.1.41.7 Due to the urgency and the nature of the events, it was not practical to provide the documents to the FSPT on 08 March 2023, to conduct the probity test, as the appointment was already concluded on 07 March 2023 and this could have been an exercise in futility;
- 6.1.41.8 It was also not practical to postpone the Memorial Service on Thursday, 09 March 2023 and the funerals on 11 March 2023 and 12 March 2023, due to the nature of the events as it was not a normal procurement of Goods & Services;
- 6.1.41.9 It is always almost impossible to compile comprehensive specifications for a funeral event. This is as result of the peculiarities of deceased individuals and their standing in society, their culture, and family wishes and preferences. This difficulty is, however, catered for in the Funeral Policy read in totality. Whilst the specifications could be insufficient, the Funeral Policy covers all the items as listed below. The CFO was appointed as a Family Aide, which means he had the authority to communicate with both families on a daily basis from 06 March 2023 to cater for all the needs of the families as agreed;

-
- 6.1.41.10 The Public Protector should consider the supposed inconsistencies of the initial specifications with the above understanding and the fact that both funerals together with the memorials beginning on Thursdays had to be planned and executed within a period of five (05) working days;
- 6.1.41.11 The FSOP disclosed the procurement of the funeral as possible Irregular Expenditure only in so far that the quotations did not mirror the original specification. The possible Irregular Expenditure will be subjected to the investigation as per Irregular Expenditure Framework Chapter 4, Section 38(1)(c)(ii) PFMA and National Treasury Guidelines on Irregular Expenditure of May 2014, which will lead to the condonation of the expenditure given the extra ordinary circumstances under which this procurement was conducted;
- 6.1.41.12 The FSOP issued specifications for the RFQ to service providers on 06 March 2023. The closing date and time for submission of the RFQ was 07 March 2023, at 11h00. During the meeting between the Investigation Team and the functionaries of the FSOP, it was confirmed that there was no further communication with the service providers after the specifications were issued regarding amending the specifications on the RFQ;
- 6.1.41.13 According to the CFO, the assertion by the Public Protector in the section 7(9) Notice is because of a misunderstanding emanating from the discussion on the matter with the Investigation Team. Mr Martins had a meeting with the service providers on the morning of 07 March 2023 around 08h00, to indicate what additional items should be quoted for; and
- 6.1.41.14 There are draft minutes of the meeting which are written to confirm the discussions and signed by the parties involved as an acknowledgement of such a meeting. The BAC evaluated the Bids or Quotes submitted based on the above.

6.1.41.15 The following summary of items delivered for the events leading up to, and funerals of Mr Makgoe and Mr Mdi was included in the submission of Mr Martins and others:

SUMMARY OF ITEMS DELIVERED TO THE EVENTS LEADING TO THE FUNERAL OF THE LATE MEC MAKGOE AND WARRANT OFFICER MDI			
Description		Amount	Comment
<i>Items which are included on the specifications as per CFO assessment on the Public Protector Report, which were identified as not included on the specification</i>		<i>R1 064 523,00</i>	<i>Total amount of items on the specifications as per CFO assessment, which were wrongly classified as not included on the specifications.</i>
<i>Total of items not included on the specification that were identified by CFO</i>		<i>R859 966,00</i>	<i>Total amount as per the CFO Assessment conducted on the items not included on the specifications, which was correctly highlighted by the Public Protector.</i>
<i>The total amount identified by the Public Protector on items not on the specifications</i>		<i>R1 924 489,00</i>	<i>Total amount highlighted by the Public Protector as not included on the specifications and found on the quotation of C-Squared. The items were wrongly indicated as R1 879 489 instead of R1 924 489</i>
<i>Total amount paid to C-Squared Variation 15%</i>		<i>R5 961 260,00 R894 189,00</i>	<i>The total amount of the invoice of C-Squared The amount of the items that may be classified as variation from the total amount for the items not on specifications.</i>
Assessment on Public Protector Report for The Late MEC Makgoe & WO Mdi			
Items on the Specifications submitted to all service providers			
Memorial Service			
Descriptions	Quantity	Amount	Comment
<i>Backline</i>	<i>1</i>	<i>R45 000</i>	<i>The Specifications indicate that the Sound Indoors with Backline for 4000 capacity was requested from all service providers which was responded as such, however, the quote from C-Squared separated the Sound and Backline. The sound indoor for capacity of 4 000 is R95 000, and when you add the two amounts together with the Backline of R45 000, it will make the total of R140 000.</i>
<i>Trussing and Motors</i>	<i>1</i>	<i>R6 000</i>	<i>The Specifications indicate that the Stage (setup) for the front part of the hall, which was</i>

			<i>requested from all the service providers, however the quotes received from-C Squared specified the type of the setup which is Trussing and Motors.</i>
<i>Diesel</i>	<i>1</i>	<i>R7 924,00</i>	<i>The specifications requested Generator from all service providers, however the quotes received from comparison quotes reflects a Generator with a Diesel costs included. Subsequently to that effect, the quotes received from C- Squared were more detailed compared to the other two service providers which separates the costs on Generator for R8 500 x 2= R17 000 and Diesel R7 924. The classification of the items is based on their R7 924,00 own business practice.</i>
<i>Juice/Drinks</i>	<i>500</i>	<i>R10 000</i>	<i>The specifications on catering for finger lunch, it is inclusive of Juice/Drinks as the service providers will know how the item is quoted with the Juice/Drinks. The analysis is based on the comparison quotes received from all service providers, due to the cost price per person as reflected as such. e.g. Nasty Events Managements & Entertainment cost R210, Bokgiba Trading R220, and C- Squared =R195 catering and R20 for Juice/Drinks which amount to the total of R215 each, which is also within the market prices. The separation/reclassification of the items is mainly the business practice of C-Squared on how they operate for their own admin purposes.</i>
TOTAL		R68 924,00	

Funeral Parlour/Graveyard – WO Mdi		Items on the Specification	
<i>VIP – Toilets (1x male & female)</i>	<i>2</i>	<i>R5 560,00</i>	<i>The specification submitted to all the service providers indicates that the VIP Toilets (1 x Male & 1 x Female) was part of the initial request</i>
<i>Fresh Flower Arrangements</i>	<i>1</i>	<i>R13 400,00</i>	<i>Fresh Flowers was part of the initial specification which was submitted to all the service providers by the FSOP</i>
<i>PA System</i>	<i>1</i>	<i>R7 500,00</i>	<i>Every service provider would have known that it is a standard practice to provide for the PA System at the Graveyard</i>
Total		R26 460,00	
Funeral Day Items on the Specifications – WO Mdi			
<i>Diesel</i>	<i>1</i>	<i>R5 000,00</i>	<i>The specifications requested Generator from all service providers, however the</i>

			quotes received from comparison quotes reflects a Generator with a Diesel costs included. Subsequently to that effect, the quotes received from C-Squared was more detailed which separates the costs on Generator R8 590 x 2, adding also a Diesel of R5 000, which will make the total amount to R17 180.
Lunch	200	R39 000,00	The specifications submitted to all service providers indicate the planning for 3 000 mourners. As a result of the above, the 200 catering falls within the capacity 3 000
Juice/Drinks	1500	R30 000,00	The specification submitted to all service providers indicates that the need for catering which normally includes food and drinks as per practice, however C-Squared separated the costs of the food, juice/ drinks as per their own business practice
Breakfast	250	R30 000,00	The specification submitted to all service providers indicates the planning for 3 000. As the result of the above, the 250 catering falls within the capacity 3 000
Furniture and Décor (Mahube Tumelo)	1300	R71 500,00	The Furniture and Décor – Mahube Tumelo is part of the initial specification under Décor and Chairs
Family Cow	1	R20 000,00	The specification submitted to all service providers indicates the need for catering which normally includes meat, and the meat comes from the cow. The elements of having the cow to be slaughtered is due to the rituals practice from different cultures, as the meat will also be used for the catering purposes at home
Flooring Home	1	R4 270,00	The specification submitted to all service providers included Marquee Tent, and Flooring which was initially for UFS Arena. However, through the family meetings and preparatory meetings on the 06 March 2023 in the evening, the families indicated that it will not be appropriate for the tent to be pitched at the UFS nor Tsosetso High School. Through the meeting held with the families on the 06 March 2023, the CFO was notified by the families to pitch the

			same tents as their homes, inclusive of flooring.
Programmes & Obituary	300	R16 500,00	Whilst not explicitly reflected in the specification, every service provider knows that programmes are part of the funeral package
Furniture and Décor Mahube Tumelo		R18 609,00	The Specification submitted to all service providers included furniture & décor: Round Tables Home – R360, Table Clothes Home – R450, Chair Covers – R1 200, Guest Stove – R7 900, Deep Freeze – R4 970, Pot – R1 479, 1kg Gass – R2 250 which was as a result of shortage of utilities during the daily prayers sessions by the public, and various churches from the 06 March 2023. We also need to take into account that during those activities, the family's cultures will be to provide tea, coffee, juice, water and scones as a gesture of appreciation for the support from the family's side.
Total		R234 879,00	

2nd Funeral – Makgoe Funeral Parlour		Item on the Specifications	
Mortuary Fees (Tent/ Graveyard, Water, Décor etc.)	1	R123 850,00	Whilst not explicitly reflected, every service provider knows that the mortuary fees is part of the funeral package. As such the following items were critical at the gravesite such as: Plastic Flooring amount to R9 150, Astro Turf – R9 900, Chairs Presidential – R33 000, Flower Arrangements Red Roses (Stage & Graveyard) – R59 000, PA System – R12 800.
Total		R123 850,00	
Funeral Mr Makgoe		Items on the Specification	
Executive Chairs (Stage Exhibit)	10	R1 200,00	The specifications included 10 Chairs for the speakers and Programme Director etc. which was submitted to all service providers.
Stage Lights and Mood Lights	1	R9 700,00	The specifications included the stage setup as it will include State Lights and Mood Lights, since the event was held indoor and there was a huge interest for the lights and stage setup.
Diesel	1	R10 000,00	The specification requested Generator from all service providers, however the quotes

			received from comparison quotes reflect a Generator with Diesel costs included. Subsequently to that effect, the quote received from C-Squared was more detailed, which separates the costs on Generator R8 590 x 2, adding also a Diesel of R10 000, which will make the total amount to R17 180. Section 4 recommended that the sound, lights, screens, aircons etc. must be continuously connected and functional through the generator for the entire duration of the memorial service and the funeral. This decision was to avoid the disruption during the loadshedding.
Breakfast	250	R30 000,00	The specification submitted to all service providers indicates the planning for 3 000. As the result of the above, the 250 catering falls within the capacity 3 000 as the cost per item is $120 \times 250 = R30\ 000$
Snack packs	2000	R150 000,00	The snack packs were part of the specification under catering for 3 500 which was submitted to all the service providers. The specification indicated the catering for the same number of guests however, the classification on the morning and the afternoon serving was not clearly stipulated besides both elements taken into account (3 000 Guests & 500 Family members of Hon MEC).
Programme & Obituary	1000	R55 000,00	Whilst not explicitly reflected, every service provider knows that the programmes are part of the funeral package.
Total		R255 900	

