



REPORT OF THE AUDITOR-GENERAL

**to the Northern Cape Provincial Legislature
on an investigation at the Northern Cape Department of Health**

NOVEMBER 2011



AUDITOR-GENERAL
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at the Northern Cape Department of Health

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REPORT OF THE AUDITOR-GENERAL OF SOUTH AFRICA TO THE PROVINCIAL LEGISLATURE ON AN INVESTIGATION AT THE NORTHERN CAPE DEPARTMENT OF HEALTH

1. EXECUTIVE SUMMARY

1.1 Background

- 1.1.1 The Auditor-General of South Africa (AGSA) was requested in a letter dated 26 August 2010 to conduct an investigation into the procurement of waste management and security services contracts at the Northern Cape Department of Health (department). The allegations raised in the letter to the AGSA included the following:
- (a) Irregularities during the procurement process of both waste management and security services contracts; and
 - (b) Irregularities relating to the management of the contracts, as well as payments made on both contracts.
- 1.1.2 The AGSA and the department met on 22 November 2010 to discuss the proposed investigation and consensus was reached on the scope of the investigation.
- 1.1.3 A letter of engagement in this respect was signed on 22 November 2010 with the Member of the Executive Council (MEC) of the department.
- 1.1.4 This report accordingly provides the AGSA's conclusions on the allegations investigated.
- 1.1.5 In line with the Auditor-General's *Policy, Standards and Guidelines: Investigations*, due care was taken to confirm the factual accuracy of the findings in this report. This includes discussions with officials of the department and an opportunity for management of the department to formally respond to the findings in this report.

1.2 Findings

- 1.2.1 The findings are predominantly due to non-adherence to procurement legislation and practice notes, issued by the National Treasury, in awarding the contracts for security services and waste management services. The findings also highlight inadequate planning, monitoring and oversight by the department to ensure that contracts were not being extended for long periods of time without a competitive bidding process being followed.
- 1.2.2 The MEC of the department, with the support of the department's executive management, should address the findings in this report decisively. However, corrective actions limited to the specific individual findings would likely address symptoms, but not the underlying causes. This approach carries the risk of deficiencies recurring in future. It is therefore imperative that the underlying causes contributing to the deficiencies be properly understood and addressed as part of the corrective actions to be taken in response to this report.
- 1.2.3 The findings of the investigation cover the 2009-10 and 2010-11 financial years, unless indicated otherwise. These findings are summarised below:



1.2.4 Security services contract

- 1.2.4.1 The security company did comply with the bid specification relating to the company's registration with the Private Security Industry Regulatory Authority (PSIRA). Therefore, allegations regarding non-compliance by the security company with the bid specifications relating to the company's registration with PSIRA were unfounded. Furthermore, the security company did submit a valid tax clearance certificate and it was also confirmed with the South African Revenue Services (SARS) that the value-added tax (VAT) registration number used by the security company was valid.
- 1.2.4.2 It was found during the compliance check that either the Northern Cape Provincial Treasury (Provincial Treasury) or the department had scored incorrectly for Historically Disadvantaged Individuals (HDIs). During the evaluation process performed by the Bid Evaluation Committee (BEC), eight bid proposals were disqualified for deviating from the department's cost estimate, in contravention of the Supply Chain Management (SCM) circular. Four companies were disqualified by the BEC for not complying with the evaluation criteria for locality; however, the AGSA confirmed that these bidders had indeed complied with the evaluation criteria for locality.
- 1.2.4.3 Based on recalculations performed by the AGSA, another security company scored the highest number of points for price and HDI. This entity was disqualified for not complying with the criteria for locality, although, according to its proposals, the company had offices in the Northern Cape. This resulted in the bid being awarded for an amount of R3 769 864 per month and not to another security company which had scored the highest points and whose bid amount was R2 618 973 per month. Valid reasons for not awarding the bid to the bidder scoring the highest points, as required, were not provided.
- 1.2.4.4 In this regard, the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) and relevant practice notes define irregular expenditure as being expenditure, other than unauthorised expenditure, incurred in contravention of or not in accordance with a requirement of any legislation applicable to public sector procurement. Payments of R39,79 million for the period March 2010 to January 2011 were made to the security company.
- 1.2.4.5 The security company failed to comply with the memorandum of agreement (MoA) when invoicing the department for security services. The proposal and MoA for the monthly cost per security guards were inclusive of VAT. The security company, however, claimed additional VAT on invoices submitted to the department, resulting in overpayments of R3,97 million being made. During the investigation the department was in the process of recovering the overpayments. The AGSA was unable to confirm the correctness of payments made for security services rendered at 10 health facilities as the monthly costs for these facilities were not included in the security company's proposal and there was no addendum to the MoA detailing the monthly cost for security guards relating to these health facilities. Total payments to the value of R4,9 million were made in this regard.
- 1.2.4.6 The security company also failed to comply with the requirements of the MoA by supplying security guards who did not have the specific grading, contrary to the agreement with the various health facilities. Various other requirements in the MoA were not complied with by the company, which led to the termination of the agreement at the end of December 2010. These issues of non-compliance with the MoA were identified by the department in June 2010 and also contributed to the department terminating the contract.



