

Executive Summary

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into the alleged maladministration by the Free State Department of Agriculture and Rural Development (the Department) in that it did not adhere to treasury prescripts and lack of financial control in the administration of the Vrede Dairy Project (the Project).
- (iii) The Complainant is Mr R Jankielsohn (the Complainant) a member of the Free State Provincial Legislature representing the Democratic Alliance. Mr Jankielsohn submitted a complaint alleging maladministration after visiting the Vrede Dairy Farm and received answers to questions posed in the Free State Legislature which were not satisfactorily answered according to him.
- (iv) In the main, the complaint dated 12 September 2013 provides:
 - (a) That the Portfolio Committee on Agriculture and Rural Development in the Free State Legislature, around September 2013, heard from the Head of Department, Mr M P Thabete, that an agreement between the province and the private sector partners ESTINA/PARAS in the Vrede Dairy Project was subject to a confidentiality clause;
 - (b) That in terms of the agreement the Indian company "PARAS" and their South African Partner "ESTINA" would receive a 49% share with a R228 million investment in the R570 million project, while the 100 local beneficiaries would jointly receive 51% shares through a government investment of R342 million. This implied that ESTINA/PARAS would obtain a 49% share with an investment of only 40% of the projected cost of the project. Government would thus be

- investing R144 million more in the project than their private sector partners without the beneficiaries receiving the proportionate number of shares;
- (c) The project planned to milk 500 cows and produce 40 000 litres of milk per day that would be processed by a factory built by ESTINA/PARAS. The Department had invested R30 million in the project the previous year on designs, an Environmental Impact Assessment, planting of fodder, etc. On the year the complaint was lodged, an amount of R84 million was to be invested in the infrastructure, machinery and cattle. The Department had indicated that 400 pregnant cattle had already been purchased for the project; and
- (d) That the Public Protector had to investigate the issues in an attempt to ensure transparency in the project as well as an equitable share in the project for the local 100 beneficiaries based on the government investment.
- (v) On 28 March 2014, the Public Protector received a further complaint from the Complainant on the Project. The Complainant made the same allegations as those received on 12 September 2013. The second complaint was:
- (a) That it had come to light that ESTINA would only contribute if necessary and that they were also benefiting from the supply of goods and services from the contributions from the provincial government;
- (b) That the R342 million was also subject to hugely inflated costs, some of which included among others the construction of a silage bunker for R5 000 000.00; a 2km gravel access road for R1 200 000.00; a security gate and guard house for R2 6000 000.00; a cattle feed pant for R7 350 000.00; a milking parlour and mild processing plant for R30 050 000.00; tools such as spanners, shovels, grinders, air compressors, etc. for R2 513 000.00; administrative, legal, accounting and other consulting fees for R12 000 000.00; irrigation equipment, pasteurizer and dairy equipment for R37 779 613.00 and 351 dairy cows for R6 212 000.00;

- (c) That the Free State government had paid R2 838 000.00 more for the 351 dairy cows than was necessary. There also appeared to be no official record of such transactions within the breed society that kept stud books of such cattle. Even though the value of the cattle bought was questionable, the DA had made enquiries about the best possible market prices for stud cattle with the Free State Friesland Breed Society. The market prices for prime cattle were indicated in the following table:

Types of Heifers Purchased	Number Purchased	Market price of Friesland/Holstein Stud Heifers	Total Costs
Pregnant Heifers	62	R15 000 per heifer	R930 000
Breeding Cows	57	R16 000 per cow	R912 000
Calves 12 months +	70	R8 000 per heifer	R560 000
Heifers 9-12 months	77	R6 000 per heifer	R462 000
Heifers 6-9 months	85	R4 000 to R6 000 per heifer	R510 000 (maximum)
TOTAL			R3 374 000

- (d) That at the time, the national Department of Agriculture had supplied the provincial government with R40 466 231 worth of equipment that included tractors and most of the other related equipment for planting and maintaining crops. Purchasing additional tractors and equipment for the project wasn't necessary and jointly cost the project an additional R5 867 494.00;
- (e) That the top range rotary milking machines with electronic sensors cost about R55 000.00 per point. The machines for the 82 points should not have cost more than about R4.5 million. They were included as part of the R30 050 000.00 price tag that included the milk processing plant;