Mr Makgoe: Lunch – Home / Infrastructure		Items on the specifications	
Makgoe's Lunch – Home / Infrastructure	1	R154 010,00	The specification submitted to all the service providers included a need for the Marquee Tent which was for VIP Catering & Family. After the deliberations with the family, it was then decided to remove them from the UFS Arena and place it at Home for the same purpose which is to cater for Close Family, Family Guests and VIP such as Executive Authority (Premier, MEC etc.) Due to the available space inside the yard of MEC Makgoes Home, the following tents need to be erected inside the yard;

			<ol style="list-style-type: none"> 1. Marquee 10 x 15m = R10 350, Flooring = R9 150, Draping = R13 500, Lights – Electrical – Wiring = R9 870. 2. Marquee Tent 10 x 10m = R6 900, Flooring = R6 100, Draping = R6 750, Lights – Electrical - Wiring = R4 270. 3. Marquee 5 x 5m = R1 725, Flooring = R1 525,00 4. Marquee 5 x 5m = R1 725, Flooring = R1 525,00 5. Marquee 3 x 27m = R5 589, Flooring = R4 941,00. Lights/Electrical/ Wiring = R3 940. Draping = R7 650. 6. Marquee 15 x 30m Black Mamba = R31 050. Flooring = R27 450.
VIP – Toilets (3 x Male & 3 x Female)	6	R16 680,00	The specification submitted to all the service providers indicates that the VIP Toilets (3 x Male & 3 x Female) was part of the initial request
Disability VIP Toilet (4 days)	4	R14 000,00	The specification submitted to all the service providers indicates that the Disability Toilet was part of the initial request
Generator	1	R8 570,00	The specification submitted to all the service providers indicates that the Generator 4 days hire was part of the initial request. Requested at a quantity of 1.
Diesel	1	R1 250,00	The specifications requested Generator from all service providers, however the quotes received from comparison quotes reflect a Generator with a Diesels costs included. Subsequently to that effect, the quotes received from C-Squared was more detailed which separates the costs on Generator R8 570, adding also a Diesel of R5 000, which will make the total amount to R6 250.
Food	700	R136 500, 00	The specification requested catering for 4000. 3 300 guests were catered for at the UFS arena. 700 guests were catered at the family home. The quote received from C-Squared was more detailed which separates Food and Drinks.
Juice / Drinks	800	R16 000,00	The specification requested catering for 4000. 3 300 guests were catered for at the UFS arena. 700 guests were catered at the family home. The quote received from C-Squared was more detailed which separates Food and Drinks.

Décor	1	R7 500,00	The specification requested to the service provider included the Décor
Total		R354 510,00	
Total On Specification (Public Protector erroneously refers the above items as not being on specification)		R1 064 523,00	

ITEMS NOT ON SPECIFICATIONS			
Memorial Service			
Coffee/Tea/Juice/Muffins, Sandwiches - VIP	300	R36 000,00	The allocation provided for the morning part of the memorial service is mainly for the working staff, Families and Executives attending and organising the Memorial Service. The department further agree with the Public Protector that the allocation was not part of the initial specifications, however during the preparatory meeting on the 06 March 2023, it was highlighted as a need since the Police, Ushers, Security, Working Staff may need the refreshments. The working staff will be arriving from the early hours of the morning of the 07 March 2023 to consider the amendments on specifications, and requested all of them to make the necessary adjustments (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023
Artist - Thoko	1	R35 000,00	According to the wishes of the families, it was indicated during the meeting held in the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Service and the two funerals. All service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023 by the CFO
Artist - Xhariep	1	R30 000,00	According to the wishes of the families, it was indicated during the meeting held in the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Service and the

			<i>two funerals. All service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023 by the CFO</i>
<i>Artist – Botshabelo Sunrise</i>	<i>1</i>	<i>R30 000,00</i>	<i>According to the wishes of the families, it was indicated during the meeting held in the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Service and the two funerals. All service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023 by the CFO</i>
<i>Pull Up Banner – Warrant Officer Mdi</i>	<i>2</i>	<i>R7 500,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023 by the CFO</i>
<i>Programmes</i>	<i>500</i>	<i>R27 500,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023 by the CFO</i>
Total		R166 000,00	

Funeral Parlour/Graveyard – WO Mdi		Items not on Specifications	
<i>None</i>			
<i>Funeral Day WO Mdi</i>			
<i>Artist – Botshabelo Sunrise</i>	<i>1</i>	<i>R30 000,00</i>	<i>According to the wishes of the families, it was indicated during the meeting held in the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Service and the two funerals. All service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023 by the CFO</i>
<i>Artist - Teboho</i>	<i>1</i>	<i>R75 000,00</i>	<i>According to the wishes of the families, it was indicated during the meeting held</i>

			<i>in the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Service and the two funerals. All service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023 by the CFO</i>
<i>Artist - Thoko</i>	<i>1</i>	<i>R35 000,00</i>	<i>According to the wishes of the families, it was indicated during the meeting held on the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Services and the two funerals. All service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023 by the CFO</i>
<i>Accreditations</i>	<i>460</i>	<i>R13 754,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 202</i>
<i>Total</i>		<i>R153 754,00</i>	
<i>Funeral Mr Makoe</i>		<i>Items not on specification</i>	
<i>Executive Chairs (Stage Exhibit)</i>	<i>10</i>	<i>R1 200,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all services providers. The 10 Chairs was for the artist to sit close to the stage, so that they don't waste time on the performance by minimising the movement during the funeral proceedings (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023</i>
<i>Condolences Book</i>	<i>4</i>	<i>R1 996,00</i>	<i>This item was added by the CFO at the meeting in the morning of 07 March 2023 with all service providers (except Dots Design who was not compliant on</i>

			<i>CSD) were engaged on the around 08:00 on the 07 March 2023</i>
<i>COC Certificate</i>	<i>1</i>	<i>R26 900,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers. The specifications didn't include the certificate as it was omitted from the original specifications which is the requirements from the Security cluster (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 07 March 2023</i>
<i>Artist - Sechaba</i>	<i>1</i>	<i>R75 000,00</i>	<i>According to the wishes of the families, it was indicated during the meeting held on the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Services and the two funerals. All service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 06 March 2023 by the CFO, in order to submit the correct specifications on the closure of the RFQ timeframes</i>
<i>Artist - Teboho</i>	<i>1</i>	<i>R75 000,00</i>	<i>According to the wishes of the families, it was indicated during the meeting held on the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Services and the two funerals. All service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 06 March 2023 by the CFO, in order to submit the correct specifications on the closure of the RFQ timeframes</i>
<i>Artist - Thoko</i>	<i>1</i>	<i>R35 000,00</i>	<i>According to the wishes of the families, it was indicated during the meeting held on the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Services and the two funerals. All service providers (except Dots Design</i>

			<i>who was not compliant on CSD) were engaged on the around 08:00 on the 06 March 2023 by the CFO, in order to submit the correct specifications on the closure of the RFQ timeframes</i>
<i>Artist - Sello</i>	<i>1</i>	<i>R75 000,00</i>	<i>According to the wishes of the families, it was indicated during the meeting held on the evening of 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Services and the two funerals. All service providers (except Dots Design who was not compliant on CSD) were engaged on the around 08:00 on the 06 March 2023 by the CFO, in order to submit the correct specifications on the closure of the RFQ timeframes</i>
<i>Accreditations</i>	<i>3240</i>	<i>R96 876,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not compliant on CSD). The accreditation is the important component of the event management from the security perspective.</i>
<i>Pull Ups Banners</i>	<i>4</i>	<i>R15 000,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not compliant on CSD)</i>
<i>Wall Banner</i>	<i>1</i>	<i>R7 370,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not compliant on CSD)</i>
<i>Vinyl Podium Branding</i>	<i>1</i>	<i>R850,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not compliant on CSD)</i>
<i>Parking Stickers</i>	<i>90</i>	<i>R4 050,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07</i>

			<p><i>March with all service providers. According to the wishes of the families, it was indicated during the meeting held on the evening of the 06 March 2023 that there should be artists performing at the 3 events which is the Memorial Service and the two funerals. All service providers (except Dots Design who was not complaint on CSD) were engaged on the around 08:00 on the 07 March 2023, in order to submit the correct specifications on the closure of the RFQ timeframes</i></p>
<i>Black Vinyl Flooring</i>		<i>R15 000,00</i>	<p><i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not complaint on CSD) were engaged on the around 08:00 on the 07 March 2023, in order to submit the correct specifications on the closure of the RFQ timeframes</i></p>
<i>Total</i>		<i>R429 242,00</i>	
<i>Mr Makgoe: Lunch – Home / Infrastructure</i>			
<i>VIP – Toilets (1 x Male & 1 x Female)</i>	<i>2</i>	<i>R5 560,00</i>	<p><i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not complaint on CSD) were engaged on the around 08:00 on the 07 March 2023, in order to submit the correct specifications on the closure of the RFQ timeframes</i></p>
<i>Generator</i>	<i>3</i>	<i>R25 710,00</i>	<p><i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers.</i></p>

			<p>The specification submitted to all the service providers indicates that the Generator was part of the initial request. Requested at a quantity of the one (1) instead of four (4) (except Dots Design who was not complaint on CSD) were engaged on the around 08:00 on the 07 March 2023, in order to submit the correct specifications on the closure of the RFQ timeframes</p>
Diesel	1	R3 750,00	<p>The specifications requested Generator from all service providers (except Dots Design who was not complaint on CSD) were engaged on the around 08:00 on the 07 March 2023, in order to submit the correct specifications on the closure of the RFQ timeframes, however the quotes received from comparison quotes reflects a Generator with a Diesel Costs included. Subsequently to that effect, the quote received from C-Squared was more detailed which separates the costs on Generator R8 570, adding also a Diesel of R3 750, which will make the total amount to R29 460.</p>
Round Tables	70	R4 200,00	<p>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not complaint on CSD) were engaged on the around 08:00 on the 07 March 2023, in order to submit the correct specifications on the closure of the RFQ timeframes.</p> <p>Round tables were used at the home of MEC, which was not part of the original specification.</p>
Tablecloths	70		<p>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not complaint on CSD) were engaged on</p>

			<i>the around 08:00 on the 07 March 2023, in order to submit the correct specifications on the closure of the RFQ timeframes.</i>
<i>Executive Chairs</i>	<i>700</i>	<i>R66 500,00</i>	<i>This item was added by the CFO at the meeting held in the morning of 07 March 2023 with all service providers (except Dots Design who was not complaint on CSD) were engaged on the around 08:00 on the 07 March 2023, in order to submit the correct specifications on the closure of the RFQ timeframes.</i>
<i>Total</i>		<i>R110 970,00</i>	
<i>Total not on original specification (All these items were however included in the amended specification discusses with all service providers on 07 March 2023 at around 08:00, except Dots Design who was not compliant on CSD)</i>		<i>R859 966,00</i>	

Response to the section 7(9) notice: Mr Ralikontsane

- 6.1.42 On 20 March 2024, the Notice was hand delivered to the FSOP for the attention of Mr Ralikontsane and acknowledged by Ms Keitumetsi Bonokoane. On 12 April 2024, the Public Protector received Mr Ralikontsane’s response to the Notice stating *inter alia* the following:

6.1.42.1 *“As a very important role player, as Chairperson of the Funeral Planning Committee, so appointed by the Executive Council, in the planning, arrangements and implementation of the plans for the funerals of Mr Makgoe and Mr Mdi as well as everything associated with these funerals, the Public Protector thought it wise, for some reason, not to interview him;*

