

**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**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT  
AND MALADMINISTRATION RELATING TO THE PROCUREMENT OF GOODS AND  
AWARDING OF A CONTRACT TO MACRONYM 37 CC BY THE NORTHERN CAPE  
PROVINCIAL DEPARTMENT OF HEALTH TO SUPPLY THE DEPARTMENT WITH  
PERSONAL PROTECTIVE EQUIPMENT**

**TABLE OF CONTENTS**

**List of Acronyms.....3**

**Executive Summary.....4**

**1. INTRODUCTION.....10**

**2. THE COMPLAINT.....11**

**3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR.....12**

**4. ISSUES IDENTIFIED AND INVESTIGATED.....14**

**5. THE INVESTIGATION.....14**

**6. THE DETERMINATION OF THE ISSUES IN RELATION TO THE  
EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH  
REGARD TO THE APPLICABLE LAW AND PRESCRIPTS.....18**

**7. FINDINGS.....33**

**8. REMEDIAL ACTION.....35**

**9. MONITORING.....37**

**LIST OF ACRONYMS**

<b>ANC</b>	African National Congress
<b>B-BBEE</b>	Broad Based Black Economic Empowerment
<b>CC</b>	Close Corporation
<b>CFO</b>	Chief Financial Officer
<b>CIPC</b>	Companies & Intellectual Property Commission
<b>CSD</b>	Central Supplier Database
<b>HOD</b>	Head of Department
<b>MEC</b>	Member of Executive Council
<b>PFMA</b>	Public Finance Management Act
<b>PPE</b>	Personal Protective Equipment
<b>PPSA</b>	Public Protector South Africa
<b>SAPS</b>	South Africa Police Service
<b>SARS</b>	South African Revenue Services
<b>SBD</b>	Standard Bidding Document
<b>SCM</b>	Supply Chain Management
<b>SIU</b>	Special Investigating Unit
<b>TCS</b>	Tax Compliance Status

## EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- (ii) The report communicates the findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to the procurement of goods and awarding of a contract to Macronym 37 CC by the Northern Cape Provincial Department of Health to supply the Department with personal protective equipment.
- (iii) On 30 August 2020, the *Sunday Times* published an article with the title: “*Northern Cape Premier Zamani Saul could be in hot water after the wife of his advisor, Norman Shushu and his friend, Somandla Sibisi were revealed to have won Covid tenders*”.
- (iv) In the main, *the Sunday Times* reported the following:
  - (a) Officials awarded tenders worth more than twenty-seven million rand (R27 million) to Macronym 37, a Kimberley “*branding agency*” owned by Somandla Christopher Sibisi, who is believed to be a friend of the Premier;
  - (b) An anonymous source said it was an open secret that Sibisi is politically connected and close to the ANC. “*Somandla is not just close to Saul, but to the entire senior ANC leadership in the province*”;
  - (c) Mr Sibisi’s Company was awarded a tender despite being under a process of deregistration by the Companies & Intellectual Property Commission (CIPC) for non-compliance due to its failure to submit tax returns since 2017;

- (d) The wife of Mr Norman Shushu, the Special Adviser to the Premier of the Northern Cape, was awarded a thirteen-million rand (R13 million) tender to supply the South African Police Service (SAPS) with one (1) million masks;
- e) The Province's Covid-19 spending report also shows that an amount of one million five-hundred-thousand rand (R1.5m) infrastructure contract was awarded to a company called Lemoendraai Bouers despite it not being registered on the central supplier database (CSD), which lists all companies that want to do business with the government;
- (f) The wife of the Special Adviser to the Premier, in a telephone interview denied the allegation that a company called Kamo Training, of which she is the sole director, had received the SAPS mask contract;
- (g) The SAPS placed the first order, worth six million five-hundred-thousand rand (R6.5m), on 29 March 2020, four days after the country went into lockdown. Brigadier Mahlangu verbally approved purchase orders for four companies;
- (h) The HAWKS are currently investigating allegations relating to the SAPS officials who abused emergency procurement procedures and fraudulently handed multimillion-rand contracts for the supply of masks and sanitizers to four (4) companies: Tsa Bophelo Medical Supplies and Logistics, Tombo Investments, Basadzi Pele Management Consulting and the Before Sunset Group; and
- (i) Basadzi Pele received a purchase order of three-hundred-and-sixty-three million Rand (R363m) from the SAPS to supply nine (9) million masks, one thousand (1000) 25 litre bottles of sanitisers and one thousand (1000) 5 litre bottles of sanitisers.
- (v) Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:
  - (a) Whether the Premier of the Northern Cape and the MEC for Health played a part or influenced the Department to award a tender for the procurement of PPE to

Macronym 37 CC, owned by the Premier's alleged friend, Mr Somandla Sibisi, and if so, whether the conduct of the Premier and the MEC constitutes improper conduct in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act; and

- (b) Whether the procurement of PPE and the awarding of a contract to Macronym by the Department was not in accordance with the relevant laws and prescripts regulating the procurement of goods and services and if so, whether the conduct of the Department constitutes improper conduct in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
  
- (vi) On 27 and 28 April 2022 notices in terms of section 7(9) of the Public Protector Act were issued to the following persons, affording them an opportunity to respond to the notice:
  - a) Dr Dion Theys, the then Head of Department of Health;
  - b) Mr Malibongwe Faas, the Supply Chain Manager;
  - c) Mr Eric Gabarone, the Chief Financial Officer of the Department; and
  - d) Mr Maruping Lekwene, the Member of the Executive Council for Health.
  
