



**REPORT NO: 47 of 2020/21**  
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**CLOSING REPORT ON AN OWN INITIATIVE INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION BY THE HOUSING DEVELOPMENT AGENCY RELATING TO THE CONSTRUCTION OF TRANSITIONAL RESIDENTIAL UNITS AT TALANA HOSTEL, TZANEEN**

**1. INTRODUCTION**

- 1.1 This report is issued in terms of Section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and Section 8 (1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report relates to an own initiative investigation into allegations of maladministration by the Housing Development Agency (HDA) relating to the construction of transitional residential units at Talana Hostel, Tzaneen.
- 1.3 This was an own initiative complaint launched by the Limpopo Provincial Office of the Public Protector South Africa on 03 August 2020.

**2. THE COMPLAINT**

- 2.1 The investigation was launched based on newspaper reports from Sowetan Newspapers of 03 and 04 August 2020 which reported as follows:

- 2.1.1 Forty (40) temporary residential units (TRU), made up of corrugated iron sheeting, were erected near the Talana Hostel in Tzaneen, with the aim of alleviating the congestion experienced by dwellers at the said hostel in light of the requirement of social distancing under the regulations promulgated in terms of the Disaster Management Act 2002, to mitigate the rapid spreading of the Corona virus;
- 2.1.2 A contractor, Aventino Group CC (Aventino), was appointed by the HDA to construct the TRUs;
- 2.1.3 It was reported in the Sowetan Newspaper article of 04 August 2020 that each of the units cost approximately R64 000.00 to construct, and that there was a public outcry when comparing the value of the final structures and the money spent thereon. A total of R2, 4 million is alleged to have been spent in total on the 40 units which were handed over to beneficiaries of the Talana Hostel;
- 2.1.4 The TRUs were reportedly so shoddily constructed that the Premier of Limpopo Province, Mr Chupu Stanley Mathabatha, sought to distance himself from the project after officially cutting the ribbon during the ceremony to hand them over to recipients;
- 2.1.5 The Public Protector's office was informed by the Limpopo Department of Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA) that the HDA was appointed as the implementing agent for the development. The HDA, in turn, through its procurement process, appointed Aventino as the service provider to carry out the construction work; and
- 2.1.6 The Public Protector sought to determine whether there was value for money in terms of the amount spent on the construction of the TRUs given the public outcry relating thereto.

**2.2 Based on the analysis of the allegations, the following issue was identified to inform and focus the investigation:**

2.2.1 Whether the Department of Cooperative Governance, Human Settlements and Traditional Affairs' Temporary Residential Units in Tzaneen were constructed according to specifications and whether there was value for money in terms of the amount allegedly paid to Aventino for their construction.

### **3. THE INVESTIGATION**

#### **3.1 The Investigation Process**

3.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act. The Public Protector Act confers the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives the Public Protector the authority to resolve a matter without conducting an investigation and resolve a matter through alternative dispute resolution (ADR) measures such as conciliation, mediation and negotiation.

3.1.2 The investigation process commenced with an inspection *in loco* of the TRUs by the Public Protector's Investigation team on 06 August 2020. Thereafter, a formal investigation, meetings with various parties, inspection of all relevant documents, letter exchanges between the Office of the Public Protector and various affected parties and an analysis and application of all relevant laws, policies and related prescripts, followed.

#### **3.2 Approach to the investigation**

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

3.2.1.1 What happened?

3.2.1.2 What should have happened?

- 3.2.1.3 Is there a discrepancy between what happened and what should have happened and does that discrepancy amount to maladministration or other improper conduct?
- 3.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct.
- 3.2.1.5 The question regarding what happened is resolved through a factual enquiry on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on what happened based on a balance of probabilities.

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

##### **4.1 Regarding whether the Department of Cooperative Governance, Human Settlements and Traditional Affairs' Temporary Residential Units in Tzaneen were constructed according to specifications and whether there was value for money in terms of the amount allegedly paid to Aventino for their construction:**

###### *Common cause issues*

- 4.1.1 COGHSTA appointed the HDA as the implementing agent for the project of the construction of TRUs following an assessment of the residential situation at Talana Hostel, Tzaneen, where it was evident that the settlement was highly congested and posed a risk of spreading the Covid-19 virus.
- 4.1.2 The HDA, in turn, appointed the contractor, Aventino Group CC (Aventino) through its procurement processes to carry out the actual work of construction of the TRUs.
- 4.1.3 Specifications for the construction of the TRUs were set out in the Scope of Work provided in the Amended Terms of Reference for the Appointment of a

Service Provider to Construct. A written contract was entered into between the HDA and Aventino.