- (f) That it appeared the payments for goods and services were in some, if not all, instances highly inflated. It was also not known who the suppliers of the various goods and services were, and whether the suppliers, implementing agents, or officials were responsible for the inflated prices;
 - (g) That the agreement with ESTINA included a clause that the service provider would be "responsible to ensure that they comply with environmental requirements" had already been breached since complaints of indiscriminate ploughing of natural fields and wetlands had been received. This could not be done without the necessary environmental procedures being followed; and
 - (h) That various reports indicated that up to between 50 and 100 cattle had died since being purchased. There was obviously a serious problem with these cattle and this was costing taxpayers a great deal of money. It was not known what the cause of the deaths was, or what the costs of this was. Furthermore that some carcasses had also been dumped next to a stream that ran into the catchment area for water for the town of Vrede/Ezenzeleni. These had just been covered with gravel and still posed a risk when it rained.
- (vi) On 10 May 2016, after the issues in the investigation were identified by the Public Protector, the Complainant further submitted the following:
- (a) That the appointment of ESTINA as partner in the project did not follow the necessary state procurement processes;
 - (b) ESTINA misrepresented itself as being in partnership with a large dairy company in India, namely PARAS, by marketing itself in presentations as "Estina/Paras. This could not have been overlooked by those who approved the project since logic dictates that Paras would be part of such a presentation or at least be requested to commit in writing to being part of the project;

- (c) The contract was approved by the legal department in the Office of the Premier, as confirmed by the CFO in interviews. The contract clearly benefits ESTINA at the cost of the state, taxpayers, and beneficiaries;
- (d) The fact that ESTINA was both a partner and implementing agent was highly irregular. ESTINA subsequently received up to R183 million for the construction of infrastructure and purchasing of cattle for the project. It appeared that costs of some of the items were inflated and that the processing plant that was paid for was dysfunctional;
- (e) The fact that ESTINA would receive 49% share in the project with only a 40% contribution was irregular and robs the taxpayers and beneficiaries of a 9% share;
- (f) ESTINA was allowed to abscond from the project without any accountability. The FDC have taken over their management role in this project;
- (g) The Mahoma Mobung part of the project, including bank accounts in this name, was unclear and appeared to be irregular;
- (h) The fact that the 80 beneficiaries had been sidelined, while they in fact should own 51% of the project, implied that they were used as pawns to justify the project after the DA requested the names from them. A meeting with some of them indicated that they were merely names on a piece of paper with no further information or involvement. They had a right to claim their 51% share;
- (i) The National Treasury investigation had revealed various irregularities with recommendations of disciplinary procedures against both the HoD and CFO, which had been ignored by the provincial government and the Premier. The recommendations had to be implemented;
- (j) Questions in the Portfolio Committee on Economic Affairs that included agriculture in the Free State Legislature relating to the Vrede Dairy Project had

been ignored. In fact the Chairperson of the committee would not allow any questions to the Department of Agriculture on the issue by the members of the legislature. The former MEC for the Agriculture and Rural Development, Mamiki Qabathe, refused to answer questions relating to the project in the committee;

- (k) While the FDC had taken over the management of the project, the Department of Agriculture and Rural Development continued to make monthly payments for running costs such as food into the project.”
- (vii) On analysis of the complaint received in 2013 and 2014, the following issues were identified and investigated:
 - (a) Whether the Department improperly entered into a Public Private Partnership agreement for the implementation of the Vrede Dairy Project;
 - (b) Whether the Department failed to manage and monitor implementation of the terms of the agreement in relation to budget evaluation, expenditure control and performance by ESTINA;
 - (c) Whether or not prices for goods and services procured were inflated, specifically alleged expenses in respect of construction, processing equipment, procurement of cows and administration costs; and
- (viii) **The following issues were not investigated due to capacity and financial constraints experience by the Office of the Public Protector:**
 - (a) The cause of the alleged deaths of the cattle. The photographs submitted in respect of the alleged deaths of the cattle indicated that the deaths did not occur recently. The Minister of Water Affairs intervened and issued instructions on the removal of the dead cows.

- (b) Issues emanating from the complaint sent on 10 May 2016 as the issues pertaining to the investigation were already identified and an investigation was at an advance stage.
- (c) The issue of value for money obtained by the Government in terms of the agreement was investigated by National Treasury: Accountant General.
- (d) The recent newspaper articles on the emails reported, relating to the Gupta family, that surfaced around June 2017, referring to the Project were noted but do not form part of the scope of this investigation.
- (e) How the money transferred to ESTINA were spent by ESTINA, as the Directorate for Priority Crime is dealing with the issue.
- (f) The matter relating to beneficiaries who were intended to benefit from the project due to lack of information.
- (ix) The investigation process was conducted through meetings and interviews with the Complainant and relevant officials of the Department as well as inspection of all relevant documents and analysis and application of all relevant laws, policies and related prescripts.
- (x) Key laws and policies taken into account to determine if there had been maladministration by the Department and prejudice to the Complainant or South African Citizens were principally those imposing administrative standards that should have been complied with by the Department or its officials. Those are the following:
 - (a) Sections 195 and 217 of the Constitution create the basis for a public procurement framework aimed at ensuring equity, good governance and administration, fair dealing in the administrative context, enhancing protection

of the individual against abuse of state power, promoting public participation in decision-making, and strengthening the notion that public officials are answerable and accountable to the public they are meant to serve.¹