- (vii) Another notice was issued in terms of section 7(9) of the Public Protector Act, to Mr Somandla Sibisi, the Director of Macronym on 18 August 2022.
  
- (viii) On 10, 19 and 24 May 2022 Mr Lekwene; Dr Theys, through his Attorneys, Mjila Attorneys; and Mr Faas responded respectively to the section 7(9) notice. Mr Gabarone did not respond to the notice.
  
- (ix) Subsequently, Dr Theys was suspended as the Head of Department (HoD) and Mr Riaan Strydom assumed the duties as acting HoD. Mr Strydom was not served with the section 7(9) notice, he was however copied in the response to the Public Protector by Mr Lekwene, the MEC.

- (x) Having considered the evidence and information obtained during the investigation, the Public Protector makes the following findings:
- (a) **Regarding whether the Premier of the Northern Cape and the MEC for Health played a part or influenced the Department to award a tender for the procurement of PPE to Macronym 37 CC, owned by the Premier's alleged friend, Mr Somandla Sibisi, and if so, whether the conduct of the Premier and the MEC constitutes improper conduct in terms of section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.**
- (aa) The allegation that the Premier of the Northern Cape and the MEC for Health played a part or influenced the Department to award a tender for the procurement of PPE to Macronym 37 CC, owned by the Premier's alleged friend, Mr Somandla Sibisi, is unsubstantiated.
- (bb) No evidence was found supporting the allegation against the Premier and the MEC that they played a part or influenced the Department to award the tender to the Director of Macronym 37 CC.
- (b) **Regarding whether the procurement of PPE and the awarding of a contract to Macronym by the Department was not in accordance with the relevant laws and prescripts regulating the procurement of goods and services and if so, whether the conduct of the Department constitutes improper conduct in terms of section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.**
- (aa) The allegation that the procurement of PPE and the awarding of a contract to Macronym by the Department was not in accordance with the relevant laws and prescripts regulating the procurement of goods and services and if so, whether the conduct of the Department was improper and constitutes maladministration, is substantiated.

- (bb) The Department failed to comply with the policy regulating the procurement of goods and services in that it awarded the contract without checking whether Macronym's quotation documents were signed as required. The Department also failed to verify the validity of Macronym's Tax Clearance Certificate with SARS before the tender was awarded and before payment was made to the supplier.
- (cc) Internal procedures and internal control measures were not in place for the approval and processing of payments. The controls did not provide reasonable assurance that all expenditure is necessary, appropriate, paid promptly, and adequately recorded and reported on.
- (dd) Irregular expenditure was incurred as Macronym's documents were considered although they were not duly signed as required, and without verifying the validity of Macronym's Tax Clearance Certificate.
- (ee) Macronym further did not submit to the Department the B-BBEE Certificate, as required.
- (ff) The conduct of the Department accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (xi) Having considered the evidence, the appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:
  - (a) **The Member of the Executive Council for Health in the Northern Cape Province must:**
    - (aa) Within **sixty (60) days** take appropriate action in terms of section 27(1)(a) of the Public Service Act, read with Paragraph 18.1, Chapter 7 and Paragraph 2.7.2 of the Senior Management Services Handbook, 2003 against Dr Theys for his failure to comply with the requirements of sections 38, 39, 40, 41 or 42 of the PFMA and with the policy regulating the procurement of goods and services and incurring the



associated expenditure, when the Department awarded the contract to Macronym 37 CC.

**(b) The Head of Department must:**

- (aa) Within **ninety (90) days** from the date of this report, take appropriate action in terms of section 38(h) of the PFMA against any official who contravened section 45 of the PFMA.
- (bb) Within **ninety (90) days** from the date of this report, take appropriate action to ensure that all officials involved in the Supply Chain Management Unit are properly trained in the provisions of the PFMA, Treasury Regulations, the Policy and National Treasury Supply Chain Management Prescripts.
- (cc) Within **thirty (30) days** from the date of this report, report the non-compliance with the prescribed laws and prescripts and the expenditure incurred in the procurement of the PPE to the Northern Cape Provincial Treasury, in terms of section 38(1)(g) of the PFMA.
- (dd) Take steps to ensure that the Audit Committee of the Department reports regularly to the Head of Department on the audit outcomes relating to the internal audit plan, in terms of Regulation 27.1 of the Treasury Regulations, 2005.
- (ee) Ensure that the Internal Audit Unit of the Department, on an annual basis, reviews the adequacy and effectiveness of the Department's system of internal control, risk management, and supply chain management, in terms of Regulation 27.2 of the Treasury Regulations. It is further recommended that the Audit Committee must consider in all its meetings, the reports of the Internal Audit Unit and of the Auditor-General of South Africa, to ensure that recommendations are implemented.

## **REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO THE PROCUREMENT OF GOODS AND AWARDING OF A CONTRACT TO MACRONYM 37 CC BY THE NORTHERN CAPE PROVINCIAL DEPARTMENT OF HEALTH TO SUPPLY THE DEPARTMENT WITH PERSONAL PROTECTIVE EQUIPMENT**

### **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 23 of 1994 (the Public Protector Act).

1.2. The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act, to the Acting Head of the Department of Health to inform him of the outcome of the investigation and the remedial action taken:

1.2.1. Copies of the report are also provided to:

1.2.1.1. Dr Zamani Saul, the Premier of the Northern Cape Province;

1.2.1.2. Mr Maruping Lekwene, the Member of Executive Council: Department of Health;

1.2.1.3. Mr Riaan Strydom, the Acting Head of the Department of Health;

1.2.1.4. Dr Dion Theys, the former Acting Head of Department of Health;

1.2.1.5. Mr Eric Gabarone, the Chief Financial Officer of the Department; and

1.2.1.6. Mr Malibongwe Faas, the former Supply Chain Manager of the Department.

1.3. The report relates to an investigation into allegations of improper conduct and maladministration into allegations of improper conduct and maladministration relating to the procurement of goods and awarding of a contract to Macronym 37

CC by the Northern Cape Provincial Department of Health to supply the Department with personal protective equipment.