The Public Protector held meetings with functionaries of the FSOP, however no meeting was held with him as the main functionary. Many of the issues, which have been raised as issues of concern, could have been clarified, had the Public Protector met with him and he was unduly prejudiced by not affording him the opportunity to explain some of the issues in the Notice during an earlier meeting with the Public Protector, especially since the Notice was also sent to the Complainant”;

6.1.42.2 Paragraph 2.6 of the Funeral Policy provides that the State may assist the family to conduct a night vigil;

6.1.42.3 Paragraph 3.2(k) of the Funeral Policy provides that the Chief Directorate: Protocol and Ceremonial Services in the Presidency shall do the necessary reservations for accommodation of family members from outside Gauteng and that the Department of International Relations, and the South African Defence Force shall do the same for all foreign guests and mourners;

6.1.42.4 Paragraph 3.7 of the Funeral Policy provides that the Chief Directorate: Protocol and Ceremonial Services shall ensure, amongst other things, that:

- (a) All the necessary materials and infrastructure have been properly procured in collaboration with relevant departments;

- (b) The necessary infrastructure and refreshments for family and mourners at the funeral service, cemetery, family home, state memorial service etc. have been provided;
- (c) A public address system is provided where required;
- (d) The preparation of the grave site has been done;
- (e) There is drapery on Government buildings;
- (f) Platforms of scaffolding for photographers and media crews are acquired;
- (g) All the props needed, such as banners, stage elevation, décor etc., are in place;
- (h) The necessary reservations for accommodation of family members from outside Gauteng are done;
- (i) After the funeral, notes of appreciation to a selected list of mourners have been written and dispatched and that messages of thanks through the media have been sent out;
- (j) Special letters of thanks and appreciation are sent to all relevant parties and individuals; and
- (k) All logistical activities at the place of repose, family home, memorial service, funeral service, venue and the cemetery are managed properly.

6.1.42.5 Paragraph 3.10 of the Funeral Policy provides that the Director General of the Department of Public Works should ensure that all the infrastructural needs of all points identified by the Funeral Planning Committee are provided for. This *inter alia* includes the necessary infrastructure and related facilities for the family and mourners at the funeral service, cemetery, family home, State memorial service etc., which includes, among other things:

- (a) A public address system where required;
- (b) Preparation of the grave site;

- (c) Drapery on government buildings;
- (d) Platform of scaffolding for photographers and media crews; and
- (e) Temporary structures, buildings and engineering services.

6.1.42.6 The Government Communication and Information System (GCIS) is in terms of the Funeral Policy responsible for *inter alia* the following:

- (a) The production of the funeral- and memorial service programmes;
- (b) The signage, the quantity of which will depend on the capacity of the venue;
- (c) Facilitating live broadcast by the SABC and other national- and/or international broadcasters in collaboration with Departments responsible for security and protocol;
- (d) Ensuring the transportation of journalists between venues;
- (e) Assist Provincial Government and Municipal officials with the development of a mobilization plan for the public to attend memorial services and the funeral including transport pick-up points for those interested in attending the funeral;
- (f) The branding of venues for the memorial and funeral services including the provision of generic banners;
- (g) Standard poster or banner with a photograph of the deceased and wording, stating the name of the deceased and other particulars, shall be produced; and
- (h) Ensure that all lecterns be correctly branded with the National Coat of Arms.

6.1.42.7 These responsibilities will result in expenditure from the GCIS, which is clearly not provided for in “(funeral undertaker cost, including the coffin and limited catering for the family and official guests)”;

- 6.1.42.8 Only the most important responsibilities relating to the interpretation of the Funeral Policy are indicated above and the Funeral Policy would appear only to apply to role players at National level. Where a Provincial Official Funeral or Special Provincial Official Funeral is declared, the principles of the Funeral Policy apply consistently to such a funeral and, in this instance, all the responsibilities of the national role players in the Funeral Policy applied to the FSOP as the designated entity responsible for all the arrangements relating to the funeral;
- 6.1.42.9 The death of Mr Makgoe and Mr Mdi on 05 March 2023, the meeting with EXCO on 06 March 2023, the bid evaluation and adjudication processes on 07 March 2023 and the approval of the appointment of C-Squared on 07 March 2023, placed exceptional pressure on SCM to procure the necessary service providers to provide the deceased with funerals they deserved;
- 6.1.42.10 He approved the memorandum of 06 March 2023 from Mr Martins for the memorial service and the funeral arrangements of Mr Makgoe and Mr Mdi. The memorandum stated that Mr Martins will request the Accounting Officer's approval of the specifications after the engagement between the Department and the family of the deceased had taken place. He did not approve the specifications and had never seen or approved the specifications which were sent out to the five (05) prospective service providers to submit quotations;
- 6.1.42.11 He accepted the BAC recommendation from Mr Martins given his clear responsibilities as well as that of the Manager (Director: SCM) as set out in the SCM Policy and accepted at that stage, that all prescripts and compliance processes had duly been complied with and based on that, he approved the recommendation in the submission;

- 6.1.42.12 Given the responsibilities of a Head of Department and Accounting Officer, especially that of a Director-General in terms of Sections 7(3)(b) and 7(3)(c) of the Public Service Act, due to workload, especially relating to the funeral arrangements which included *inter alia* the chairing of meetings, the preparation of speeches etc., he had to rely on the presentations which were made to him by Mr Martins, indicating that the procurement process was in order. At that point in time, when he approved the submission, there was no indication that there were any problems or non-compliance with the procurement process;
- 6.1.42.13 The Public Protector ignored paragraph 5 of PFMA SCM Instruction No. 03 of 2021/22 of National Treasury, that deals with variations, as it overrides the definition of an acceptable tender as contained in the PPPFA, 2000 “*if Section 3(3) of the PFMA as well as the definition of this Act in Section 1 of the PFMA is concerned*”;
- 6.1.42.14 The FSOP followed the deviation process in accordance with these legal prescripts, which process was duly recorded and approved by himself as the Accounting Officer of the FSOP;
- 6.1.42.15 The deviation was as a result of the urgency of the matter in question, in that, the funeral of Mr. Makgoe and Mr. Mdi were to be conducted within a period of a week. Furthermore, the events leading up to the funeral were to be catered for after the death of Mr. Makgoe and Mr. Mdi was announced;
- 6.1.42.16 The reasons provided were not emotive, but they were rather informed by the reality of the situation which the functionaries of the FSOP had to deal with at the time. This was categorized by extreme time pressures;

- 6.1.42.17 He is not aware that there was any collusion between the functionaries of the FSOP and C-Squared. He had no individual contact whatsoever with any of the service providers who submitted quotations for the funeral, except for the fact that, according to the attendance register of the Funeral Planning Committee, the service provider attended the meeting of 08 March 2023. However, during the meetings with the families of the deceased on 05 March 2023, it became apparent that they have already appointed Twilight Funeral Parlor to take care of the bodies of the deceased and, for this reason, Twilight Funeral Parlor was invited to the Funeral Planning Committee meeting that took place on 07 March 2023;
- 6.1.42.18 It was not unreasonable that such information would have been communicated immediately and the fact that PROVJOC knew of the outcome 15 minutes after the decision, is understandable;
- 6.1.42.19 Ms Sesing, was appointed by EXCO as a member of the Funeral Planning Committee and was invited to all meetings, she attended only the first meeting on 07 March 2023;
- 6.1.42.20 The relevant provisions of the PFMA referred to by the Public Protector states that the Provincial Treasury may assist the provincial departments in building their capacity for efficient, effective and transparent financial management. It is not a pre-requisite that the approvals can only be effected with the Provincial Treasury. Notwithstanding, Ms. Sesing for the FSPT was supposed to attend all meetings and she provided no input regarding the budget, a probity test or any cost containment measures;
- 6.1.42.21 According to a note made in the minutes of meeting of the Funeral Planning Committee on 07 March 2023, this meeting resolved that Ms Sesing should provide an indication of the available budget for the funeral by 12h00 on the

very same day. Ms Sesing did not provide the information as agreed. Ms. Nicoline Jordaan of the FSPT attended subsequent meetings and no input regarding the above-mentioned issues were received from her either;

- 6.1.42.22 Both the e-mail from Ms. Jordaan on 08 March 2023 as well as the WhatsApp messages from Ms. Sesing were not helpful given the fact that at that time, the approval to appoint the service provider had already been granted. The WhatsApp messages from Ms. Sesing were sent at approximately 20h00 on 08 March 2023, when the approvals were expected to be and were effected on 07 March 2023. Consequently, the offers to conduct the probity test from Ms. Sesing came after the fact;
- 6.1.42.23 C-Squared was appointed as a service provider on 07 March 2023 and any input from FSPT after this appointment could only mean that the procurement documents had to be amended retrospectively. This would have created an irregularity or would have meant that the procurement process had to be initiated afresh;
- 6.1.42.24 The extreme time pressure made it impossible to allow a process to commence afresh. At best, Ms Sesing should have or could have audited the process to advise on compliance as opposed to amending the procurement process;
- 6.1.42.25 It is misleading that he refused to accept Ms Sesing's offer and appointed C-Squared despite the offer from Ms Sesing, as her offer came after C-Squared had already been appointed;
- 6.1.42.26 Provincial Treasury Instruction Note No. 31, dated 26 November 2018, is not applicable and/or relevant to assess any expenditure for the funerals of both the Mr Makgoe and Mr Mdi. This Instruction Note is signed by Mrs AS Fourie, the Provincial Accounting General. Section 17 of the PFMA provides that the MEC for Finance in the Province is the Head of the Provincial Treasury and all

policies and decisions of Treasury must be taken by the MEC for Finance. There is no indication whatsoever that the authority to issue this Circular was delegated to Mrs Fourie. Apart from this, the Funeral Policy does not at all deal with any expenses relating to a Provincial Official Funeral. Even if paragraph 4.8, dealing with departmental catering, is applicable, paragraphs 4.8.1, 4.8.2 and 4.8.3 of the Instruction Note are not relevant to a Provincial Official Funeral. Expenses for catering and beverages relating to a funeral may indeed be catered for in paragraphs 4.8.4 and 4.8.5;

- 6.1.42.27 Expenditure in conflict with this purported Instruction Note cannot be regarded as irregular expenditure, since it does not fall within the definition of “*this Act*” as set out in the definition of “*irregular expenditure*”, both defined in Section 1 of the PFMA;
- 6.1.42.28 Although a formal approval for a variation of the contract was not requested or granted in respect of the provisions of paragraph 5 of Instruction Note No. 03 of 2021/22, according to calculations, the additional items did not amount to R1 936 339, but were significantly less than that and do not exceed 15% of the bid. Apart from this, C-Squared submitted the lowest bid and from his perspective as Accounting Officer, in the absence of any indication to the contrary, should have been appointed as service provider;
- 6.1.42.29 The Public Protector’s finding that the quotation of one hundred and ten thousand six hundred and thirty rand (R110 630) paid for accreditation was irregular as the function could have been performed by functionaries of FSOP is made with no regard to what the accreditation process entails;

6.1.42.30 The accreditation for such a big event as a memorial service and funeral service for a prominent figure, such as the late Mr. Makgoe, entails *inter alia* the following:

- (a) The identification of the various groups of people who need to be accredited, such as high-level guests, ordinary guests, media, security, etc;
- (b) Accreditation points had to be identified from which everyone who had wished to attend the funeral, had to pick up their accreditation tags;
- (c) There had to be ushers to manage the attendees at all the events. In order to demonstrate that costs containment was a consideration, these were sourced from other Departments on a voluntary basis with no costs being incurred;
- (d) Given the fact that most people would have attended the funeral by motor vehicle, it was also important that certain vehicles, which would be granted close access to the venues, had to be identified through stickers to be displayed on such vehicles; and
- (e) Although government officials were responsible for all accreditation functions including the design of the tags and the vehicle stickers, the Free State Provincial Government did not have the human resources and equipment to print all the accreditation prototypes as well as a sufficient stock of tags for individuals within which the accreditation had to be displayed by the attendees. A service provider had to provide for this.