1.2.5 Waste management contract

- 1.2.5.1 The deviation from inviting competitive bids and the decision to follow a limited bidding process were not reported to the AGSA and Provincial Treasury.
- 1.2.5.2 The department did not record the date on which bid proposals were received from service providers, thus the AGSA could not verify whether bid proposals were received before the closing date.
- 1.2.5.3 Payments to the value of R8,23 million to the service provider reflected items that were not stipulated in the service level agreement (SLA). The AGSA also identified overpayments amounting to R47 225 that were not made in accordance with the tariffs stipulated in the SLA.

1.2.6 Recommendations

- 1.2.6.1 The Head of Department (HoD) should implement effective measures to ensure compliance with procurement legislation and practice notes in awarding contracts to service providers, especially with regard to the bid evaluation and adjudication processes as well as the calculation of points for price and HDI.
- 1.2.6.2 The BEC and BAC should ensure that:
 - (a) all bids are evaluated and adjudicated by the BEC and BAC, respectively; and
 - (b) disqualification of bidders is valid and in accordance with the procurement legislation and practice notes.
- 1.2.6.3 The HoD should ensure that processes are in place to timeously invite bid proposals before contracts with existing service providers expire.
- 1.2.6.4 The department should ensure that contract extensions are minimised and competitive bid processes are initiated for the procurement of services.
- 1.2.6.5 Payments should only be made in accordance with agreed SLAs. If applicable, addenda to the existing agreement should be signed should rates/tariffs be subsequently revised.
- 1.2.6.6 The department should take action to recover overpayments from both companies.
- 1.2.6.7 The service providers' ability to execute the contract successfully should be thoroughly evaluated and assessed prior to awarding the contract.
- 1.2.6.8 The HoD should take appropriate steps against officials who contravened the procurement legislation and regulations in awarding the contract.
- 1.2.6.9 The HoD should determine whether expenditure incurred on the security contract constitutes irregular expenditure as defined in the PFMA, and, if so, report the irregular expenditure in terms of the PFMA.



2. INTRODUCTION

- 2.1 The functions of the AGSA in supporting constitutional democracy in South Africa are described in section 188 of the Constitution of the Republic of South Africa, 1996, as well as the Public Audit Act, 2004 (Act No. 25 of 2004) (PAA). Section 5(1)(d) of the PAA specifically gives the AGSA the authority to carry out an appropriate investigation if the AGSA considers it to be in the public interest or upon receipt of a complaint or request. In this context, the AGSA investigates allegations in order to facilitate public accountability by reporting the findings emanating from the investigation to management and those charged with governance. Ultimately, the findings and recommendations in this report are intended to enable management and those charged with governance to implement measures that will ensure effective governance.
- 2.2 The AGSA was requested in a letter dated 26 August 2010 to conduct an investigation into the procurement of waste management and security services contracts at the department. The AGSA and the department met on 22 November 2010 to discuss the scope of the proposed investigation. In line with its mandate, the AGSA decided to investigate the allegations made and an engagement letter was signed on 22 November 2010 between the MEC and the AGSA.

3. RESPONSIBILITIES OF MANAGEMENT AND THOSE CHARGED WITH GOVERNANCE

- 3.1 Within the context of the public service and state-owned entities, the primary responsibility for the prevention and detection of fraud and error rests with management of the entity and those charged with governance. Management needs to set the proper tone and create and maintain a culture of honesty and high standard of professional ethics. Furthermore, management must establish a control environment and maintain policies and procedures to assist in achieving the objective of ensuring the orderly and efficient conduct of the entity's business.
- 3.2 On the other hand, those charged with the governance of an entity must ensure, through the oversight of management, the integrity of an entity's accounting and financial reporting systems and that appropriate controls are in place, including those for monitoring risk, financial control and compliance with the law.
- 3.3 The HoD, in his capacity as the accounting officer of the department, is responsible for outputs and implementation and is accountable to the Provincial Legislature for the management of the implementation of the department's budget. Furthermore, in terms of section 38(1)(a)(iii) of the PFMA, the HoD is responsible for ensuring that the department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.
- 3.4 The intention is that the findings and recommendations in this report should enable the management of the department to implement the necessary measures and steps to ensure effective accounting and internal control systems.

4. SCOPE OF THE ASSIGNMENT

- 4.1 The scope of the investigation, as defined in the letter of engagement with the MEC of the department, was as follows:



- (a) To determine whether there were any possible irregularities during the procurement process of both waste management and security services contracts; and
- (b) To determine any possible irregularities relating to the management of the contracts, as well as payments made on both contracts.

4.2 The investigation covered the 2009-10 and 2010-11 financial years, unless indicated otherwise.

5. PURPOSE, OBJECTIVES AND APPROACH OF THE INVESTIGATION

5.1 The purpose of the investigation is to identify any procurement and management irregularities regarding the waste management and security services contracts. The report with findings and recommendations is aimed at enabling management to implement measures to strengthen governance and prevent further occurrences of irregular expenditure.

5.2 The investigation was performed in terms of the Auditor-General's *Policy, Standards and Guidelines: Investigations*.

5.3 The AGSA conducted interviews with officials from the department and the Provincial Treasury to obtain clarity on the allegations. The investigation commenced with the collation of relevant documentation received from the department. The documentation was scrutinised and compared to the prevailing prescripts and policies mentioned herein.

5.4 The AGSA conducted site visits at certain health facilities to verify whether services rendered by service providers complied with the MoA.

