

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



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**CLOSING REPORT ON AN INVESTIGATION IN CONNECTION WITH THE
AWARDING OF A CONTRACT TO C-SQUARED CONSUMER CONNECTEDNESS
(PTY) LTD AND OTHER SERVICE PROVIDERS FOR THE SUPPLY OF PERSONAL
PROTECTIVE EQUIPMENT (PPE) BY THE NATIONAL DEPARTMENT OF
TRANSPORT, AS WELL AS CONFLICT OF INTEREST ARISING FROM THE
CONTRACT**

1. INTRODUCTION

- 1.1. This is a closing 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, 1994 (Public Protector Act), on an investigation in connection with the awarding of a contract to C-Squared Consumer Connectedness (Pty) Ltd and other service providers for the supply of personal protective equipment (PPE) by the National Department of Transport (the Department), as well as conflict of interest arising from the contract.
- 1.2. The investigation relates to a complaint that was lodged with the Public Protector by Anonymous Concerned Members of Staff of the Department of Transport (the Complainants) on 25 August 2020, in connection with the awarding of a contract to C-Squared Consumer Connectedness (Pty) Ltd and other service providers for the supply of PPE by the Department, as well as conflict of interest arising from the contract.
- 1.3. The detailed allegations are listed below as follows:
 - 1.3.1. In or around March 2020, the Director-General of the Department, Mr. Alec Moemi (Mr. Moemi), and Senior Manager: Supply Chain Management, Ms. Reanette de Villiers (Ms. de Villiers) appointed C-Squared Consumer Connectedness (Pty) Ltd and other service providers to supply PPE contrary to the provisions of section 217 of the Constitution, read with the Public Finance Management Act 1999 (the PFMA), the Department's Supply Chain Management Policies and other prescripts applicable to the Department;
 - 1.3.2. In awarding the PPE contract, the Middle Management of the Supply Chain Management Unit and Public Transport (who are the custodians of taxi operations in the Department) were excluded and not consulted during the procurement process;

- 1.3.3. Notwithstanding the fact that the procurement of the services which equated to approximately eighty million rand (R80 million) was based on an emergency procurement, in particular on a three (3) quotation system, which in any event would be allowed in case of an emergency espoused in the National Treasury Practice Note, the criteria applied in the appointment of service providers were inconsistent and preferred certain service providers over the others;
- 1.3.4. In some instances, one service provider (unnamed) was used for all the required material ordered and in other instances, the appointment was spread to a few service providers;
- 1.3.5. Mr. Moemi also purchased PPE such as boots and protective clothing for the Department's wellness section, whilst the Department does not have any frontline staff; and
- 1.3.6. When it was time to appoint service providers, Mr. Moemi and Ms. de Villiers brought their own list of service providers which included companies owned by their close friends and associates. Further to that, it was alleged that some of the companies which appeared on the list had previously rendered services for the Department of Sports and Recreation whilst Mr. Moemi was its Director-General and also that a list brought by Ms. de Villiers, included a company owned by her ex-husband which was subsequently awarded a contract to supply the PPE.

2. Based on the analysis of the complaint, including the allegations contained herein, the following issues were identified to inform and focus the investigation:

- 2.1. Whether the appointment of C-Squared Consumer Connectedness (Pty) Ltd and other service providers to supply Personal Protective Equipment (PPE) was contrary to the provisions of section 217 of the Constitution, read with the PFMA,

National Department of Transport Supply Chain Management Policies and other prescripts; and

- 2.2. Whether there was any conflict of interest that arose between the officials of the National Department of Transport and the service providers that were awarded contracts to supply Personal Protective Equipment.

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

- 3.1. The Public Protector was established in terms of section 181 (b) of the Constitution to support and 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 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. Section 182 (2) directs that the Public Protector has additional powers prescribed in legislation.
- 3.3. Additional powers of the Public Protector to investigate improper conduct in state affairs are provided for in national legislation, among others, sections 6 and 7 of the Public Protector Act.

4. **THE INVESTIGATION**

4.1. **Methodology**

- 4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.2. Approach to the investigation

4.2.1. The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

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

4.2.2.1. What happened?

4.2.2.2. What should have happened?

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

4.2.2.4. In the event of a violation, what action should be taken?

4.2.3. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the Department followed proper tender processes and procedures in appointing C-Squared Consumer Connectedness (Pty) Ltd and other service providers to supply the PPE and whether there was any conflict of interest that arose between the officials of the Department and the service providers that were awarded contracts to supply the PPE.

4.2.4. 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 maladministration and conduct failure.

4.3. Key Sources of Information

4.3.1. Correspondence Sent and Received

- 4.3.1.1. A copy of the anonymous complaint dated 25 August 2020.
- 4.3.1.2. A copy of the correspondence sent to Mr. Moemi, the Director General of the Department dated 21 September 2020.
- 4.3.1.3. A copy of the correspondence sent to Mr. Motsi Moseme, the Director of C-Squared Group (Mr Moseme) dated 30 September 2020.
- 4.3.1.4. Correspondence sent to the Department of Transport, Ms. de Villiers, Senior Manager: Supply Chain Management dated 7 October 2020.
- 4.3.1.5. Correspondence sent to the former Acting Chief Financial Officer at the Department, Ms Dalian Mabula, dated 22 October 2020.
- 4.3.1.6. A copy of the correspondence received from Mr Moseme dated 1 October 2020.
- 4.3.1.7. A copy of the correspondence received from Mr. Moemi dated 12 October 2020.
- 4.3.1.8. A copy of the correspondence received from Ms de Villiers dated 21 October 2020.
- 4.3.1.9. Correspondence sent to the Director General of the National Treasury, Mr. Mogajane, dated 27 October 2020.
- 4.3.1.10. Email received from Mr Bafana Mkhwebane, the official from the Department's Public Transport Unit dated 27 October 2020.
- 4.3.1.11. Response from the National Treasury Chief Director: Supply Chain Management Governance, Monitoring and Compliance, Mr Basani Duiker, dated 31 January 2021.
- 4.3.1.12. Response received from Ms. Mabula of the Department dated 3 November 2020.
- 4.3.1.13. Telephone records received from Vodacom for Messrs Moemi and Moseme on 19 November 2020.
- 4.3.1.14. Response received from Mr Siphon Ndaba, the Corporate Executive: Support Audit Services of the Auditor General of South Africa dated 11 May 2021.

4.3.2. **Legislation and other prescripts**

- 4.3.2.1. The Constitution of the Republic of South Africa, 1996;
- 4.3.2.2. The Public Protector Act, 1994;
- 4.3.2.3. The Public Finance Management Act, 1994;
- 4.3.2.4. The National Treasury Regulation, 2005;
- 4.3.2.5. The National Department of Transport Supply Chain Policy of 17 April 2019;
- 4.3.2.6. The National Treasury Instruction Number 8 of 19 March 2020;
- 4.3.2.7. The National Treasury Instruction Number 5 of 2020/21; and;
- 4.3.2.8. The National Treasury Instruction Number 2 of 2016/2017.

4.4. The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, she is now in a position to make findings. Having regard to the investigation conducted in the matter, the evidence and information obtained therewith, it appears to the Public Protector that the allegations raised are not substantiated.

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. **Regarding whether the appointment of C-Squared Consumer Connectedness (Pty) Ltd and other service providers to supply Personal Protective Equipment (PPE) was contrary to the provisions of section 217 of the Constitution 1996, read with the Public Finance Management Act 1999 and the National Department of Transport Supply Chain Management Policies and other applicable prescripts:**

Common Cause Issue

- 5.1.1. It is not disputed that the Department appointed C-Squared Consumer Connectedness (Pty) Ltd and other service providers to supply the PPE.

Issues in Dispute

- 5.1.2. The issue for the Public Protector's determination is whether the appointment of C-Squared Consumer Connectedness (Pty) Ltd and other service providers to supply PPE was done contrary to the provisions of section 217 of the Constitution, read with the PFMA and the Department's Supply Chain Management Policies and other applicable prescripts.
- 5.1.3. The Anonymous Complainants alleged that in awarding the PPE contract, Middle Management of the Supply Chain Management Unit and Public Transport (who are the custodians of taxi operations in the Department) were excluded and not consulted during the procurement process.
- 5.1.4. It is the Complainants' contention that, notwithstanding the fact that the procurement of the services which equated to approximately eighty million rand (R80 million) was based on an emergency procurement, in particular on a three (3) quotation system, which in any event would be allowed in case of an emergency espoused in the National Treasury Practice Note, they were of the view that the criteria applied in the appointment of service providers was inconsistent and preferred certain service providers over the others.
- 5.1.5. The Complainants alleged that in some instances one service provider (unnamed) was used for all the required material ordered and in other instances, the appointment was spread to a few service providers.

- 5.1.6. The Complainants further alleged that, Mr. Moemi also purchased the PPE such as boots and protective clothing for the Department's wellness section, whilst the Department does not have any frontline staff.
- 5.1.7. In some instances, one service provider was allegedly appointed based on quotation, whilst in other instances, various service providers were made to share a contract for the supply of PPE.
- 5.1.8. The Complainants alleged that it was irregular to have the Chief Financial Officer (CFO) participate in the procurement process.
- 5.1.9. They further argued that it was irregular that C-Squared Consumer Connectedness (Pty) Ltd was appointed to be a service provider whilst its offices are based in Bloemfontein.
- 5.1.10. According to the Complainants, the value of C-Squared Consumer Connectedness (Pty) Ltd to supply the PPE first contract amounted to millions of rand and they may have been involved in the subsequent procurement of the second batch of the PPE by the Department.
- 5.1.11. The Northern Cape Province allegedly raised questions that some PPE delivered by C-Squared Consumer Connectedness (Pty) Ltd had the branding of the National Department of Sports and Recreation.
- 5.1.12. On 21 September 2020, the investigating team requested information and documentation relating to the matter from Mr Moemi who responded on 9 October 2020. In his response, Mr Moemi stated that the Department procured the PPE largely under Level 5 of the Lockdown period and during which all employees were encouraged to stay at home and only essential personnel was allowed to operate and work. Therefore, the majority of staff were unavailable to perform the functions they would normally perform during the normal period.

5.1.13. He further indicated that during that time, the listed suppliers on the Transversal contract had no stock and there was immense pressure to provide the PPE to the public transport sector, more so the Taxi Industry. He further reported that the officials of Public Transport, Supply Chain Management and Finance Units were asked to perform duties despite the lockdown restrictions.

5.1.14. Mr. Moemi further reported that the allegations were devoid of any truth and the process followed was transparent and fully compliant as they engaged the Auditor General South Africa throughout the entire process as procurement awards were being made to ensure full compliance and to mitigate against any malpractice as well as to have the ability to detect same at an earliest convenience.