## **2. THE COMPLAINT**

- 2.1. This is an own initiative investigation by the Public Protector in terms of section of the Public Protector Act 23 of 1994. The investigation was opened on 9 September 2019 at the Northern Cape Provincial Office of the Public Protector South Africa in Kimberley.
- 2.2. The investigation originated from the *Sunday Times* article with the title: "*Northern Cape Premier Zamani Saul could be in hot water after the wife of his advisor, Norman Shushu and his friend Somandla Sibisi were revealed to have won Covid tenders*", published on 30 August 2020.
- 2.3. In the main, the *Sunday Times* reported the following:
  - 2.3.1. Officials awarded tenders worth more than R27 million to Macronym 37, a Kimberley "branding agency" owned by Somandla Christopher Sibisi, who is believed to be a friend of the Premier;
  - 2.3.2. An anonymous source said it was an open secret that Sibisi is politically connected and close to the ANC. "Somandla is not just close to Saul, but to the entire senior ANC leadership in the province";
  - 2.3.3. Mr Sibisi's Company was awarded a tender despite being under a process of deregistration by the Companies & Intellectual Property Commission (CIPC) for non-compliance due to its failure to submit tax returns since 2017;
  - 2.3.4. The wife of Mr Norman Shushu, the Special Adviser to the Premier of the Northern Cape, was awarded a R13 million tender to supply the South African Police Service (SAPS) with one (1) million masks;

- 2.3.5. The Province's Covid-19 spending report also shows that an amount of R1.5m infrastructure contract was awarded to a company called Lemoendraai Bouers despite it not being registered with on central supplier database (CSD), which lists all companies that want to do business with the government. The wife of the Special Adviser to the Premier, in a telephone interview denied the allegation that a company called Kamo Training, of which she is the sole director, had received the SAPS mask contract. The SAPS placed the first order, worth R6.5m, on 29 March 2020, four days after the country went into lockdown. Brigadier Mahlangu verbally approved purchase orders for four companies;
- 2.3.6. The HAWKS are currently investigating allegations relating to the SAPS officials who abused emergency procurement procedures and fraudulently handed multimillion-rand contracts for the supply of masks and sanitizers to four companies: Tsa Bophelo Medical Supplies and Logistics, Tombo Investments, Basadzi Pele Management Consulting and the Before Sunset Group; and
- 2.3.7. Basadzi Pele received a purchase order of three-hundred-and-sixty-three million rand (R363m) from the SAPS to supply nine (9) million masks, one thousand (1 000) 25 litre bottles of sanitisers and one thousand (1000) 5 litre bottles of sanitisers.

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

- 3.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2. Section 182(1) of the Constitution provides that:

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

*(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*

*(b) to report on that conduct; and*

*(c) to take appropriate remedial action.”*

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

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

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

3.5. The Municipality is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the matter falls within the jurisdiction of the Public Protector.

3.6. The Public Protector’s powers and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

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<sup>1</sup> [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

<sup>2</sup> *Supra* at para [73].

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

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

(a) Whether the Premier of the Northern Cape and the Northern Cape MEC for Health played a part or influenced the Department to award a tender for the procurement of PPE to Macronym 37 CC, owned by the Premier's alleged friend, Mr Somandla Sibisi and if yes, whether the conduct of the Premier and the MEC amounts to improper conduct in terms of section 182 of the Constitution and maladministration as envisaged in section 6(4) of Public Protector Act.

(b) Whether the procurement of PPE and the awarding of a contract to Macronym by the Department was not in accordance with the relevant laws and prescripts regulating the procurement of goods and services and if yes, whether the conduct of the Department amounts to improper conduct in terms of section 182 of the Constitution and maladministration as envisaged in section 6(4) of the Public Protector Act.

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

##### **5.1. Methodology**

5.1.1. The investigation was conducted in terms of section 182 of the Constitution and 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 how to resolve a dispute of alleged improper conduct or maladministration.

## 5.2. Approach to the investigation

5.2.1. The investigation was approached using an enquiry process that seeks to find out:

5.2.1.1. What happened?

5.2.1.2. What should have happened?

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

5.2.1.4. In the event of improper conduct or maladministration, what would it take to remedy the wrong, and what action should be taken?

5.2.2. The question regarding what happened is resolved through a factual inquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual inquiry principally focused on:

5.2.2.1. Whether the Premier of the Northern Cape and the Northern Cape MEC for Health played a part or influenced the Department to award a tender for the procurement of PPE to Macronym 37 CC, owned by the Premier's alleged friend, Mr Somandla Sibisi and if so, whether the conduct of the Premier and the MEC was improper and constitutes maladministration; and

5.2.2.2. Whether the procurement of PPE and the awarding of a contract to Macronym by the Department was not in accordance with the relevant laws and prescripts regulating the procurement of goods and services and if so, whether the conduct of the Department was improper and constitutes maladministration.

5.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department to prevent improper conduct, maladministration and prejudice.

- 5.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration where possible and appropriate.

