

**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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*“Allegations of maladministration, procurement irregularities and nepotism in the awarding of tenders for the supply and delivery of personal protective equipment by the Limpopo Department of Health”*

**REPORT ON OWN INITIATIVE INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, PROCUREMENT IRREGULARITIES AND NEPOTISM IN THE AWARDING OF TENDERS FOR THE SUPPLY AND DELIVERY OF PERSONAL PROTECTIVE EQUIPMENT BY THE LIMPOPO DEPARTMENT OF HEALTH**

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## EXECUTIVE SUMMARY

- (i) This is the Public Protector's report 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 relates to an own initiative investigation into allegations of maladministration by the Limpopo Department of Health (LDoH) relating to the procurement irregularities and nepotism in the awarding of tenders for the supply and delivery of Personal Protective Equipment (PPE).
- (iii) The Public Protector Limpopo Provincial Office came across a newspaper article titled "*A R932m PPE mess*" which was published in the *Sunday Independent* newspaper. The article prompted the office to register a complaint on 17 August 2020 as an Own Initiative investigation in terms of section 7(1)(a) of the Public Protector Act, 1994, which empowers the Public Protector's Office to investigate complaints on an own initiative basis.
- (iv) In the main, the article alleged that:
  - (a) Some of the companies who were awarded the PPE tenders were handpicked and did not appear on the official database of the LDoH's suppliers;
  - (b) The companies who were awarded the tenders are owned by people who are politically connected;
  - (c) The companies who were appointed and awarded tenders belong to African National Congress (ANC) activists and relatives of senior officials, including prominent politicians; and

(d) The LDoH officials manipulated the procurement processes to benefit their associates and close comrades before locking away all PPE documents.

(v) **ISSUES IDENTIFIED AND INVESTIGATED**

**Based on analysis of the complaint and the allegations contained therein, the following issues were identified and investigated:**

(a) Whether the LDoH followed due processes in the procurement of PPE's;

(b) Whether there was nepotism and/or undue influence/favouritism in the appointment of service providers for the provision of PPE; and

(c) If yes, whether other prospective service providers suffered prejudice as a result of nepotism or favouritism in the awarding of the PPE tenders.

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

(vii) The investigation process included an exchange of correspondence and an analysis of all relevant documents and application of all relevant laws, policies and related prescripts.

(viii) 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.<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*”

- (ix) Section 7(9) Notices were served on the Head of the Department (HOD), the Member of the Executive Council (MEC) and the Premier. Written submissions or representations were received from the HOD in a letter dated 23 March 2021 followed by a meeting on 24 March 2021.
- (x) Prior to arriving at the findings of the Public Protector, all relevant documents and correspondence were obtained, considered and analysed. Relevant laws, policies and related prescripts were also considered and applied throughout the preliminary investigation.
- (xi) Key laws and prescripts taken into account to determine if there had been maladministration or improper conduct by the Limpopo Department of Health (LDoH) relating to the procurement irregularities and nepotism in the awarding of tenders for the supply and delivery of Personal Protective Equipment (PPE) are the following: -
  - (a) **The Constitution of the Republic of South Africa, 1996** [Act 106 of 1996] which is the supreme law of the Republic;
  - (b) **The Public Protector Act 23 of 1994** [Act No 23 of 1994] which is the key legislation giving effect to the provisions of section 182(1)(a) to (c) of the Constitution, 1996;

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

- (c) **Public Finance Management Act No 1 of 1999** (PMFA), which aims to regulate financial management in the national 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, to provide for matters connected therewith.
- (d) **National Treasury Practice Note No 8 of 2019/2020** (Practice Note) which regulates the use of emergency processes to procure goods and services;
- (e) **National Treasury Practice Note No 5 of 2020/2021** (Practice Note) which provided for the specifications and maximum prices the Institutions must use to procure the basic preventative PPE Items and cloth masks to contain and manage the transmission of the COVID-19 virus
- (f) **Treasury Regulations** issued to promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities.
- (g) **Preferential Procurement Policy Framework Act, 2000** (Act No. 5 of 2000) (PPPFA) to regulate the procurement policy and framework of organs of state. Its purpose is to enhance the participation of Historically Disadvantaged Individuals (HDIs) and small, medium and micro enterprises (SMMEs) in the public-sector procurement system.
- (h) **Departmental Supply Chain Management Policy, Circular No 63 of 2016**, which establishes a framework that will guide the Limpopo Department of Health in conducting best SCM practices.
- (xii) Having considered the evidence and information obtained during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

**(a) Regarding whether the LDoH followed due processes in the procurement of PPE's:**

(aa) The allegation that the LDoH did not follow due processes in the procurement of PPEs, is substantiated.

(bb) The LDoH procured the supply and delivery of PPE's through an emergency procurement process provided for in the Practice Notes.

(cc) The deviation was executed in terms of paragraph 14.2.5 of the SCM Procurement Policy of the Department which provides for the exemption or deviation from the normal bid procedures as necessitated by the emergency of the Covid-19 pandemic.

(dd) According to the evidence obtained, the deviation was reported within 10 working days to the Provincial Treasury on 25 March 2020, 02 June 2020, and 14 July 2020 and to AGSA on 02 June 2020 and 14 July 2020.

(ee) The HOD complied with the provisions of the Practice Notes, Treasury Regulations and Public Finance Management Act (PFMA) by reporting the deviation to the Provincial Treasury and AGSA within the prescribed time period. However, no evidence was provided to confirm that the March 2020 deviation was reported to the AGSA.

(ff) The Public Protector could not find evidence indicating that the Department did not follow paragraph 14.2.5 of the SCM policy or that the Department contravened National Instruction Note No.05 of 2020/2021: Emergency Procurement in response to the national disaster paragraph 3, which also regulates deviations from inviting bids in instances of emergency.

- (gg) Evidence was uncovered to prove that the LDoH did not comply with the National Treasury SCM Instruction Note 9 of 2017/18, paragraph 2.2 and 3.1 in the procurement of PPEs by appointing service providers who were not tax compliant.
- (hh) Though Mokgobedi Training and Consulting was awarded the PPE tender, the HOD confirmed that the company did not render services and as such was not paid. The Director of Mokgobedi Training and Consulting, Ms Motlatso Elizabeth Moloai also confirmed that the company did not render services and was not paid.
- (ii) Though Machawana Trading Enterprise was awarded the tender, the HOD confirmed that the company did not render services and as such was not paid by the Department. The Director of Machawana Trading Enterprise, Mr Milton Moagi confirmed telephonically on 10 December 2020, that his company did not render services as the order was cancelled because the service provider could not deliver services at the required time.
- (jj) Sedilaka Holdings and Projects as well as Tsopane Pharm Group supplied and delivered the PPEs, were paid for services rendered but did not claim Value Added Tax (VAT).
- (kk) The conduct of the HOD is in contravention of section 38(1)(a)(iii) by ensuring that there was an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective, 38(c)(ii) of the PFMA by preventing unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct , 81(b) of the PFMA by making or permitting an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure and 81(2) of the PFMA by wilfully or negligently failing to



exercise the power and duties to prevent unauthorised expenditure, assigned to her.

(II) The conduct of the HOD constitutes maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, and improper conduct as envisaged in section 182(1) of the Constitution.

**(b) Regarding whether there was nepotism and or undue influence/favouritism in the appointment of service providers for the provision of PPEs:**

(aa) The allegation that there was nepotism and or undue influence/favouritism in the appointment of service providers for the provision of PPEs, is unsubstantiated.

(bb) Mokgobedi Training and Consulting and Machawana Trading Enterprise are among companies which were awarded the PPE tenders but their orders were cancelled before services could be rendered.

(cc) Independently obtained evidence confirmed that the Directors of the following companies, i.e. NDIA Business Trading (Pty) Ltd; Luhura Trading and General Supplier and Mokgobedi Training and Consulting are politically connected and or related to senior officials in government but we could not find any evidence that confirms that there was nepotism and or undue influence/favouritism in the appointment of service providers for the provision of PPEs.

(dd) The HOD did not deny the relationship between the Directors of NDIA Business Trading (Pty) Ltd and the Deputy Chairperson of the ANC, Ms Florence Radzilani; Luhura Trading and General Supplier and Deputy Director-General for Institutional Support in the Premier's Office, Mr Eddie Managa as well as the relationship between the Director of

Mokgobedi Training and Consulting and the former MEC for Department of Sport, Arts and Culture, Ms Onicca Mokgobedi Moloi. However, she denied any relationship between the company Directors and the members of the Bid Evaluation Committee and Bid Adjudication Committee which could have influenced the procurement process within the LDoH.

(ee) The Public Protector could not find any evidence indicating that the MEC and HOD had any influence in the awarding of PPE tenders even though there is evidence that indicates that some of the service providers are related to politicians and senior government officials.

(ff) The Public Protector could not find evidence to prove the alleged possible influence in the procurement processes of the awarding of PPE tenders or the relationship between the Directors of the companies awarded tenders and officials of the department.