5.1.15. Regarding the allegation of violation of the provisions of section 217 of the Constitution, read with the provisions of the PFMA, Mr. Moemi stated that section 217 provides that:

“When an Organ of state in the national provincial and 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”

5.1.16. According to Mr. Moemi, having duly looked at these provisions, the Department denied that any of the procurement processes related to COVID19 procurement were in violation of section 217 of the Constitution and/or PFMA.

5.1.17. Regarding the allegation that the staff in the Department’s Supply Chain Management Unit and Public Transport Branch were excluded and not consulted, Mr. Moemi submitted that the allegation was unfounded and untruthful as staff of the Supply Chain Management Unit, under the tutelage of the Acting Chief Financial Officer and those in Public Transport Branch were involved in the procurement process. He provided the investigating team with numerous emails,

presentations and invoices signed by officials that work within the Public Transport Unit to prove that they were involved in the procurement process as required, within the lockdown restrictions.

5.1.18. He also provided information as to how the Public Transport Branch assisted with regard to the "Distribution plan". The information also included how the PPE were to be distributed based on the number of taxi vehicles registered in each Province. It also entailed how the Department was to proportionally distribute the PPE to all the Provinces.

5.1.19. Amongst others, proof was also provided in that the Public Transport Unit attended distribution meetings of the PPE and they also accompanied the Minister to distribute PPE at Bree Taxi Rank/Facility and the MTN Taxi Facility. These were the engagements where the Minister went to explain the Covid-19 regulations and distribute some PPE.

5.1.20. Mr Moemi also submitted to the investigating team that numerous sundry payment advice, with supporting documentation were checked and verified by officials of the Public Transport Unit.

5.1.21. In respect of the allegation that there was an expenditure worth R80 million and the Department's process was inconsistent with the PFMA as they preferred certain service providers over others, Mr. Moemi stated that this allegation was also not true in that the total expenditure for Covid19 related matters was approximately R30 million and not R80 million as alleged and had not favoured any service providers over others. The investigating team was provided with copies of sundry payment advice and accompanying documents that demonstrated the expenditure and items procured.

5.1.22. Regarding the allegation that in one instance, one service provider was utilised and in other instances, the appointment was spread to a few service providers,

Mr. Moemi stated that during the period, the Department undertook only three (3) rounds of procurements. In the first round, a traditional system of the '*winner takes all*' was applied in the procurement process due to urgency, time pressure and availability of stock on hand by the service providers as well as who was the cheapest service provider.

5.1.23. According to Mr. Moemi, this was informed by the fact that the competitor, Ecko-Green Environment Services, was found not to be tax compliant in this round of procurement and its prices were higher than C-Squared.

5.1.24. During the second round, a much more liberalised approach of multiple awards was taken to ensure that decisions were made on the line items, instead of the overall quotation.

5.1.25. He said that this was designed to give the Department an added benefit of cost saving, but also to ensure that the cake was spread widely amongst several suppliers. Furthermore, during the second round, more service providers reported availability of stock and vigorously marketed themselves to the Department and its entities. He further stated that the third round of procurement involved the sourcing of PPE for Leaner Scholar Transport space in conjunction with the Department of Basic Education.

5.1.26. The investigating team was provided with a memorandum from Ms. Mabula addressed to Mr. Moemi and approved on 31 March 2020, titled "*Approval of Emergency Procurement- Santaco Hlokomela Coronavirus 2020.*" The purpose of the memorandum was to request Mr. Moemi to approve the emergency procurement of goods for the Department's role in the South African National Taxi Council (SANTACO) Hlokomela Coronavirus 2020 Project as per National Treasury Instruction number 8 of 2019/20 in response to the National State of Disaster.

5.1.27. In the memorandum, it is stated that the two quotes were received from Ecko-Green Environment Services and C-Squared Consumer Connectedness and requested that Mr. Moemi should approve the procurement of goods for SANTACO Hlokomela Coronavirus 2020 Project from C-Squared Consumer Connectedness at a total of R12 142 082.38.

5.1.28. The memorandum further stated that in terms of the Instruction Note 8, paragraph 3.7.6, an institution may approach any other supplier (not listed in the Annexures to the Instruction Note) to obtain quotes, and may procure from such suppliers on condition that:

5.1.28.1. The items are to the specifications as determined by the Department of Health;

5.1.28.2. The prices are equal or lower than the prices in Annexure A of the Instruction Note; and

5.1.28.3. The supplier's registered on the CSD.

5.1.29. In the memorandum, it is also stated that, National Treasury Instruction Note No 3 of 2016/2017, paragraphs 8.1 and 8.2 confirm that in cases of emergency, the departments may deviate from following competitive bidding processes and that it does not require National Treasury approval.

5.1.30. Mr. Moemi also provided the investigating team with evidence of the price difference between C-Squared and Ecko-Green to substantiate the appointment of C-Squared as illustrated below:

Item	Quantity	Max Price		C-Squared	Ecko-Green
		Table 1	Table 2 (Not on Transversal)		
PENDO-FOG Equipment	10 units	Not listed	Not listed	R 599.95	R1500
Taxi Disinfectant Dispensers	2 units per taxi rank times 300	Not listed	Not listed	R 599.95	R120

Chemical (Disinfected)	2 x 20 litre per rank times 300	Not listed	R690 for 5l R2760 for 20L	R42.50	R1850
1 litre Dispensers	80 000	R80.74	R207	R25.95	R110
Sanitizers 20 litre refill	1200	R427.64	R3450 for 25l R2760 for 20l	R94.95	R1850
Gloves	8,000 boxes	R609.13 (Type 2) R170.14 Type 1	Not listed	R445	R250
PPE	500	Not listed	R883,27	R149.95	Not quoted
Masks	80,000	R43	R150	R19.95	R55

5.1.31. With regard to the allegation that Mr. Moemi purchased PPE such as boots and protective clothing for the wellness section, whilst the Department did not have any frontline staff, he stated that the allegation was devoid of truth. He contended that the Department did not procure any boots or protective clothing for frontline staff and although some Ministry Staff were performing outreach functions and the Public Transport facilities had requested same, they were however never procured.

5.1.32. He further stated that the Department procured some of the protective clothing for the Taxi Rank Marshalls who were performing frontline interaction with commuters at taxi ranks.

5.1.33. With regard to the allegation that he and Ms de Villiers brought their own list of service providers, Mr. Moemi stated that the allegation was false, as there was never a pre-determined list. He said that during that period, a lot of companies had been marketing themselves as suppliers of PPE and approaching various government departments and entities perceived by them as those relevant to procure the PPE and *“their approaches were through all their available channels and platforms”*.

5.1.34. Mr. Moemi submitted that service providers approached the Department in various ways, such as through the Ministry and Office of the Director General as they had picked up the available numbers online, some through their Communications

section whilst others called-in to ask for the Supply Chain Management office or were walk-ins.

- 5.1.35. He further stated that all these service providers were consolidated into a single list and many were engaged, by email and telephone, to verify their details and their compliance levels. He indicated that the Department was overwhelmed by the number of service providers calling and sending names and company profiles. The Department eventually had to stop loading companies on the list as its procurement window was closing up.
- 5.1.36. Mr. Moemi explained that the requirements that had to be verified were those contained in the National Treasury practice note such as whether the service providers were registered on the Central Supplier Database (CSD), were tax compliant, had stock on hand as well as the capacity to deliver within a limited timeframe.
- 5.1.37. With regard to the allegation that in the absence of the Public Transport Unit, who then generated the Request for Quotation (RFQ) in the process of acquiring the PPE. Mr. Moemi informed the investigating team that this assertion was also inaccurate and was based on a false premise that the Public Transport Unit was not involved in the determination of needs and procurement process. He further indicated that there were Public Transport Unit officials involved, despite the hard lockdown and general shortage of staff. The investigating team was provided with sundry payment advices that show that the Director: Taxi Recapitalisation under the Public Transport Unit checked and verified the information.
- 5.1.38. With regard to the allegation on the process and procedure that was used in requesting and receiving quotations, Mr. Moemi stated that emails were sent out by their Supply Chain Management Unit to service providers requesting them to indicate if they had stock on hand and quotations. The investigating team was

provided with copies of emails as proof that suppliers submitted their details and corresponded to SCM.

- 5.1.39. With regard to the allegation that he was involved in the sourcing of quotations, Mr. Moemi disputed this assertion. He indicated that all quotations were sourced through their Supply Chain Management Directorate.
- 5.1.40. With regard to the allegation that Middle Management of the Supply Chain Management Directorate were excluded from the procurement process, Mr. Moemi stated that, no staff were excluded from the procurement process as the bulk of the process for the supply of the PPE occurred during hard lockdown levels 5 and, 4 when only key and essential staff worked.
- 5.1.41. He further stated that during that period, the volumes of procurement were at a bare minimum and only a few staff members were allowed permits and to work. Therefore, most of the Middle Managers were required by law (Disaster Management Act, 2002) to stay at home.
- 5.1.42. With regard to the allegation that the Chief Financial Officer was involved in the procurement process, Mr. Moemi stated that, *“the acting Chief Financial Officer was fully involved in the process on budgets and procurement right through the process and this is evidenced by her signature in support of the procurement process in all the procurement submissions as well as purchase orders.”*
- 5.1.43. With regard to the question why C-Squared was appointed as a service provider whilst their offices are based in Bloemfontein, Mr. Moemi indicated that as the National Department of Transport, they were responsive to the whole of South Africa and not just where their offices are located. They are not the Gauteng Department of Transport or the Tshwane Metropolitan Municipality Transport Department.

- 5.1.44. He further stated that they are also required by law to utilise all qualifying suppliers on the CSD, which has all suppliers from all over the country. He argued that South Africa is a Unitary State in terms of the Constitution and it should also be considered that the intent was that whichever company gets appointed, it would distribute to all the nine (9) Provinces.
- 5.1.45. He indicated further that consideration should be given to the fact that after appointment, it became apparent that C-Squared also had a Gauteng based office and a warehouse in Gauteng and at the time that the Department procured, there were few suppliers that had stock on hand to deliver within a short space of time.
- 5.1.46. With regard to the allegation that C-Squared was appointed for a contract worth millions of rand and that it was also involved in the provision of a second batch and whether this was fair to other service providers, Mr. Moemi confirmed that C-Squared was a service provider appointed to provide the PPE for the first batch of procurement based on the responsive suppliers who had stock on hand and provided the cheapest price. He explained further that it was also appointed as part of other service providers who were to provide a second batch of PPE based on the system of multiple awards as well as consideration of who provided the cheapest prices.
- 5.1.47. He further stated that the system of procurement requires that those companies participating in the process were to be treated fairly and the Department complied. He said that the decision to appoint a service provider was not based on emotions, but on prescripts, including the most responsive bid at the most affordable price, with the price being the bigger determinant factor to be considered and the price quoted by C-Squared was found to be way below the prices set by the National Treasury and the quality of PPE delivered was as required.