5.5 A management report on the outcome of the investigation was issued to the department on 10 June 2011 for comments. Responses were received from the department on 4 July 2011, 7 September 2011 and 7 October 2011. These responses, where applicable, are included in the report.

6. REGULATORY FRAMEWORK

6.1 The documentation collated was compared to the prevailing prescripts, such as:

- Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA);
- Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) and its associated regulations;
- Supply Chain Management practice notes issued by the National Treasury;
- Supply Chain Management circular dated 10 May 2005;
- Supply Chain Management circular dated 24 March 2006;
- National Treasury Guidelines for accounting officers/authorities, 2004;
- Northern Cape Supply Chain Management Policy; and
- Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).

The above list of the relevant prescripts is, however, by no means exhaustive.



7. LIMITATIONS OF THE REPORT

- 7.1 Although the work performed incorporates our understanding of the relevant prescripts and the law as it stands, we do not express an opinion on the legal effect of the facts or the guilt or innocence of any person(s) or party, but merely state the facts as they have come to our attention. In the case of disciplinary hearings or civil and criminal litigation, this report may only be used as a reference document.
- 7.2 The report is based on the facts established from documentation and information provided and/or obtained during the course of the investigation. Should further documentation or information be obtained, this may influence the findings and conclusions made.
- 7.3 The validity or authenticity of the relevant records and information subjected to analysis was not verified. This information was accepted at face value unless stated otherwise.

8. DETAILED FINDINGS, RECOMMENDATIONS AND RESPONSES

8.1 Security company's compliance with legislation

8.1.1 Context

- 8.1.1.1 It was alleged that the security services company appointed by the department on 4 December 2009 (security company) had not complied with certain aspects of the MoA in respect of security industry requirements, tax legislation and labour legislation.

8.1.2 Findings

- 8.1.2.1 Review of the security company's compliance in terms of registration with PSIRA, SARS and the Department of Labour, indicated that:
- (a) the PSIRA registration status of the security company had been confirmed with PSIRA and that the particulars of the security company's registration with PSIRA as a security services provider were valid.
 - (b) the majority of the security company's security guards at the respective health facilities visited were registered with PSIRA.
 - (c) the tax clearance certificate and VAT registration number with SARS were authentic.
 - (d) information obtained from the Department of Labour confirmed that employees of the security company were registered with the Unemployment Insurance Fund.



8.2 Appointment of the security company

8.2.1 Context

- 8.2.1.1 It was alleged that there were irregularities relating to the appointment of the security company.
- 8.2.1.2 According to executive council resolution 77/2007/06, dated 6 June 2007, it was resolved that the Provincial Treasury would assist the department in improving supply chain management processes as well as its efficiency and effectiveness. Three officials from the Provincial Treasury were seconded to the department to render administrative support. Administrative support was rendered until 30 September 2009.
- 8.2.1.3 The previous security contract expired in July 2009. The Senior Manager: Legal Services requested the SCM to initiate the process of procuring security services as of 1 August 2009.
- 8.2.1.4 The department invited bid proposals on 27 August 2009 to appoint a service provider for rendering security services in the Northern Cape for a three-year period. The closing date for bid proposals was 25 September 2009 and, according to the bid register, 19 bid proposals were received timeously.
- 8.2.1.5 The specifications and evaluation criteria in the bid proposal included the following:
- (a) Bidders were required to provide full details of registration with PSIRA for both the company and the individual workers. If workers were to be absorbed, these workers' registration details were to be provided within 14 days of starting with service delivery. According to the special requirements of the bid proposal, newly appointed companies should absorb at least 70% of the current staff/officers at any particular site or in total.
 - (b) Preference shall be given to the Northern Cape-based companies and companies with a majority HDI shareholding. According to the NCP 6.9 (promotion of enterprises located in the Northern Cape) document, Northern Cape-based companies *include enterprises whose head office may be situated in another province, but has established a fully-fledged branch within the province.*
- 8.2.1.6 The bids were evaluated in terms of the 90/10 preference points system as stipulated in the PPPFA. Points were allocated as follows:

Criteria	Points
Price	90
Preference claim for equity ownership by HDIs	5
Preference claim for equity ownership by HDIs who are women	1
Preference claim for equity ownership by HDIs who are disabled	1
Preference claim for youth	1
Preference claim for locality	2
Total	100