- 6.1.42.31 All these logistics required the services of an expert and could not have been performed by functionaries. They required human resources and expert services which resulted in the related expenses being unavoidable;
- 6.1.42.32 The Public Protector's finding that seventy-two thousand and four hundred rand (R 72 400) was paid for flower arrangements and four hundred and ninety-five thousand rand (R495 000) which was paid in respect of performing artists is indicative that there was no regard for cost containment on the part of the FSOP SCM functionaries, the BAC, Mr Martins and himself in line with their respective roles in the SCM, is disputed. The Public Protector has not laid any factual basis for this view. It is, therefore, his view that this is a subjective finding and all these were arranged in line with the applicable legal principles and policy provisions;
- 6.1.42.33 In respect of the Public Protector's finding that the FSOP incurred costs for amongst others, catering for all attended at the events leading up to and the funeral of Mr. Makgoe, groceries for the family, artists, accreditation, diesel, red roses and parking stickers and did not ensure costs are reasonable as required by the policy, reference is made to paragraph 2.9(b) of the Funeral Policy which provides that provincial departments shall be responsible for reasonable costs related to the services they are expected to offer (funeral costs including the coffin and limited catering for the family and State/Official guest);
- 6.1.42.34 The Funeral Policy, considered in its entirety, is clear that reasonable costs are not only related to "*(funeral undertaker cost, including the coffin and limited catering for the family and official guests)*". According to the legal principles of the Funeral Policy provisions are made for the State to be able to assist the family to conduct a night vigil which would come with related costs;

- 6.1.42.35 The Funeral Policy makes provisions for the reservations of accommodation of family members from outside Gauteng, necessary material, infrastructure and refreshments for family and mourners at the funeral, cemetery, family home, state memorial, etc. are all provided for;
- 6.1.42.36 Furthermore, the Funeral Policy caters for the preparation of the grave site, for platforms of scaffolding for photographers and media crews, all the props needed, such as banners, stage elevation, décor, etc. All this is not exhaustive, but serves to demonstrate that the provisions of the Funeral Policy are not only limited to what the Public Protector describes as just the coffin and limited catering;
- 6.1.42.37 The Public Protector correctly notes that the Funeral Policy does not define “*reasonable costs*” and that it does not provide for limits on the amounts spent for the different categories of funerals. The Public Protector’s finding that the costs were unreasonable, is based on a subjective view and not supported by any evidence or comparative analysis of other state funeral costs. The Public Protector failed to compare the prices in the previous Transversal Events Management Agreement before reaching the conclusion that there was no regard for cost containment, despite having been provided with a copy of the fee structure thereof;
- 6.1.42.38 The Public Protector has not done a comparative analysis with the procurement processes and costs of the funerals of, for instance, the late Aziz Pahad, Essop Pahad and Jesse Duarte, who, in accordance with the faith to which they belonged, had to be buried on the same day on which they passed away;

- 6.1.42.39 The “*Quotation recommendation/adjudication*” document which was submitted to him with the Memorandum to appoint a service provider, does indeed refer to the Preferential Procurement Regulations of 2011. Although it provides for points which are scored for BBB-EE status, given the fact that the 03 service providers who submitted quotations, scored the same points for their BBB-EE status, makes no difference on the adjudication of quotations submitted and the subsequent approval of the appointment of C-Squared who submitted the lowest quotation. It is a simple non-compliance issue and not material to the process;
- 6.1.42.40 The Public Protector’s finding that the entire procurement process was conducted in a rushed manner in that the RFQ was issued on 06 March 2023 and all other processes, namely the Bid Evaluation, Adjudication and Approval took place all took place in one day is not out of the ordinary. This was a case of extreme urgency, and the planning required all hands on deck;
- 6.1.42.41 If the appointment, the evaluation and the adjudication happened on three different days, the funerals of Mr Makgoe and Mr Mdi would not have happened. It was already determined that the memorial service would take place on 09 March 2023 and in terms of the dictates of the families, according to their culture and traditions, 11 and 12 March 2023 were already determined as dates for the funerals of Mr Makgoe and Mr Mdi respectively. These dates were cast in stone and could not be postponed. The officials had to work backwards from these dates and were under extreme pressure;
- 6.1.42.42 Mr Mdi’s was not entitled to a Provincial Official Funeral, however, following a visit by the former Premier, Members of EXCO and himself to the family of Mr Mdi, it was clear that, given the attention which his funeral would attract, the family would not be able to manage or pay for the funeral themselves.

Following an informal discussion between the Premier, Members of EXCO present and himself, it was agreed that in the spirit of Ubuntu and given the fact that Mr Mdi also passed away in the line of duty protecting Mr. Makgoe, his family be assisted with the funeral arrangements;

6.1.42.43 *“It was not going to be proper and would have resulted in the public outcry that one person be seen more deserving of the State funeral than the other based on their standing or position, when they all passed away in one accident. It would have sent a message that Mr. Makgoe’s life was more valuable to the Government than that of his protector at the time”;*

6.1.42.44 He also met with members of the SAPS, (Protection- and Security Services) at National level and Major General Mmotlane, as well as Brigadier Montha, regarding the funeral arrangements of Mr. Mdi, where they confirmed that the SAPS was going to only contribute twenty thousand rands (R20 000) to the funeral arrangements of Mr Mdi and that this amount would only be payable after the funeral had taken place;

6.1.42.45 Given the prevailing circumstances, the only rational decision was to make a donation to the family to ensure that Mr Mdi received a fitting funeral and, based on that he approved the submission submitted to him by Mr Martins on 06 March 2023;

6.1.42.46 It is incorrect that there is no evidence provided to the Public Protector, indicating that the approval for the donation for the costs incurred for Mr Mdi’s funeral was requested or granted, as the memorandum from Mr Martins, dated 06 March 2023, sought approval from him for the FSOP to assist with the costs for the funeral of Mr Mdi. This memorandum was approved by him and given the fact that Mr Mdi was employed by the SAPS, the associated funeral costs

could only be a donation and nothing else. The fact that the word “*donation*” does not appear in the submission is irrelevant in terms of “*the well-known principle that substance overrides form*”;

- 6.1.42.47 The amount donated is still to be tabled before Legislature for appropriation. Given the urgency of the matter at the time relevant permission could not be sought. This process is still pending and has not yet been completed;
- 6.1.42.48 The purpose of the Sub-programme Special Programmes is to co-ordinate and implement Premier’s Special Projects as identified by the Premier as well as mainstreaming the rights of vulnerable groups. The item “*Premier’s Special Projects*” does not fall within the above-mentioned outputs in the APP. It relates to an incidental issue which can be regarded as a special project and although the occurrence is unpredictable, when the need arises such expenditure is funded from the budget of this Programme;
- 6.1.42.49 If the 2022/23 budget allocation for Programme 3 is considered, it will be noted that an amount of R63 012 000 has been appropriated under Goods and Services: Contractors and an amount of R2 075 000 under Transfers and Subsidies: Households: Other transfers to households. The amounts expended towards funeral arrangements had in fact been appropriated by the Legislature. Apart from this, previous Provincial Official Funerals were paid from this Item in this Programme and the Auditor General had no problem with it;
- 6.1.42.50 The process with regards to the findings of the Auditor-General must be read in context. In terms of this process, once the Auditor-General makes preliminary findings that the expenditure looks *prima facie* irregular, the FSOP would ordinarily not dispute the findings but undertake to investigate;

- 6.1.42.51 Once irregular expenditure has been identified and recorded in the Annual Financial Statements, such expenditure must be investigated in terms of the prescribed process as set out by the Irregular Expenditure Framework, issued by the Office of the Accountant General, National Treasury. In terms of these processes, the outcome of investigations may lead to recovery, condonation or the removal thereof. The investigation is still pending and finding by the Public Protector is therefore based on the interim finding of the Auditor-General, which is premature;
- 6.1.42.52 The Public Protector finds that it is unclear why the FSOP hired appliances instead of acquiring meals and that this suggests that C-Squared did not have the means to prepare the actual food for the funeral. In terms of the traditional and cultural rituals of the families involved in the funerals of Mr Makgoe and Mr Mdi, it normally includes a vigil at the residence of the deceased. To indicate that the FSOP procured all appliances required to start a company is a misstatement at best. Appliances which were acquired was a gas stove, a deep freeze, a pot and a 9kg of gas.
- 6.1.42.53 These appliances were necessary to feed the mourners who turned up at the residences of the Mr Makgoe and Mr Mdi. Once procured for the rituals at the residence of Mr Mdi, it was also used at the residence of the late Mr Makgoe for the same purpose. The appliances were used to cook the meat of the animal traditionally slaughtered in terms of the rituals and to feed the mourners in attendance. It is important to note that the Funeral Policy recognizes events at the residence of a deceased;
- 6.1.42.54 It is denied that the appointment of C-Squared was not in accordance with a system that was fair, equitable, transparent and cost effective and that the conduct of the functionaries in appointing C-Squared was improper, the

expenditure incurred in conducting the two funerals was excessive or reckless and that there was excessive expenditure relating to the funerals;

6.1.42.55 He has organised a number of official funerals in the Province and have attended a number of official funerals in the country in his career. There is little difference between what he has witnessed at those funerals and the funerals of Mr Makgoe and Mr Mdi;

6.1.42.56 In as far as the findings relating to him are concerned, the following should be mentioned:

- (a) The statement that he failed to ensure that appropriate expenditure control measures are maintained in terms of Section 38(1)(a)(i) of the PFMA, is incorrect. Appropriate expenditure control measures are indeed in place and there is full compliance with section 38(1)(a)(i) of the PFMA. The expenditure control measures of the FSOP have not been investigated at all by the Public Protector and the statement appears to be only an assumption;
- (b) The statement that he failed to ensure that there is effective-, efficient-, economical- and transparent use of the FSOP's resources as required by section 38(1)(b) of the PFMA, is also incorrect. The items as quoted for by the service providers were assessed against the previous Transversal Contract for events management. Apart from that, the Public Protector has failed to do a comparative analysis of any other official funeral, either inside the Province, in another Province or at National level; and
- (c) The statement that he failed to take effective and appropriate steps to prevent irregular expenditure as required by section 38(1)(c)(ii) of the

PFMA is not only incorrect, but also premature. Once irregular expenditure has been identified and recorded in the Annual Financial Statements, such expenditure must be investigated in terms of the prescribed process as set out by the Irregular Expenditure Framework, issued by the Office of the Accountant General, National Treasury. In terms of these processes the outcome of investigations may lead to recovery, condonation or the removal thereof. These processes have not been completed as yet;

- 6.1.42.57 He has not transgressed any of the provisions of section 38 of the PFMA or any other legislative provision or prescript and consequently there are no grounds whatsoever for the Premier to initiate any disciplinary steps against him.