- 5.1.48. With regard to the allegation that there was no distribution plan for the PPE and the quantities were not the same, Mr. Moemi stated that this allegation is rejected as it was agreed with SANTACO, as the overall umbrella body of taxis in South Africa and as recognised by government and with 9 provinces on the delivery sites. He further stated that they had a plan done in conjunction with the Public Transport and Supply Chain Management Units. Mr Moemi provided the investigating team with the distribution plan for delivery of PPE to each Province.
- 5.1.49. With regard to the allegation that Provinces did not receive an equal share of PPE, Mr. Moemi stated that this allegation is unfounded as the Provinces received their share and what was procured for them and the determination of quantities was based on the number of registered taxis per Province through consultations with the Provinces.
- 5.1.50. He further stated that as early as 20 March 2020, a week before the hard lockdown level 5, he appointed a Departmental Task Team to work on the response for Covid19 for the Transport sector and this team included two senior officials in the Public Transport Unit and were involved in the process of determination of needs, quantities and response plans. He said that the team initially worked with SANTACO for the initial intervention and gradually through Provinces and cities and finally, the Department handed over procurement processes to Provinces and cities on PPE provision for the public transport sector.
- 5.1.51. With regard to the allegation that the Northern Cape Province raised questions that some PPE delivered by C-Squared had the branding of the National Department of Sport and Recreation, Mr. Moemi indicated that they were not aware of any questions raised by the Northern Cape Province on the PPE supplied.

- 5.1.52. With regard to the allegation that C-Squared first delivered the PPE to Forum Building in Pretoria and thereafter to Provinces, he informed the investigating team that part of the batch that was delivered to Forum Building were PPE intended for the distribution in the Tshwane area and to the Ministerial outreach to the taxi ranks in Pretoria and Bree Street taxi rank in Johannesburg and the delivery by C-Squared intended for other Provinces went directly to those Provinces.
- 5.1.53. He further stated that only Mistralog and Ecko-Green suppliers indicated that they only quoted delivery costs to one address, namely, the Forum Building and did not have the means and capacity under lockdown level to deliver the goods to all other destinations. He indicated that their deliveries were then received at Forum Building and these were subsequently sent to their final destinations. According to Mr. Moemi, the delivery costs were an additional R268 515.11 as this was not quoted for by the two suppliers.
- 5.1.54. The investigating team was also provided with a memorandum titled, “*Approval of Distribution of Emergency procurement Goods- Santaco Hlokomela Coronavirus 2020*” from Ms Mabula addressed to Mr Moemi and approved by him on 20 April 2020.
- 5.1.55. The purpose of the memorandum was to request Mr Moemi to approve the additional costs of R268 515.11, for the distribution to all nine Provinces, of emergency procurement of goods for the Department’s role in SANTACO Hlokomela Coronavirus 2020 project.
- 5.1.56. It is stated in the memorandum that on 31 March 2020, the Supply Chain Management Unit was requested to approach additional service providers with specifications, as per SANTACO’s requirements for the second round of procurement. The Unit was provided with a list of companies who had done similar work for other departments and who were able to mobilise immediately.

They approached these companies and quotes were received from five (5) companies. Two of these companies were disqualified i.e. Oresol for non-tax compliance and Delivea for late submission.

- 5.1.57. The Department received different quotes for specific items and it was agreed that the Department would follow a multiple approach to curb costs and companies that qualified were requested to resubmit quotes on the items they had quoted the lowest value on. Additionally, the Department included C-Squared who had quoted for the first round, to ensure allocation of line items was to the most cost effective service provider.
- 5.1.58. The quotations were approved and orders issued on 3 April 2020, C-Squared was contracted to provide four (4) items Ecko-Green two (2) and Mistralog one (1). Only C-Squared specifically quoted on distribution.
- 5.1.59. Only during the issuing of the orders and distribution schedule was the Department informed by both Ecko-Green and Mistralog that they had misinterpreted the distribution section of the request, and omitted to quote for distribution, and the pricing only included one (1) central delivery.
- 5.1.60. The matter was discussed with the Chief Director: Finance and Administration and Supply Chain Management, Mr Dan Pretorius, as well as Ms Mabula. It was agreed that the most cost effective option would be to request C-Squared to indicate whether they could assist with the distribution of the additional items, as the additional cost implication would be less when combining the deliveries.
- 5.1.61. C-Squared submitted a quote of R268 515.11 which was prepared on 8 April 2020, however due to an administrative oversight at C-Squared, it was only submitted to the Department on 20 April 2020.

- 5.1.62. The extension was supported by Ms Mabula and approved by Mr Moemi on 20 April 2020. A Manual Order was issued by Mr Linda Sidumo, the Procurement Officer in the Supply Chain Management: Quotation Unit on 5 May 2020, and the service was rendered and invoiced.
- 5.1.63. Mr Moemi also reported that the COVID 19 pandemic was declared as an unforeseen event by the Government of the Republic of South Africa and when the budgets for 2020/21 were being finalised, no allocation was specifically made for this specific line item in the budget nor planned for any tenders in the Annual Procurement Plan, but the Department had to muster in consultation with the National Treasury sufficient resources to respond to the challenge.
- 5.1.64. Mr. Moemi further stated that the budget in the Public Transport Unit and that of Employee Health and Wellness were reprioritised to enable the Department to procure and acquire the necessary PPE for distribution to the public transport sector and to the departmental staff.
- 5.1.65. This approval was done using the National Treasury instruction note Number 3 of 2016/17 paragraph 8.1 and 8.2 which confirms that in cases of emergency, the departments may deviate from following competitive bidding processes.
- 5.1.66. The memorandum was also approved because the value of the procurement, as well as authority to approve the deviation was based on an emergency and it fell under the delegation of the Accounting Officer and the deviation was also only calculated to be 2.13% of the original contract value.
- 5.1.67. He averred that on 28 March 2020, he had a telephonic discussion with the Director General of National Treasury, Mr. Mogajane, who indicated that the expectation of the National Joint Operations and Intelligence Structure (NATJOINTS) and the National Coronavirus Command Council (NCCC) was for the Department to provide PPE to the public transport sector on an urgent basis

and that the Department would require the National Treasury to provide support and additional resources in that regard. They agreed that the Department could start spending so long until discussions were finalised.

5.1.68. Mr. Moemi also informed the investigating team that the Department also made a formal presentation of the needs and budget to the National Treasury on 2 April 2020. The National Treasury sent the Department a revised budget template on 7 April 2020.

5.1.69. According to Mr. Moemi, the Department followed all the prescripts by the National Treasury in the COVID 19 procurement processes and the provisions of Practice Note No 4 of 2020 were followed in respect of this procurement process, quotations were sourced in line with the provisions of the relevant Treasury instructions in the initial round of procurement. He further stated that in the later rounds, a process of a multiple award approach was utilised to meet the necessary volumes requested in the distribution of the PPE.

5.1.70. According to Mr. Moemi, after the National Disaster declaration by the President in line with the National Disaster Management Act, 2002, consultative meetings were held with the public transport sector on the impact of COVID 19 Disaster Management Regulations on the public transport sector.

5.1.71. He indicated that the sector, more so the Taxi Industry remains unsubsidised by the State, highlighting its inability to secure the necessary resources to provide commuters with PPE to run a safe public transport operation in the face of COVID 19 environment.

5.1.72. Furthermore, Mr. Moemi stated that SANTACO was further requested to play an administrative role for the Department in accepting and certifying the deliveries at Provincial Distribution centres and to nominate the rank Marshalls who would receive the goods.

5.1.73. According to Mr. Moemi, a briefing was then made to him and Ms. Mabula, on the quantities required for the Taxi Industry. He said that work was also done with all other modes of travel and a full presentation and budget with notes were prepared for the transport sector. These covered the needs of the sector in making a determination. He said that the following stakeholders were consulted:

SECTOR	ENTITY	RATIONALE
Aviation	Airports Company of South Africa (ACSA) Air Traffic and Navigation Services (ATNS) South African Civil Aviation (SACAA)	During this period the Aviation Sector was to continue to operate although the borders were closed. Evaluation flights and Repatriation of flights were to continue. Sanitization of Airports and aircrafts and facilities were necessary
Maritime	South African Maritime Safety Authority (SAMSA) Ports Regulator South Africa	The Shipping vessels continued to arrive at the remaining functioning ports and there was a need to continue functioning during this period
Rail	Passenger Rail Agency of South Africa (PRASA)	The passenger trains were known for overcrowding and a response plan needed for the sub-sector to respond to the pandemic, consequently, the decision was made that it will be prudent in Metrorail system was closed completely during lockdown level 5 and 4
Roads	South African National Roads Agency Limited(SANRAL) Road Traffic Management Corporation (RTMC) Cross-Border Road Transport Agency (CBRTA) Road Accident Fund (RAF) Road Traffic Infringement Agency (RTIA)	Although travel was limited during the lockdown periods of Level 5 and Level 4 the toll-gates remained opened for operations, borders remain functional for the set of goods deemed essential. Therefore the operations on the country's roads continued albeit at a reduced level
Public Transport	SANTACO South African Bus Operators Association (SABOA) South African Small Bus Operators Council (SANSBOC) South African Metered Taxi Forum e-Hailing providers (Uber, Bolt and Taxi Live Africa)	The Public transport space continued to be functional with the transportation of essential workers
National Treasury	Public Finance Branch of National Treasury	To secure consensus with National Treasury on the financing for provision of PPE for the Public Transport Sector
NATJOINT	Workstreams at NATjoints	Natjoints had directed that taxi industry be supported with the provision of PPE
Provinces and Cities	All provincial departments responsible for the portfolio of transport	Provinces needed to be consulted to finalise on the needs and also on the alignment in this regard

5.1.74. Mr. Moemi also provided the investigating team with the presentation to the National Treasury dated 2 April 2020, titled, *Presentation to the National Treasury on Covid19–Response Budget* and one of the items was the Transport Response Budget to Covid 19 which is illustrated as follows:

No	Item Description	Budget Amount	
		Subtotal	Total
1	Surface Sanitization		1 730 100 000.00
	Taxi Rank	728 000 000.00	
	Major Bus Terminal	31 200 000.00	
	Taxis	600 000 000.00	
	Buses	140 400 000.00	
	Airports	60 000 000.00	
	Sea Ports	160 000 000.00	
	Airplanes	10 500 000.00	
2	Masks		204 160 000.00
	Taxi and bus Commuters	198 000 000.00	
	Traffic Police	6 050 000.00	
	C BRTA Officials	110 000.00	
3	Scanners		46 000 000.00
4	Hand Sanitizers		80 000 000.00
	TOTAL		2 060 260 000.00

5.1.75. The investigating team was also provided with Price comparison for C-Squared and the National Treasury and sundry payment advices to demonstrate that C-Squared charged less than the National Treasury prices as per the diagram hereunder:

ITEMS DELIVERED TO PROVINCES BY DOT FOR COVID19 TAXI INDUSTRY ASSISTANCE						
ORDERS TOTAL: R15 291 292, 41						
TOTAL PAID: R15 043 233, 56						
Item	Description	Unit of Measure	National Treasury Prices	C-Squared Rate	Total Quantity Delivered	Total Paid Per Item
			Note 1	Note 2	Note 3	

PENND- FOG	Fogging Machines to dispense DDAC disinfected chemical. To be used every 3 rd day per Taxi	Per Item	Not listed	689,94	19,00	13 108,01
Taxi Disinfectant Dispensers	To Disinfect all Taxis in a Taxi rank before use daily- 4 Queue Marshal will ensure that each Taxi is disinfected before loading daily	Per item	Not Listed	689,94	600	413 965,50
Disinfectant	DDAC Chemical to be used as preferred disinfectant base	20 litres	2 760,00	977,50	1 286,00	1 257 065,00
Sanitizers 1 litre	Provide 1 liter sanitizer bottles per taxi	Per item	207,00	29,84	148 087,00	4 419 286,30
Sanitizers	To refill bottles for approximately 200 000 taxis on local operation	20 litre	2 760,00	2 183,85	1 266,00	2 764 754,10
PPE	Protective Gear to Queue Marshals and Rank disinfectant team	Per item	883,23	172,44	1000	172 442,50
Masks	Masks to be kept by the driver to offer to passengers who have no masks and for their own use	Per item	150,00	22,94	80 040,00	1 836 317,70
Gloves	Gloves for the Queue Marshals to wear during disinfecting and when touching door handles	Box of 100	609,13	511,75	7 300,00	3 735 775,00
Delivery Costs						430 518,55
					Total Paid	15 043 233,56

5.1.76. On 21 October 2020, Ms. de Villiers responded to the investigating team and stated that National Treasury issued Instruction Note 8 on 19 March 2020 relating to the emergency procurement in response to the national state of disaster.

- 5.1.77. She further stated that during the end of March and April 2020, the Supply Chain Management Unit approached service providers with specifications, as per requirements communicated by SANTACO and the Public Transport Unit for the Taxi Industry and later by the Department of Basic Education and again the Public Transport Unit for Scholar Transport, based on the Department's engagement with them in this regard.
- 5.1.78. According to Ms. de Villiers, Supply Chain Management Unit was initially provided with a list of companies who did similar work for other Departments and had approached the Department indicating that they were able to mobilise immediately. This list continued to grow as multiple service providers contacted the Department through email, phone and walk-in submissions, and different Departmental offices (Ministry, DG's office, Security etc.) indicating their ability to supply various PPE immediately, as and when the Department needed to procure.
- 5.1.79. She further indicated that the Supply Chain Management Unit utilised this growing list to procure the PPE during the beginning of lockdown as service providers on the National Treasury's transversal contract were non-responsive or did not have stock immediately on hand. She also stated that the service providers included on the list still had to comply with the standard Supply Chain Management Unit rules such as being registered on CSD, tax-compliant, etc.
- 5.1.80. She stated that in terms of the Instruction Note 8, paragraph 3.7.6, an institution may approach any other supplier (not listed in the Annexures to the Instruction Note) to obtain quotes, and may procure from such suppliers on condition that the items are to the specifications as determined by the Department of Health; the prices are equal or lower than the prices in Annexure A of the Instruction Note and the supplier's registered on the CSD.

- 5.1.81. Ms. de Villiers further stated that additionally, National Treasury Instruction Note Number 3 of 2016/2017, paragraph 8.1 and 8.2 confirms that in cases of emergency, the departments could deviate from following competitive bidding processes and that it did not require National Treasury approval. According to Ms. de Villiers, Mr. Moemi approved the procurement in line with these prescripts as the Accounting Officer of the Department.
- 5.1.82. She further stated that all procurement were still done through a competitive quote process in which multiple suppliers were approached and the only reason for invoking the emergency procurement prescripts was based on the value of the quotes, which was above the threshold for quotations (R500 000) and a tender process was deemed impractical due the time frames causing the procurement to be an emergency.
- 5.1.83. She further stated that, section 217 of the Constitution determines 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.***” According to her, the process was fair, open and transparent.
- 5.1.84. Ms. de Villiers further indicated that multiple service providers were approached in each round of procurement and provided with the same opportunity to quote for the PPE, in line with Supply Chain Management prescripts. With reference to **equitable**, she stated that this relates to impartiality which was proven that none of the service providers appointed were known to the Department’s Supply Chain Management officials nor connected to officials within Supply Chain Management Unit, or indicated on their SBD4 documents that they were connected to Department’s officials in any way.

- 5.1.85. She stated that they were transparent in that Internal Audit, Auditor-General of South Africa and National Treasury were provided with reports and supporting documents for the PPE procurement. She added that the Department also submitted the monthly procurement spent on PPE to National Treasury which is published on Treasury website.
- 5.1.86. Ms. De Villiers provided the investigating team with correspondence from the Department to the National Treasury and Auditor General South Africa dated 3 April 2020 with regard to the expenditure of R12 142 082.38 made to C-Squared regarding reporting of emergency procurement for SANTACO Hlokomela Coronavirus 2020 (Covid/19/SANTACO) project for National Treasury and Auditor General South Africa to take note of the aforesaid deviation.
- 5.1.87. She also provided the investigating team with another correspondence from the Department to the National Treasury and Auditor General South Africa dated 8 April 2020, which served to inform National Treasury and Auditor General as required by Practice Note No 6 of 2007/2008 of cases whereby procurement above R1 million was done in terms of Treasury Regulation 16A6.4 and extensions exceeded 15% in terms of Practice Note No 32 of 2011/2012 with regard to the payment of R12 589 210.03 made to C-Squared.
- 5.1.88. The Department requested for the National Treasury and Auditor General to note the deviation to C-Squared to the amount of R3 149 218.04, Ecko-Green for the amount of R8 072 000 and R1 368 000.00 to the Mistralong, which amounted to the above mentioned R12 589 210.03.
- 5.1.89. A report dated 3 June 2020 titled, "*Reporting of Emergency Procurement- Supply of Disinfectants and Sanitizers of Scholar Transport*", was also provided by Ms. de Villiers to the investigating team from the Department to the National Treasury and Auditor General South Africa.

- 5.1.90. The purpose of the correspondence was to inform National Treasury and Auditor General as required by Practice Note No 6 of 2007/2008 of cases whereby procurement above R1 million was done in terms of Treasury Regulation 16A6.4 and extensions exceeded 15% in terms of Practice Note No 32 of 2011/2012 with regard to the value of quotes and subsequent orders submitted by Maphuthla BA Africa Pty Ltd which was R4 287 550.15 for Disinfectant and related products and Atlas Paints Manufacturing Pty Ltd was for Sanitizers for the total procurement of R5 182 393.90.
- 5.1.91. Furthermore, Ms. De Villiers provided the investigating team with the monthly reporting spreadsheet relating to Covid-19 procurement expenditure to the National Treasury and the Quarterly reporting on the procurement plan.
- 5.1.92. The investigating team was also provided with the request for quotation for Emergency Procurement of the Supply of Disinfectants and Sanitizers for Scholar Transport and emergency procurement for SANTACO Hlokomela Coronavirus 2020 project.
- 5.1.93. She further reported that the process was competitive in that on all occasions more than one (1) supplier was approached to quote.
- 5.1.94. She also stated that the process was cost effective in that during round (one) 1 for the taxi industry, only one (1) supplier was compliant (the supplier also submitted the lowest quote). This is illustrated in the graph above that shows the price difference between C-Squared and Ecko-Green.
- 5.1.95. She further added that during round two (2) for the taxi industry and all the subsequent PPE procurement, multiple service providers were compliant (tax compliance etc.) and as such the Department utilised a multiple award process in which service providers were appointed on the lowest quote per item. She

further stated that this was to reduce the expenditure on the PPE by procuring the cost-effective solution per item.

Regarding who generated the request for Quotation (RFQs) in the absence of the Public Transport Unit in the process of these PPE procurement.

- 5.1.96. Ms. De Villiers stated that the items required and the quantities were provided to the Supply Chain Management Unit based on consultation between SANTACO and the Department (including Public Transport and the office of the Minister) for the taxi industry and between the Department of Basic Education and the Department (Public Transport and office of the DG) for scholar transport.
- 5.1.97. She further stated that based on the specifications submitted to the Supply Chain Management Unit, they, as per standard procedure, emailed the request to service providers. The Supply Chain Management processes dictate that end-users should provide the Supply Chain Management with the detailed specifications after which it compiles the RFQ cover submitted to the suppliers.
- 5.1.98. Ms. de Villiers also stated that the Public Transport Unit was part of the process by providing the specifications and ultimately also prepared the payment packs. The Public Transport Unit also initiated the approval submission in some cases. The investigating team was provided with proof of participation by the Public Transport Unit, evidence which included correspondence such as email trails and also the distribution plan by the Public Transport Unit, which corroborated Mr Moemi's assertion.
- 5.1.99. She further stated that the allegation that the Public Transport Unit was not involved in the procurement process was untrue, as it had provided specifications, signed-off on deliveries at the Department and at Bree outreach, provided the distribution list and contact details of provincial offices and signed

off on invoices. She further added that any information directed to the Supply Chain Management Unit was shared with the Public Transport Unit.

- 5.1.100. With regard to the process and procedure that was followed in requesting quotations from the service providers and how the business enterprises submitted their quotations and whether it was on email or fax, Ms. de Villiers stated that the suppliers were approached and submitted quotes through email.
- 5.1.101. With regard to the question why Mr. Moemi was involved in the sourcing of quotations, she stated that he was not involved in the sourcing of quotes, but the Supply Chain Management Unit was responsible. The Chief Director: Financial Administration and Supply Chain Management and the Acting Chief Financial Officer reviewed the process. She indicated that Mr. Moemi only approved the procurement in line with the PFMA and National Treasury Instruction Notes and Regulations.
- 5.1.102. With regard to the criterion that was used to appoint the service providers, as it was alleged that in some instances one service provider was appointed based on quotation, whilst in other instances various service providers were made to share a contract for the supply of PPE and does this not point to irregularities in the appointment criteria that was used, Ms. de Villiers informed the investigating team that all the service providers were appointed based on the quotes submitted and as previously stated above during round one (1) for the taxi industry, only one (1) supplier out of the two (2) suppliers was compliant (the supplier also submitted the lowest quote), during round two (2) for the taxi industry and all the subsequent PPE procurement, multiple service providers were compliant (tax compliance etc.) and as such the Department utilised a multiple award process in which service providers were appointed on the lowest quote per item.