### **5.3. Key Sources of information**

#### **5.3.1 Documents and correspondence**

- 5.3.1.1. A copy of the letter from the South Africa Revenue Services to Macronym 37 CC dated 6 December 2019;
- 5.3.1.2. A copy of the *Declaration of Interest Form* NCP 4 (7/12/11) dated 9 June 2020;
- 5.3.1.3. A copy of an undated Addendum to the Quotation Invitation Form report titled *“Procurement Processes in place to fulfil service requests by the end user’s”*;
- 5.3.1.4. A copy of an undated document titled *‘An assessment of the requirement/quotation communicated with the provider, in light of National Treasury Requirements emanating from PFMA*; and
- 5.3.1.5 Senior Management Service Handbook, 2003.

#### **5.3.2. Meetings held**

- 5.3.2.1. Meeting held on 12 February 2021 with Mr Gabarone, the Chief Financial Officer of the Department of Health.

#### **5.3.3 Legislation and other prescripts**

- 5.3.3.1 The Constitution of the Republic of South Africa, 1996;
- 5.3.3.2 The Public Protector Act No 23 of 1994;
- 5.3.3.3 The Public Finance Management Act No 1 of 1999;



5.3.3.4 The National Treasury Instruction No 3 of 2014/2015;

5.3.3.5 The Department's Policy of Supply Chain Management, 2018; and

5.3.3.6 The Public Service Act No 103 of 1994;

#### **5.3.4 Subpoena in terms of section 7(4)(a) of the Public Protector Act**

5.3.4.1 Subpoena issued to Vodacom on 1 October 2020;

5.3.4.2 Subpoena issued to MTN on 1 October 2020;

5.3.4.3 Subpoena issued to Cell C on 2 December 2020;

5.3.4.4 Subpoena issued to Telkom on 11 November 2020; and

5.3.4.5 Subpoena issued to Standard Bank on 17 November 2020.

#### **5.3.5 Notices issued in terms of section 7(9) of the Public Protector Act**

5.3.5.1 A Notice was issued in terms of section 7(9) of the Public Protector Act to Dr Dion Theys, the former Head of Department of Health on 27 April 2022, Mr Faas, the Supply Chain Manager and Mr Gabarone, the Chief Financial Officer of the Department, affording them an opportunity to respond to the evidence obtained during the investigation. Dr Dion Theys, through his Attorneys and Mr Faas responded to the section 7(9) Notices and their responses are incorporated in the report. Mr Gabarone did not respond to the allegations.

5.3.5.2 A Letter was also sent to Mr Maruping Lekwene, the Member of the Executive Council of Health, on 27 April 2022, alerting him to the contents of the section 7(9) Notice. A response was received on 10 May 2022 and is incorporated in the report.

5.3.5.3 Another Notice was issued in terms of section 7(9) of the Public Protector Act to Mr Somandla Sibisi, the Director of Macronym on 18 August 2022. Mr Sibisi did not respond to the allegations.

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

**6.1 Whether the Premier of the Northern Cape and the Northern Cape MEC for Health played a part or influenced the Department to award a tender for the procurement of PPE to Macronym 37 CC, owned by the Premier's alleged friend, Mr Somandla Sibisi and if yes, whether the conduct of the Premier and the MEC amounts to improper conduct in terms of section 182 of the Constitution and maladministration as envisaged in section 6(4) of Public Protector Act**

### *Common cause issues*

6.1.1 In June 2020, the Department awarded Macronym 37 CC a contract to procure Covid-19 PPE i.e. coveralls, surgical masks and N95/FFP2 masks in the amount of twenty-six million, nine-hundred sixty thousand and twenty five rand (R 26 960 025,00).

6.1.2 Macronym 37 CC is a Close Corporation that is owned and managed by Mr Christopher Somandla Sibisi.

6.1.3 In terms of the undated Database of Restricted Suppliers to the State, obtained during the investigation, Mr Sibisi or Macronym 37 CC is not a restricted supplier.

Issues in dispute

- 6.1.4 During the investigation, the allegations were raised with Dr Zamani Saul, the Premier of the Northern Cape. In a response to the allegations during the investigation, the Premier denied the allegations in that he was, in his position of the Premier, involved in the Supply Chain Management processes of the Department.
- 6.1.5 According to the Declaration of Interest Form NCP 4 (7/12/11), dated 9 June 2020, obtained during the investigation, Mr Sibisi stated that he did not have any relationship with a person employed by the state and who was involved with the evaluation and or adjudication of the bid in question.
- 6.1.6 According to Vodacom and MTN cell phone records obtained during the investigation there was no evidence that there was any contact or regular contact between the Premier and Mr Sibisi before and after the tender was awarded to Macronym 37 CC.

Conclusion

- 6.1.7 Based on the outcome of the assessment of the cell phone records and tender documents obtained during the investigation, there was no evidence that the Premier and the MEC played a part or influenced the Department to award the tender to the Director of Macronym 37 CC.
- 6.2 Whether the procurement of PPE and the awarding of a contract to Macronym by the Department was not in accordance with the relevant laws and prescripts regulating the procurement of goods and services and if yes, whether the conduct of the Department amounts to improper conduct in terms of section 182 of the Constitution and maladministration as envisaged in section 6(4) of the Public Protector Act**

Common cause issues

- 6.2.1 The Department deviated from the normal supply chain management process when it commenced procuring PPE for the Covid-19 pandemic in March 2020, by virtue of Treasury Instruction No 05 of 2020/21 relating to emergency procurement that applied at the time.
- 6.2.2 In April 2020, the Department requested quotations from service providers to procure Covid-19 PPE.
- 6.2.3 In June 2020, the Department awarded Macronym 37 CC a contract to procure Covid-19 PPE i.e. coveralls, surgical masks and N95/FFP2 masks in the amount of R 26 960,025.00.
- 6.2.4 Macronym is a Close Corporation that is owned and managed by Mr Cristopher Somandla Sibisi.
- 6.2.5 The records of the Municipality indicate that the goods ordered from Macronym were delivered and confirmed by delivery notes.