- (b) There are certain requirements before a government can successfully use Public-Private-Partnerships (PPP) to procure public services infrastructure or services. A detailed legislative framework is in place through the Public Finance Management Act, 1 of 1999 (PFMA) and PFMA regulation 16 of the Treasury Regulation (Regulations).
 - (c) Sections 38, 39 and 40 of the PFMA require Accounting Officers of departments to ensure that effective, efficient and transparent financial and risk management systems are in place.
- (xi) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:
- (a) **Regarding whether the Department of Agriculture improperly entered into a Public Private Partnership agreement for the implementation of the Vrede Dairy Project:**
 - (aa) The allegation that the Department improperly entered into a Public Private Partnership agreement for the implementation of the Vrede Dairy project is not substantiated.
 - (bb) The Department did not enter into a PPP with ESTINA in the context of Treasury Regulation requirements.

¹ Devenish, Govender and Hulme *Administrative Law* 14-16

Observations

(cc) The Public Protector in concurrence with the Accountant General's investigation observed the following procurement irregularities:-

- (1) That the HoD of the department did not follow the normal procurement process, as prescribed by the Constitution, PFMA and National Treasury Regulations;
- (2) That the payments to Estina were also not line with Treasury prescripts;
- (3) That the agreement between the Department and Estina seems to be invalid, due to non -compliance with the procurement process;
- (4) That despite the Accountant General's report, the department failed to comply with section 81 and 86 of the PFMA, which prescribed the process to be followed when there is allegations of financial misconduct;

(dd) The prescripts in respect of the procurement of the agreement were not adhered to.

(ee) The Accounting Officer of the Department proceeded after the recommendation of the Accountant General to pay a further R143, 950 million to ESTINA in respect of the Project.

(b) Regarding whether the Department failed to manage and monitor implementation of the terms of the agreement in relation to budget evaluation, expenditure control and performance by ESTINA:

(aa) The allegation that the Department failed to manage and monitor implementation of the terms of agreement is substantiated.

- (bb) No documents and/or policies or measures were provided by the Department that proper financial control and risk management of the Project were in place. The Public Protector could find no evidence or indication that the Accounting Officer invoked the provisions of the agreement in respect of the control over the Project and this raises a serious concern. This concern was supported by the report of the Accountant General and the lack of effective, efficient and transparent systems of financial and risk management and internal control amounts to gross negligence and maladministration.
 - (cc) No supporting evidence in the form of actual invoices/receipts was submitted to substantiate the expenditure as claimed in the financial statements submitted, except for nine (9) invoices for procurement of cattle.
 - (dd) The evidence outlined earlier points to gross irregularities in ensuring the effective and efficient performance of the agreement and resulted in maladministration.
 - (ee) From the above it is clear that this amounts to gross negligence and also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act.
- (c) **Whether the prices for goods and services procured were inflated, specifically alleged expenses in respect of construction, processing equipment, procurement of cows and administration costs:**
- (aa) The allegation that the prices for goods and services procured were inflated, specifically expenses in respect of construction, processing equipment,

procurement of cows and administration costs is difficult to determine. This is due to the following:

1. ESTINA did not follow public procurement processes when procuring the services of the service providers in the project;
2. Due to the lack of resources and financial constraints, the Public Protector was unable to conduct a comprehensive investigation in order to determine the fair market value for good and services procured; and
3. The Public Protector was not provided with all the invoices and proof of payments for the goods and services procured by Estina on behalf of the Department.

(xi) REMEDIAL ACTION

The appropriate remedial action the Public Protector takes in pursuit of section 182(1)(c) of the Constitution, with the view of addressing systemic procurement management deficiencies in the Department and the irregular expenditure incurred, is the following:

(a) The Premier of the Free State Province must

- (aa) Initiate and institute disciplinary action against all implicated officials involved in the Vrede Dairy Farm project.
- (bb) Submit the report regarding the remedial action in (aa) to the Public Protector after conclusion of the disciplinary action processes.
- (cc) Ensure that that he conducts a reconciliation of the number of cows initially procured and found during April 2017 as per his undertaking in the response to the section 7(9) notice.

- (dd) Ensure that he submit an implementation plan within 30 days of the issuing of this report.

(b) The Head of the Free State Department of Agriculture must:

- (aa) Ensure that the officials in the Supply Chain Management Division and the Management of the Department are trained on the prescripts of the National and Provincial Treasuries in respect of procurement and specifically in respect of deviations;
- (bb) Take corrective measures to prevent a recurrence of the failure in the management process referred to in this report;
- (cc) Ensure that all Departmental staff involved in the implementation and execution of Projects are properly trained and capacitated to manage Projects assigned to them, for future projects; and
- (dd) Develop and revise current policies for the implementation of internal control measures in line with Treasury prescripts and regulations.