- 5.1.103. According to Ms. de Villiers, this was to reduce the expenditure on the PPE by procuring the most cost effective solution per item.
- 5.1.104. She further stated that the allegation did not make sense as it was not rooted in any justified non-compliance with the Supply Chain Management processes.
- 5.1.105. On the question why Supply Chain Management Middle Managers were excluded from the procurement process, she stated that Mr. Moemi, as the authorised office bearer to issue permits during lockdown as per the Disaster Management Act, issued limited permits in line with the Regulations and to ensure minimum exposure and endangerment of employees.
- 5.1.106. She further stated that initially only Senior Managers were given permits and as the only Senior Manager in Supply Chain Management Unit, she was the only person initially provided with a permit and it can be argued that based on the composition of the officials issued with permits, she became the only Manager whose operational tasks were reviewed and approved by senior managers in the next level of the structure.
- 5.1.107. With regard to the nature of the role of Ms. Mabula in the procurement process, she informed the investigating team that Ms. Mabula was actively involved as she signed-off on submissions and orders. She further stated that Ms. Mabula also attended meetings with parties, and the Supply Chain Management Unit was usually informed by Ms. Mabula to accompany her to the office of the Director General for meetings to discuss COVID-19 procurement.
- 5.1.108. According to Ms. De Villiers, Ms. Mabula was also responsible for engaging Public Transport, the various Provinces and National Treasury on budget related discussions regarding Covid19 procurement and she can only confirm Ms. Mabula's involvement as it pertained to the Supply Chain Management processes.

- 5.1.109. With regard to why C-Squared Consumer Connectedness (Pty) Ltd was appointed as a service provider whilst its offices are based in Bloemfontein and whether there were no other suitable local service providers that could have been used by the Department, Ms. De Villiers explained that the items procured had to be distributed nationwide and the location of a service provider's head office was not a factor, as long as they were in a position to distribute nationwide.
- 5.1.110. According to her, this was not deemed local procurement as the items were to be distributed nationally to all nine (9) Provinces.
- 5.1.111. She said that there was nothing the Department could have done better with regard to this matter and only if they had some warning, time to plan then yes, they could have followed a normal tender process, but according to her, procuring the PPE was not even a standard item.
- 5.1.112. Ms. de Villiers stated that the Department, and specifically those involved in the procurement process, still complied with all aspects of the instructions and guidelines provided by National Treasury and endeavoured to not only save lives, but saved money in the process by ensuring compliance with costing and ensuring that the items were procured at the lowest compliant quoted price.
- 5.1.113. She indicated that they did all of this while under severe time frame pressures to deliver and still did this with limited staff.
- 5.1.114. Ms. De Villiers provided the investigating team with the following spreadsheet and invoices with supporting documents that outlined the procurement process the Department followed:

COVID19 RELATED ACTIVITIES FROM 1/3/2020					
A. RELATED SERVICES					
1. TRANSPORT SECTOR (EXTERNAL)					
SERVICE/GOODS	PROCESS FOLLOWED	SERVICE PROVIDER	APPOINTMENT DATE	AMOUNT	NOTES
Public Transport: Round 2 Extension-Distribution to provinces of PPE procured during Round 2 (DOT assistance to the taxi industry and commuters)	Extension of existing order	C-Squared Consumer	05/05/2020	R268 515,11	Service rendered and paid
			TOTAL:	R268 515,11	
2. DOT (INTERNAL)					
SERVICE/GOODS	PROCESS FOLLOWED	SERVICE PROVIDER	APPOINTMENT DATE	AMOUNT	NOTES
COO: Extension of Cleaning Contract to include COVID19 required intervention	Extension of existing order	Neso Scope	01/06/2020	R1 038 835,35	Payment is done monthly together with normal contractual payment
Disinfecting of entire Forum Building	Competitive Quote Process	C-Squared Consumer	12/06/2020	R128 064,00	Service rendered and paid
Disinfecting of specific areas of Forum Building	Competitive Quote Process	Rimone Wako Mzantsi	21/07/2020	R25 369,60	Service rendered and paid
Disinfecting of specific areas of Forum Building	Competitive Quote Process	I Ria Trading and Projects	30/07/2020	R9 900,00	Service rendered and paid
Disinfecting of specific areas of Forum Building	Competitive Quote Process	Cajole Benison	14/08/2020	R6 665,00	Service rendered and paid
Disinfecting of Forum Building	Competitive Quote Process	Thebis Project Investments	20/10/2020	R364 000,00	Open Order for 100 000m ² if and when required

			TOTAL:	R1 572 833,95		
B. PPE AND RELATED GOODS						
1. TRANSPORT SECTOR (EXTERNAL)						
GOODS	ITEMS	PROCESS FOLLOWED	SERVICE PROVIDER	APPOINTMENT DATE	AMOUNT	NOTES
Public Transport: Activation at Taxi Ranks	Mask Surgical, Gloves - Surgical, Sanitizers, Disinfectants, Sanitiser Refills, Disinfectant Wipes, Non-contact Infrared Temperature Scanners	Competitive Quote Process	Moloko Family Holdings	19/03/2020	R141 940,00	Goods delivered and paid
Public Transport: Round 1 - DOT assistance to the taxi industry and commuters	Mask Surgical, Gloves - Surgical, Sanitizers empty refillable bottles, Disinfectants, Sanitiser Refills, Disinfectant refill, Disposable Protective Wear, Fogging Machines	Emergency procurement in terms of Instruction Note 5 of 2020/2021 and Instruction Note Nr 3 of 2016/2017. Competitive Quote Process	C-Squared Consumer	31/03/2020	R12 142 082,38	Goods delivered and paid
Public Transport: Round 2 - DOT assistance to the taxi industry and commuters (Multiple Award)	Sanitizers empty refillable bottles, Disinfectant refill, Disposable Protective Wear, Fogging Machines	Emergency procurement .in terms of Instruction Note 5 of 2020/2021 and Instruction Note Nr 3 of 2016/2017. Competitive Quote Process	C-Squared Consumer	03/04/2020	R3 149 210,03	Goods delivered and paid
Public Transport: Round 2 - DOT assistance to the taxi industry and commuters (Multiple Award)	Mask Surgical, Disinfectant Spray	Emergency procurement .i.to Instruction Note 5 of 2020/2021 and Instruction Note Nr 3 of 2016/2017. Competitive Quote Process	Ecko-Green	03/04/2020	R8 072 000,00	Goods delivered and paid

Public Transport: Round 2 - DOT assistance to the taxi industry and commuters (Multiple Award)	Sanitiser Refills	Emergency procurement .i.to Instruction Note 5 of 2020/2021 and Instruction Note Nr 3 of 2016/2017. Competitive Quote Process	Mistralog	03/04/2020	R1 368 000,00	Goods delivered and paid
Ministry: Outreach and DLTC's: Face Shields and Sanitizers	Sanitisers, Sanitiser Refills	Competitive Quote Process	Cherry Pickles	20/05/2020	R175 500,00	Goods delivered and paid
Ministry: Outreach and DLTC's: Face Shields and Sanitizers	Face Shields	Competitive Quote Process	Morerishi Travel	20/05/2020	R90 000,00	Goods delivered and paid
PT: Assistance to DBE by providing Sanitizers and Disinfectant to Scholar Transport	Disinfectant refillable bottle, Disinfectant Refills, Gloves-Surgical	Emergency procurement ito Instruction Note 5 of 2020/2021 and Instruction Note Nr 3 of 2016/2017. Competitive Quote Process	Maputha Ba Africa	29/05/2020	R4 287 550,00	Goods delivered and paid
PT: Assistance to DBE by providing Sanitizers and Disinfectant to Scholar Transport	Sanitiser refillable bottle, Sanitiser Refills	Emergency procurement ito Instruction Note 5 of 2020/2021 and Instruction Note Nr 3 of 2016/2017. Competitive Quote Process	Atlas Paints	29/05/2020	R894 843,75	Goods delivered and paid
				TOTAL:	R30 321 126,16	
2. DOT (INTERNAL)						
GOODS	ITEMS	PROCESS FOLLOWED	SERVICE PROVIDER	APPOINTMENT DATE	AMOUNT	NOTES

COO: PPE for DOT officials/internal use	Mask Surgical, Gloves - Surgical, Sanitizers, Disinfectants, Sanitiser Refills, Disinfectant Wipes, Non-contact Infrared Temperature Scanners, Electronic touchless hand sanitisers including installation	Competitive Quote Process	Way 2 Go It Solutions	20/03/2020	R465 000,00	Goods delivered and paid
COO: PPE for DOT officials/internal use (Multiple Award)	Sanitiser Refills, Gloves - Surgical	Competitive Quote Process	Mistralog	23/04/2020	R19 300,00	Goods delivered and paid
COO: PPE for DOT officials/internal use (Multiple Award)	Disinfectants Refills, Non-contact Infrared Temperature Scanners	Competitive Quote Process	Hamisa	23/04/2020	R26 569,14	Goods delivered and paid
COO: PPE for DOT officials/internal use (Multiple Award)	Cloth Masks	Competitive Quote Process	Amet	23/04/2020	R51 750,00	Goods delivered and paid
COO: PPE for DOT officials/internal use (Multiple Award)	Disinfectant Wipes	Competitive Quote Process	Ecko-Green	23/04/2020	R9 000,00	Goods delivered and waiting for invoice from Service Provider to process payment
COO: PPE for DOT officials/internal use (Multiple Award)	Fogging Machines	Competitive Quote Process	Ecko-Green	30/04/2020	R6 000,00	Goods delivered and paid
COO: PPE for DOT officials/internal use (Multiple Award)	Foot Operated Santisier Dispenser	Competitive Quote Process	Tshwane Running Shop	04/06/2020	R22 000,00	Goods delivered and paid
COO: PPE for DOT officials/internal use (Multiple Award)	Sanitiser refillable bottle	Competitive Quote Process	David Madia Trading & Projects	08/07/2020	R7 500,00	Goods delivered and paid
COO: PPE for DOT officials/internal use (Multiple Award)	Disposable Masks & Gloves for Ministry	Competitive Quote Process	Liaison Investment t/a S Grossberg	09/09/2020	R31 912,50	Goods delivered and paid