- 8.2.1.7 The 19 bids received were checked by either the Provincial Treasury or the department for compliance in respect of the submission of the tax clearance certificate, submission of PSIRA registration and completion of the NCP 8 (declaration of bidder's past SCM practices) and NCP 4 (declaration of interest) documents. Preference points for HDI and pricing were also calculated during the compliance check processes. Based on the compliance check performed, three bids did not comply with the bid specifications and conditions of the bid. These bids were disqualified and regarded as non-responsive in accordance with the SCM circular dealing with the evaluation of bids, calculation of points and timeous payment of accounts dated 10 May 2005.
- 8.2.1.8 According to the memorandum dated 23 November 2009 from the BEC to the BAC, trade experience was among the bid information and criteria considered during the evaluation of the bid proposals.
- 8.2.1.9 The BEC recommended in its memorandum to the BAC dated 23 November 2009 that the bid be awarded to the security company. On 3 December 2009, the BAC recommended that the bid be awarded to the security company for R134 576 899,20 (R3 738 247,20 p/m). The acting HoD formally notified the security company on 4 December 2009 of the acceptance of their bid. According to the undated MoA entered into between the department and the security company, the agreement was for a three-year period from 1 February 2010 to 31 January 2013. The security company started to render security services to the department in February 2010.
- 8.2.1.10 Non-compliance with the requirements of the MoA was reported by the acting HoD to the security company on 9 June 2010. The department decided to terminate the contract and informed the security company in a letter dated 23 November 2010 of the cancellation of the contract at the end of December 2010.
- 8.2.1.11 Total payments of R39 793 799 were made to the security company during the period March 2010 to January 2011. Payments for December 2010 were made in January 2011.
- 8.2.1.12 Subsequent to the commencement of the AGSA investigation, a request to follow a limited bidding process in terms of Treasury Regulation 16A.6.4 was approved by the acting HoD on 21 December 2010. The department initiated the limited source bidding process due to a decision to cancel the security contract that was in place at the time. During the briefing session held on 23 December 2010, new bid proposals were invited through the limited source bidding process. Four bid proposals were received by the department and the evaluation of proposals was performed based on compliance with the following:
- (a) Completion of specifications;
 - (b) Completion of pricing schedules;
 - (c) Valid tax clearance certificate;
 - (d) Valid PSIRA certificate;
 - (e) Companies and Intellectual Property Rights Office (CIPRO) currently known as the Companies and Intellectual Property Commission (CIPC) certificate;
 - (f) Bank guarantee letter; and
 - (g) Operational plan.
- 8.2.1.13 A new security company was appointed by the acting HoD on 29 December 2010 to render security services for the period 1 January 2011 to 31 March 2011.



- 8.2.1.14 According to the chief financial officer (CFO) the contract with the new security company will be extended for a further period of one or two months and the department would then be in a position to advertise a new tender for security services.

8.2.2 Findings

8.2.2.1 Compliance checks

- (a) A compliance sheet was compiled detailing the compliance of the various bid proposals with the specifications and the scoring of the bids for price and HDI. The AGSA was unable to establish whether the department or Provincial Treasury were responsible for compiling the compliance sheet as there was insufficient evidence in this regard. The AGSA reviewed the compliance sheet and identified the following:

- Three bids did not comply with the bid specifications and conditions of the bid. These bids were disqualified and regarded as non-responsive in accordance with the SCM circular dealing with the evaluation of bids, calculation of points and timeous payment of accounts dated 10 May 2005.
- According to the compliance sheet, the monthly cost for security guards stated in bid proposals did not include the cost of relief security guards. The cost of these relief security guards was calculated separately, thereby increasing the total cost of bid proposals. This calculation was done incorrectly as paragraph 2 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) defines a relief guard as an employee who is required to replace any other employee who may be on scheduled time off, annual leave or absent from duty. The cost of such guards should, therefore, not be calculated separately.

The total cost stated in some of the bid proposals increased due to the incorrect calculation, thereby placing their bid proposals in a disadvantaged position regarding the scoring of points for pricing.

- During the costing of the respective bidding proposals, the AGSA noted that in certain instances bid prices in the tender proposals differed from those used to score the various bidders for price. In some instances the incorrect monthly costing was used for the security guards and in other cases the calculations of the total bid prices for the various districts were incorrect.
- (b) According to recalculations performed by the AGSA, another security company scored the highest points while according to paragraph 8 (8) of the PPPFA, *only the tender with the highest number of points scored may be selected*.

8.2.2.2 Evaluation and adjudication of bids

- (a) The BEC evaluated the remaining 16 bid proposals against the following criteria:
- Bidders that were within the predetermined price range;
 - Locality; and
 - Bidders' financial resources.



- (b) Although the BEC based their evaluation on the incorrect compliance sheet as indicated above during their evaluation, it disqualified the following bidders without valid reasons:
- According to the memorandum to the BAC compiled by the BEC, bid prices within the price range of R3,3 million – R4 million were evaluated as *this price was deemed to be reasonable*. Eight bidders were subsequently disqualified as their bid prices were in excess of R4 million. The disqualification of these bids by the BEC is in contravention of SCM circular dated 10 May 2005, which states that *deviation by more than a predetermined percentage from the cost estimate of the project/ commodity cannot be regarded as a justifiable reason for the rejection of a bid and has, therefore, not been approved as an evaluation norm by the National Treasury*.
 - Four of the remaining eight proposals were disqualified by the BEC on the criteria for locality and not having offices in the Northern Cape. On inspection of the respective bid proposals, the AGSA confirmed that these bidders had indeed complied with the evaluation criteria for locality as they had offices in the Northern Cape and thus were incorrectly disqualified.
- (c) The remaining four companies were requested to indicate their contractual obligations and to submit a finance plan inclusive of their available financial resources in respect of the first two months of the contract in order for the BEC to assess the respective company's ability to operate successfully. By reviewing the evaluation performed by the BEC, the following had been identified:
- One security company was disqualified as their proposal related only to one district.
 - Another security company was disqualified as no evidence could be found that the company responded to the department's request.
 - The third security company was disqualified for not indicating the source of funding in their financial plan. However, the security company that was recommended by the BEC had also not provided evidence indicating their source of funding in their financial plan.
- (d) According to documentation submitted by the security company that was awarded the bid, the security company was incorporated three months before the bid closing date and registered with PSIRA approximately one month before the tender closing date. There was no indication in their proposal of any past experience of rendering security services prior to this bid proposal. Paragraph 4.1(b) of the SCM circular relating to the implementation of SCM states inter alia that, *the BEC is responsible for the evaluation of bids received, which include verification of the capability/ability of the bidder to execute the contract*.
- (e) According to the unsigned minutes of the BAC meeting dated 3 December 2009, there is no evidence indicating that the BAC had adhered to the SCM circular dated 24 March 2006 dealing with the code of conduct for the BAC. Paragraph 2.5 of the said circular requires inter alia that *the BAC must ensure that disqualifications are justified and valid and accountable reasons/motivations were furnished for passing over bids; scoring has been fair, consistent and correctly calculated and applied*.