Issues in dispute

- 6.2.6 It is alleged that the procurement of PPE and the awarding of a contract to Macronym 37 CC by the Department was not in accordance with the relevant laws and prescripts regulating the procurement of goods and services at the Department.
- 6.2.7 During the investigation, the allegations were raised with Dr Dion Thys, the then Acting Head of Department of Health in a letter dated 11 September 2020. In his response to the allegations during the investigation, Mr D Gaborone, the Chief Financial Officer of the Department, conceded in a meeting held on 17 February 2021 that the Department's Supply Chain Management (SCM) Unit did not deal adequately with the procurement process in relation to the Covid-19 PPE.

- 6.2.8 According to an undated Addendum to the Quotation Invitation Form marked *Annexure A* obtained from the Department during the investigation, the Department set out the minimum qualification criteria for PPE quotations, including:
- (a) Paragraph 7.1 on the preference Point Claim form (SBD 6.1) must be completed and signed in full if B-BBEE points are claimed. Failure to do so will result in points not being allowed;
  - (b) SBD 4, 8 and 9 must be completed in full, signed and returned to the Department together with the quotation;
  - (c) The validity of the Tax Clearance Certificate would be verified by the Department through the National Treasury Central Supplier Database (CSD); and
  - (d) Quotations submitted on the company's letterhead must be signed by the supplier.
- 6.2.9 According to Macronym's response to the request for Covid-19 PPE quotation, dated 9 June 2020, it was submitted on the entity's letterhead but not signed by the supplier as required.
- 6.2.10 Except for the quotation document, the other required documents that Macronym submitted as part of the quotation were properly completed and signed.
- 6.2.11 The procurement documents obtained from the Department during the investigation indicate that Macronym did not submit an original or certified copy of a B-BBEE Status Level Certificate to claim points in the prescribed procurement process.

- 6.2.12 According to information obtained from the CSD during the investigation, Macronym's B-BBEE Status had already expired when the contract was awarded in June 2020.
- 6.2.13 Mr Gaborone further stated in the meeting during the investigation that due diligence was not exercised in ensuring that the company that was awarded the contract was indeed tax compliant because the Supply Chain Management (SCM) Unit of the Department relied mostly on the CSD information for March 2020 and did not verify Macronym's tax compliance status with the South Africa Revenue Service (SARS), as required.
- 6.2.14 An undated report titled "*Procurement Processes in place to fulfil service requests by the end user's*" obtained from the Department during the investigation indicates that the following 3 (three) phases were used to meet the procurement of services and/or goods requirements in response to meeting the end user needs for COVID-19:

**(a) Phase 1: Period March 2020**

- (aa) The inception phase for SCM to initiate procurement resulted from/out of National Treasury issuing Instruction Note: 08 of 2019-2020. Through this authority, the SCM Unit of the Department had to procure PPE from Transversal Contract awarded companies;
- (bb) Out of this process only 3 companies i.e. Central Medical, ARC Technology, and Logan Medical could be approached. However, all three companies could not deliver the products required by the Department;
- (cc) Further, the Department also issued orders to companies not on the National Treasury database i.e. DNS and CMED Suppliers;

**(b) Phase 2: Period April 2020**

- (aa) National Treasury issued Instruction Note: 03 of 2020-2021. Through this authority, SCM had to procure PPE products through Imperial Health Sciences (IHS), the appointed central implementing agent;
- (bb) Institutions were allowed to approach any other supplier and procure from them on the condition that:
  - (i) Items were to the specifications as determined by the National Department of Health;
  - (ii) Prices were equal or lower than prices as set out in Instruction Note 3 of 2020/2021;
  - (iii) Suppliers were registered on CSD;
- (cc) Out of this process, the only items sourced by the Department from Imperial Health Science i.e. digital thermos, goggles, disposable gowns, body bags with zip, overalls, masks, medical masks, and surgical gloves.

**(c) Phase 3: Quotation Communicated to service providers in light of the National Treasury Requirements emanating from the Public Finance Management Act**

- (aa) There were 39 (thirty-nine) service providers that submitted quotations for additional PPE. Out of 39 (thirty-nine) suppliers, only 2 (two) suppliers were compliant with the quotation requirements;
- (bb) According to an undated document titled *'An assessment of the requirement/quotation communicated with the provider, in light of National Treasury Requirements emanating from PFMA'* obtained from the Department during the investigation:

- (i) Macronym submitted its quotation, however, not as per the requirements stated in the request form;
  - (ii) Additional declaration as stated on the quotation request form and all the details were not submitted by the service provider; and
  - (iii) Macronym Supplier's submission was not compliant in many respects to quotation requirements.
- (cc) According to the CSD information obtained during the Investigation on 18 March 2020, Macronym's overall tax status was reflected as tax compliant;
- (dd) According to the undated document obtained from the Department during the investigation, the validity of a Tax Clearance Certificate is verified by the Department through the CSD;
- (ee) In terms of the National Treasury Instruction No 3 of 2014/2015, it is necessary to ensure that persons conducting business with the State are tax compliant at the date of submission and award of a bid as well as for the full duration of their respective contracts. On the assessment of the records obtained during the investigation, it appears that at all relevant times Macronym was tax compliant, accordingly, the prescripts of National Treasury Instruction No 3 of 2014/2015 were adhered to;
- (ff) In a letter obtained during the investigation dated 6 December 2019, the South Africa Revenue Services (SARS) issued Macronym 37 CC with a tax compliance status (TCS) PIN and also informed Macronym that it may authorize a third party to view its tax compliance status by providing it with the PIN;
- (gg) SARS further informed Macronym that the PIN would allow the third party access to its tax compliance status which is based on Macronym's



compliance as at the date and time the PIN is used. According to the said letter, Macronym TCS PIN's expiry date was on 6 December 2020;