Response to the section 7(9) notice: Ms Baleni

- 6.1.43 On 20 March 2023, the Notice was emailed to the Presidency for the attention of Ms Baleni. On 23 April 2023, Ms Baleni responded to the Public Protector stating that the Presidency intended to abide by the relevant “*recommendations*” of the final Report.

Minutes of a meeting held between Mr Martins and prospective service providers on 07 March 2023 at 08:05

- 6.1.44 On 26 June 2024, the Investigation Team visited the office of FSOP to request copies of the minutes of a meeting held between Mr Martins and the prospective service providers on 07 March 2023. The handwritten minutes were furnished by Mr Martins and upon perusal, the Investigation Team observed the following:

6.1.44.1 The meeting was attended by the following parties:

- (a) Mr Sello Martins, the CFO;
- (b) LM Moseme, C-Squared;
- (c) Modise Tsibulane, Bokhiba Trading;
- (d) Nasty Kwatala, Nasty Events Management;
- (e) Moeketsi Leoatle, Monge Events; and
- (f) Stephen Tsunke, Director Finance and SCM.

6.1.44.2 The purpose of the meeting was to discuss the issues agreed upon between the CFO and both families during discussions on the evening of 06 March 2023, in relation to the logistical arrangements for the funerals as well to discuss the additional items not included in the original specifications, submitted to the Event Management companies.

6.1.44.3 It is further recorded that the CFO presented the following additional items:

Item description	Quantity
Memorial Service	
Artists	
Thoko	
Xhariep artist	
Botshabelo Sunrise	
Branding	
Pull Up Banners- WO Mdi	2
Programmes	500
Catering	
Morning Tea (Coffee/tea/juice, muffins, sandwiches for staff, PROVJOC, securities, families and executives etc)	

Funeral Day - WO Mdi	
Artists	
Botshabelo Sunrise	
Teboho	
Thoko	
Printing	
Accreditations	
Banners	
Funeral Day – MEC Makgoe	
Artists	
Sechaba	
Teboho	
Thoko	
Sello	
Printing	
Accreditations	3240
Pull up banners	4
Wall Banners	1
Infrastructure	
Executive Chairs	10
Others	
Parking stickers	90
Black vinyl flooring	
COC certificate	
Condolence Book	4
MEC Makgoe Lunch Home	
Infrastructure	
VIP Toilets (male and female)	2
Generators	3
Round tables	70
Tablecloths	70
Executive chairs	700
Marquee tent at home	

- 6.1.44.4 The minutes noted that there would be changes regarding the serving of lunch for the families and VIP guests for Mr Makgoe's funeral from the UFS arena to Mr Makgoe's home, and that the tent would be pitched there. Furthermore, it was stated that snack packs should be provided to the students.

Applicable Law

Constitution of the Republic of South Africa, 1996 (the Constitution)

- 6.1.45 Section 125(1) of the Constitution provides that the executive authority of the province is vested in the Premier of the province.
- 6.1.46 Section 125(2) of the Constitution states that *"the Premier exercises the executive authority, together with other members of the Executive Council, by-*
- (a) Implementing provincial legislation in the province"*.
- 6.1.47 Section 217 of the Constitution is the basis upon which all procurement practices within the public sector are developed. The Constitution demands that when an organ of state contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive, and cost effective.

Public Finance Management Act, 1999 (PFMA)

- 6.1.48 The PFMA is the main legal instrument that regulates financial management and procurement in the public service. Its objectives are to regulate financial management in the national government and provincial governments, to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively, to provide for the

responsibilities of persons entrusted with financial management in those governments.

6.1.49 Irregular expenditure is defined by section 1 “*as expenditure, other than unauthorised expenditure incurred in contravention of or that is not in accordance with a requirement of any applicable legislation*”.

6.1.50 Section 6 of the PFMA defines the functions and powers of the National Treasury and provides in subsection (1), *inter alia*, that the National Treasury must—

(f) monitor the implementation of provincial budgets; and

(g) promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of departments, public entities and constitutional institutions;

6.1.51 Section 38 of the PFMA outlines the general responsibilities of accounting officers as follows:

1. *The accounting officer for a department, trading entity or constitutional institution—*

(a) *must ensure that that department, trading entity or constitutional institution has and maintains—*

(i) *effective, efficient and transparent systems of financial and risk management and internal control;*

(ii) *...;*

- (iii) *an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;*
 - (iv) *...;*
 - (b) *is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;*
 - (c) *must take effective and appropriate steps to—*
 - i. ...;*
 - ii. prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and*
 - iii. manage available working capital efficiently and economically;*
 - (d) *...*
 - (e) *...*
 - (f) *....*
 - (g) *...*
 - (h) *must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who—*
 - (i) contravenes or fails to comply with a provision of this Act;*
 - (ii) commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution; or*
 - (iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;*

....

(k) must enforce compliance with any prescribed conditions if the department, trading entity or constitutional institution gives financial assistance to any entity or person”.

6.1.52 Section 45 of the PFMA provides that *“an official in a department, trading entity or constitutional institution —*

- (a) must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;*
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official’s area of responsibility;*
- (c) must take effective and appropriate steps to prevent, within that official’s area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;*
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and*
- (e) is responsible for the management, including the safe-guarding, of the assets and the management of the liabilities within that official’s area of responsibility”.*

6.1.53 Section 81 of the PFMA provides for financial misconduct by officials in departments and constitutional institutions and states that:

“(1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer wilfully or negligently—

- (a) *fails to comply with a requirement of sections 38, 39, 40, 41 or 42; or*
- (b) *makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.*

- (2) *An official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty”.*

6.1.54 Section 84 of the PFMA dealing with the applicable legal regime for disciplinary proceedings states that:

“A charge of financial misconduct against an accounting officer or official referred to in section 81 or 83, or an accounting authority or a member of an accounting authority or an official referred to in section 82, must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority, or member or official, and any regulations prescribed by the Minister in terms of section 85”.

National Treasury Regulations, 2005

6.1.55 In terms of Treasury Regulation 2.1.3, the general responsibility of the Chief Financial Officer is to assist the Accounting Officer in discharging the duties prescribed in Part 2 of Chapter 5 of the PFMA and these duties relate to the effective financial management of the institution including the exercise of sound budgeting and budgetary control practices and the operation of internal controls.

6.1.56 National Treasury Regulation 16A3.2(a) state that:

“A supply chain management system referred to in paragraph 16A3.1 must be fair, equitable, transparent, competitive and cost effective”.

6.1.57 National Treasury Regulation 16A6.1 states that

“Procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury”.

6.1.58 National Treasury Regulation 16A6.4 states that:

“If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority”.

6.1.59 National Treasury Regulation 21.1.1 dealing with Granting of gifts, donations, and sponsorships by the state provides that:

“The accounting officer may approve gifts, donations and sponsorships of state money and other movable property in the interest of the state. When such cash amounts exceed R100 000 per case, the approval of the relevant legislature must be sought by including the item separately in the appropriation bill”.

National Treasury PFMA SCM Instruction No.3 of 2021/22

6.1.60 Instruction 3 of 2021/22 dealing with deviations from normal bidding processes states that:

“

4.1 *If in a specific case it is impractical to invite competitive bids, the AO/AA may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the AO/AA;*

4.2 *In this Instruction, procurement by “other means” includes-*

(f) *limited bidding;*

(g) *written price quotations not within the threshold determined Instruction; and*

(h) *procurement that occurs in emergency and urgent cases.*

4.3 *The AO/AA must provide for procurement by “other means” in a SCM policy for the institution”.*

National Treasury Circular: Implementation of Supply Chain Management, 27 October 2004

6.1.61 Paragraph 4.1(b) of the National Treasury Circular: Implementation of Supply Chain Management, 27 October 2004, states that “...*The evaluation and adjudication committees should be composed of different members to ensure that a transparent review of the evaluation is undertaken. Members of the evaluation committee may present their reports to the bid adjudication committee and clarify any uncertainties. Such members should not have any voting power on the adjudication committee.*”

The bid specification, evaluation and adjudication processes must be within the ambit of section 217 of the Constitution...

Preferential Procurement Policy Framework Act, 2000

- 6.1.62 The Preferential Procurement Policy Framework Act, 2000 (PPPFA) provides that procuring entities should consider only *"acceptable tenders"*. An *"acceptable"* tender, in turn, is defined in section 1(i) of the Act as *"... any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document"*.

Preferential Procurement Regulations, 2022

- 6.1.63 Regulation 10(1) repealed the Preferential Procurement Regulations, 2017 with effect from the date referred to in Regulation 11.
- 6.1.64 Regulation 11 states that the Preferential Procurement Regulations, 2022 came into effect on 16 January 2023.
- 6.1.65 The Preferential Procurement Regulations, 2022, defines *"tender"* as a *"written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation"*.

Provincial Treasury Instruction Note Number 31 (Amendment 2)

- 6.1.66 Paragraph 2.2 of Amendment 2 regulates and guides accounting officers and accounting authorities to, in line with section 38(1)(b) of the PFMA, ensure that appropriate expenditure control measures are instituted to provide reasonable

assurance that all expenditure in their respective institutions is necessary, appropriate, cost-effective and is recorded and reported.

6.1.67 Paragraph 2.3 of Amendment 2 states that:

“In giving effect to this requirement, Accounting Officers and Accounting Authorities are responsible for ensuring that all employees are mindful of the current economic realities and the need to intensify efforts to improve efficiency in expenditure”.

6.1.68 Paragraph 3.3 of Amendment 2 states that non-compliance with the provisions of this Provincial Treasury Instruction can constitute grounds for financial misconduct, as regulated by Chapter 10 of the PFMA.

6.1.69 Further thereto, Paragraph 3.4 of Amendment 2 states that irregular expenditure resulting from non-compliance with the instruction note must be recorded as such in the irregular expenditure register and disclosed appropriately in the annual financial statements of the institutions.

6.1.70 Paragraph 4.8.1 of Amendment 2 states that Accounting Officers must implement policies and procedures to eliminate unnecessary catering expenses.

**Implementation Guide: Preferential Procurement Regulations 2022
(Implementation Guide)**

6.1.71 In terms of Paragraph 8 of the Implementation Guide *“Tenders must be evaluated in terms of the criteria stated in the tender documents”.*

Supply Chain Management Policy of the Office of the Premier, 30 July 2021

6.1.72 Paragraph 1 of the Supply Chain Management Policy of the FSOP (SCM Policy) states that:

“1.2.1 This policy applies to everyone in the Office of the Premier, in particular to every official involved in the process of Supply Chain Management as of the date of approval by the Accounting Officer,

1.2.2 The procurement of goods, services and works, either by way of quotations or through the competitive tendering process shall be within the threshold values determined by the national treasury”.

6.1.73 Paragraph 2.1 of the SCM Policy states, *inter alia*, that the Accounting Officer is the decision-making authority and approves deviations from the SCM Policy subject to relevant legal provisions.

6.1.74 Paragraph 2.2 of the SCM Policy dealing with the role of the CFO states as follows:

“The Chief Financial Officer:

2.2.1 Is the custodian of the SCM Policy and reports on progress regarding its implementation;

2.2.2 ...

2.2.3 Does the overall management of the quotation and competitive bidding process from solicitation to processing of invoices;

2.2.4 ...