- (f) In conclusion, during the evaluation process performed by the BEC, eight bid proposals were disqualified for deviating from the department's cost estimate, in contravention of SCM circular dated 10 May 2005. Four companies were disqualified by the BEC for not complying with the evaluation criteria for locality. However, the AGSA confirmed that these bidders had indeed complied with the evaluation criteria for locality.
- (g) Based on recalculations performed by the AGSA, another security company scored the highest number of points for price and HDI. This entity was disqualified for not complying with the criteria for locality, although, according to its proposals, the company had offices in the Northern Cape. This resulted in the bid being awarded for an amount of R3 769 864 per month and not to the security company that scored the highest points and whose bid amount was R2 618 973 per month.

8.3 Compliance with the memorandum of agreement

8.3.1 Context

- 8.3.1.1 It was alleged that there were irregularities relating to the contract management subsequent to awarding of the contract.
- 8.3.1.2 The acting HoD addressed a letter dated 9 June 2010 to the security company identifying non-compliance with the tender requirements. The following issues of non-compliance, amongst others, were identified by the department in the said letter:
 - (a) *Failure to provide facility managers with the approved list of guards, which should be complete, updated and accurate;*
 - (b) *Failure to attach timesheets of guards when submitting monthly invoices to the department;*
 - (c) *Failure to provide the facility managers with the allocation of schedules (rosters) for guard;*
 - (d) *Failure to ensure that the agreed set and number of guards are on duty at facilities, which has resulted in confusion regarding the number of employees contracted to the security company, and in repeated conflicts between the guards. This has led to an increasing disruption of services and decline in quality of services rendered;*
 - (e) *Failure to provide employees with appropriate equipment and essential accessories such as uniforms, two-way radios, security sprays, functional torches, handcuffs, batons and valid contracts with all employees/guard;*
 - (f) *Failure to provide proof of relevant registration to PSIRA by the guards;*
 - (g) *Failure to provide proper access controls at points of security;*
 - (h) *Poor supervision, failure to enforce discipline amongst guards, resulting in growing incidents of late coming, absenteeism, drunkenness, rudeness to clients and employees of the department; and*
 - (i) *Failure to maintain occurrence books.*
- 8.3.1.3 It was further indicated in the said letter that, *in the event that your company does not remedy the situation described...within 14 days, the department will exercise their right to terminate your services.*
- 8.3.1.4 According to the department, issues of non-compliance identified were not rectified by the security company. A notice of termination dated 23 November 2010 was sent to the security company terminating the security contract with effect from 31 December 2010.



8.3.1.5 Site visits were conducted by the AGSA at certain health facilities to verify compliance with the MoA.

8.3.2 Findings

8.3.2.1 The following issues of non-compliance identified by the department in their letter dated 9 June 2010 to the security company were confirmed by the AGSA during the site visits conducted at the health facilities:

- (a) The number of security guards per grading on site at the various health facilities was not in accordance with the requirements stipulated in the MoA.
- (b) The security company did not adhere to paragraph 7.5 of the MoA in terms of equipment that was to be issued per security guard. The security company charged the department for equipment that they did not supply. Furthermore, the department paid for equipment not supplied.
- (c) The uniforms of security guards did not display the name of the security guard, contrary to paragraph 7.7 of the MoA. Furthermore, relief security guards were not dressed in the uniforms of the security company.

8.3.2.2 According to the conditions of the MoA, the department is in a position to terminate the agreement if the security company failed to rectify non-compliance with the requirements of the MoA within 14 days. According to the Senior Manager: Legal Services, the department exercised some flexibility and granted the security company at least three months (10 September 2010) to resolve all the issues raised by the department. The department continued with the agreement for a further period of six months from date of the non-compliance letter and the agreement was only terminated on 31 December 2010.

8.4 Payments to the security company

8.4.1 Context

8.4.1.1 It was alleged that there were possible irregularities relating to payments made to the security company and that payments were made into more than one bank account.

8.4.1.2 Paragraph 9 of the special requirements of the bid proposal required bidders to submit attendance registers per sites with invoices.

8.4.1.3 Payment documentation to the value of R38,49 million was reviewed by the AGSA.

8.4.2 Findings

8.4.2.1 The AGSA examined the electronic bank transfer disbursement reports and noted that payments were made into the same banking account that was reflected on the registration form of the security company.

8.4.2.2 The AGSA reviewed the payment documentation for services rendered and noted that for payments totalling R38,49 million, attendance registers and timesheets were not attached to the invoices as required in terms of paragraph 9 of the bid proposal.