(hh) According to the information on the Central Supplier Database (CSD) obtained during the investigation dated 18 March 2020, Macronym's business status appears as conversion CO/CC or CC/CO instead of "*in business*";

6.2.15 In a response to a section 7(9) Notice received during the investigation in a letter dated 10 May 2022, Mr M Lekwene, the MEC for Health stated that:

(a) The Department had already engaged with disciplinary action against Dr Thys. The process of the investigation was quite complicated and this was delayed due to the investigation initiated by the Special Investigating Unit (SIU). A charge sheet was drafted;

(b) The current process was still ongoing and the matter is being discussed with the DG and would continue in due course;

(c) The process for instituting disciplinary action was ongoing and the necessary notices would be issued in due course against the implicated officials in the Supply Chain Unit;

(d) Disciplinary action had already been instituted against Mr Gabarone and the case was still pending but had to be postponed due to ill health and the seizing of the laptop and cell phone by the Hawks for further investigation. This has stalled the continuation of the disciplinary process;

(e) A new manager had already been appointed to oversee the processes of the SCM Unit and to strengthen compliance;

(f) The Department had already reported the expenditure to the Provincial Treasury in terms of section 38(1) of the PFMA;

- (g) The Internal Audit Committee would continue with its work to ensure compliance with and in terms of Regulation 27.2 of the Treasury Regulations, 2005;
- (h) As the Executive Authority, the MEC has an oversight on an ongoing basis of the strengthening of administrative processes in the Department and also with specific regard to Supply Chain. Mechanisms and internal controls were being implemented to ensure a more functional operational system and to operate more effectively;
- (i) The implementation report would be submitted by the Acting Head of the Department within ninety (90) days from the date of the report.

6.2.16 The Public Protector took note of the response by the MEC to the section 7(9) Notice that the Department had already reported the expenditure to the Provincial Treasury in terms of section 38(1) of the PFMA. However, despite the undertaking by Mr Riaan Strydom, the Acting Head of Department, to provide the Public Protector with a copy of the letter sent to the Provincial Treasury, Mr. Strydom failed to send the requested copy in order to prove that the expenditure incurred in the procurement of PPE was reported to Treasury.

6.2.17 In a subsequent response to the section 7(9) Notice as per a letter dated 19 May 2022, Dr Theys, the former HoD, through his Attorneys Mjila & Partners Inc. stated the following that:

- (a) The PFMA requires of the accounting officer of a department to ensure that there are proper systems in place;
- (b) The complaint does not relate to the absence of systems but a failure of operations in the existing system in place, during an emergency;
- (c) It is common cause that the department has a fully functional Supply Chain Management in existence, which is responsible for the procurement of goods and services in the department. It goes without saying that this

unit has to ensure that every service provider from whom the department procures goods or services is fully compliant as it is in its job description;

- (d) It is contended the Public Protector did not mean that:
  - (i) It is/was the duty of the Head of the Department to look at every supplier's credentials personally because there is an entire unit dedicated in each and every department for this purpose;
  - (ii) The HoD must personally check the tax compliance of suppliers when the entire SCM Unit exists;
  - (iii) The HoD to check the B BBEE status of suppliers However, it is the duty of the HoD to ensure that transgressions or non-compliance with existing SCM are dealt with via the Labour Relation Act;
  - (iv) The matters complained of are matters relating to non-compliance or transgression of the SCM processes by the officers overseeing this process;
  - (v) It is required of the HoD to investigate the transgressions of the SCM system that is in place and to initiate disciplinary processes against the affected officers if it is found that they committed misconduct;
  - (vi) It is going overboard if the Public Protector had to hold the HoD responsible for the failures of his staff without even giving him an opportunity to investigate the veracity of the allegations;
  - (vii) The HoD, as the accounting officer, was in compliance with the PFMA because he performed his duty by having a functional SCM in place which is required by the PFMA, a fully staffed SCM, Unit, and proper SCM policies;

(viii) Further that the PPE tender had been under investigation by multiple government agencies and as such seems to be confronted by the state for the same answers;

6.2.18 According to Mr Faas, the Manager: Fleet and Asset Management of the Department, in his response to a section 7(9) Notice in an email/letter dated 24 May 2022, Mr Faas stated that:

(a) The department's process to acquire PPE through Macronymn occurred twice. This was significant because each transaction should be judged on its merits. The first transaction was done by SCM Unit and the second transaction was done by the CFO;

(b) Regarding the first transaction by the SCM Unit, the following process was followed:

(i) A quotation form designed by Mr V Nyokong from the SCM Unit was used;

(ii) The quotation form was sent/provided by Mr S Booi to all service providers by email or physical handover;

(iii) Items/goods in the quantity required in the approved Submission of the End User authorized by the Accounting Officer in terms of Paragraph 8.2.1 of Treasury Regulations were itemized in the quotation form;

(iv) The details of transactions through a request for quotations by the SCM Unit occurred largely before June 2020;

(v) The outcome of the SCM Unit process resulted in the disqualification of Macronymn.