2.2.5 *Ensures that procurement and disposals are effected through practices that demonstrate compliance to all relevant legislation;*

2.2.6 *Is responsible for managing procurements and disposals to ensure that the SCM System of the department is adhered to...”.*

6.1.75 Paragraph 2.3 of the SCM Policy dealing with the role of the Manager (Director) SCM states as follows:

“The Manager (Director) SCM-

2.3.1 *Shall be responsible and accountable for the day-to-day implementation of the SCM System under the leadership of the CFO;*

2.3.2 *serves as a secretariat of the Bid Adjudication Committee...”.*

6.1.76 Paragraph 2.4 of the SCM Policy dealing with the role of the SCM Unit states as follows:

“The SCM Unit

2.4.1 *The SCM Unit (SCM Deputy Director or Demand and Acquisition Specialist) shall render secretariat services to the Bid Committees;*

2.4.2 *The SCM Unit shall be responsible for the implementation of the SCM System on a daily basis under the leadership of the Manager (Director): SCM and the CFO;...”.*

6.1.77 Paragraph 2.17.2 of the SCM Policy states that bids are to be evaluated in accordance with bid documents and applicable legislation.

***The Code of Conduct for Supply Chain Management Practitioners
Practice Note Number SCM 4 of 2003 (SCM Code of Conduct)***

6.1.78 The SCM Code of Conduct is applicable to all officials and other role players involved in the supply chain management process.

6.1.79 Paragraph 1.2 of the SCM Code of Conduct requires that Practitioners are to ensure that they perform their duties efficiently, effectively, and with integrity in accordance with the relevant prescripts.

6.1.80 Paragraph 1.3 states that:

“Practitioners should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them”.

***State, Official and Provincial Funeral Policy Manual, July 2016 (the
Funeral Policy)***

6.1.81 In terms of paragraph 1.4.1 of the Funeral Policy, the MEC is entitled to a Provincial Official Funeral Category 1.

6.1.82 Paragraph 2.9(b) of the Funeral Policy states that:

“In respect of a Provincial Official or Special Provincial Funeral, the relevant provincial department and entities shall be responsible for reasonable costs related to the services they are expected to offer (funeral undertaker costs including the coffin and limited catering for the family and State/Official guests)”.

Public Service Act, 1994, as amended (PSA)

6.1.83 Section 7(3)(b) of the PSA states that:

“... the head of department shall be responsible for the efficient management and administration of his or her department, including the effective utilisation and training of staff, the promotion of sound labour relations and the proper use and care of State property, and he or she shall perform the functions that may be prescribed”.

Case Law

6.1.84 In the case of *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency*⁴ the Court held that:

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

6.1.85 The Court further held that:

“(27)...deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose:

(a) it ensures fairness to participants in the bid process;

⁴ *Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency (No 1)* (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC).

- (b) *it enhances the likelihood of efficiency and optimality in the outcome; and*
(c) *it serves as a guardian against a process skewed by corrupt influences”.*

Analysis

Mr Makgoe’s memorial service and funeral

- 6.1.86 The evidence at the Public Protector’s disposal indicates that Mr Dukwana obtained approval from the President, declaring the funeral of Mr Makgoe as a Provincial Funeral Category 01, on 06 March 2023, as required by paragraph 1.4.1 of the Funeral Policy. The FSOP issued specifications for the RFQ to service providers on 06 March 2023. The closing date and time for submission of the RFQ was 07 March 2023 at 11h00.
- 6.1.87 The evidence at the Public Protector’s disposal indicates that on 07 March 2024, Mr Martins held a meeting with prospective service providers to communicate amendments to the original specifications.
- 6.1.88 On 07 March 2023, the Demand and Acquisition Unit comprised of Mr Ntsunke, Mr Kokoana and Ms Tsimele evaluated the quotations and made a submission to Mr Martins, recommending the appointment of C-Squared.
- 6.1.89 On 07 March 2023, in the BAC meeting attended by Mr Martins as the Chairperson, Mr Ntsunke, Ms Tsimele and Mr Kokoana, supported the recommendation of the Demand and Acquisition Unit for the appointment of C-Squared. In a memorandum dated 07 March 2023, from Mr Martins to Mr Ralikontsane, the BAC requested a deviation from Treasury Regulation 16A6 and PFMA SCM Instruction Note 2 of 2021/22, to appoint C-Squared without following a competitive bidding process. Mr Ralikontsane approved the appointment of C-Squared through a deviation process, on 07 March 2023.

- 6.1.90 Section 217 of the Constitution enjoins organs of state in any sphere of government to contract for goods and services in a manner that is fair, equitable, transparent, competitive and cost effective. Paragraph 4.1 of PFMA SCM Instruction Note 3 of 2021/22 provides for deviation if it is impractical to invite competitive bids such as in cases of an urgency, provided that the reasons for deviating from competitive bids must be recorded and approved by the accounting officer.
- 6.1.91 The Public Protector accepts Mr Ralikontsane's submission in response to the section 7(9)(a) Notice that the events in preparation for Mr Makgoe's funeral were characterised by time pressures. However, the process followed was flawed in several respects.
- 6.1.92 The Public Protector noted that **all** three (03) service provider's quotations were dated 06 March 2023, however, they include items that are not recorded in the original specification [own emphasis].
- 6.1.93 During the meeting between the Investigation Team and the functionaries of the FSOP on 06 September 2023, Mr Martins and the other functionaries stated that there was no further communication with the service providers regarding amending the specifications.
- 6.1.94 However, in his response to the section 7(9) Notice, Mr Martins submitted that there was a misunderstanding during the meeting held on 06 September 2023 in that he in fact, met with the service providers on the morning of 07 March 2023 around 08h00 to indicate the additional items to be included in their quotations. Mr Martins provided the Investigation Team with the minutes of the meeting held on 07 March 2023; and
- 6.1.95 It is clear from the evidence that the amended specifications, which Mr Martins allegedly communicated on the morning of 07 March 2023 to the prospective

service providers, were already reflected on some of the quotations dated 06 March 2023. Notably, the quotation from C-Squared as the preferred service provider included all the additional items that were purportedly only communicated on 07 March 2023 by Mr Martins, some of the items were quantities were either increased or decreased or not quoted for at all and items were recorded under different subheadings. Furthermore, some of the items in the quotation by C-Squared are neither reflected in the original specification nor in the minutes of the meeting on 07 March 2023 provided by Mr Martins to the Public Protector.

- 6.1.96 Paragraph 2.17.2 of the FSOP SCM Policy and Paragraph 8 of the Implementation Guide states that bids are to be evaluated in accordance with bid documents and applicable legislation. The RFQ specified the required items to be delivered by the service providers. The evidence before the Public Protector indicates that the functionaries of the FSOP proceeded to evaluate and adjudicate the quotations received from all service providers and appointed C-Squared despite all the quotations not being in accordance with the specifications.
- 6.1.97 Furthermore, C-Squared was appointed despite having included items that were not listed on the specifications.
- 6.1.98 The functionaries of the FSOP issued the RFQ and evaluated the quotations in terms of the repealed Preferential Procurement Regulations, 2011, and not in terms of the Preferential Procurement Regulation, 2022 which came into effect on 16 January 2023. Accordingly, the use of the 2011 Regulations by the evaluation committee resulted in the incorrect scoring of the bidders.
- 6.1.99 Mr Ralikontsane submitted in the Notice that given the fact that the 03 service providers who submitted quotations, scored the same points for their BBB-EE

status, makes no difference on the adjudication of quotations submitted and the subsequent approval of the appointment of C-Squared who submitted the lowest quotation. He stated that it is a simple non-compliance issue and not material to the process.

- 6.1.100 Mr Ralikontsane's submission clearly indicates that the non-compliance with relevant legislation was acceptable to him as the Accounting Officer. He failed to verify the submissions made to him by Mr Martins and provide guidance to the functionaries of the FSOP as required by his responsibilities in terms of section 38 of the PFMA.
- 6.1.101 The evidence before the Public Protector further reveals that Mr Ntsunke, Mr Kokoana and Ms Tsimele from the Demand and Acquisition Unit evaluated the quotations, and the same officials adjudicated their own recommendation as members of the BAC. Furthermore, Mr Martins was directly involved in the amendment of the specification even though he was also the chairperson of the BAC.
- 6.1.102 In terms of National Treasury Circular: Implementation of Supply Chain Management, 27 October 2004, the evaluation and adjudication committees should be composed of different members to ensure that a transparent review of the evaluation is undertaken. Members of the evaluation committee may present their reports to the bid adjudication committee and clarify any uncertainties, however, such members should not have any voting power on the adjudication committee.
- 6.1.103 In his response to the section 7(9) notice, Mr Ralikontsane submitted that due to the exceptional pressures placed on SCM and his responsibilities at the time, he relied on Mr Martins for compliance on the submission to approve C-Squared. He further stated that he never saw or approved the specifications.

- 6.1.104 Whilst the Public Protector takes cognisance that the circumstances required an urgent procurement process, however, it was still incumbent on the functionaries of the FSOP to adhere to the standards set out in section 217 of the Constitution read with section 38(1)(a)(iii) of the PFMA and National Treasury Regulations 16A3.2. In this instance, there was no segregation of the functions that were performed by the officials in the drafting of the specifications, the evaluation of the quotations and the adjudication thereof.
- 6.1.105 Mr Ralikontsane had a greater responsibility to ensure compliance with the processes and apply his mind to the documents submitted to him to ensure efficiency in spending in respect of his responsibilities in terms of section 38 of the PFMA.
- 6.1.106 In addition, Mr Ralikontsane submitted in his response to the section 7(9) notice that the Public Protector ignored Paragraph 5 of the National Treasury PFMA SCM Instruction No. 03 of 2021/22, that deals with variations, as it overrides the definition of an acceptable tender as contained in the PPPFA, 2000 *“if Section 3(3) of the PFMA as well as the definition of this Act in Section 1 of the PFMA is concerned”*.
- 6.1.107 Mr Martins submitted calculations regarding the variation of the scope of work after the Notice was issued to him, which indicates that the additional items were significantly less and did not exceed 15% of the bid.
- 6.1.108 Paragraph 5 of the National Treasury PFMA SCM Instruction No. 03 deals with the expansions and **variations of contracts** [own emphasis]. In the circumstances, Paragraph 5 is not applicable as it relates to variations of contracts and not the amendment of the specifications. At the time that the specifications were amended, the contract had not yet been awarded.