- 8.4.2.3 Although the proposal and MoA for the monthly cost per security guards were inclusive of VAT, invoices issued by the security company reflected these cost as VAT exclusive, resulting in overpayments of R3,97 million for the period February 2010 to October 2010 being made by the department. These overpayments also resulted in the department paying more than the monthly contract value. During the investigation the department was in the process of recovering the overpayments made to the security company.
- 8.4.2.4 The security company invoiced the department for security guards at 10 health facilities; however, the cost of security guards at these health facilities amounting to R4,9 million for the period March 2010 to October 2010 was not included in the MoA and therefore the AGSA could not confirm the correctness thereof.
- 8.4.2.5 The PFMA and relevant practice notes define irregular expenditure as being expenditure, other than unauthorised expenditure, incurred in contravention of or not in accordance with a requirement of any legislation applicable to public sector procurement. Payments made to the security company amounting to R39,79 million are regarded as irregular.

8.5 Rates charged by the security company

8.5.1 Context

- 8.5.1.1 It was alleged that the security company's monthly rates for security guards were inflated and not in line with industry norms.

8.5.2 Findings

- 8.5.2.1 The Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) as amended on 25 August 2009, read in conjunction with the various sectoral determinations, stipulates the minimum salaries for employees in the various sectors. On review, it was noted that the monthly wages per officer claimed by the security company, as reflected in the table below, were in accordance with the minimum wages as prescribed. The allegation that the security company's monthly rates for security guards were inflated and not in line with industry norms could therefore not be substantiated.

Grade	Minimum wages as per the Basic Conditions of Employment Act (Area 2: Kimberley) (R)	Rates charged/quoted by the security company (Kimberley) (R)	Minimum wages as per the Basic Conditions of Employment Act (Area 4: Other areas) (R)	Rates charged/quoted by the security company (Other areas) (R)
Grade B	2 633,00	4 079,62	2 213,00	3 009,99
Grade C	2 180,00	No quote for grade C guards	1 849,00	2 083,13
Grade D	2 007,00	2 485,52	1 704,00	1 713,16



8.6 Response from the Head of Department

- 8.6.1 According to the department, the security company's proposal did not include all health facilities as certain health facilities were accidentally omitted.
- 8.6.2 The department had commenced with the process of recovering overpayments made to the security company prior to the commencement of this investigation by the AGSA. The delay in the process of recovering these overpayments is, however, being challenged in a court of law.
- 8.6.3 The security company's non-compliance with the MoA was identified by the department during June 2010 and was amongst the issues of non-compliance identified by the department which led to the termination of the contract with the security company.

8.7 Waste management contract

8.7.1 Context

- 8.7.1.1 It was alleged that there were possible irregularities in the awarding of the waste management contract to a company on 15 July 2010 for a three-month period (company).
- 8.7.1.2 A company was awarded a tender during October 2003 for the disposal of bio-hazardous healthcare waste. The contract with the company was for a two-year period, i.e. 1 November 2003 to 31 October 2005. The contract with the company was extended on a month-to-month basis until the company ceded the contract to another company on 11 July 2008. On 29 July 2008 the HoD approve ceding of the contract for a period of three months, i.e. 1 August 2008 to 31 October 2008.
- 8.7.1.3 The process to appoint the above companies was not reviewed by the AGSA as this contract did not form part of the scope of the investigation.
- 8.7.1.4 Although tenders were invited on the following two occasions, the tenders were not awarded and therefore the contract with the above company was extended after 31 October 2008 until June 2010 on a month-to-month basis.
- 8.7.1.5 The tender for the storage, removal and disposal of bio-hazardous medical waste (NC/DOH/10/2008) was advertised by the department on the first occasion on 18 August 2008, with the closing date for the submission of bid proposals being 8 September 2008. Bids were received from four service providers.
- 8.7.1.6 The evaluation and adjudication process took place on 20 October 2008 and 27 November 2008, respectively. According to the BAC memo dated 27 November 2008, two companies complied with the evaluation criteria.
- 8.7.1.7 The validity period of the above bids expired on 8 December 2008 and service providers were requested by the Senior Manager: SCM from Provincial Treasury on 8 April 2009 to confirm that they would extend the validity period of their tenders. On the same day confirmation was received from the respective bidders that the validity period may be extended. However, the HoD did not approve the extension of the validity or the BAC's recommendation to award the tender to a company due to procedural concerns as the validity period had lapsed in December 2008 and was only renewed in April 2009.