- 4.1.4 Aventino constructed forty (40) TRUs at Talana Hostel in Tzaneen at a cost of R2 577 640.00. The cost per unit, according to the Appointment Letter, amounted to R64 441.00.
- 4.1.5 The Terms of Reference specified the structural elements to be used in the construction of the TRUs as follows:
  - 4.1.5.1 0.6mm thick galvanized mild or 0.5mm thick galvanized full hard profile for the roof covering;
  - 4.1.5.2 Prefabricated light steel insulated panels or fibre cement insulated panels or sandwich panelled walls for the side cladding;
  - 4.1.5.3 Cold rolled 125 x 50 x 20 x 2, 5 mm lipped channels for the rafters;
  - 4.1.5.4 Concrete floor 75 mm on compacted soil for the flooring;
  - 4.1.5.5 1 x Meranti external door and 5 x NC2 windows of 1022 x 950 mm.
- 4.1.6 After completion of the forty (40) TRUs, the HDA paid Aventino an amount of R2 577 640.00. The money was paid in two tranches of R1 095 497.00 on 22 July 2020 and R1 482 143.00 on 24 July 2020 as reflected in the bank records of Aventino.
- 4.1.7 On 31 July 2020, Premier Mathabatha, accompanied by the Member of the Executive Council for COGHSTA, Mr Basikopo Makamu, officially handed over the TRUs to the beneficiaries from Talana Hostel.
- 4.1.8 After the media uproar and public outcry following the official handover of the TRUs, the Department of Human Settlements requested the National Home Builders Registration Council (NHBRC) to conduct an investigation into the TRUs.
- 4.1.9 The findings of the investigation, contained in a report authored by the NHBRC and dated 20 August 2020, in summary, revealed the following:

- 4.1.9.1 The defects found in the TRUs are major structural and non-structural defects;
- 4.1.9.2 The said defects are mainly due to design deficiencies, poor construction practice, inadequate assembly and non-compliance with processes regarding certification of alternative building technologies;
- 4.1.9.3 The major deficiency is the absence of foundations and structural elements in all TRUs;
- 4.1.9.4 The TRUs are not safe and pose a public health and safety hazard to inhabitants and other persons in their vicinity; and
- 4.1.9.5 The workmanship is generally poor and does not meet the level of accuracy required in building construction.
- 4.1.10 The NHBRC recommended that the Department of Human Settlements should formally request a remedial report from the home builder (the contractor).
- 4.1.11 On 24 November 2020, the Public Protector's investigation team held a collaborative meeting with the Special Investigating Unit (SIU) in Polokwane. During the course of the meeting, it transpired that the SIU was also seized with the investigation of this matter and that its investigation was already at an advanced stage.
- 4.1.12 The Directorate for Priority Crime Investigation (the Hawks) is also investigating the same matter. On 17 December 2020, it was reported in the media that the Hawks had arrested the Director of Aventino as well as the HDA Project Manager who was involved in the awarding of the tender. Both were charged with fraud relating to the awarding of the tender to construct the TRUs.

- 4.1.13 On 13 January 2021, the Public Protector’s investigation team met Lieutenant Colonel MP Mungani of the Hawks, who confirmed that the co-director of Aventino as well as four (4) members of the Bid Evaluation Committee and the Limpopo HDA Project Manager had also been arrested.