(gg) The conduct of the department did not constitute maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, and improper conduct as envisaged in section 182(1) of the Constitution.

**(c) Regarding whether other prospective service providers suffered prejudice as a result of nepotism or favouritism in the awarding of the PPE tender:**

(aa) The allegation that other service providers suffered prejudice as a result of nepotism or favouritism in the awarding of the PPE tender, is unsubstantiated.

(bb) The Public Protector could not find any evidence indicating undue influence, nepotism and or favouritism during the investigation in the awarding of PPE tenders to the said companies.

- (cc) Though the investigation team established that some of the appointed companies' Directors may be politically connected and/ or related to senior officials in government, the team could not find any evidence to confirm that there was any influence/favouritism or nepotism.
- (dd) The Public Protector could not find evidence indicating that other prospective service providers suffered any prejudice as a result of the alleged nepotism or favouritism in the awarding of PPE tender.
- (ee) The conduct of the Department did not constitute maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, and improper conduct as envisaged in section 182(1) of the Constitution.
- (xiii) The appropriate remedial action the Public Protector is taking in terms of section 182(1)(c) of the Constitution to remedy the maladministration and improper conduct referred to in this report are as follows:

**The Premier must:-**

- (a) **Within ninety (90) working days** of receipt of the report and in terms of section 38(1)(h), take disciplinary action against the HOD for contravening section 38(1)(a)(iii),(c)(ii) and 81(b) of the PFMA.

**The Acting HOD must:-**

- (b) **Within sixty (60) working days** of receipt of the report take appropriate disciplinary action against all Supply Chain Management (SCM) officials who were involved in the procurement of the PPE for contravention of paragraph 13.3 (a)(b) and (c) of the SCM policy, paragraph 14(d) and (j) of

the Public Service Regulations of 2016 and section 45(a), (b) and (c) of the PFMA;

- (c) **Within one hundred and twenty (120) working days** of receipt of the report and upon discovery of any unauthorised, irregular or fruitless and wasteful expenditure, immediately report in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services in terms of section 38(1)(g) of the PFMA;
- (d) Ensure that Internal Audit Unit, on an annual basis, review the adequacy and effectiveness of the Department's system of internal control, risk management and supply chain management.
- (e) Ensure that the Audit Committee of the Department, in all its meetings, consider the internal audit and AGSA reports to ensure that the recommendations are implemented.
- (f) In terms of paragraph 17.1.2 (a) of the SCM Policy, report any criminal conduct to the South African Police Service.

## REPORT ON OWN INITIATIVE INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, PROCUREMENT IRREGULARITIES AND NEPOTISM IN THE AWARDING OF TENDERS FOR THE SUPPLY AND DELIVERY OF PERSONAL PROTECTIVE EQUIPMENT BY THE LIMPOPO DEPARTMENT OF HEALTH

### 1. INTRODUCTION

- 1.1 This is the report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa Act, No. 108 of 1996, (the Constitution) and published in terms of section 8(1) of the Public Protector Act, No. 23 of 1994, (the Public Protector Act).
- 1.2 The report relates to an own initiative investigation into allegations of maladministration by the Limpopo Department of Health (LDoH) relating to the procurement irregularities and nepotism in the awarding of tenders for the supply and delivery of Personal Protective Equipment (PPE).
- 1.3 The report is submitted in terms of section 8(3) of the Public Protector Act to the following persons to note the outcome of the investigation and to implement the remedial action taken:
- 1.3.1 The Premier of Limpopo Province, Hon Chupu Stanley Mathabatha;
- 1.3.2 The MEC of the Limpopo Department of Health, Dr Phophi Constance Ramathuba;
- 1.3.3 The Acting HOD of the Limpopo Department of Health, Dr M Dombo ;
- 1.3.4 A copy of the report is also submitted to the Head of the Limpopo Auditor General of South Africa, Mr S Kheleli
- 1.3.5 A copy of the report is also submitted to Limpopo Treasury, Mr G Pratt.

## 2. OWN INITIATIVE INVESTIGATION

2.1 The investigation commenced on 17 August 2020 as an own initiative investigation by the Public Protector South Africa (PPSA) in terms of section 6(4) of the Public Protector Act.

2.2 The Public Protector Limpopo Provincial Office came across a newspaper article titled “A R932m PPE mess” which was published in the *Sunday Independent* newspaper. The article prompted the office to register a complaint on 17 August 2020 as an Own Initiative investigation in terms of section 7(1)(a) of the Public Protector Act, 1994, which empowers the Public Protector’s Office to investigate complaints on an own initiative basis.

(iv) In the main, the article alleged that:

(a) Some of the companies who were awarded the PPE tenders were handpicked and did not appear on the official database of the LDoH’s suppliers;

(b) The companies who were awarded the tenders are owned by people who are politically connected;

(c) The companies who were appointed and awarded tenders belong to African National Congress (ANC) activists and relatives of senior officials, including prominent politicians; and

(d) The LDoH officials manipulated the procurement processes to benefit their associates and close comrades before locking away all PPE documents.

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

#### **3.1 The mandate of the Public Protector**

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

3.1.2 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”.*

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

3.1.4 The Public Protector’s powers are regulated and amplified by the Public Protector Act, which states, among others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act also confers powers on the Public Protector to resolve disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as subpoena persons and information from any person in the Republic for the purposes of an investigation.

3.1.5 The Limpopo Department of Health is an organ of state and its conduct amounts to conduct in state affairs. This matter, falls within the ambit of the Public Protector's mandate.

3.1.6 The jurisdiction of the Public Protector was not disputed by any of the parties in this matter.

## **4. THE INVESTIGATION**

### **4.1 Methodology**

4.1.1 The investigation of the complaint was conducted in terms of section 182(1)(a) of the Constitution which gives the Public Protector the powers 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; to report on that conduct; and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, that regulates the manner in which the powers conferred by section 182 of the Constitution may be exercised in respect of government at any level.

4.1.2 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. Section 6 of the Public Protector Act gives the Public Protector the authority to resolve a matter through Alternative Dispute Resolution (ADR) measures such as conciliation, mediation and negotiation.

4.1.3 The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Head of the Department of Health and the Member of the Executive Council of the Department of Health as well as



perusal of all relevant documents, the analysis and application of all relevant laws, policies and related prescripts.

## **4.2 Approach to the investigation**

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

- (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 amounts to maladministration or other improper conduct?
- (d) In the event of maladministration or improper conduct, what would it take to remedy the wrong or to place the Complainant as close as possible to where he/she would have been but for the maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination was made on what happened based on a balance of probabilities. The Supreme Court of Appeal<sup>2</sup> (SCA) made it clear that it is the Public Protector's duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do.

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<sup>2</sup> *Public Protector v Mail and Guardian* 2011(4) SA 420 (SCA).

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

4.2.4 The enquiry regarding the remedial or corrective action seeks to explore options for redressing the consequences of maladministration or improper conduct. Where a Complainant has suffered prejudice, the idea is to place him or her as close as possible to where they would have been had the LDoH complied with the regulatory framework setting the applicable standards for good administration.

**4.3 On analysis of the complaint, the following issues were considered and investigated:**

4.3.1 Whether the LDoH followed due processes in the procurement of PPE's;

4.3.2 Whether there was nepotism and/or undue influence/favouritism in the appointment of service providers for the provision of PPE; and

4.3.3 If yes, whether other prospective service providers or the taxpayers suffered prejudice as a result of nepotism or favouritism in the awarding of the PPE tender.

**4.4 The key sources of information**

**4.4.1 Documents**

4.4.1.1 Copy of the newspaper article from the Sunday Independent newspaper dated 16 August 2020;

4.4.1.2 Seventeen (17) copies of Central Supplier Database Certificates (CSD);

#### **4.4.2 Correspondence sent and received**

- 4.4.2.1 Letter from PPSA to the HOD dated 24 August 2020;
- 4.4.2.2 Letter from the HOD to PPSA dated 03 September 2020;
- 4.4.2.3 Letter from PPSA to the MEC dated 28 September 2020;
- 4.4.2.4 Sworn statement from the MEC dated 08 October 2020;
- 4.4.2.5 Letter from the HOD to the Provincial Treasury dated 25 March 2020;
- 4.4.2.6 Letter from the HOD to the Provincial Treasury dated 02 June 2020;
- 4.4.2.7 Letter from the HOD to the AGSA dated 02 June 2020;
- 4.4.2.8 Letter from the HOD to the Provincial Treasury dated 14 July 2020;
- 4.4.2.9 Letter from the HOD to the AGSA dated 14 July 2020;
- 4.4.2.10 Letter from PPSA to the HOD dated 04 November 2020;
- 4.4.2.11 Letter from the HOD to PPSA dated 13 November 2020;
- 4.4.2.12 Letter from PPSA to the HOD dated 24 November 2020;
- 4.4.2.13 Letter from the HOD to PPSA dated 30 November 2020; and
- 4.4.2.14 Letter from the MEC and the HOD dated 23 March 2021.