COO: PPE for DOT officials/internal use	Sanitiser refillable bottle with nozzle for footstands	Competitive Quote Process	Uspects Trading Enterprises	29/09/2020	R1 200,00	Goods delivered and paid
COO: PPE for DOT officials/internal use	Glass Table Shielfs	Competitive Quote Process	Mupo Wanga Investments	06/10/2020	R7 150,00	New Order to be delivered
COO: PPE for DOT officials/internal use	Posters and Leaflets	Competitive Quote Process	Basadi Synergy	14/10/2020	R173 700,00	New Order to be delivered
COO: PPE for DOT officials/internal use	Gloves - Surgical, Shoe covers, Protective Wear, Goggles, Mop Caps	Competitive Quote Process	Vittos 86 Interiors	14/10/2020	R318 855,00	New Order to be delivered
COO: PPE for DOT officials/internal use	Mask Surgical, Non-contact Infrared Temperature Scanners, Foot Operated Santisier Dispenser and bottle, Face Shields, Cloth Masks, Disinfectant wipes	Competitive Quote Process	Shirley Media	14/10/2020	R180 936,90	New Order to be delivered
COO: PPE for DOT officials/internal use	Protective Screens	Competitive Quote Process	Airpic Life	14/10/2020	R196 000,00	New Order to be delivered
				TOTAL:	R1 516 873,54	

5.1.115. The table above also illustrates that all the above procurement by the Department were done after 15 of March 2020, once President Cyril Ramaphosa had declared a national state of disaster to deal with the COVID-19, and the National Treasury had issued an Instruction Note 8 of 2019/20 applicable to the PFMA institutions and a Municipal Finance Management Act (MFMA) Circular 100 for municipalities and municipal entities, to speed up the procurement of goods/commodities required to reduce and control the spread of the virus.

5.1.116. Regarding the above-mentioned competitive quote process followed in the appointment of service providers, amongst others, the Department provided sundry payment advice, commitment in respect of goods and services, the acceptance of quote and request for purchase order, approval documents

indicating who authorized and the date when the authorisation of the order was done as well as the date when the quote were accepted, which were analysed by the investigating team.

- 5.1.117. The investigating team was also provided with confirmation of funds and approval of procurement, the 80/ 20 Comparative Schedule, the specifications, CSD Reporting, CSD Registration summary report, request for quotations invite, request for quotations form, quote from suppliers, a request to approve expenditure to process payment, request to approve expenditure to process payment internal memorandum, the declaration of interest SBD 4 form, Declaration of Bidder's past supply chain management practices form- SBD 8, a certificate of independent Bid Determination SBD 9 forms. These documents confirm the process that was followed in appointing the service providers and the amount paid and the description of the service that was provided and reasons for the service as shown in the diagram above.
- 5.1.118. Correspondence was also sent to Mr. Moseme, the founder and Chairman of C-Squared Consumer Connectedness (Pty) Ltd on 30 September 2020. Mr Moseme responded on 1 October 2020, and confirmed that he received an email from Ms. de Villiers requesting a quotation for the list of specified items for COVID19 DOT/ SANTACO Intervention.
- 5.1.119. He reported that Ms. Maralize van Royeen of C-Squared Consumer Connectedness (Pty) Ltd provided the Department with a quotation for an amount of R12 142 982.38., SBD form which was completed by Ms. Vanessa Eva who was the General Manager of C-Squared Consumer Connectedness (Pty) Ltd, Gauteng offices and sent it to Ms. De Villiers on 31 March 2020.
- 5.1.120. He also indicated that the second quotation was requested by means of an email again by Ms. de Villiers on 2 April 2020 with the closing date of 3 April 2020. Their quotation to the value of R3 149 210.03, together with the SBD forms dated 03 April 2020, were sent to the Department.

- 5.1.121. In responding to the question about the company being based in Bloemfontein, Mr. Moseme stated that C-Squared Consumer Connectedness has a footprint in Bloemfontein, Honeydew, Gauteng and a satellite office at Green Point in Cape Town.
- 5.1.122. With regard to the allegation that the value of C-Squared Consumer Connectedness (Pty) Ltd to supply the PPE first contract amounted to millions of rands and that they may have been involved in the subsequent procurement of the second batch of PPE by the Department, Mr. Moseme stated that they were appointed for a second batch of PPE supplies for R3 149 210.03 although it was clearly stated in the email received from Ms. de Villiers that a particular contract was a multiple award contract shared amongst a number of suppliers.
- 5.1.123. According to Mr. Moseme, C-Squared delivered first and second orders: Order Form AI- 236 275 to the rand value of R 12 142 082.38 dated 31 March 2020 and Order form AI 236 277 for R3 149 210.03 dated 3 April 2020 from their Honeydew and Bloemfontein warehouses with their fleet of over 12 trucks to all nine provinces. He further stated that these two orders included transportation costs as per quotations and invoices submitted and the total value of transportation costs for orders amounted to R195 418.35 VAT inclusive.
- 5.1.124. He further stated that subsequent to their demonstration of logistics and project management capabilities, they were requested to quote on the same route and distribution list to all nine provinces to assist with the delivery of the Department's PPE stock supplied by other service providers in round two.
- 5.1.125. He confirmed that they sent a quote by an email to Ms. de Villiers on 20 April 2020 to the value of R268 515.11 and received an Order form number AI- 263 297 dated 5 May 2020 which was exclusively for transportation cost

(logistics and distribution services) to deliver PPE stock of the Department from their Head Office to be distributed to nine provinces.

- 5.1.126. He stated that C-Squared was appointed to assist with logistics/ transportation of the Department's PPE inventory and this was contracted separately as per quote QUO0007119 and order form AI-236 297.
- 5.1.127. He explained further that the invoice of R268 515.11 (INV0002570) was sent on 23 May 2020 to Ms. de Villiers. According to Mr. Moseme, C-Squared Consumer Connectedness Pty Ltd did not supply this PPE stock. The stock was given to C-Squared Consumer Connectedness Pty Ltd driver, Mr. Brave Mkhwanazi, by Ms. de Villiers and communication to the nine (9) Provinces was managed by Ms. Eva and Mr. Manquthu from C-Squared.
- 5.1.128. On the allegation that the Northern Cape Province raised questions that some PPE delivered by C-Squared Consumer Connectedness (Pty) Ltd had the branding of the National Department of Sports and Recreation, Mr. Moseme responded to the investigating team that under no circumstances did they provide branded masks to the Northern Cape. According to him, the masks they supplied were 3 ply (surgical health), blue masks, which could not be branded.
- 5.1.129. He further stated that all boxes received from the mask manufacturer were sealed and delivered as such and the request was strictly for 3 ply surgical/health/medical masks. He indicated that the fallacy of this misconception lied in the fact that at no stage, during this period, cloth masks which inevitably could be branded, were sanctioned.
- 5.1.130. He further stated that C-Squared was contracted to courier/distribute the PPE inventory to the nine (9) Provinces and were only contracted to do the

distribution thereof and none of their drivers on delivery, had any obligation to verify the nature of the PPE inventory delivered.

- 5.1.131. With regard to the allegation that C-Squared delivered the first batch of the PPE at the Head office Pretoria instead of directly to all Provinces and how much were transportation costs for the distribution of the PPE.
- 5.1.132. In his response, Mr. Moseme stated that C-Squared delivered all the procured items to all Provinces on both the R12 million purchase order and the second R3 million purchase order directly from their Honeydew and Bloemfontein offices.
- 5.1.133. He further stated that no delivery was made by C-Squared to the Department's Pretoria Office except a small batch of sanitizers, empty 500 ml and masks, which were leftovers from part of goods delivered to Bree Street Johannesburg for activation of COVID19 DOT/ SANTACO.
- 5.1.134. According to Mr. Moseme, no PPE stock was requested to be delivered at the Department's Struben Street offices.
- 5.1.135. He concluded by stating that C-Squared has been in the business of PPE and corporate gifting since 2004 and the company grew over the last 18 years and has a good reputation at a national level due to its footprint in the country. Although they may be regarded as a Free State company, they operate at a national and global scale.
- 5.1.136. On 21 October 2020, correspondence was also sent to Ms. Mabula, the Department's acting Chief Financial Officer at the time of the Covid 19 procurement. Ms. Mabula responded on 3 November 2020 and stated that:

- 5.1.136.1. With regard to the allegation that Department irregularly appointment of C-Squared Consumer Connectedness (Pty) Ltd and other service providers for the implementation of the PPE project, Ms Mabula stated that the Department was approached by SANTACO to assist in the provision of COVID-19 PPE in order for the industry to comply with COVID-19 regulations for public transport. SANTACO's request had Specifications and was followed by the request from the Department of Basic Education to assist with COVID-19 PPE for Scholar Transport.
- 5.1.137. She further reported that the Department accepted the request from SANTACO and Department of Basic Education to assist with COVID-19 PPE. But contended that the Department followed the PFMA and complied with procurement processes, procedures and SCM Policies and prescripts. She said that the procurement had to be in line with the National Treasury Instruction Note 8. She indicated that the Department also complied with National Treasury Instruction Note Nr 3 of 2016/2017, including section 217 of the Constitution.
- 5.1.138. With regard to the allegations that she, as the acting Chief Financial Officer at the time, should not have been part of the procurement process, Ms Mabula stated that her involvement was as per the PFMA and the Supply Chain Management Prescripts and Policies. She further indicated that the Supply Chain Management Unit reports to the Chief Financial Officer in terms of the organisational structure and was responsible for sourcing and issuing of orders. She also stated that the Chief Director: Supply Chain Management was responsible for reviewing the process since only Senior Managers were working during lockdown level 5. As the Acting Chief Financial Officer, her role was to review the recommendations from Supply Chain Management and then recommend to the Director General for approval, in line with financial prescripts.