(iii) Regarding the second transaction by the CFO in June 2020, the following process was followed:

- (a) The CFO received a proposal directly from Macronymn;
- (b) The items and quantity were different from those that the SCM Unit had listed in the quotation form to service providers;
- (c) In June 2020, the CFO appointed Macronymn for reasons best known to him;

6.2.19 During the investigation several attempts were made by the Investigation Team to interview Mr Somandla Sibisi, the Director of Macronymn 37 CC but to avail.

*Application of the relevant law*

**The Constitution of the Republic of South Africa, 1996**

6.2.20 Section 217(1) of the Constitution provides that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

6.2.21 In this matter the Department failed to ensure that the contract for service awarded to Macronym 37 CC was cost-effective as envisaged by section 217 of the Constitution.

6.2.22 The Department incurred irregular expenditure because Macronym's quotation documents were considered although they were not duly signed as required, and without verifying the validity of Macronym's Tax Clearance Certificate.

**The Public Finance Management Act No 1 of 1999**

- 6.2.23 Section 38(1)(b) of the PFMA provides that the accounting officer for a department, trading entity or constitutional institution is responsible for the effective, efficient, economical, and transparent use of the resources of the department, trading entity, or constitutional institution.
- 6.2.24 It therefore follows that the Head of Department was obligated by law to use the resources of the Department in an effective, efficient, and economical manner. This was not denied by the Department during the investigation. Mr Gabarone, the then Chief Financial Officer conceded that the Department's Supply Chain Management Unit did not deal adequately with the procurement process in relation to the Covid-19 PPE.
- 6.2.25 According to section 38(1)(c)(ii) of the PFMA, the accounting officer for a department, trading entity or constitutional institution must take effective and appropriate steps to prevent unauthorized, irregular, fruitless, and wasteful expenditure and losses resulting from criminal conduct.
- 6.2.26 In this case, there is no evidence that the Head of Department, as the accounting officer of the Department, took steps to prevent unauthorized, irregular and fruitless, and wasteful expenditure relating to the awarding of the COVID-19 PPE contracts to suppliers including Macronym 37 CC.
- 6.2.27 Section 38(1)(h)(i)(ii) and (iii) of the PFMA provide that the accounting officer for a department, trading entity, or constitutional institution must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who contravenes or fails to comply with a provision of this Act, commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution or makes or permits an unauthorized expenditure, irregular expenditure or fruitless and wasteful expenditure.

6.2.28 During the investigation, no evidence was found that the HoD took disciplinary steps against any official of the Department who committed financial misconduct relating to the awarding of the COVID 19 PPE contracts.

**The Department's Policy of Supply Chain Management, 2018**

6.2.29 In terms of paragraph 3.6.2 of the Department's Policy of Supply Chain Management (the Policy), the Department shall give preference to local service providers who are registered on the CSD and tax compliant at the time of the issuing of the (purchase) order.

6.2.30 In this there is no conclusive evidence to show that Macronym 37 CC was tax compliant when the Department awarded the COVID 19 PPE contract in June 2020. The HoD failed to ensure that tax compliance checks were done before the contract was awarded to Macronym 37 CC.

**The National Treasury Instruction No 3 of 2014/2015**

6.2.31 Paragraph 3.8 of the National Treasury Instruction provides that:

*“Where a department, constitutional institution or a public entity listed in Schedule 3A or 3c of the PFMA appoints a supplier in terms of Treasury Regulations 16A. 6.4 to supply goods or render services without inviting competitive bidding, the accounting officer or accounting authority must perform tax compliance checks:*

*(a) before appointing the supplier; and*

*(b) before any payment is made to the supplier”.*

6.2.32 No indication could be found during the investigation that the Department verified whether Macronym CC was tax compliant at the time when the contract for the PPE was awarded to them. However, according to the CSD information obtained during the investigation on 18 March 2020, Macronym's overall tax

status was reflected as tax compliant. The quotation that was submitted by Macronym was also not on the letterhead of the entity and not signed to make it an official document that could be considered.

6.2.33 Paragraph 3.6.2.1(e) of the Policy refers, *inter alia*, to Regulation 6(1) of the Preferential Procurement Regulations, 2017 made in terms of the Preferential Procurement Policy Framework Act, 2000, in terms of which suppliers and service providers are required to prove their level of contribution to Broad Based Black Economic Empowerment (B-BBEE), which information should be available on the CSD.

6.2.34 The B-BBEE status of Macronym, as reflected on the CSD had already expired at the time when the Department granted the contract for more than R26 million to them. The Head of Department failed to take effective and appropriate steps to prevent, irregular and fruitless expenditure in the procurement of PPE and awarding of the tender to Macronym 37 CC.

6.2.35 The Chief Financial Officer of the Department, on the other hand, also failed to take effective and appropriate steps to prevent, within his area of responsibility to prevent irregular expenditure and fruitless and wasteful expenditure in the procurement of PPE and awarding of the tender to Macronym 37 CC.

**The Public Service Act 103 of 1994**

6.2.36 Section 27(1)(a) of the Public Service Act, provides that when a head of department is accused of misconduct, the relevant executive authority may appoint a person to investigate the matter and to report to him or her thereon, and such authority may thereupon report the matter to the President or, in the case of a provincial administration, to the Premier of the province, who may direct the said authority to charge the head of department concerned with that misconduct.