- 6.1.109 Mr Ralikontsane approved the expenditure for the events leading up to and funerals of Mr Makgoe and Mr Mdi to the cost of R5 961 260. Included in this expenditure were items additional to the original specification. The evidence before the Public Protector indicates that both the SCM functionaries and the BAC, which were chaired by Mr Martins, considered and accepted the quotation which included items that were not in the original specifications.
- 6.1.110 The following items, in the amount of approximately **R1 840 929** were not requested in the original RFQ but were added to the quotation submitted by C-Squared and accepted by the FSOP, resulting in excessive expenditure being incurred:

Item description	C-Squared	
	Quantity	Price Quoted
Main Memorial		
Trussing and Motors	1	R6 000
Diesel	1	R7 924
Juice/Drinks	500	R10 000
Coffee/Tea/Juice/Muffins & Sandwiches -VIP	300	R36 000
Artists – Thoko	1	R35 000
Artists- Gariiep	1	R30 000
Artists – Botshabelo Sunrise	1	R30 000
Pull Up Banners- Mr Mdi	2	R7 500
Programmes	500	R27 500
TOTAL		R 189 924
Funeral Parlour /Graveyard - Mr Mdi		
	Quantity	Price Quoted
Fresh Flower Arrangements	1	R13 400
PA System	1	R7 500
TOTAL		R 20 900

Funeral Day - Mr Mdi		
	Quantity	Price Quoted
Diesel	200 litres	R5 000
Breakfast	250	R30 000
Artists – Botshabelo Sunrise	1	R30 000
Artists – Teboho	1	R75 000
Artist – Thoko	1	R35 000
Lunch – Home	200	R39 000
Furniture & Deco – Mahube Tumelo	1 300	R71 500
Juice/Drinks	1 500	R30 000
Family Cow	1	R20 000
Flooring – Home	70 sq	R4 270
Round Tables – Home	6	R360
Tablecloths – Home	6	R450
Chair Covers	100	R1 200
Gas Stove	1	R7 900
Deepfreeze	1	R4 970
Pot	1	R1 479
9kg Gas	6	R2 250
Programme and Obituary	300	R16 500
Accreditation	460	R13 754
TOTAL		R 388 633
2nd Funeral – Mr Makgoe Funeral Parlour/Graveyard		
	Quantity	Price Quoted
Plastic Flooring	150 sq	R9 150
Astroturf	1	R9 900
Flower Arrangements – Red Roses	1	R59 000
PA System	1	R12 800
TOTAL		R 90 850
Funeral Mr Makgoe		
	Quantity	Price Quoted

Executive Chairs (Stage Exhibit)	20	R2 400
Stage Lights & Mood Lights	1	R9 700
Diesel	400 litres	R10 000
Breakfast	250	R30 000
Snack Packs	2000	R150 000
Condolences Books	4	R1 996
COC Certificate	1	R26 900
Artists – Teboho	1	R75 000
Artists- Sechaba	1	R75 000
Artists- Thoko	1	R35 000
Artist – Sello	1	R75 000
Accreditation	3240	R96 876
Programmes and Obituary	1000	R55 000
Pull Up Banners	4	R15 000
Wall Banner	1	R7 370
Vinyl Podium Branding	1	R850
Parking Stickers	90	R4 050
Black Vinyl Flooring	300 sq	R15 000
TOTAL		R 685 142
Mr Makgoe: Lunch -Home/ Infrastructure		
	Quantity	Price Quoted
Marquee 10 x 15m	150 sq	R10 350
Flooring	150 sq	R9 150
Draping	300 sq	R13 500
Lights/Electrical/Wiring	1	R9 870
Marquee 10 x 10m	100 sq	R6 900
Flooring	100 sq	R6 100
Draping	150 sq	R6 750
Lights/Electrical/Wiring	1	R4 270
Marquee 5x 5m	25 sq	R1 725
Flooring	25 sq	R1 525
Marquee 5x 5m	25 sq	R1 725
Flooring	25 sq	R1 525

Marquee 3 x 27m	81 sq	R5 589
Flooring	81 sq	R4 941
Draping	170 sq	R7 650
Lights/Electrical/Wiring	1	R3 940
Marquee 15 x 30m Black Mamba	450 sq	R31 050
Flooring	450 sq	R27 450
VIP Toilets (2 x Toilets for 4 days)	8	R22 240
Disability VIP Toilet (4 days)	4	R14 000
Generator (4-day hire)	4	R34 280
Diesel	200 litres	R5 000
Food	700	R136 500
Juice/Drinks	800	R16 000
Décor	1	R7 500
Round Tables	70	R4 200
Tablecloths	70	R5 250
Executive Chairs	700	R66 500
TOTAL		R 465 480
GRAND TOTAL		R1 840 929

- 6.1.111 Paragraphs 2.2, 2.3 and 2.4 of the SCM Policy read with Provincial Instruction Note 31 (Amendment 2) provide for the effective, efficient and economical management of working capital to improve efficiency in expenditure.
- 6.1.112 Paragraph 2.9(b) of the Funeral Policy provides that provincial departments shall be responsible for reasonable costs related to the services they are expected to offer.
- 6.1.113 The Public Protector notes that the FSOP paid for the events leading up to the funeral, such as groceries for the family, prayers and support during the week. According to Mr Martins' submission, the additional items to the specification, were added at the request of the family. Paragraph 2.3.8(a) of the Funeral Policy, indicates that the Special Aide is required to co-ordinate and liaise with

the family regarding funeral arrangements including co-ordinating all the activities of the various provincial departments at the residence in accordance with the wishes of the family.

- 6.1.114 Whilst the Public Protector notes that paragraph 2.8 of the policy makes provision for the state assisting the family during a time of bereavement, the intention of the Policy could not be for state functionaries to abdicate their duties and not follow due process regarding expenditure control.
- 6.1.115 Mr Ralikontsane's submission in the Notice that the state may assist the family of the deceased to conduct a night vigil as per the Funeral Policy is noted, however, the night vigil and related costs did not form part of the specifications, neither did any of the quotations received from the service providers make reference to a night vigil save for reference to "*Groceries, prayers and support during the week...*".
- 6.1.116 Paragraph 2.6 of the Funeral Policy states that "*In all categories of the State Funeral, Official Funeral, Special Official Funeral, Provincial Official Funeral, and Special Provincial Official Funeral, a night vigil is the prerogative of the family, and the State may assist*". The reference to "*Groceries, prayers and support during the week...*", indicates that the FSOP paid for events leading up to the funeral at the families' homes of both Mr Makgoe and Mr Mdi.
- 6.1.117 Mr Ralikontsane's submission in the Notice that the principles of paragraphs 3.7, 3.10 and 3.11 of the Funeral Policy apply consistently to a Provincial Official Funeral or Special Provincial Official Funeral and that all the responsibilities of the National role players in the Funeral Policy applied to the FSOP as the designated entity responsible for all the arrangements relating to the funeral is without merit.

- 6.1.118 The version of the FSOP regarding the inclusion of additional items cannot be sustained, because as functionaries of the FSOP they are governed by the PFMA and other prescripts. Therefore, they had an obligation to ensure that the support rendered to the family is within reasonable costs, as required by the policy.
- 6.1.119 The acceptance of the aforementioned amounts indicates that there was no regard for cost containment on the part of the FSOP SCM functionaries, the BAC, Mr Martins and Mr Ralikontsane, in line with their respective roles in the SCM process.
- 6.1.120 Mr Ralikontsane's submission in the Notice that Provincial Treasury Instruction Note No. 31, dated 26 November 2018, is not applicable and/or relevant to assess any expenditure for the funerals of both the Mr Makgoe and Mr Mdi, and that there is no indication that the Accountant General had the delegated authority to issue the circular is noted. Mr Ralikontsane's attention is drawn to section 18(2)(a) of the PFMA, which states that "*A provincial treasury must issue provincial treasury instructions not inconsistent with this Act*".
- 6.1.121 Section 20 of the PFMA empowers the MEC to delegate any of the powers entrusted or delegated to the Provincial Treasury to the Head of the Department and the Head of Department may sub-delegate the delegated power to another treasury official or the holder of a specific post in that treasury, or to the accounting officer for a provincial department, or to the accounting authority for a provincial public entity in the province. Mr Ralikontsane's submission does not provide any evidence that the Accountant General did not have the delegated authority to issue Provincial Treasury Instruction Note No. 31, dated 26 November 2018.

- 6.1.122 Paragraph 2.2 of Provincial Treasury Instruction Note No. 31, dated 26 November 2018 relates to all expenditure in provincial departments. Mr Martins and others' submission in the Notice that the FSOP had available budget to deal with the issue of the events leading up to the funerals, does not give the FSOP unfettered powers to spend available funds in a manner that was not in line with sections 38 and 45 of the PFMA.
- 6.1.123 Mr Ralikontsane's submission that Public Protector did not compare the prices in the previous Transversal Events Management Contract, before reaching the conclusion that there was no regard for cost containment, is even more concerning. This gives the impression that there have been more instances of wasteful expenditure and therefore the standard must be set on that.
- 6.1.124 Even though the Funeral Policy does not define "*reasonable costs*", cognisance must be taken that R 5.9 million rand for a funeral could have never been the intention of the policy. It is the Public Protector's view that the Policy defines reasonable costs within the ambit of "*funeral undertaker costs including the coffin and limited catering for the family and State/Official guests*". In this instance, the functionaries went beyond same.
- 6.1.125 The evidence before the Public Protector indicates that Ms Sesing, from the FSPT, in line with the aforementioned prescripts, offered to assist the FSOP to ensure compliance with section 38(1)(b) of the PFMA read with Provincial Instruction Note 31 (Amendment 2) dealing with cost containment measures.
- 6.1.126 It is the Public Protector's view that this is information which the functionaries of the FSOP have at their disposal, and should have conducted themselves in line with the requirements. As the Accounting Officer, CFO and functionaries of the FSOP they had a responsibility in terms of section 38 and 45 of the PFMA respectively, to ensure that processes are complied with in terms of the

relevant legislation and prescripts, irrespective of any offer of assistance from the FSPT.

- 6.1.127 Mr Ralikontsane alleges that he was not provided sufficient opportunity to respond, this assertion is rejected. An allegations letter was served on Mr Ralikontsane, notifying him of the complaint and requesting him to provide information and documentation relevant thereto. He was subsequently furnished with another letter, drawing his attention to the allegations and requesting him to respond thereto. He submitted the documents and responded to the allegations in writing.
- 6.1.128 Mr Ralikontsane was further served a section 7(9) Notice, which afforded him another opportunity to make representations, to which he responded in writing. Communication was also sent for his attention, requesting a meeting with the functionaries involved in the procurement process. The meeting which was held was facilitated through his office. At no stage during these interactions did Mr Ralikontsane request an opportunity to be interviewed regarding the allegations.
- 6.1.129 Furthermore, the Public Protector has a discretion in terms of section 7(1)(b) of the Public Protector Act, to determine the format and the procedure to be followed in conducting any investigation with due regard to the circumstances of each case.
- 6.1.130 It is the Public Protector's view that Mr Ralikontsane was given ample opportunity to provide his version. Mr Ralikontsane's response to the Notice that he was not interviewed by the Investigation Team and that he was unduly prejudiced by not affording him an opportunity to explain some of the issues in the Notice during an earlier meeting with the Public Protector especially since the Notice was issued to the Complainant, cannot be sustained.

6.1.131 The Notice was not served on the Complainant as contended by Mr Ralikontsane, however, nothing precludes the Public Protector from serving the notice to the Complainant as an affected person, as a section 7(9) notice only reflects the intended findings and remedial action for the implicated party to make representations. Thus, this would not be prejudicial to the implicated parties.

Mr Mdi's memorial service and funeral

6.1.132 Paragraph 1.4 of the Funeral Policy provides for the categories of persons who qualify for a provincial official funeral. Paragraph 1.5 states that other persons may also qualify for special provincial official funerals. The evidence at the Public Protector's disposal indicates that Mr Dukwana obtained approval from the President, Mr Ramaphosa, declaring only the funeral of Mr Makgoe as a provincial official funeral. No evidence could be found by the Public Protector that approval was sought from and granted by the President, to declare Mr Mdi's funeral as a special provincial official funeral. Accordingly, the approximate amount of one million rand (R1 000 000) spent towards Mr Mdi's funeral, cannot be justified.

6.1.133 The memorandum from Mr Martins dated 06 March 2023 sought approval from Mr Ralikontsane for the FSOP to assist with the costs for the funeral of Mr Mdi.