#### **4.4.3 Meeting**

- 4.4.3.1 Meeting with the HOD on 24 March 2021

#### **4.4.4 Legislation and other prescripts**

- 4.4.4.1 The Constitution of the Republic of South Africa, 1996.
- 4.4.4.2 The Public Protector Act 23 of 1994.
- 4.4.4.3 Public Finance Management Act No 1 of 1999 (PMFA)
- 4.4.4.4 National Treasury Practice Note No 8 of 2019/2020 (Practice Note)
- 4.4.4.5 National Treasury Practice Note No 5 of 2020/2021 (Practice Note)

4.4.4.6 Treasury Regulations

4.4.4.7 Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA)

4.4.4.8 Departmental Supply Chain Management Policy, Circular No 63 of 2016

#### **4.4.5 Case Law**

4.4.5.1 *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC).

4.4.5.2 *President of the Republic of South Africa v Office of the Public Protector and Others* Case [2017] ZAGPPHC 747.

4.4.5.3 *Public Protector v Mail and Guardian* 2011(4) SA 420 (SCA).

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

#### **5.1 Whether the LDoH followed due processes in the procurement of PPE's**

##### *Common cause issues*

5.1.1 The Sunday Independent newspaper published an article titled "*Limpopo's R932m PPE tender mess*" on 16 August 2020.

5.1.2 In the newspaper article, the following were alleged: "*The majority of successful bidders appear to be politically connected individuals, ANC activist and relatives of senior officials and prominent politicians. They*

*include the 22 year old daughter of former Limpopo sports MEC, Onicca Mokgobedi Moloji, Motlatso Elizabeth Moloji, who scored a 2.2m contract. Moloji and provincial Health MEC, Dr Phophi Ramathuba, are allegedly close friends and comrades who served together in Premier Stan Mathabatha's fifth administration cabinet.*

*Other major beneficiaries included ENPRO Laboratories R64m, Mizana Trading R53m, Tsopane Pharmacy R39m, Clinipro R30m, Sedilaka Holdings and Projects R21.5m, Pro Asanta R10m, Smandi Projects Management R14m, Mkhacani Holdings (Pty)Ltd R 8.3m, RIHM R7.5m, Machawana Trading Enterprise R6m, 777 MPS Logistics, Ngoako Holdings R17.7m, Confidence no 1 Trading (Pty) Ltd R8.3m, Luhura Trading and General Supplier R1.2M, ProSecure(Pty)Ltd, R151,629,083.71, Mokgobedi Training and Consulting R2.2m, AG Medical R1,6m, NDIA Business Trading (Pty) Ltd R1.1m”.*

- 5.1.3 The tender was awarded to 216 companies, but the investigation was only focused on the 18 Companies mentioned in the article with the focus on alleged political connections to ANC activists, relatives of senior officials and prominent politicians.

Issues in dispute

- 5.1.4 The newspaper article reported that some of the companies that were awarded the PPE tenders were handpicked and do not appear on the supplier database of the LDoH.
- 5.1.5 On 24 August 2020, the investigation team raised the matter with the Head of Department (HOD), Dr TF Mhlongo.
- 5.1.6 On 03 September 2020, the HOD responded by indicating the following:

*“8.1 The Department applied a three approach procurement process for the procurement of PPE’s as follows: 1st and 2<sup>nd</sup> Procurement approach: Procurement from National Treasury RT Contracts and from the Department Contracts;*

*8.1.1.1 All medical related PPE’s or products are covered in either the National Treasury RT contracts or Departmental contracts. Therefore, the first step taken by the Department was to place orders with both RT and Departmental Contractors.*

*8.2. 3<sup>rd</sup> Procurement Approach: Emergency Procurement Process in terms of the following National Treasury Instruction Notice: Note 08 of 2019/20*

*(Emergency Procurement in Response of National State of Disaster) and NT SCM Note no 03 of 2016/17(Prevention and Combating Abuse in the Supply Chain Management System.*

*8.3. The procurement approaches in 8.1 above indicated challenges in the supply market which was caused by the confirmation of COVID-19 by the World Health Organization as pandemic. The confirmation of COVID-19 as a pandemic resulted in a severe and mounting disruptions to the global supply of personal protective equipment (PPE’s).This resulted in the market volatility wherein the contractors were unable to supply the department at contracted rates within the required timeframes. This resulted in approach 3 as outlined in 8.2 above being applied.*

*8.4.Due to challenges highlighted in 8.3 above coupled with the mounting pressure to minimize the impact of COVID – 19 it was incumbent of the Department to follow the emergency procurement process detailed in*

*instruction notes issued by National Treasury for Emergency Procurement Process in Response to the National State of Disaster listed above” (sic).*

- 5.1.7 The HOD indicated that all the medically related PPE’s or products were procured both through National Treasury RT contracts or Departmental contracts and through Emergency Procurement Process in terms of the National Treasury Instruction Notice: Note 08 of 2019/20.
- 5.1.8 The HOD indicated that the reasons for deviation were reported to the Provincial Treasury and the Auditor-General South Africa (AGSA) within 10 working days from date of procurement of goods and services.
- 5.1.9 The HOD also furnished the office with copies of the letters dated 25 March 2020, 02 June 2020 and 14 July 2020 respectively in which the reasons for the deviation were reported to the Provincial Treasury.
- 5.1.10 She also furnished the office with copies of letters dated 02 June 2020 and 14 July 2020 in which the reasons for deviation were reported to the Auditor-General South Africa (AGSA) within 10 working days from date of appointment of the service provider.
- 5.1.11 In response to the Public Protector’s Section 7(9) notice, the MEC responded in a letter dated 23 March 2021, and indicated the following:  
*“Your letter dated 05 March 2021 is hereby acknowledged with thanks. Let me indicate to your office that after going through your preliminary report, as you will appreciate issues raised are mainly Supply Chain Processes, which are of administrative in their nature and the accounting officer has the final say on the matter, I did engaged the accounting officer who gave a thorough report and clarify all issues that were raised as findings by the preliminary report to my satisfaction.*

*According to your preliminary report, the HOD dispute report and the*

*newspaper article which prompted your investigation one could come to a conclusion that out of a total of 216 companies that were awarded PPEs contracts in the Limpopo department of health, only 15 were alleged to have been awarded through nepotism and corruption because of political connections, of which only three companies were found to be belonging to people who are close relatives of politicians of which none of them belongs to a relative or friend of any employee within the department of health. The three companies in terms of your report, one belongs to a daughter of a deputy chair of the ANC, another to the wife of a DDG at premier's office and a third belonging to a daughter of a former politician, former MEC who is currently not in any political or government position. None of these people have influence in the awarding of tenders including the appointment of Human Resources within the department of health. Out of those three companies two companies were paid because they delivered the goods as required. I am therefore of the view that perceptions created on the public space looking at these facts are very wrong, department followed processes stipulated by the law when awarding PPEs tenders. The HOD report is hereby attached."*

- 5.1.12 The MEC denied any involvement in the procurement process, supply and delivery of PPE's. She indicated that this function was purely of an administrative nature and the only person accountable in this regard was the HoD who had prepared a report in response to the allegations mentioned in the newspaper article.
- 5.1.13 In response to the Public Protector's Section 7(9) notice, the HOD responded in a letter dated 23 March 2021, and denied the existence of any relationship with the appointed companies or that she unduly influenced, favoured, or that there was nepotism in the awarding of the tender for the supply and delivery of PPE.



- 5.1.14 A meeting was held on 24 March 2021 with LDoH officials responsible for Supply Chain Management. The meeting was held at the request of the LDoH with a view of detailing and explaining the process followed to procure PPE and the appointment of service providers in response to the Section 7(9) Notice. The officials reiterated what was captured in their letters referred to above.
- 5.1.15 On 08 September 2021, the Provincial Treasury and the AGSA were requested to confirm whether the above deviation letters were received from the LDoH.
- 5.1.16 In a letter dated 09 September 2021, the Provincial Treasury confirmed that the Provincial Treasury Transversal Supply Chain Management Unit received the deviation letters from the LDoH in terms of Treasury Regulation 16.A.6 dated 25 March 2020, 02 June 2020 and 14 July 2020 respectively.
- 5.1.17 In a letter dated 13 September 2021, the AGSA confirmed that the LDoH reported the deviations in terms of Treasury Regulation 16.A.6 in letters dated 02 June 2020 and 14 July 2020 respectively.
- 5.1.18 The investigation team independently obtained evidence from the National Treasury's Central Supplier Database (CSD) in respect of the registration, Directorship and the tax status of the eighteen (18) companies.
- 5.1.19 Out of the eighteen (18) companies mentioned in the newspaper article, no evidence was uncovered on fourteen (14) companies to support the allegation that they are not tax compliant or not registered on the CSD.
- 5.1.20 The fourteen (14) companies referred to above are: ENPRO Laboratories; Mizana Trading; Clinipro; Pro Asanta; Mkhacani Holdings (Pty) Ltd; RIHM; Machawana Trading Enterprise; 777 MPS Logistics; Ngoako Holdings;

Confidence no.1 Trading (Pty) Ltd; Luhura Trading; Smandi Project Management and General Supplier; AG Medical, Ndia Business Trading (Pty) Ltd.