- 8.7.1.8 The tender specifications for the bio-hazardous medical waste management tender was subsequently revised and a new tender (Tender no. NC/DOH/019/2009) was advertised on 14 July 2009. Interested service providers were required to submit their bid proposals to the department by 7 August 2009. According to the report compiled by the Senior Manager: SCM of Provincial Treasury dated 8 October 2009, four bids were received timeously. The compliance evaluation for this tender was finalised and, as part of the handover process, the Provincial Treasury requested that the department finalise this bid through the various committees. This request was communicated by the Provincial Treasury to the department on 3 October 2009. According to meetings held with the chairpersons of the BEC and the BAC, these bid proposals were never evaluated/adjudicated by either the BEC or the BAC.
- 8.7.1.9 According to information provided by the department, the company with which the contract was extended on a month-to-month basis until June 2010 had rendered unsatisfactorily services to the department during the period February 2010 to June 2010.
- 8.7.1.10 According to the memorandum dated 24 June 2010 from the deputy director: Environmental Health to the acting HoD, a site visit was conducted to establish the progress made by the company to remove the medical waste in their storage facility/depot in Kimdustria. Findings included the following:
- (a) *There are no adequate cooling/freezing facilities. Bags containing anatomical waste were stored outside refrigerators;*
 - (b) *About 200 containers containing anatomical waste were found standing on the floor or stacked on top of each other. Another 30 bags could have been in the three freezers;*
 - (c) *A smell caused by decomposing or decaying blood was present in the building;*
 - (d) *The number of vehicles used to collect and remove waste is inadequate; and*
 - (e) *The storage facility is untidy and there is no indication that good acceptable housekeeping practices exists.*
- The deputy director: Environmental Health had stated in the said submission that *the only practical solution is to appoint an interim service provider to address the backlog and render the service until a 3-year contract can be entered into between the department and the successful bidder.*
- 8.7.1.11 According to the undated submission to the acting HoD, emergency action was required as the company had failed to fulfil their contract. The acting HoD approved the deviation from inviting competitive bids and the decision to follow a limited bidding process. Bid proposals were requested on 6 and 8 July 2010 from six service providers for the clean-up operation of medical waste at the various health facilities. Service providers were required to submit their bid proposals to the department by 14 July 2010. The scope of this contract/assignment was for a period of three months.
- 8.7.1.12 Service providers were required to submit a detailed bid proposal indicating their costing and capability to undertake the clean-up operation of medical waste at the various health facilities in the Northern Cape. Proposals submitted by service providers had to address the following issues:
- (a) Medical waste currently waiting to be collected from the facilities;
 - (b) Medical waste at the warehouse in Kimberley;
 - (c) Material equipment and applicable number of vehicles to be utilised;



- (d) Turnaround time applicable for collection and to the treatment site.
- (e) Incineration, appropriately regulated, which the service provider has authorised access to use.

8.7.1.13 Five bid proposals were received by the SCM directorate in this regard.

8.7.1.14 According to the undated submission to the acting HoD in which the acting HoD approved the appointment of a new company, the following criteria were used during the evaluation of the bid proposals:

(a) Comprehensive profile which should include the following:

- Human resources;
- Complement vehicles;
- Storage facilities;
- Relevant experience of the service provider;
- Valid tax clearance certificate; and
- Statutory compliance with regard to medical waste management and disposal.

(b) Costing to include the following: (individual costing applied as it was impossible to determine total cost)

- Disposal cost;
- Transport cost; and
- Container costs with brochure.

8.7.1.15 According to the department, bid proposals were not evaluated or adjudicated by the BEC or the BAC. The evaluation of bid proposals was performed by the assistant director: Acquisitions.

8.7.1.16 A letter dated 15 July 2010 from the acting HoD was sent to the newly appointed company confirming the awarding of the contract for the removal of healthcare waste and rendering of healthcare waste services for a period of three months. However, the said letter did not indicate the starting date of the three-month period. The company was required to start rendering these services as a matter of urgency after signing the SLA.

8.7.1.17 A SLA was signed between the department and the company on 24 August 2010. The total amount payable was not specified in the SLA, which indicated that remuneration would be calculated in terms of the bid proposal.

8.7.1.18 According to BAS reports obtained from the department, R15 664 808 was paid to the company during the period August 2010 to March 2011.

8.7.1.19 The contract was further extended for six months.



8.7.2 Findings

- 8.7.2.1 The deviation from inviting competitive bids and the decision to follow a limited bidding process were approved by the acting HoD in terms of Treasury Regulation 16A6.4. It was confirmed that the deviation from inviting competitive bids and the decision to follow a limited bidding process were not reported to the AGSA and Provincial Treasury, as prescribed by practice note no. 8 of 2007-08.
- 8.7.2.2 The reason given for deviating from inviting competitive bids was that it was an emergency due to the backlog of uncollected hazardous waste at the healthcare facilities. According to the department, the deviation was an appropriate measure and procedure at the time as the medical waste services were at a point of collapse and the HoD had no option but to institute an urgent and emergency procedure. Prior to the appointment of the company as a result of the deviation approved by the HoD, there was a trend at the department to continuously approve extensions of the waste management contract with companies without inviting competitive bids, which possibly constitutes poor planning in terms of paragraph 2.5 of the National Treasury practice note no. 6 of 2007-08 which states that *a lack of proper planning does not constitute a reason for dispensing with prescribed bidding process*.
- 8.7.2.3 The following is an indication of a possible lack of planning relating to the procurement of waste management services:
- (a) The waste management contract with the various service providers has been continuously extended by the department on a monthly basis as from 1 November 2005.
 - (b) During the period August 2008 to August 2009, the department advertised two bids relating to bio-hazardous medical waste management. Tender no. NC/DOH/010/2008 was evaluated and adjudicated by the BEC and BAC, respectively; however, the HoD had not approved the tender award as the validity period of the bids had lapsed. The compliance evaluation for tender no. NC/DOH/019/2009 was finalised; however, according to meetings held with the chairpersons of the BEC and BAC, bid proposals were not evaluated/adjudicated by either the BEC or the BAC. Therefore, due to a lack of proper planning the department had to deviate from the competitive bid process in contravention of said practice note no. 6 of 2007-08.
- 8.7.2.4 The AGSA noted that the department did not record the date when bid proposals were received from service providers, thus the AGSA could not verify whether bid proposals had been received before the closing date of 14 July 2010. Furthermore, bid proposals received from three service providers were undated.
- 8.7.2.5 Four of the five bid proposals received did not comply with the specifications. The four bidders were disqualified for not complying with some or all of the following specifications:
- (a) Submission of a valid tax clearance certificate;
 - (b) Relevant experience of the service provider;
 - (c) Statutory compliance with regard to medical waste management and disposal;
 - (d) Individual costing relating to disposal cost, transport cost and container costs; and
 - (e) Company profiles.