- 5.1.139. With regard to the allegation that in the absence of the Public Transport Unit in the process of these PPE procurement, who generated the request for Quotation (RFQs), Ms. Mabula submitted that the request for quotation was developed by the Department's Supply Chain Management: Quotations unit based on the initial specifications for support to the Taxi Industry. She further added that it was a normal standard operating procedure to use specifications to develop requests for quotations. The Supply Chain Management Unit, as per the standard procedure, emailed the request for quotation to the service providers. She indicated that the Supply Chain Management processes dictate that end-users provide them with the detailed specifications after which the Supply Chain Management Unit compiles the request for quotation to suppliers and according to her knowledge Public Transport was part of the process working with SCM.
- 5.1.140. With regard to whether Mr Moemi was involved in the sourcing of quotations, Ms. Mabula stated that she has no knowledge of his involvement in the sourcing of quotes and according to her knowledge, the Supply Chain Management Unit was responsible for sourcing of quotes. The Chief Director: Supply Chain Management reviewed the process and she, as the Acting Chief Financial Officer, reviewed the recommendation and recommended to the Director General for approval in line with the procurement as per PFMA and National Treasury Instruction Notes and Regulations.
- 5.1.141. With regard to which criteria was used to appoint the service providers, as it was alleged that in some instances one service provider was appointed based on quotation, whilst in other instances, various service providers were made to share a contract for the supply of PPE and whether this does not point to irregularities in the appointment criteria that was used, Ms. Mabula stated that:

- 5.1.141.1. The service providers were appointed based on the competitive quotation processes. These line item prices must comply with National Treasury prices determination per item;
- 5.1.141.2. It is true that there was an instance where only one service provider was appointed, this happened once during round 1 of the procurement for the Taxi Industry; and
- 5.1.141.3. It is true that during round 2 for the Taxi Industry, various service providers were appointed to share the contract. Multiple service providers were compliant (e.g. tax compliance etc.), others did not quote on all items and also quoted differently on items. The Department utilised a multiple award process in which service providers were appointed on the lowest quote per item to comply with National Treasury prescripts and to reduce the expenditure on PPE by procuring in the most cost-effective manner per item.
- 5.1.142. With regard to the allegation that Supply Chain Management Middle Managers were excluded from the procurement process, Ms. Mabula corroborated the evidence provided by Mr Moemi and Ms de Villiers, as discussed above.
- 5.1.143. She indicated that the Department was compliant with the National Treasury Instruction Note Number 3 of 2016/2017, paragraph 8.1 and 8.2 which provides that in cases of emergency, the departments may deviate from competitive bidding. The Department reported to the National Treasury and the Auditor General all expenditure to contractors that were paid over R1 million and reported all other expenditure monthly to the National Treasury.
- 5.1.144. A response was also received from the Mr Sipho Ndaba, the Corporate Executive: Support Audit Services of the Auditor General of South Africa dated 11 May 2021 regarding the audit report on the outcome of the review of the

PPE contracts awarded by the Department as well as details of any conflicts of interest arising from the contract.

- 5.1.145. In his response to the investigating team, he said that the emergency procurement of PPE was audited for contracts awarded between 19 and 31 March 2020 and no non-compliance with prevailing SCM prescripts were identified in the contracts.

Application of the relevant laws and prescripts

The Constitution of the Republic of South Africa, 1996

- 5.1.146. Section 217 of the Constitution is the basis of all procurement practices within the public sector. It provides that when an organ of state contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.
- 5.1.147. It is important to note, in this regard, that in terms of section 2, conduct that is inconsistent with the Constitution is invalid.

The Public Finance Management Act, 1999

- 5.1.148. The key instrument regulating procurement in the public service is the PFMA. Its objectives are 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; and to provide for matters connected therewith.

- 5.1.149. Section 38 of the PFMA provides that the accounting officer of the department is *inter alia*, responsible for the effective, efficient, economical and transparent use of resources of the department.
- 5.1.150. Section 38(1)(a) (iii) provides that the accounting officer for a department must ensure that the department maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.
- 5.1.151. In terms of section 38(2), the accounting officer may not commit a department, trading entity or constitutional institution to any liability for which money has not been appropriated.
- 5.1.152. The accounting officer is required to take effective and appropriate steps against any official in the service of the department who contravenes or fails to comply with the provisions of this Act, or who makes or permits unauthorised, irregular or fruitless and wasteful expenditure.

The Treasury Regulations

- 5.1.153. The SCM Framework of departments, constitutional institutions and public entities, is set out in Regulation 16A of the Treasury Regulations.
- 5.1.154. Regulation 16A3.2 provides that: -

“16A 3.2 A supply chain management system referred to in paragraph 16A.3.1 must –

- (a) be fair, equitable, transparent, competitive and cost effective;*
- (b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);*

- (c) *be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and*
- (d) *provide for at least the following: –*
 - (i) *demand management;*
 - (ii) *acquisition management;*
 - (iii) *logistics management;*
 - (iv) *disposal management;*
 - (v) *risk management; and*
 - (vi) *regular assessment of supply chain performance.”*

5.1.155. Treasury Regulation 16A4.1 regulates the establishment of supply chain management units and provides that “[t]he accounting officer or accounting authority must establish a separate supply chain management unit within the office of that institution’s chief financial officer, to implement the institution’s supply chain management system.” (emphasis added)

5.1.156. In terms of Regulation 16A6.1, the procurement of goods and services either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury.

5.1.157. Regulation 16A6.4 provides that: -

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

National Treasury issued Instruction No 3 of 2016/2017

- 5.1.158. National Treasury Instruction Note Number 3 of 2016/2017, paragraph 8.1 and 8.2 provides that in cases of emergency, the departments may deviate from competitive bidding.
- 5.1.159. Paragraph 8.1 of the note provides that an accounting officer must only deviate from inviting bids in case of emergency and sole supplier status.
- 5.1.160. Paragraph 8.2 of the note provides that an emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an urgency to action and there is insufficient time to invite competitive bids.

National Treasury issued Instruction No 8 of 2019/2020

- 5.1.161. To support the declaration by President Cyril Ramaphosa on 15 March 2020 regarding the COVID-19 virus, National Treasury issued an Instruction Note 8 of 2019/20 applicable to Public Finance Management Act (PFMA) institutions and a Municipal Finance Management Act (MFMA) Circular 100 for municipalities and municipal entities, to speed up the procurement of goods/commodities required to reduce and control the spread of the virus.
- 5.1.162. The Instruction Note aim to augment and enhance uniformity across organs of state, decisions by Accounting Officers and Accounting Authorities in their emergency procurement, in support of effective and efficient service delivery and curb the possible abuse of Supply Chain Management systems during the period of managing this national disaster. The Instruction Note and the Circular also list prices of goods/commodities in efforts to curb opportunistic use of this disaster to drive profit margins. The instruction note provide annexures outlining the list of available goods/commodities and items not catered for on

the Transversal Contracts, but can be procured from the enclosed list of compliant service providers.

National Treasury issued Instruction Note No 5 of 2020/2021

- 5.1.163. On 28 April 2020, National Treasury issued Instruction Note No 5 of 2020/2021 “Treasury Instruction 5”, which repeals the above Treasury Instruction in totality.
- 5.1.164. The National Treasury Instruction 5 specifically prescribes procedures for the emergency procurement of COVID-19 PPE and cloth masks for ease of supply by local SMMEs, and seeks to create an environment for the stimulation of economic participation in supply and manufacturing by these SMMEs.
- 5.1.165. The National Treasury Instruction 5 requires accounting authorities and officers to ensure that authorised or delegated officials properly account when committing public funds, and that any procurement for COVID-19 specific items takes place in terms of an internal financial control, risk management and reporting system and furthermore, organs of state are required to conduct regular audit checks in order to proactively identify any irregularities in the procurement process.
- 5.1.166. Contract variation (without approval) threshold in relation to contracts for goods related to COVID-19 was increased from 15% or R15 million in the first Treasury Instruction, to 25% or R25 million of the original contract price in Treasury Instruction 5.
- 5.1.167. This increased threshold was going to remain in place until the COVID-19 pandemic was declared to be over, however, in recognition of the need for more stringent regulation of emergency procurement during the national state of disaster, expansions, extensions or variations in excess of the above

thresholds will only be allowed in exceptional circumstances, and subject to prior written approval by the relevant treasury.

5.1.168. The first Treasury Instruction No 8 of 2019/2020 provides, in Annexure A Table 2, a list of preventative items for the containment and management of the COVID-19 pandemic and suppliers of those items with whom National Treasury had negotiated alternative arrangements, Annexure A to Treasury Instruction 5 only provides a list of PPE items and cloth masks with specifications and maximum prices, for the duration of the national disaster, institutions are permitted to obtain these items from any supplier, provided that:

5.1.168.1. Items are to the specifications as determined by the World Health Organisation and the National Department of Health for PPE and the Department of Trade, Industry and Competition in relation to cloth masks;

5.1.168.2. The prices are lower than, or equal to the prices listed in Annexure A;

5.1.168.3. The supplier from whom the items are procured is registered on the CSD and any other database that may be approved by National Treasury; and

5.1.168.4. In relation to cloth masks, institutions may only purchase from suppliers that are registered with Department of Small Business Development (“DSBD”) and are on the CSD.

5.1.169. In keeping with the government’s mandate to stimulate economic participation by local SMMEs, institutions were encouraged to procure from small enterprises that fall under the designated group in terms of the Preferential Procurement Regulations, 2017.

5.1.170. The Treasury Instruction further provides that institutions are instructed to refrain from procuring items at prices above the maximum prices listed in

Annexure A, however, a variation of up to 10% of the prices listed in Annexure A will be allowed, provided that any deviation must be approved by the accounting officer or authority, based on a justifiable reason.

- 5.1.171. According to the National Treasury Instructions, the provisions relating to Transversal Contract which allow institutions that are already participants on the transversal contracts to continue placing orders as usual, have been retained in Treasury Instruction 5 and furthermore accounting officers and authorities are permitted to obtain PPE items listed in Annexure A from transversal contract suppliers, without first obtaining participation approval from the National Treasury's Transversal Contracting Unit. An important amendment however was that transversal contract suppliers' prices will default to Annexure A prices, and may only be varied by up to 10%.
- 5.1.172. When analysing the documents received, it appears that the Department followed the National Treasury issued Instruction Note 8, which states that in terms of paragraph 3.7.6, an institution may approach any other supplier (not listed in the Annexures to the Instruction Note) to obtain quotes, and may procure from such suppliers on condition that the items are to the specifications as determined by the Department of Health, the prices are equal or lower than the prices in Annexure A of the Instruction Note and the supplier's registered on the CSD.
- 5.1.173. Regarding the procurement of R268 515.11 of distribution of emergency procurement of goods to all provinces, this approval was done in terms of Instruction note Number 3 of 2016/17 paragraph 8.1 and 8.2 which confirms that in cases of emergency, the departments may deviate from following competitive bidding processes and was approved because the value of the procurement, as well as authority to approve the deviation was based on an emergency and it fell under the delegation of the Accounting Officer.

5.1.174. The emergency procurement of PPEs was also audited by the AGSA, for contracts awarded between 19 and 31 March 2020 and they found that no non-compliance with prevailing SCM prescripts were identified on the contracts.