Issues in dispute

- 4.1.14 The article in *Sowetan* newspaper of 03 August 2020 reported as follows: *“The brown and blue shelters made from zinc which came at a cost of R64, 000 each were given to poor residents who were moved from shacks in a congested informal settlement a street away.”*

*A company based in the Vaal which has been making and selling complete shacks for 18 years, Tshepiso Fast Zozo, charges R8 300 for a three-roomed shack made from corrugated iron sheets which comes with three windows fitted with glass. Nosipho Tshawe, an HR official at Tshepiso, said their two-room shacks were going for R6,450 while their one-room shelters went for R4, 700...However, one of the beneficiaries, Joseph Marutha, said he was happy to have received something from government.”*

*“EFF provincial leader in Limpopo, Jossey Buthane, has called for a forensic investigation and audit to be conducted on the project. Buthane called the shelters an embarrassment to black people.”*

- 4.1.15 Buthane was further quoted as saying: *“The ANC government led by Mathabatha has insulted our people by giving them lousy shelters at an unreasonable price of R64, 000 a shack. That amount can build a decent home for our people who put them in government in the first place.”*

- 4.1.16 The Public Protector’s investigation team made a preliminary enquiry with the Head of the Department of COGHSTA in Limpopo by way of a written letter on 14 August 2020, enquiring on who was responsible for the implementation of the project and where the funding thereof came from.

- 4.1.17 COGHSTA responded by way of a letter dated 28 August 2020, indicating as follows:
- 4.1.17.1 The project fell under its scope of operation and the funding was sourced from the Upgrading of Informal Settlements Programme Grant for 2020/21;
- 4.1.17.2 COGHSTA appointed the HDA as an implementing agent for the project which, in turn, appointed Aventino, through its procurement process; and
- 4.1.17.3 According to the reports from HDA, the TRUs were constructed according to specifications, however, an investigation had been commissioned by the National Department of Human Settlements into the specification and quality of the project.
- 4.1.17.4 The report further revealed that the contractor was paid in full by HDA, but COGHSTA had not transferred any funds to HDA. The officials of COGHSTA had, however, conducted an inspection on 15 July 2020.
- 4.1.18 As outlined in paragraph 4.1.9 above, the report of NHBRC paints a different picture altogether.

*Application of relevant legal framework*

- 4.1.19 Section 217 (1) of the Constitution stipulates that: *“When an organ of state in the national or local government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with the system which is fair, equitable, transparent, competitive and cost-effective”*
- 4.1.20 In *Steenkamp NO v Provincial Tender Board, Eastern Cape*<sup>1</sup>, Moseneke DCJ stated:

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<sup>1</sup> CCT71/05 [2006] ZACC16 at p.18 par 33



*“Section 217 of the Constitution is the source of the powers and function of a government tender board. It lays down that an organ of State in any of the three spheres of government, if authorised by law may contract for goods and services on behalf of government. However, the tendering system it devises must be fair, equitable, transparent, competitive and cost-effective. This requirement must be understood together with the constitutional precepts on administrative justice in section 33 and the basic values governing public administration in section 195(1).”*

4.1.21 Section 38(1)(a) (iii) of the Public Finance Management Act, 1999 (PFMA) requires the Accounting Officer of a Department, trading entity or constitutional institution to ensure that the department, trading entity or constitutional institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

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

4.1.23 National Building Regulations and Building Standards, Act, 1977 defines that a building, includes, amongst others, the following:

*“(a) any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used in connection with –*

*(i) the accommodation or convenience of human beings or animals...”*

4.1.24 It was expected of the HDA to comply with the required standards and conditions of a building so defined when erecting the TRUs.

- 4.1.25 The National Housing Code, 2009, Part 3, Emergency Housing Programme empowers the government to provide temporary housing relief to households in stress, following natural or manmade disasters.
- 4.1.26 The HDA as the implementing agent had to oversee the erection of the TRUs due to the outbreak of the Corona virus and had to ensure that there was compliance with the statutory framework for the said construction.
- 4.1.27 According to the Emergency Housing Guidelines promulgated in terms of the Emergency Housing programme, 2009, implementing agents must only initiate progress payments in terms of contractual agreements with the providers of housing goods and services against the actual achievement of value for money and certification thereof.
- 4.1.28 It is standard procedure that when payment has to be made for construction work, a department or public entity has a duty to inspect that the construction is in accordance with the specifications agreed upon as well as complying with any applicable building regulations. A payment certificate is then signed to confirm that the construction complies with the specifications and the regulations. Any payment made in the absence of these processes may result in fruitless and wasteful expenditure should the construction turn out not to be compliant.
- 4.1.29 It was expected of the accounting officer of the HDA to ensure that when payment was made to Aventino, same was done in accordance with the requirements of the Emergency Housing Programme as set out above. Any payment made which does not comply with this provision will amount to fruitless and wasteful expenditure.
- 4.1.30 Section 83(3) of the PFMA provides that an official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