5.1.21 Out of the eighteen (18) companies mentioned, only two (2) companies, viz. Tsopane Pharmacy and Mokgobedi Training and Consulting were found to be non-tax compliant. The tax status of Sedilaka Holdings and Projects on the CSD indicated the following: *“Unable to determine the tax compliance and taxpayer information provided does not match or could not be found”* and with Pro Secure its tax status could not be determined.

5.1.22 Out of the two (2) companies whose tax status could not be determined on the CSD, it was uncovered that only Sedilaka Holdings and Projects rendered services and was paid by the Department.

5.1.23 Out of the two (2) companies appointed which were not tax compliant, only Tsopane Pharmacy rendered a service and was paid by the Department.

5.1.24 The evidence obtained (invoices) from the LDoH reveal that Sedilaka Holdings and Projects was paid as follows:

Date of Payment	Description of item	Amount
1. 06-04-2020	100 000 Surgical masks	R2,000 000,00
2. 17-04-2020	150 000 Surgical masks	R3,000 000,00
3. 20-04-2020	50 000 Surgical masks	R1,000 000,00
4. 18-04-2020	100 000	R2,000 000,00

REPORT ON OWN INITIATIVE INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, PROCUREMENT IRREGULARITIES AND NEPOTISM IN THE AWARDING OF TENDERS FOR THE SUPPLY AND DELIVERY OF PERSONAL PROTECTIVE EQUIPMENT BY THE LIMPOPO DEPARTMENT OF HEALTH

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	Surgical masks	
5. 24-04-2020	50 000 Surgical masks	R1,000 000,00
6. 29-04-2020	150 000 Surgical masks	R3,000 000,00
<b>Total</b>		<b>R12,000 000.00</b>

5.1.25 The evidence (invoices) obtained from the LDoH reveal that Tsopane Pharmacy was paid as follows:

Date of Payment	Description of item	Amount
1. 21-04-2020	350ml of hand-rubs , 2227 of 100 000	R66 587, 30
2. 28-04-2020	350ml of hand-rubs , 5166 of 100 000	R154 463,40
3. 11-05-2020	350ml of hand-rubs , 6174 of 100 000	R184 602,60
4. 11-05-2020	350ml of hand-rubs , 5544 of 100 000	R164 765,60
5. 15-05-2020	350ml of hand-rubs , 5796 of 100 000	R173 300,40
6. 19-05-2020	Chlorhex 0,5%	R165 765 ,60

7. 19-05-2020	Chlorhex 0,5%	R184 602,60
8. 20-05-2020	50 000 Surgical masks	R1, 000 000,00
9. 07-08-2020	350ml of hand-rubs , 5166 of 100 000	R154 463 ,40
<b>Total</b>		<b>R2 587 616,90</b>

5.1.26 The procurement of the PPE's was done centrally by the Limpopo Department of Health pharmaceutical depot and all other institutions in the province would then place their orders directly at the depot according to their needs. The Department procured the PPE's in bulk and supplied all other institutions in the province.

Application of the relevant law

5.1.27 Section 217 (1) of the Constitution stipulates that: "*When an organ of state in the national or local government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with the system which is fair, equitable, transparent, competitive and cost-effective*".

5.1.28 It was required of the LDoH to procure goods and services from the service providers in a fair, equitable, transparent, competitive and cost- effective manner.

5.1.29 The HOD indicated that the supply and delivery of PPE were procured through an emergency procurement process in terms of National Treasury Instruction No. 08 of 2019/20 issued in response to the National State of Disaster (COVID 19).

- 5.1.30 Clause 3.5.1 of the National Treasury Practice Note No 8 of 2019/2020 (Practice Note) provides that: *“If an item is not listed on Annexure A, and is deemed to be a specific requirement for the institution, the Emergency procurement prescripts may be followed:*
- I. Accounting Officers of national and provincial departments and accounting authorities of national and provincial public entities may deviate for inviting competitive bidding in cases of emergency – paragraph 8.1 and 8.2 of National Treasury SCM Instruction 3 of 2016/2017. This does not require National Treasury’s approval”.*
- 5.1.31 Treasury Regulations 16A6.4 ( the Regulations) provide 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 competitive bids must be recorded and approved by the accounting officer or accounting authority”*
- 5.1.32 Both the Practice Notes and the Regulations allow the accounting officer of an organ of state to deviate in circumstances where it is impractical to invite competitive bids and to report such deviation to the Provincial Treasury and AGSA within 10 working days all cases where goods and services were procured.
- 5.1.33 It was required of the HOD, as the accounting officer, to report the deviation to both the Provincial Treasury and AGSA within 10 working days on all cases where goods and services were procured but compliance with other supply chain processes should not be comprised or selectively applied.

5.1.34 Section 41 of the Public Finance Management Act No 1 of 1999 (PMFA) provides that: *“An accounting officer for a department, trading entity or constitutional institution must submit to the relevant treasury or the Auditor-General, such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require”*

5.1.35 Copies of the letters obtained from the Department indicates that the deviation was reported to both the Provincial Treasury and AGSA within 10 working days, on 25 March 2020, 02 June 2020, and 14 July 2020, and to the AGSA on 02 June 2020 and 14 July 2020 respectively.

5.1.36 The National Treasury SCM Instruction Note 9 of 2017/18, paragraph 2.2 and 3.1 state the following:

*“2.2 It is therefore essential to ensure that persons conducting business with the State are tax compliant at the time of the awarding of price quotations or competitive bids. No price quotations or competitive bids shall be awarded to businesses or persons who are not tax compliant.*

*3.1 In order to comply with the provisions indicated in paragraph 2 above and the condition **that successful bidder's taxes must be in order, accounting officers and accounting** authorities of all PFMA compliant institutions must:*

- a) *Designate officials, preferably from the Supply Chain Management Unit, whose function will be to verify the tax compliance status of a bidder on the South African Revenue Service's Tax Compliance Status system housed on eFiling. Guidance on the functionality of the Tax Compliance Status system on eFiling is available on the*

*South African Revenue Service website [www.sars.gov.za](http://www.sars.gov.za);*

- b) *Utilise the SBD1 issued with this Treasury Instruction when inviting bids;*
- c) *As a bid condition, accounting officers and accounting authorities must request bidders to register on Government's Central Supplier Database and to include in their bid their Master Registration Number (Supplier Number) in order to enable the institution to verify the supplier's tax status on the Central Supplier Database;*
- d) *Utilise the tax compliance status PIN or the Central Supplier Database Master Registration Number (MAAA number) to verify the bidders' tax compliance status; and"*

5.1.37 It was required of the HOD to ensure that persons conducting business with the state are tax compliant at the time of the awarding of price quotations or competitive bids.

5.1.38 Paragraph 4.4 of the National Treasury SCM Instruction Note 9 of 2017/18 states that:

*"Where goods or services have been delivered satisfactorily without any dispute, accounting officers and accounting authorities must not delay the processing of payments as a result of outstanding tax matters".*

5.1.39 Though it was required of the LDoH not to delay the processing of payments as a result of the outstanding tax matters, there were no delays with regard to the payment for the services or goods delivered.

5.1.40 National Treasury Instruction No. 5 of 2020/21: Emergency Procurement in response to National State of Disaster, paragraph 4.4 stipulates that:

*“During the duration of the state of disaster, the supply of the PPE items will be open to all suppliers that conform to the COVID-19 item specifications issued by the World Health Organisation (WHO) and the National Department of Health (NDOH)”.*

5.1.41 Though it was required of government Departments to appoint all service providers that conform to the COVID-19 item specifications issued by WHO and the National Department of Health, no evidence was uncovered for non-compliance thereto.

#### Conclusion

5.1.42 Based on the evidence, it can be concluded that the PPE’s were procured both through National Treasury RT contracts or Departmental contracts and through Emergency Procurement Process in terms of the National Treasury Instruction Notice: Note 08 of 2019/20.

5.1.43 The acquisition, supply and delivery of PPE was not through competitive bids, but were procured both through National Treasury RT contracts or Departmental contracts and through Emergency Procurement Process in terms of the National Treasury Instruction Notice: Note 08 of 2019/20.

5.1.44 The HOD reported the deviation from the competitive bidding process to both the Provincial Treasury and AGSA within 10 working days from the date of appointment of the service provider, as required by law but the Department failed to report the first deviation of March 2020 to the AGSA.