- 8.7.2.6 The Director: SCM, in an undated submission to the acting HoD, recommended that the company which complied with the specifications be appointed. The AGSA reviewed the company's proposal and noted the following with regard to its experience:
- (a) No mention is made of the company's past experience in waste management. The company's proposal indicates the experience of their project manager. The project manager confirmed to the AGSA that he had been appointed by the company during June 2010 and that his main responsibility was to draft the company's bid proposal for submission to the department. He confirmed that he had resigned from the company during December 2010.
 - (b) According to the curriculum vitae of the company's director, the company's services relate to the provision of installation and maintenance services for developed properties, including the construction of road infrastructure and bulk resources such as water and sewage.
- 8.7.2.7 The SLA did not specify the starting and completion date for the services to be rendered. Paragraph 3.1 of the SLA stated: *this agreement will commence on the date specified in Annexure "A" and will continue in force and effect for a period of 3 to 6 months (the initial period) unless terminated earlier in terms of either clause 3.2 or clause 10.* Although reference is made in the SLA to the commencement date as per annexure A, the commencement date was not indicated on this annexure. Furthermore, according to the extension letter dated 6 October 2010, the SLA was extended to six months; however, there is no indication as to the specific period to which the extension relates.
- 8.7.2.8 With regard to invoices to the value of R8,23 million the following was noted. In most instances, these invoices reflected the incorrect transportation cost per km as well as charges for management fees, cost of hiring trucks and operating costs which were not stipulated in the SLA. According to the department, meetings were held with the company where changes to the rates in the SLA were discussed. However, an amended SLA has not yet been concluded with the company.
- 8.7.2.9 Overpayments to the value of R47 225 were made for the treatment of pharmaceutical waste.
- 8.7.2.10 Based on the site visits conducted at the four health facilities, the AGSA noted that medical waste was being regularly collected by the company as there were no stock piles of medical waste.

8.8 Recommendations

- 8.8.1 The HoD should implement effective measures to ensure compliance with procurement legislation and practice notes in the awarding of contracts to service providers, especially with regard to the bid evaluation and adjudication processes as well as the calculation of points for price and HDI.
- 8.8.2 The BEC and BAC should ensure that:
- (a) all bids are evaluated and adjudicated by the BEC and BAC, respectively; and
 - (b) disqualification of bidders is valid and in accordance with the procurement legislation and practice notes.



- 8.8.3 The HoD should ensure that processes are in place to timeously invite bid proposals before contracts with existing service providers expire.
- 8.8.4 The department should ensure that contract extensions are minimised and that competitive bid processes are initiated for the procurement of services.
- 8.8.5 Payments should only be made in terms with the SLA. If applicable, addenda to the existing SLA should be signed should rates/tariffs be subsequently revised.
- 8.8.6 The department should take action to recover overpayments made to both companies.
- 8.8.7 The service providers' ability to execute the contract successfully should be thoroughly evaluated and assessed prior to awarding of the contract.
- 8.8.8 The HoD should take appropriate steps against officials who contravened the procurement legislation and regulations in awarding the security contract.
- 8.8.9 The HoD should determine whether expenditure incurred on the security contract constitutes irregular expenditure as defined in the PFMA and, if so, report the irregular expenditure in terms of the PFMA.

8.9 Response from the Head of Department

- 8.9.1 According to the department, there was an existing crisis that had to be addressed urgently, and the deviation from inviting competitive bids became a necessary procedure to address the crisis from spreading further.
- 8.9.2 The department will internally verify payments made to the company and undertakes to recover any overpayments made.
- 8.9.3 According to the department, the waste management services in the province at the time when the company was appointed did not have a baseline, which would normally have provided for the calculation of all variables needed to develop a full schedule of billable services. It was for this reason that the department could not fully itemise the service or provide an overall cost projection. The baseline has now been developed by the department.

8.10 General response received from the Head of Department

- 8.10.1 The department will continue in its endeavours to improve the quality of governance, management and all the internal control processes. The department further pledges its unconditional commitment to working collaboratively with oversight institutions to improve departmental performance.
- 8.10.2 Measures to ensure compliance with procurement legislation and practice notes in the awarding of contracts to service providers are in place and consistently observed. The department is continuously working towards improving these measures.



- 8.10.3 The department subscribes to principles of discipline and has consistently enforced these principles when the need arose. There will be no exceptions to the department's approach. The AGSA's recommendations will, however, be considered once sufficient and compelling reasons and factors have been conclusively established.

9. APPRECIATION

- 9.1 The assistance rendered during the investigation by the officials of the department is appreciated.



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