6.2.37 In this case, the former Acting Head of Department failed to ensure that internal procedures and internal control measures were in place for the approval and processing of payments to Macronym 37 CC.

### Conclusion

6.2.38 The evidence obtained during the investigation from the National Treasury Central Supplier Database (CSD) revealed that Macronym was awarded a contract to procure Covid-19 PPE, while it was in the process of being deregistered by the Company Intellectual and Property Commission (CIPC).

6.2.39 The awarding by the Department of the contract to Macronym for the procurement of PPE was not in accordance with the relevant laws and legal prescript regulating the procurement of goods and services by the Department.

6.2.40 The Department failed to verify Macronym's tax compliance and Macronym's B-BBEE status had already expired, which should have disqualified it from being considered in terms of the Policy.

## **7 FINDINGS**

7.1 Having regard to the evidence, the regulatory framework determining the standard that the Department should have complied with, the Public Protector is likely to make the following adverse findings:

**7.1.1. Whether the Premier of the Northern Cape and the Northern Cape MEC for Health played a part or influenced the Department to award a tender for the procurement of PPE to Macronym 37 CC, owned by the Premier's alleged friend, Mr Somandla Sibisi and if so, whether the conduct of the Premier and the MEC amounts to improper conduct in terms of section 182 of the Constitution and maladministration as envisaged in section 6(4) of Public Protector Act**

7.1.1.1. The allegation that the Premier of the Northern Cape and the MEC for Health played a part or influenced the Department to award a tender for the procurement of PPE to Macronym 37 CC, owned by the Premier's alleged friend, Mr Somandla Sibisi, is unsubstantiated.

7.1.1.2. No evidence was found supporting the allegation against the Premier and the MEC that they played a part or influenced the Department to award the tender to the Director of Macronym 37 CC.

**7.1.2. Whether the procurement of PPE and the awarding of a contract to Macronym by the Department was not in accordance with the relevant laws and prescripts regulating the procurement of goods and services and if so, whether the conduct of the Department amounts to improper conduct in terms of section 182 of the Constitution and maladministration as envisaged in section 6(4) of the Public Protector Act**

7.1.2.1. The allegation that the procurement of PPE and the awarding of a contract to Macronym by the Department was not in accordance with the relevant laws and prescripts regulating the procurement of goods and services and if yes, whether the conduct of the Department was improper and constitutes maladministration, is substantiated.

7.1.2.2. The Department failed to comply with the Policy regulating the procurement of goods and services in that it awarded the contract without checking whether Macronym's quotation documents were signed as required. The Department also failed to verify the validity of Macronym's Tax Clearance Certificate with SARS before the tender was awarded and before payment was made to the supplier.

7.1.2.3. Internal procedures and internal control measures were not in place for the approval and processing of payments. These controls did not provide reasonable assurance that all expenditure is necessary, appropriate, paid promptly, and adequately recorded and reported on.

- 7.1.2.4. Irregular expenditure was incurred as Macronymn's documents were considered although they were not duly signed as required, and without verifying the validity of Macronymn's Tax Clearance Certificate.
- 7.1.2.5. Macronymn further did not submit to the Department, the B-BBEE Certificate, as required.
- 7.1.2.6. The conduct of the Department accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

## **8. REMEDIAL ACTION**

- 8.1. Having considered the evidence and information obtained during the investigation, the Public Protector intends to take the following remedial action:

**The Member of the Executive Council for Health in the Northern Cape Province must:**

- 8.2. Within **sixty (60) days** take appropriate action in terms of section 27(1)(a) of the Public Service Act, read with Paragraph 18.1, Chapter 7 and Paragraph 2.7.2 of the Senior Management Services Handbook, 2003 against Dr Theys for his failure to comply with the requirements of section 38, 39, 40, 41 or 42 of the PFMA and with the policy regulating the procurement of goods and services and incurring the associated expenditure, when the Department awarded the contract to Macronymn 37 CC.

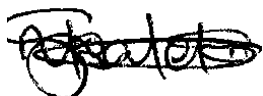
**The Head of Department must:**

- 8.3. Within ninety (90) days from the date of this report, take appropriate action in terms of section 38(h) of the PFMA against any official who contravened section 45 of the PFMA.

- 8.4. Within ninety (90) days from the date of this report, take appropriate action to ensure that all officials involved in the Supply Chain Management Unit are properly trained in the provisions of the PFMA, Treasury Regulations, the Policy and National Treasury Supply Chain Management Prescripts.
- 8.5. Within thirty (30) days from the date of this report, report the non-compliance with the prescribed laws and prescripts and the expenditure incurred in the procurement of the PPE to the Northern Cape Provincial Treasury, in terms of section 38(1)(g) of the PFMA.
- 8.6. Take steps to ensure that the Audit Committee of the Department reports regularly to the Head of Department on the audit outcomes relating to the internal audit plan, in terms of Regulation 27.1 of the Treasury Regulations, 2005.
- 8.7. Ensure that the Internal Audit Unit of the Department, on an annual basis, reviews the adequacy and effectiveness of the Department's system of internal control, risk management, and supply chain management, in terms of Regulation 27.2 of the Treasury Regulations. It is further recommended that the Audit Committee must consider in all its meetings, the reports of the Internal Audit Unit and of the Auditor- General of South Africa, to ensure that recommendations are implemented.

## 9. MONITORING

- 9.1. The Head of Department to submit an action plan to the Public Protector within thirty (30) 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.



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**ADV KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR OF**  
**THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 30 SEPTEMBER 2022**

*Assisted by: Mr M Khanya*  
*Provincial Representative: Northern Cape*