5.1.45 Only NDIA Business Trading (Pty) Ltd and Luhura Trading and General Supplier were tax compliant. Mokgobedi Training and Consulting was not



tax compliant but did not render any service.

- 5.1.46 The Public Protector could not find evidence indicating that the service providers did not comply with the requirement the COVID-19 item specifications issued by the World Health Organisation (WHO) and the National Department of Health (NDOH).
- 5.1.47 The Department appointed service providers by issuing orders without verifying the tax status of Tsopane Pharmacy and Mokgobedi Training and Consulting.
- 5.1.48 The Department paid an amount of R1 000 000, 00 on 20 May 2022 to Tsopane Pharmacy for the procurement of 50 000 Surgical Masks.
- 5.1.49 The HOD appointed service providers who were not tax compliant in contravention of the National Treasury SCM Instruction Note 9 of 2017/18, paragraph 2.2 and 3.1.

**5.2 Whether there was nepotism and or undue influence/favouritism in the appointment of service providers for the provision of PPEs:**

Common cause facts

- 5.2.1 NDIA Business Trading (Pty) Ltd, Luhura Trading and General Supplier and Mokgobedi Training and Consulting, were amongst the companies who were awarded the PPE tenders.
- 5.2.2 NDIA Business Trading (Pty) Ltd is owned by Ms Ndivhuwo Radzilani, who is the daughter of the ANC Deputy Chairperson in the Province, Ms Florence Radzilani.

5.2.3 Luhura Trading and General Supplier is owned by Ms Suzan Managa, who is the wife of Mr Eddie Managa, the Deputy Director-General for Institutional Support in the Premier's Office.

5.2.4 Mokgobedi Training and Consulting is owned by Ms Motlatso Elizabeth Moloji, who is the daughter of the former MEC of the Limpopo Department of Sport, Arts and Culture, Ms Mokgobedi Onicca Moloji.

Issues in dispute

5.2.5 It was reported in the Newspaper article that the companies which were awarded the tenders, are owned by people who are politically connected.

5.2.6 It was also reported that the companies that were awarded tenders belong to ANC activists and relatives of senior officials, including prominent politicians.

5.2.7 The investigation team independently obtained evidence from the National Treasury's Central Supplier Database (CSD) in respect of the registration, Directorship and the status of the eighteen (18) companies but the focus of the investigation was on following companies which allegedly had political connections: NDIA Business Trading (Pty) Ltd; Luhura Trading and General Supplier, and Mokgobedi Training and Consulting.

5.2.8 Out of the eighteen (18) companies mentioned in the newspaper article, no evidence was uncovered regarding fifteen (15) companies to support the allegation that they are either owned by people who are politically connected or ANC activists as evidenced by the analysis of bank and cell phone records.

- 5.2.9 The fifteen (15) companies referred to are: ENPRO Laboratories; Mizana Trading; Tsopane Pharmacy; Clinipro; Sedilaka Holdings and Projects; Pro Asanta; Smandi Projects Management; Mkhacani Holdings (Pty) Ltd; RIHM; Machawana Trading Enterprise; 777 MPS Logistics; Ngoako Holdings; Confidence no.1 Trading (Pty) Ltd; Pro Secure (Pty) Ltd and AG Medical.
- 5.2.10 The HOD in her response dated 03 September 2020 confirmed that NDIA Business Trading (Pty) Ltd, Luhura Trading and General Supplier and Mokgobedi Training and Consulting were amongst the companies that were awarded the PPE tenders. However, she denied any relationship between any of the company Directors and the members of the Bid Evaluation Committee (BEC) and Bid Adjudication Committee (BAC) which could have influenced the procurement process within the LDoH.
- 5.2.11 The invoices and proof of payments obtained from the LDoH indicates that Sedilaka Holdings and Tsopane Pharm Group supplied and delivered the PPE, were paid for their services and did not claim VAT.
- 5.2.12 Though Mokgobedi Training and Consulting, was awarded the tender, no services were rendered and the company was not paid.
- 5.2.13 The bank records of Mokgobedi Training and Consulting were analysed for the period 01 January 2020 to 31 August 2020, the analysis did not reveal suspicious transactions, deposits or withdrawals of large amounts. The account had a total amount of only R863.38.
- 5.2.14 The CSD certificates also show that two (2) companies, i.e. Mokgobedi Training and Consulting and Sedilaka Holdings and Projects were in the process of deregistration/conversion when they were awarded the PPE

tender but were active to be considered for appointment.

- 5.2.15 On 24 September 2020, bank records of NDIA Business Trading (Pty) Ltd, Luhura Trading and General Supplier and Mokgobedi Training and Consulting were subpoenaed for the period 01 January 2020 ending 31 August 2020, and same were received on 29 October 2020.
- 5.2.16 An analysis of NDIA Business Trading (Pty) Ltd banking records for the period 01 January 2020 to 31 August 2020, the analysis did not reveal suspicious transactions, deposits or withdrawals of large amounts.
- 5.2.17 An analysis of Luhura Trading and General Supplier banking records for the period 01 January 2020 to 31 August 2020, the analysis did not reveal suspicious transactions, deposits or withdrawals of large amounts.
- 5.2.18 An analysis of Mokgobedi Training and Consulting banking records for the period 01 January 2020 to 31 August 2020, the analysis did not reveal suspicious transactions, deposits or withdrawals of large amounts.
- 5.2.19 On 07 October 2020, the Cellphone records of the Directors of the companies who were awarded PPE tenders, viz Mokgobedi Training and Consulting, Luhura Trading and General Supplier, and NDIA Business Trading (Pty) Ltd who were allegedly connected to prominent politicians and LDoH officials were subpoenaed for the period 01 January 2020 ending 31 August 2020, and same were received on 29 October 2020.
- 5.2.20 On analysis of the cellphone records of Dr Phophi Ramathuba: MEC of the Department of Health Limpopo Province for the period 01 January 2020 to 31 August 2020, the analysis did not reveal any incoming or outgoing calls linking the Directors of the companies and prominent politicians. No

cellphone numbers of any of the Directors of companies or service providers that supplied and delivered PPE's to the LDoH were found on her cellphone records.

- 5.2.21 For the period in question, no incoming or outgoing cellphone numbers of Ms Moloi Onicca and Ms Florence Radzilani were found in the MEC's cellphone records even though they are members of the same political party and served together.
- 5.2.22 No communication link could be established between the MEC and the Directors of the appointed service providers and prominent politicians.
- 5.2.23 No communication link could be established between the MEC and senior government official, Mr Eddie Managa.
- 5.2.24 No communication link could be established between the Directors of the service providers and the HOD, Dr Mhlongo and the Chief of staff, Ms Nyambeni.
- 5.2.25 On 28 September 2020, the MEC was requested to provide the investigation team with a sworn statement regarding her role in the awarding of the PPE tender as well as her relationship with the Directors of NDIA Business Trading (Pty) Ltd; Luhura Trading and General Supplier and Mokgobedi Training and Consulting that could have influenced the procurement process and the ultimate awarding of the tender to those companies.
- 5.2.26 In a sworn statement dated 08 October 2020, the MEC declared that she did not play any role in the supply chain processes which led to the awarding and appointment of any service provider for supplying and delivering of Personal Protective Equipment to the Limpopo Department of Health. She also declared that Ms Onicca Mokgobedi Moloi was not her friend or her

close friend. Also, that the latter is her former colleague whom she served together with as Members of the Executive Council during the 5<sup>th</sup> Administration. Further, that Ms Onicca Mokgobedi Moloji was the MEC responsible for Sports, Arts and Culture, while she as HOD was responsible for health and as such they were forced to collaborate on Departmental programs.

5.2.27 The HOD also indicated in a letter dated 13 November 2020 that: *“I am unable to provide you with the Tax Clearance Certificates of the business entities contained in the above mentioned letter. Please be informed that submission of Tax Clearance Certificate was not a requirement for these Request for Quotations. In terms of National Treasury Instruction Note number 09/2017/2018, the Accounting Officer must require Central Supplier Database Master Registration number or Tax Compliance status pin. It further states that the Central Supplier database and the tax compliance tax status pin are the only approved methods of verifying the tax compliance status of a bidder. The Department has required the Central Supplier Database Master Registration number. We are prepared to supply the Public Protector with the CSD for all the service providers in question if that will suffice. The department will await your guidance”*

5.2.28 In a letter dated 30 November 2020, the HOD indicated the following: *“NB Mokgobedi Training and Consulting and Machawana Training Enterprise did not render the services hence there are no payments attached”*. This was confirmed by the analysis of the bank statements.

5.2.29 Ms Motlatso Moloji of Mokgobedi Training and Consulting in an email dated 16 December 2020, corroborated the statement of the Department that her company was not paid because it did not render any services. She indicated the following:

*“Good day. Please find attached communications with the Department of*

*Health in Limpopo.*

*This is in regard to the PPE tender my company Mokgobedi Training and Consulting. After bidding for the tender, we received an award letter on the 23rd of June.*

*Thereafter, we were sent specific orders on the 25th of which were cancelled before we could even render services”.*

5.2.30 On 10 December 2020, Mr Milton Moagi, the Director of Machawana Trading Enterprise confirmed telephonically that his company did not render services and was not paid by the Department.