6.1.134 In the memorandum, Mr Martins submitted that the Special Programme, in Programme 03 of the FSOP was aimed at dealing with all activities that need the intervention of the Premier's Special Projects, which includes but is not limited to, *"making the necessary funeral arrangements for anyone as per the mandate of the programme"*.

- 6.1.135 However, the motivation by Mr Martins was misleading in that the 6 outputs of the Special Programme in Programme 03, are intended to cater for the needs of vulnerable groups and do not make provision for funerals. The decision by the functionaries of FSOP to utilise the budget of the Special Programme in Programme 03 for the events leading up to and the funeral of Mr Mdi can therefore not be justified. Mr Ralikontsane's submission in the Notice that the use of funds from the Special Programme 03 relates to an incidental issue which can be regarded as a special project and that although the occurrence is unpredictable, when the need arises such expenditure is funded from the budget of this Programme is rejected.
- 6.1.136 The FSOP's submission that the costs incurred for Mr Mdi's funeral were regarded as a donation in terms of National Treasury Regulation 21.1.1, could not be substantiated in that no evidence was provided to the Public Protector indicating that approval for this donation was requested or granted.
- 6.1.137 Mr Ralikontsane further indicated in his submission to the Public Protector on 18 August 2023, that the required approval will be requested. It should be noted that this expenditure was incurred in March 2023 already, which would require an *ex post facto* approval.
- 6.1.138 Mr Ralikontsane's submission in the Notice regarding the donation made for Mr Mdi's funeral and events leading up to the funeral and that the word "*donation*" does not appear in the submission is irrelevant in terms of "*the well-known principle that substance overrides form*", is not justifiable.
- 6.1.139 Mr Dukwana submitted in response to the Notice that assistance for the funeral and memorial services costs for Mr Mdi were extended on humanitarian grounds and from "*a moral perspective it was necessary to accord these two servants of the state dignified send-offs*". He stated that this objective had to

be achieved, but not necessarily at any cost and any price. He further submitted that it seems immoral that the funeral of the political principal will be at state cost, with all “*prompt and ceremony, but the one of the officials who perished with them is left to the measly means of their families*”. (sic)

- 6.1.140 The submissions by Mr Ralikontsane and Mr Dukwana regarding the costs incurred for the events leading up to and funeral of Mr Mdi is noted, however the approval for the donation was not sought in terms of National Treasury Regulation 21.1. from the Legislature and has still to date not been sought. It is critical that every decision must be regulated.
- 6.1.141 This is contrary to the provisions of section 38(1)(k) of the PFMA, which requires compliance with National Treasury Regulation 21.1.1, when a department gives financial assistance to any person. National Treasury Regulation 21.1.1 stipulates that when such cash amounts exceed one hundred thousand rand (R100 000) per case, the approval of the relevant legislature **must** be sought by including the item separately in the appropriation bill (own emphasis added).
- 6.1.142 On 29 November 2023, the Public Protector received confirmation from the AGSA that the FSOP has already disclosed the expenditure incurred in the amount of five million nine hundred and sixty-one thousand two hundred and sixty rand (R 5 961 260) for the funerals as irregular expenditure in terms of section 1 of the PFMA.
- 6.1.143 The evidence before the Public Protector also indicates that there was excessive and reckless expenditure in the amount of approximately one million rand (R 1 000 000) relating to the funeral of Mr Mdi as this amount should not have been spent by the FSOP. An amount of approximately one million nine hundred and thirty-six thousand three hundred and thirty-nine rand (R1 840

929) was spent on items which were not part of the specifications which included the events leading up to and funerals of Mr Makgoe and Mr Mdi.

- 6.1.144 Mr Ralinkontsane, Mr Martins and others' submission regarding the FSOP disclosure of the procurement of the funerals as possible irregular expenditure only in so far that the quotations did not mirror the original specification, is noted. The submissions of Mr Ralinkontsane, Mr Martins asserts that the possible irregular expenditure was only in so far that the quotations did not mirror the original specification and fails to consider that there was no approval from the Provincial Legislature for the FSOP to donate funds for the events leading up to and Mr Mdi's funeral. It also fails to consider that in terms of National Treasury Regulation 21.1.1, Mr Ralinkontsane did not have the authority to approve such expenditure.
- 6.1.145 Mr Ralinkontsane further rejected the intended findings of the Public Protector against him in the Notice, stating that he did not transgress any of the provisions of section 38 of the PFMA or any other legislative provision or prescripts. He submitted that appropriate expenditure control measures are in place and there is full compliance with section 38(1)(a)(i) of the PFMA. He further submitted that the expenditure control measures of the FSOP were not investigated at all by the Public Protector and the finding appears to be only an assumption.
- 6.1.146 Mr Martins and others' submission that cost containment measures were in place to monitor or control the spending of the FSOP and that there is no section or clause on the cost containment measures that prohibit or caution the various departments on the funeral expenditure as this is managed in terms of the Funeral Policy, is noted. The submissions by Mr Ralinkontsane, Mr Martins and others' do not support the evidence obtained during the

investigation. Mr Mdi's funeral and related costs is not regulated by the Funeral Policy.

Conclusion

- 6.1.147 The Public Protector accordingly concludes that the appointment of C-Squared was not in accordance with a system that was fair, equitable, transparent and cost effective as the quotations were not evaluated in terms of the criteria stated in the RFQ.
- 6.1.148 The conduct of the functionaries of the FSOP, in appointing C-Squared and the resultant excessive expenditure, for the events leading up to and funeral of Mr Makgoe and Mr Mdi, is improper.
- 6.1.149 Mr Ralikontsane did not take effective and appropriate steps to prevent the irregular and excessive expenditure for the funerals. The functionaries of the FSOP did not ensure that costs incurred for the events leading up to and the funeral of Mr Makgoe were reasonable as required by paragraph 2.9(b) of the Funeral Policy.

7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that the functionaries of the FSOP should have complied with and the impact thereof on good administration, the Public Protector makes the following findings:

- 7.1 Whether the functionaries of the FSOP irregularly appointed C-Squared and incurred excessive expenditure relating to the events leading up to and funerals for Mr Makgoe and Mr Mdi, if so, whether such conduct is 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

- 7.1.1 The allegation that the functionaries of the FSOP irregularly appointed C-Squared and incurred excessive expenditure for events leading up to and the funerals of Mr Makgoe and Mr Mdi, **is substantiated**.
- 7.1.2 The functionaries of the FSOP proceeded to evaluate and adjudicate the quotation received from C-Squared despite the quotation including items that were not listed on the specifications of the RFQ, in contravention of section 45(a) to (d) of the PFMA.
- 7.1.3 The appointment of C-Squared and resultant expenditure was in violation of the provisions of sections 195(a),(b),(f) and 217(1) of the Constitution and in contravention of section 38(1)(a)(iii) of the PFMA and National Treasury Regulation 16A3.2(a), as the process was not conducted in accordance with a system that was fair, equitable, transparent, and cost effective as the quotation was not evaluated in terms of the criteria stated in the RFQ.
- 7.1.4 The Public Protector takes cognisance that the circumstances under which funeral preparations were to be done required an urgent procurement process, however, it was still incumbent on the Accounting Officer and functionaries of the FSOP to adhere to the standards set out in section 217 of the Constitution read with sections 38(1)(a)(iii), 45(b) of the PFMA and National Treasury Regulations 16A3.2.
- 7.1.5 There was no segregation of the functions that were performed by the officials in the drafting of the specifications, the evaluation of the quotations and the adjudication thereof, in line with the provisions of National Treasury Circular:

Implementation of Supply Chain Management, 27 October 2004, which renders the procurement process in violation of section 217 of the Constitution.

- 7.1.6 Even though the Funeral Policy does not define “*reasonable costs*”, cognisance must be taken that R 5.9 million rand for a funeral could have never been the intention of the policy. Reasonable costs should be understood within the ambit of “*funeral undertaker costs including the coffin and limited catering for the family and State/Official guests*”. In this instance, the functionaries went beyond same.
- 7.1.7 The costs incurred for the events leading up to and funerals of Mr Mdi were contrary to the provisions of section 38(1)(k) of the PFMA, which imposes an obligation in Accounting Officers to comply with National Treasury Regulation 21.1.1, when a department gives financial assistance to any person. Mr Ralikontsane failed to obtain the required approval for funds to be voted by the provincial legislature.
- 7.1.8 The conduct of the functionaries of the FSOP constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

8. REMEDIAL ACTION

- 8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this notice upon the conclusion of an investigation where adverse findings are made.
- 8.2 In *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others*

the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.

- 8.3 Having regard to the evidence, the regulatory framework determining the standard that the functionaries of the FSOP should have complied with, the Public Protector is taking the following remedial action in terms of section 182(1)(c) of the Constitution:

The Presidency

- 8.3.1 Within **one hundred and twenty (120) calendar days** from the date of this report, in line with section 85(2)(b) of the Constitution and in consultation with the National Treasury review the Funeral Policy to determine the actual costs related to services that are expected to be offered per funeral category, in light of the deficiencies identified in this report.

The Director General - National Treasury

- 8.3.2 Take cognisance of this report in line with powers contemplated in section 6(1)(f) and (g) of the PFMA and collaborate with the Presidency to determine the actual costs related to services that are expected to be offered per funeral category, in light of the deficiencies identified in this report as contemplated in paragraph 8.3.1 above.

The Premier

- 8.3.3 Within **ninety (90) calendar days** from the date of this report, in terms of section 84 of the PFMA, take disciplinary action against Mr Ralikontsane for failure to execute his duties in terms of section 38 of the PFMA relating to the events leading up to and funerals of Mr Makgoe and Mr Mdi.

- 8.3.4 Within **ninety (90) calendar days** from the date of this report, in terms of section 84 of the PFMA, ensure that disciplinary action is taken by the Director General against the functionaries of the FSOP mentioned in paragraph 8.3.4 hereunder.

The Director General

- 8.3.5 Within **sixty (60) calendar days** from the date of this report, in line with section 7(3)(b) of the Public Service Act, 1994, as amended and section 38(1)(h) of the PFMA, initiate disciplinary proceedings against Mr Martins, Mr Tsunke, Ms Tsimele and Mr Kokoana, for violating the provisions of the Constitution, contravening section 45(a) to (d) of the PFMA and paragraphs 2.2, 2.3, 2.4 and 2.5 of the SCM Policy, for their participation in the procurement process and appointment of C-Squared and appraise the Premier on the steps taken.

The Directorate for Priority Crimes Investigation (DPCI)

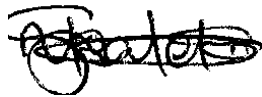
- 8.3.6 A copy of this Report is provided to the DPCI as a referral in terms of section 6(4)(c)(ii) of the Public Protector Act, to consider this Report and to establish if any acts of impropriety identified herein amount to criminal conduct in terms of the Prevention and Combating of Corrupt Activities Act, 2004.

9. MONITORING

- 9.1 The Premier to submit an action plan to the Public Protector within **thirty (30) calendar days** from the date of this report on the implementation of the remedial action referred to in paragraph 8 above.
- 9.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within

the period prescribed in this report to avoid being in contempt of the Public Protector.

- 9.3 In line with the Constitutional Court Judgement in the matter of *Economic Freedom Fighters*, and in order to ensure the effectiveness of the Public Protector, the remedial action prescribed in this Report is legally binding unless there is an Interim Interdict or Court Order directing otherwise.



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 30 JUNE 2024

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