Conclusion

5.1.175. Having considered the information obtained during the course of the investigation and the applicable legal prescripts, it can be concluded that no evidence was obtained which corroborates the allegation that the Department procured the PPE contrary to the Instruction Note No 5 of 2020/2021 and Instruction Note 8 of 2019/20, respectively. The information received provides that all items that were acquired were also within the threshold of prices provided by the National Treasury.

5.1.176. The Department was compliant with the National Treasury Instruction Note Number 3 of 2016/2017, paragraph 8.1 and 8.2 which provides that in cases of emergency, the departments may deviate from competitive bidding. The Department reported to the National Treasury and the Auditor General all expenditure to contractors that were above R1 million and reported all other Covid 19 expenditure monthly and quarterly to the National Treasury.

5.1.177. Regarding the procurement for the distribution of emergency goods to all 9 provinces to the value of R268 515.11 from C-Squared, this approval was done in terms of instruction note Number 3 of 2016/17 paragraph 8.1 and 8.2, which confirms that in cases of emergency, Departments may deviate from following competitive bidding processes and was approved because the value of the procurement, as well as authority to approve the deviation was based on an emergency and it fell under the delegation of the Accounting Officer.

5.1.178. The emergency procurement of PPE was also audited by the Auditor General, for contracts awarded between 19 and 31 March 2020 and they found that no

non-compliance with prevailing SCM prescripts were identified on the contracts.

5.2. Regarding whether there was any conflict of interest that arose between the officials of the National Department of Transport and the service providers that were awarded contracts to supply Personal Protective Equipment:

Common Cause Issue

5.2.1. It is not disputed that the Department appointed service providers for the supply of the PPE.

Issues in Dispute

5.2.2. The issue for determination is whether there was any conflict of interest that arose between the officials of the Department and service providers that were awarded contracts to supply PPE.

5.2.3. It is further alleged that, when it was time to appoint service providers, Mr. Moemi and Ms de Villiers, brought their own list of service providers which included companies owned by their close friends and associates.

5.2.4. Further to that, it is alleged that some of the companies which were appearing on the list had previously rendered services to the Department of Sports and Recreation whilst Mr. Moemi was the Director-General. In addition, that a list brought by Ms. De Villiers included a company owned by her ex-husband, which was subsequently awarded a contract to supply the PPE.

5.2.5. On 9 October 2020, Mr. Moemi responded to the investigating team with regard to the allegation of conflict of interest by rejecting them as false.

- 5.2.6. With regard to the allegation that some of the companies which had previously rendered services to the Department of Sport and Recreation whilst he was the Director General, he stated that he was not aware of any such companies, but recalled that only C-Squared did business with the Department of Sport and Recreation in 2013. He said that he found the company rendering service in that Department since 2011, as an event management company for the SA Sport Awards.
- 5.2.7. He also indicated that he was the one who terminated a contract of C-Squared and registered the copyright of the SA Sport Awards in the name of the Department and went out for competitive bidding and appointed other service providers and the Department of Sport and Recreation never utilised C-Squared again.
- 5.2.8. Mr. Moemi further stated that the appointment of the company was not based on whether or not it had provided services previously to the Department of Sport and Recreation, but rather on the applicable legal prescripts.
- 5.2.9. With regard to the allegation that Ms. de Villiers included a company owned by her ex-husband and which was subsequently awarded a contract to supply the PPE, Mr. Moemi also rejected the allegation. He stated that after receiving the allegations, he requested the CSD documents indicating ownership of the companies awarded the PPE purchase orders, in order to ascertain whether the ex-husband of Ms. de Villiers was a Director of any of the companies. He reported that he established that this allegation was devoid of the truth as no ownership by Ms. de Villiers' former husband was found.
- 5.2.10. He further stated that he has had no relationship with any of the suppliers that were awarded the PPE contract.

- 5.2.11. On 21 October 2020, Ms. de Villiers responded to the investigating team with regard to whether a company owned by her ex-husband was awarded a contract to supply the PPE. She stated that her ex-husband has never done any business with the Department for the supply of PPE or any other item. According to Ms. de Villiers, this allegation is malicious and false and fabricated by officials who are using COVID19 and the procurement of PPE to slander and frustrate officials within the Department who stand in their way to perform procurement irregularities.
- 5.2.12. With regard to the allegation that C-Squared has a relationship with officials of the Department which could create a perception of conflict of interest, on 1 October 2020, Mr. Moseme responded to the investigating team that they do not have any relationship with any official of the Department.
- 5.2.13. He further stated that C-Squared has only two shareholders namely Ms Zondy Zenamy Moseme, his wife and himself.
- 5.2.14. According to Mr. Moseme, he has no relationship with anyone in the Department and last saw Minister Mbalula in Cape Town on 13 February 2020. He also stated that he last saw Mr. Moemi in December 2012 at a distance, and again during the Inauguration of President Ramaphosa at Loftus Stadium on 25 May 2019.
- 5.2.15. He reported that post the appointment of C-Squared, they had a status meeting on 7 May 2020 with the Department whereby C-Squared was represented by himself, Mr. Ishmael Ndaba and Ms. Vanessa Eva. They met for the first time with the Department's officials, Ms. de Villiers and Mr. Bafana Mkhwebane to discuss the status of the project and to review the number of taxi ranks per province.
- 5.2.16. In conclusion, Mr. Moseme said that staff members of C-Squared have no personal relationship/friendship with any Departmental official that could create the perception of a conflict of interest.

5.2.17. A company search was also independently conducted by the investigating team with regard to Ms. de Villiers ex-husband and it was established that he is a Director in the following companies:

Enterprise Name	Registration Date	Enterprise Status	Enterprise Type	Director Status
THE GREAT FRAME-UP	2000-07-20	DEREGISTRATION PROCESS	Close Corporation	ACTIVE
WRAP YOUR BRAND	2014-06-25	In Business	Private Company	ACTIVE
TGF PRODUCTIONS	2014-07-23	AR Final deregistration	Private Company	INACTIVE
WYB EMPOWERMENT	2020-01-17	In Business	Private Company	ACTIVE

5.2.18. It was established that Ms de Villiers' ex-husband is not a Director in any company that was awarded a contract by the Department.

5.2.19. According to information independently received from the CIPC with regard to C-Squared, it provides the following:

Enterprise Details

Enterprise Number	M2004034663
Enterprise Name	C-SQUARED CONSUMER CONNECTEDNESS
Enterprise Type	Private Company
Enterprise Status	In Business
Compliance Notice Status	NONE
Registration Date	2004-12-06

PHYSICAL ADDRESS:

14 PROTEA STREET
EAST END
BLOEMFONTEIN
FREE STATE
9301

POSTAL ADDRESS:

PO BOX 4548
BLOEMFONTEIN
BLOEMFONTEIN
FREE STATE
9300

ID / Passport Number	Name(s)	Surname	Type	Status
740308 XXXX 08 X	MONTSI BEN	MOSEME	Director	Active
770327 XXXX 08 X	ZONDY ZENANY	MOSEME	Director	Active

5.2.20. According to the CSD, C-Squared is tax compliant and a level 1 contributor to BBBEE, its main business is Medical apparel and textiles; Mobile medical services products; Personal safety and protection; Photographic and recording media; Cleaning and janitorial supplies; Clothing; Personal care products; Decontamination services; Marketing and distribution; Business administration services; Advertising; Reproduction services; Graphic design; Performing arts; Community and social services, PPE.

Application of the relevant laws and prescripts

Public Finance Management Act 2001

5.2.21. Sections 38(1)(a)(iii) and 51 (1) (a) (iii) of the PFMA, prescribes that accounting officers /authorities must ensure that the institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

National Treasury Regulations 2005

5.2.22. Treasury regulation 16A.8.1 (applicable to departments, constitutional institutions and schedule 3A and 3C public entities) states that all officials and other role players in an SCM system must comply with the highest ethical standards. Treasury regulation 16A.8.3 (a) further states that an SCM official or other role player must recognise and disclose any conflict of interest that may arise.

Conclusion

5.2.23. It can be concluded that the ex-husband of Ms. de Villiers is not a Director in any company that was awarded a PPE contract by the Department.

5.2.24. There is also no evidence obtained that corroborates that Mr. Moseme had/has a relationship with the Minister of Transport or Mr. Moemi or anyone who is the official of the Department's SCM Branch. Mr. Moseme's company has also been in existence since 2004.

6. REASON(S) FOR CLOSURE

6.1. The Public Protector is therefore closing the file on the matter taking into cognisance the abovementioned reasons. There is no evidence provided that corroborated that the awarding of a contract to C-Squared Consumer Connectedness (Pty) Ltd and any other service providers for the supply of PPE by the Department, as well as conflict of interest arising from the contract were contrary to any legislation mentioned above.

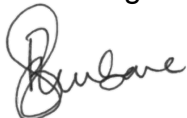
6.2. There is also no evidence obtained that substantiates the allegation that the Department procured the PPE contrary to the Instruction Note No 5 of 2020/2021, Instruction Note 8 of 2019/20 and Instruction Note Number 3 of 2016/2017. Information received provides that the Department also reported to the National Treasury and the Auditor General all expenditure to contractors that were paid above R1 million and reported all other Covid 19 expenditure monthly and quarterly to the National Treasury.

6.3. There is also no evidence of conflict of interest between the officials of the National Department of Transport and the service providers that were awarded contracts to supply PPE.

6.4. The emergency procurement of PPEs were also audited by the Auditor General (AGSA), for contracts awarded between 19 and 31 March 2020 and found that no non-compliance with prevailing SCM prescripts were identified by the AGSA on the contracts.

- 6.5. Having regard to the evidence received, and for the reasons advanced herein above, the Public Protector is unable to pursue the matter any further and is inclined to conclude that the allegations of impropriety and/or maladministration by the officials of the Department as referred to above are found to be unsubstantiated.
7. In terms of Rule 42(1) of the Public Protector Investigation Rules published in Government Gazette No. 41903 dated 14 December 2020, when the Public Protector intends concluding a complaint by means of a closing report provided for in rule 41 (b), the complainant shall be informed in writing accordingly and be given an opportunity to make representations in connection with the intended closure of the complaint within 14 days of delivery of the notification. In this instance, the anonymous complainants did not provide any forwarding address, email or any other contact information to which correspondence pertaining to this investigation and the outcome thereof could be communicated. As a result, the Public Protector was not able to dispense with the provisions of Rule 42(1) of the Public Protector Investigation Rules, as prescribed.
8. For any further enquiries with regard hereto, you may contact Mr. Khulile Mtiki, the Lead Investigator in this matter who can be reached on 012 366 7097, alternatively at khulilem@pprotect.org.

Kind regards



ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 26/05/2021

Assisted by: Mr. Khulile Mtiki- Senior Investigator: Investigations