5.2.31 In a letter dated 23 March 2021 the HOD indicated that all three (3) companies i.e. NDIA Business Trading (Pty) Ltd; Luhura Trading and General Supplier and Mokgobedi Training and Consulting, *“did not declare any interest with regard to any relationship with persons within the department who are involved in the evaluation and adjudication of this bid. In terms of the minimum requirements of the declaration of interest as prescribed by the National Treasury, NDIA Business Trading (Pty) Ltd; Luhura Trading and General Supplier and Mokgobedi Training and Consulting did not mention any other relationships warranting the department to disqualify them as a bidder. Therefore, the department is not aware of any other personal relationship between the Directors of NDIA Business Trading (Pty) Ltd; Luhura Trading and General Supplier and Mokgobedi Training and Consulting that could influence the procurement process within the department”.*

5.2.32 In a letter dated 23 March 2021, the MEC in response to the Section 7(9) Notice, responded as follows:

*“Your letter dated 05 March 2021 is hereby acknowledged with thanks. Let me indicate to your office that after going through your preliminary report,*

*as you will appreciate issues raised are mainly Supply Chain Processes, which are of administrative in their nature and the accounting officer has the final say on the matter, I did engaged the accounting officer who gave a thorough report and clarify all issues that were raised as findings by the preliminary report to my satisfaction.*

*According to your preliminary report, the HOD dispute report and the newspaper article which prompted your investigation one could come to a conclusion that out of a total of 216 companies that were awarded PPEs contracts in the Limpopo department of health, only 15 were alleged to have been awarded through nepotism and corruption because of political connections, of which only find three companies were found to be belonging to people who are close relatives of politicians of which none of them belongs to a relative or friend of any employee within the department of health. The three companies in terms of your report ,one belongs to a daughter of a deputy chair of the ANC, another to the wife of a DDG at premier's office and a third belonging to a daughter of a former politician, former MEC who is currently not in any political or government position. None of these people have influence in the awarding of tenders including the appointment of Human Resources within the department of health. Out of those three companies two companies were paid because they delivered the goods as required. I am therefore of the view that perceptions created on the public space looking at these facts are very wrong, department followed processes stipulated by the law when awarding PPEs tenders. The HOD report is hereby attached.”(sic)*

- 5.2.33 The MEC denied any involvement in the procurement process, supply and delivery of PPE. She indicated that this function was purely of an administrative nature and the only person accountable in this regard was the HOD who had prepared a report in response to the allegations mentioned by the newspaper article. Further, that only three (3)



companies were found to belong to people who are close relatives of politicians.

- 5.2.34 The MEC's response is accepted because she is only the political head of the LDoH and does not deal with issues of procurement in the department though she has an oversight role. Further, no evidence was uncovered to suggest that she was involved with the LDoH's procurement processes.
- 5.2.35 The argument by the MEC that the Directors of the companies mentioned did not have any relationship with the LDoH or its staff which could have influenced the awarding of the PPE tenders to people who are politically connect is accepted. No evidence was uncovered to suggest that the staff of the LDoH were influenced in the awarding of the PPE tender to the various service provider.
- 5.2.36 In a letter dated 23 March 2021, the HOD in response to the Section 7(9) Notice, denied the existence of any relationship with the appointed companies and that she unduly influenced, favoured or that there was nepotism in the awarding of the tender for the supply and delivery of PPE.
- 5.2.37 The HOD indicated that the National Treasury introduced the Standard Bidding Document 4 known as Declaration of Interest which states that :
- “Any legal person, including persons employed by the state, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes an advertised competitive bid, a limited bid, a proposal or written price quotation). In view of **possible allegations of favouritism**, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the*

*bidder or his/her authorised representative declare his/her position in relation to the **evaluating/adjudicating authority** where-*

- *the bidder is employed by the state; and/or*
- *the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid”.*

- 5.2.38 It is correct that any person can do business with the department as explained above and that the department could not disqualify NDIA Business Trading (Pty) Ltd owned by Ms Ndivhuwo Radzilani who is the daughter of the ANC Deputy Chairperson in the Province, Ms Florence Radzilani, Luhura Trading and General Supplier owned by Ms Suzan Managa, who is the wife of the Deputy Director-General for Institutional Support in the Premier’s Office, Mr Eddie Managa and Mokgobedi Training and Consulting owned by Ms Motlatso Elizabeth Moloi, who is the daughter of the former MEC of the Limpopo Department of Sport, Arts and Culture, Ms Mokgobedi Onicca Moloi since none of the above political figures were part of the bid committees and were not expected to declare their interest.
- 5.2.39 The HOD further argued that no person can be discriminated against or prohibited from participating in the economy because they are politicians or related to politicians.
- 5.2.40 A meeting was held on 24 March 2021 with the LDoH officials responsible for Supply Chain Management. The Senior Officials who were present at the said meeting were: Dr FT Mhlongo: HOD, Mr Justice Mudau: Chief Financial Officer (CFO), Dr M Dombo: DDG Health Care Services, Mr

Phillip Kruger: Acting Chief Director: Health Care Support Services, Mr MZ Mawasha: DDG Corporate Services, Mr S Khosa: Head- Supply Chain Management, Ms G Dlomo: Director – Office of the DDG. The PPSA investigation team comprised of Adv. Matimolane, Mr DM Mapheto and Mr ML Hiine.

5.2.41 The meeting was held at the request of the LDoH with a view of detailing and explaining the process followed to procure PPE and the appointment of service providers in response to the Section 7(9) Notice.

5.2.42 During the discussions, the LDoH team indicated the following:

- (a) That in terms of the National Treasury's Standard Bidding Documents (SBD4) Form - Declaration of Interest, the LDoH could not by law disqualify NDIA Business Trading (Pty) Ltd; Luhura Trading and General Supplier and Mokgobedi Training and Consulting because they were owned by relatives of political activists or by any person whether politically connected or government employee or office bearers.
- (b) That the declaration of interest is reciprocal, the bidders declared their interest in terms of the relationship with the Bid Evaluating and Bid Adjudication Committee members in the SBD4 and that since this was an emergency, normal Supply Chain Policy procedures were not followed. After the process was finalised, all presentations were forwarded to the Bid Adjudication Committee for ratification.
- (c) That Request for Quotation (RFQ) was processed during the COVID-19 lockdown period and this was mainly due to failure to perform by contracted suppliers. All items of PPE were on contract and with that knowledge, staff were released to work from home in compliance with COVID-19 regulations.

- (d) That Mokgobedi Trading and Consulting could not be disregarded as a bidder solely because the CSD's business status of the company indicated "*deregistration process*". Further, that the Department could only do so once the process of deregistration was completed or that the company remained eligible for doing business until deregistered.
- (e) That in dealing with selection criteria of service providers, the Department used various selection method:
- (i) *"1<sup>st</sup> Criteria: various service providers at the peak of COVID-19 approached the department offering services and products related to COVID-19 these service providers would be added into the list of service providers for invitations when a need arises.*
- (ii) *2<sup>nd</sup> Criteria: Service Providers would be directly sourced from the central supplier database in terms of product offered.*
- (iii) *3<sup>rd</sup> Criteria: The department would conduct market and commodity analysis, which included the scanning through the website, word of mouth, through other departments in other provinces, municipalities and or the private sector sourcing companies that are providing required services. All these services would be added in the list and requested to provide quotations.*
- (iv) *4<sup>th</sup> Criteria: After the establishment of the Limpopo Database of PPE suppliers, the department sourced quotations from the database. Only for services and products offered by listed companies.*
- (v) *5<sup>th</sup> Criteria: The procurement of face cloth masks was sourced from the database of suppliers listed in the Department of Small Business Development for the Limpopo Province only".*

5.2.43 In an affidavit received from the HOD signed on 12 May 2021, she indicated the following:

- “1. I am an adult female person, employed as Head of the Department of Health, Limpopo Province with my business address being 18 College Street, Polokwane.*
- 2. The facts contained herein are within my personal knowledge, save where the context otherwise indicates and are to the best of my knowledge both true and correct.*
- 3. I am the accounting officer of the Department and I am responsible for the Department’s procurement of Covid-19 Personal Protective Equipment’s (PPE’s).*
- 4 During the year 2020 and 2021, the Department purchased PPE’s from several service providers, and to the best of my knowledge every one of them was competent to provide the goods.*
- 5 Where a tender is to be awarded, I rely on the recommendations of the Bid Adjudication Committee (BAC) of the Department, headed by the Chief Financial Officer of the Department. I do not get any other information other than the official documents as presented to me.*
- 6 In the execution of my duties, I am not and I was not influenced by any person to award a tender and I have not influenced any member of the B.A.C. to recommend any particular service providers for appointment. All the PPE tenders where awarded and are awarded on merits.*
- 7 I do not share any personal or business relationship with any of the persons or companies that received tenders for the supply and delivery of PPE’s in the Department.*