- 4.1.31 It was expected of the HDA's accounting officer to ensure the erection of the Talana TRU's was done according to the specifications, that inspections were carried out to verify the compliance and quality of the construction before making any payment to avoid fruitless and wasteful expenditure. Further, to ensure that there was value for money.
- 4.1.32 Value for Money is an essential test against which a department must justify a procurement outcome. *"Value for money may be regarded as the optimal use of resources to achieve the intended outcomes. Underlying value for money is an explicit commitment to ensure that the best results possible are obtained from the money spent or maximum benefit is derived from the resources available".*<sup>2</sup> There has to be combination of cost, quality and sustainability to meet customer requirements.
- 4.1.33 It was expected of the HDA to ensure that value for money is not compromised when payment was made for each TRU, that the quality of the product was also not compromised and that the product was delivered as per the specification.
- 4.1.34 It was expected of HDA to be cost-conscious, to ensure that specifications for the construction of the TRUs as set out in the Scope of Works provided in the Amended Terms of Reference for the Appointment of a Service Provider to Construct are strictly adhered to and ensure that value for money is derived from the construction of the TRUs.
- 4.1.35 In accordance with the provisions of section 83(3) read with section 83(4) of the PFMA, the Minister of Human Settlements, Water and Sanitation, Ms Lindiwe Sisulu, relieved the acting Chief Executive Officer, Mr Mikki Xayiya and the Chief Financial Officer, Mr Brian Mosehla of the HDA of their duties for the failure of the government's TRU programme. Section 83(4) of the PFMA provides that financial misconduct is a ground for dismissal against

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<sup>2</sup> Article on Realising value for money through procurement strategy in delivery of public structure by Ron Watermeyer, Deng,PrENG,CEng,PrCRM,PrCPM, University of the Witwatersrand, February 2014.

an official referred to in subsection 3. This was reported in the Mail and Guardian Online Newspaper of 04 February 2021.

### Conclusion

- 4.1.36 From the NHBRC report it can be concluded that the contractor, Aventino, deviated markedly from the specifications and building regulations governing the construction of structures such as the TRUs.
- 4.1.37 There was general poor workmanship and poor quality of material was used in the construction of TRUs. No due diligence was undertaken by the HDA when final payment was made to Aventino for the product delivered as per the tender awarded. In the circumstances, payment by the HDA to Aventino amounted to fruitless and wasteful expenditure (as defined in section 1 of the PFMA) by HDA.
- 4.1.38 Further, there was no value for money when a comparison is made between the final cost of the TRUs and that of shacks of a similar nature that are available in the open market. The comparative enquiry made in the *Sowetan* newspaper of 03 August 2020 indicated that each TRU cost ten times more than a comparable 2-room shack which is said to cost R6 450.00.
- 4.1.39 Both the SIU and the Hawks are currently seized with the investigation of the same matter and their respective engagements are at an advanced stage. It has been established that the co-director of Aventino as well as four (4) members of the Bid Evaluation Committee and the Limpopo HDA Project Manager have also been arrested. They are being charged for fraud in the awarding of the tender for the construction of the TRUs under Tzaneen CAS 384/12/2020 which for our purpose would be conduct failure and or gross maladministration.

## 5 REASONS FOR CLOSURE

5.1 The own investigation matter is closed based on the following facts:

5.1.1 The SIU and Hawks are both seized with the investigation of this matter and it has been established that the co-director of Aventino as well as four (4) members of the Bid Evaluation Committee and the Limpopo HDA Project Manager have been arrested and charged with fraud.

5.1.2 The chief executive officer and the chief financial officer of the HDA have both been dismissed by the Minister of Human Settlements, Water and Sanitation for failure of the government's TRU programme for which they were vested with the responsibility.

5.1.3 The matter is now the subject of a case before court, with the same facts and evidence.



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**ACTING PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 01 March 2021

*Assisted by the Limpopo Provincial Office: Adv. Mashaba Matimolane*