8 *Due to the position I hold in the Department, I always interact with the Member of the Executive Committee (MEC) of my Department and on work related issues”.*

*Application of the relevant law*

5.2.44 National Treasury Practice Note No. 7 of 2009/2010, provides that:

*“6A8.4 If a supply chain management official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must –*

*(a) disclose that interest; and*

*(b) withdraw from participating in any manner whatsoever in the process relating to that contract.”*

5.2.45 Paragraph 1 of The National Treasury’s Standard Bidding Documents (SBD4) Form - Declaration of Interest states that:

*“Any legal person, including persons employed by the state, or person having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of any invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegation of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his /her authorised representative declare his/her position in relation to the evaluation/adjudicating authority where the bidder is employed by the*

*state; and/or the legal person on whose behalf the bidding document is signed, has a relationship with persons/ a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exist between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid”.*

- 5.2.46 It was expected of all the service providers to declare any interest and or any relationship with any official of the state institution involved at the evaluation and adjudication bids.
- 5.2.47 According to the HOD, all three (3) companies i.e. NDIA Business Trading (Pty)(Ltd), Lehura and General Supplier and Mokgobedi Training and Consulting, “ *did not declare any interest with regard to any relationship with persons within the department who are involved in the evaluation and adjudication of this bid. In terms of the minimum requirements of the declaration of interest as prescribed by the National Treasury, Ndia Business Trading (Pty)(Ltd), Lehura and General Supplier and Mokgobedi Training and Consulting did not mention any other relationship warranting the department to disqualify them as a bidder. Therefore, the department is not aware of any other personal relationship between the Directors of Ndia Business Trading (Pty)(Ltd), Lehura and General Supplier and Mokgobedi Training and consulting that could influence the procurement process within the department”*
- 5.2.48 National Treasury SCM instruction 4A of 2016/2017 Central Supplier Database (CSD)<sup>3</sup> prescribes as its purpose the utilisation and

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<sup>3</sup> Dated 19 May 2016 signed off by Chief Procurement Officer Kenneth Brown and which applies to all Departments, Constitutional Institutions and Public Entities listed in Schedule 2 and 3 to the PFM

establishment of mandatory CSD to accounting officers and accounting authorities and states *inter alia*:

*“3.1 In order to give effect to the mandatory requirements of this SCM Instruction, Accounting Officers and Accounting Authorities must ensure that:*

*3.1.1 The current supply chain management system and policies of their respective organs of state are aligned with the provisions of this SCM Instruction note;*

*3.1.2 Price quotations are invited and accepted from prospective suppliers listed on the CSD and*

*3.1.3 Key information of prospective suppliers is verified on the CSD in line with PFMA and regulatory requirements. The following information must be verified:*

- a) Business registration, including details of Directorship and membership;*
- b) Bank account holder information;*
- c) In the service of the state status;*
- d) Tax compliance status;*
- e) Identity number;*
  
- f) B-BBEE status level;*
- g) Tender defaulting and restriction status and*
  
- h) Any additional and supplementary verification information communicated by the National Treasury.*



*3.2 Accounting Officers and Accounting Authorities must not award any bid for price quotations to a bidder(s) not registered on the CSD, excluding transactions mentioned in paragraph 3.3.*

*3.3 Transactions concluded through petty cash, sundry payments and foreign suppliers with no local registered entity may be concluded even if the supplier is not registered on the CSD”.*

5.2.49 National Treasury SCM instruction 4A of 2016/2017 places the accounting officers under an obligation to ensure that the service providers they do business with are registered in the Central Supplier Database and are tax compliant.

Conclusion

5.2.50 Based on the evidence gathered it cannot be established that there was nepotism and/or undue influence in the procurement processes relating to the awarding of the PPE tender.

5.2.51 No relationship was established between the service providers and any official of the Department.

5.2.52 The Department cancelled the orders issued to Mokgobedi Training and Consulting because of failure to render services on time. Consequently, no service was rendered and no payment was made.

5.2.53 No suspicious transactions or large withdrawals or deposits were uncovered in respect of the banking records of the three companies.

**5.2 If yes, whether other prospective service providers or the taxpayers suffered prejudice as a result of nepotism or favouritism in the awarding of the PPE tender.**

Common cause issues

5.3.1 NDIA Business Trading (Pty) Ltd, Luhura Trading and General Supplier and Mokgobedi Training and Consulting, were amongst the companies awarded the PPE tenders.

5.3.2 NDIA Business Trading (Pty) Ltd is owned by Ms Ndivhuwo Radzilani (Ms N Radzilani), who is the daughter of the ANC Deputy Chairperson in the Province, Ms Florence Radzilani (Ms F Radzilani).

5.3.3 Luhura Trading and General Supplier is owned by Ms Suzan Managa, who is the wife of the Deputy Director-General for Institutional Support in the Premier's Office, Mr Eddie Managa.

5.3.4 Mokgobedi Training and Consulting is owned by Ms Motlatso Elizabeth Moloji (Ms ME Moloji), who is the daughter of the former MEC of the Limpopo Department of Sport, Arts and Culture, Ms Mokgobedi Onicca Moloji (Ms MO Moloji).

Issues in dispute

5.3.5 It is alleged that NDIA Business Trading (Pty) Ltd, Luhura Trading and General Supplier, and Mokgobedi Training and Consulting were awarded the PPE tenders based on their connections and relations to senior government officials, including prominent politicians.

- 5.3.6 The HOD in a letter dated 03 September 2020 denied any relationship between any of the company Directors to the members of the Bid Evaluation Committee (BEC) and Bid Adjudication Committee (BAC) which could have influenced the procurement process within the LDoH.
- 5.3.7 In letters dated 23 March 2021 both the MEC and the HOD in response to the section 7(9) Notice, denied that they had any relationship with senior government officials, or prominent politicians who influenced the awarding of the PPE tender to service providers and or influenced the decision to award the tender through nepotism or favouritism.
- 5.3.8 Further, in a meeting of 24 March 2021, the HOD re-emphasised that she does not have any relationship with either the Directors of the companies that were awarded the tenders or any politician and as a result no prospective service providers or the taxpayers suffered prejudice as a result of nepotism or favouritism in the awarding of the PPE tender. The evidence revealed that other companies were appointed despite being non-tax compliant.
- 5.3.9 Out of the eighteen (18) companies mentioned, only two (2) companies namely, Tsopane Pharmacy and Mokgobedi Training and Consulting were found to be non-tax compliant. The tax status of Sedilaka Holdings and Projects on the CSD indicated the following: *“Unable to determine the tax compliance and taxpayer information provided does not match or could not be found”* and with Pro Secure its tax status could not be determined.
- 5.3.10 Out of the two (2) companies whose tax status could not be determined on the CSD, it was uncovered that only Sedilaka Holdings and Projects rendered services and was paid.

Application of the relevant law

- 5.3.11 Section 38(1)(a)(iii) of the PFMA requires the Accounting Officer of a Department, trading entity or constitutional institution to ensure that the department, trading entity or constitutional institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.
- 5.3.12 Section 81(1)(a) and (b) of the PFMA provides that: *“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 section 38, 39, 40, 41 or 42 or*
- (b) makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure”.*
- 5.3.13 It is expected of the Accounting Officer to comply with the provisions of the PFMA and avoid permitting unauthorised expenditure, irregular expenditure or a fruitless and wasteful expenditure.
- 5.3.14 In response to our letter dated 24 August 2020, the HOD indicated in the letter dated 03 September 2020 that: *“These tenders were awarded by following the procurement procedures as contained in the PFMA prescripts. All checks and balances were done within the confines and dictates of these prescripts. All the companies in 5.3; 5.4 and 5.5 were found compliant with all the relevant prescripts”.*
- 5.3.15 The HOD also indicated in the letter dated 13 November 2020 that: *“I am unable to provide you with the Tax Clearance Certificates of the business entities contained in the above mentioned letter. Please be informed that*

*submission of Tax Clearance Certificate was not a requirement for these Request for Quotations. In terms of National Treasury Instruction Note number 09/2017/2018, the Accounting Officer must require Central Supplier Database Master Registration number or Tax Compliance status pin. It further states that the Central Supplier database and the tax compliance tax status pin are the only approved methods of verifying the tax compliance status of a bidder. The Department has required the Central Supplier Database Master Registration number. We are prepared to supply the Public Protector with the CSD for all the service providers in question if that will suffice. The department will await your guidance”*

- 5.3.16 Further that: *“In terms of National Treasury Instruction Note number 09/2017/2018, the Accounting Officer must require Central Supplier Database Master Registration number or Tax Compliance status pin. It further states that the Central Supplier database and the tax compliance status pin are the only approved methods of verifying the tax compliance status of a bidder. The Department has required the Central Supplier Database Master Registration number”.*

Conclusion

- 5.3.17 Based on the information gathered, it cannot be concluded that other prospective service providers suffered prejudice as a result of as a result of the alleged nepotism or favouritism in the awarding of PPE tender but suffered prejudice as a result of the awarding of the tender to service providers who were not tax compliant.
- 5.3.18 No relationship was established between the service providers and any official of the Department.

## 6. FINDINGS

6.1 Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

### 6.1.1 **Regarding whether the LDoH followed due processes in the procurement of PPE's:**

6.1.1.1 The allegation that the LDoH did not follow due processes in the procurement of PPEs, is substantiated.

6.1.1.2 The LDoH procured the supply and delivery of PPE's through an emergency procurement process provided for in the Practice Notes.

6.1.1.3 The deviation was executed in terms of paragraph 14.2.5 of the SCM Procurement Policy of the Department which provides for the exemption or deviation from the normal bid procedures as necessitated by the emergency of the Covid-19.

6.1.1.4 According to the evidence obtained, the deviation was reported within 10 working days to the Provincial Treasury on 25 March 2020, 02 June 2020, and 14 July 2020 and to the AGSA on 02 June 2020 and 14 July 2020.

6.1.1.5 The HOD complied with the provisions of the Practice Notes, Treasury Regulations and Public Finance Management Act (PFMA) by reporting the deviation to the Provincial Treasury and AGSA within the prescribed time period. However, no evidence was provided to confirm that the March 2020 deviation was reported to the AGSA.

- 6.1.1.6 The Public Protector could not find evidence indicating that the Department did not follow paragraph 14.2.5 of the SCM policy or that the Department contravened National Instruction Note No.05 of 2020/2021: Emergency Procurement in response to the national disaster paragraph 3, which also regulates deviations from inviting bids in instances of emergency.
- 6.1.1.7 Evidence was uncovered to prove that the LDoH did not comply with the National Treasury SCM Instruction Note 9 of 2017/18, paragraph 2.2 and 3.1 in the procurement of PPEs by appointing service providers who were not tax compliant.
- 6.1.1.8 Though Mokgobedi Training and Consulting was awarded the PPE tender, the HOD confirmed that the company did not render services and as such was not paid. The Director of Mokgobedi Training and Consulting, Ms Motlatso Elizabeth Moloji also confirmed that the company did not render services and was not paid.
- 6.1.1.9 Though Machawana Trading Enterprise was awarded the tender, the HOD confirmed that the company did not render services and as such was not paid by the Department. The Director of Machawana Trading Enterprise, Mr Milton Moagi confirmed telephonically on 10 December 2020, that his company did not render services as the order was cancelled because the service provider could not deliver services at the required time.
- 6.1.1.10 Sedilaka Holdings and Projects as well as Tsopane Pharm Group who were on the Central Suppliers' Data base, supplied and delivered the PPEs, and were paid for services rendered but did not claim VAT.
- 6.1.1.11 The conduct of the HOD is in contravention of section 38(1)(a)(iii) by failing to ensure that there was an appropriate procurement and

provisioning system which is fair, equitable, transparent, competitive and cost-effective, 38(c)(ii) of the PFMA by preventing unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct, 81(b) of the PFMA by making or permitting an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure and 81(2) of the PFMA by wilfully or negligently failing to exercise the power and duties to prevent unauthorised expenditure, assigned to her.

6.1.1.12 The conduct of the HOD constitutes maladministration as envisaged in section 6(4) (a)(i) of the Public Protector Act, and improper conduct as envisaged in section 182 (1) of the Constitution.

**6.1.2 Regarding whether there was nepotism and or undue influence/favouritism in the appointment of service providers for the provision of PPEs:**

6.1.2.1 The allegation that there was nepotism and or undue influence/favouritism in the appointment of service providers for the provision PPEs, is unsubstantiated.

6.1.2.2 Mokgobedi Training and Consulting and Machawana Trading Enterprise are among companies which were awarded the PPE tenders but their orders were cancelled before services could be rendered.

6.1.2.3 Independently obtained evidence confirmed that the Directors of the following companies, i.e. NDIA Business Trading (Pty) Ltd; Luhura Trading and General Supplier and Mokgobedi Training and Consulting are politically connected and or related to senior officials in government but evidence could not be found that confirms that there was nepotism and or undue influence/favouritism in the appointment of service providers for the provision of PPEs.



- 6.1.2.4 The HOD did not deny the relationship between the Directors of NDIA Business Trading (Pty) Ltd and the Deputy Chairperson of the ANC, Ms Florence Radzilani; Luhura Trading and General Supplier and Deputy Director-General for Institutional Support in the Premier's Office, Mr Eddie Managa as well as the relationship between the Director of Mokgobedi Training and Consulting and the former MEC for Department of Sport, Arts and Culture, Ms Onicca Mokgobedi Moloi. However, she denied any relationship between the company Directors and the members of the Bid Evaluation Committee and Bid Adjudication Committee which could have influenced the procurement process within the LDoH.
- 6.1.2.5 The Public Protector could not find any evidence indicating that the MEC and HOD had any influence in the awarding of PPE tenders even though there is evidence that indicates that some of the service providers are related to politicians and senior government officials.
- 6.1.2.6 The Public Protector could not find evidence to prove the alleged possible influence in the procurement processes of the awarding of PPE tenders or the relationship between the Directors of the companies awarded tenders and officials of the department.
- 6.1.2.7 The conduct of the department did not constitutes maladministration as envisaged in section 6(4) (a)(i) of the Public Protector Act, and improper conduct as envisaged in section 182 (1) of the Constitution.
- 6.1.3 Regarding whether other prospective service providers suffered prejudice as a result of nepotism or favouritism in the awarding of the PPE tender:**

- 6.1.3.1 The allegation that other service providers suffered prejudice as a result of nepotism or favouritism in the awarding of the PPE tender, is unsubstantiated.
- 6.1.3.2 The Public Protector could not find any evidence indicating undue influence, nepotism and or favouritism during the investigation in the awarding of tenders to the companies awarded PPE tenders.
- 6.1.3.3 Though the investigation team established that some of the appointed companies' Directors may be politically connected and/ or related to senior officials in government, the team could not find any evidence to confirm that there was any influence/favouritism or nepotism.
- 6.1.3.4 The Public Protector could not find evidence indicating that other prospective service providers suffered any prejudice as a result of the alleged nepotism or favouritism in the awarding of PPE tender.
- 6.1.3.5 The conduct of the Department did not constitute maladministration and prejudice as envisaged in section 6(4)(a)(i)(v) of the Public Protector Act, and improper conduct as envisaged in section 182(1) of the Constitution.

## **7. REMEDIAL ACTION**

- 7.1 On 05 April 2022, a letter was drafted and send to the MEC for her response on the intended remedial action. On 06 April 2022, an acknowledgement letter was received in which the Department indicated that they will respond within the stipulated time frames. On 08 April 2022, a response was received indicating that the Department will comply with the remedial action of the Public Protector.
- 7.2 The appropriate remedial action in terms of section 182(1)(c) of the Constitution to remedy the maladministration and improper conduct referred to in this report are as follows:

## **7.2.1 The Premier**

7.2.1.1 **Within ninety (90) working days** of receipt of the report and in terms of section 38(1)(h), take disciplinary action against the HOD for contravening section 38(1)(a)(iii),(c)(ii) and 81(b) of the PFMA.

## **7.2.2 The Acting HOD must:-**

7.2.2.1 **Within sixty (60) working days** of receipt of the report take appropriate disciplinary action against all Supply Chain Management (SCM) officials who were involved in the procurement of the PPE for contravention of paragraph 13.3 (a)(b) and (c) of the SCM policy, paragraph 14(d) and (j) of the Public Service Regulations of 2016 and section 45 (a), (b) and (c) of the PFMA;

7.2.2.2 **Within one hundred and twenty (120) working days** of receipt of the report and upon discovery of any unauthorised, irregular or fruitless and wasteful expenditure, immediately report in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services in terms of section 38(1)(g) of the PFMA;

7.2.2.3 Ensure that Internal Audit Unit, on an annual basis, review the adequacy and effectiveness of the Department's system of internal control, risk management and supply chain management.

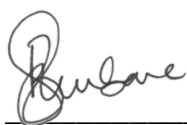
7.2.2.4 Ensure that the Audit Committee of the Department, in all its meetings, consider the Internal Audit and AGSA reports to ensure that the recommendations are implemented.

7.2.2.5 Must in terms of paragraph 17.1.2 (a) of the SCM policy report any criminal conduct to the South African Police Service.

## 8. MONITORING

8.1 The Department must submit an implementation plan to this office **within thirty (30) working days** from the date of this report indicating how the remedial action referred to in paragraph 7 above will be implemented.

8.2 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. BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 29 / 04 / 2022

*Assisted by the Limpopo Provincial Office*