



# **Report of the Auditor-General of South Africa on an investigation into the procurement of various contracts at the Gauteng Provincial Department of Roads and Transport**

**June 2011**

Abbreviations	Description
AFC	Anti-Fraud and Corruption
ASD	Assistant Director
BAC	Bid Adjudication Committee
BEC	Bid Evaluation Committee
BEE	Black Economic Empowerment
CD	Chief Director
CFO	Chief Financial Officer
CFST	Cross-Functional Sourcing Team
CIDB	Construction Industry Development Board Act, 2000 (Act No. 38 of 2000)
COIDA	Workmen's Compensation Fund
Constitution	Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
DAC	Departmental Adjudication Committee
DD	Deputy Director
DDG	Deputy Director-General
DLTC	Driver learner testing centre
EXCO	Executive Committee
GDRT SCM policy	Departmental Supply Chain Management policy approved on 2 March 2009
GB	General building works
HDI	Historically disadvantaged individuals
HoD	Head of Department
INP	Intelligent number plate
MEC	Member of the Executive Council
Memo	Memorandum
MTEF	Medium-Term Expenditure Framework
NHBRC	National Home Builders Registration Council
NIPP	National Industrial Participation Programme
NT	National Treasury
NT circular	Circular on Code of conduct for BACs

Abbreviations	Description
NT instruction note	NT instruction note on the amended guidelines in respect of bids that include functionality as a criterion for evaluation (issued September 2010)
PAA	Public Audit Act, 2004 (Act No. 25 of 2004)
PFMA	Public Finance Management Act, 1999 (Act No.1 of 1999)
PMB/PMU	Project management branch/unit
PN	Practice note
PPPFA	Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
PPR	Preferential Procurement Regulations, 2001
PSIRA	Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001)
PT	Provincial Treasury
RFP	Request for proposal
SBD	Standard Bidding Document
SCM	Supply Chain Management
SCM guide	SCM: A guide for accounting officers/authorities, February 2004
SEMC	Senior Executive Management Committee
SITA Act	State Information Technology Agency Act, 1998 (Act No. 88 of 1998)
SLA	Service level agreement
TEAC	Trading Entities Acquisition Committee
ToR	Terms of Reference
TR	Treasury Regulation
UIF	Unemployment Insurance Fund
UTF	Urban Transport Fund

Abbreviations	Description
AGSA	Auditor-General of South Africa
CIPRO/CIPC	Companies and Intellectual Property Registration Office/ Companies and Intellectual Property Commission
GFA	Gauteng Funding Agency
GPG	Gauteng Provincial Government
GSSC	Gauteng Shared Services Centre
NIA	National Intelligence Agency
SARS	South African Revenue Services
SSA	State Security Agency
The department	Gauteng Provincial Department of Roads and Transport

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## **REPORT OF THE AUDITOR-GENERAL OF SOUTH AFRICA ON AN INVESTIGATION INTO THE PROCUREMENT OF VARIOUS CONTRACTS AT THE GAUTENG PROVINCIAL DEPARTMENT OF ROADS AND TRANSPORT**

### **1. EXECUTIVE SUMMARY**

#### **1.1 BACKGROUND**

1.1.1 On 20 December 2010, the Auditor-General of South Africa (AGSA) was requested by the Member of the Executive Council (MEC) of the Gauteng Provincial Department of Roads and Transport (the department) to conduct an investigation into the awarding of certain bids by the Departmental Adjudication Committee (DAC). The aim of the investigation was to establish whether or not the decisions taken were in accordance with established legal and regulatory prescripts of Supply Chain Management (SCM) within the government sphere.

1.1.2 After reviewing the request, the scope of the investigation was defined to establish whether any irregularities and/or non-compliance with prevailing prescripts occurred during the procurement process. A further aim of the investigation was to identify any conflicts of interest or unethical conduct by officials directly/indirectly involved in the awarding of tenders or contracts pertaining to the following:

1.1.2.1 Security services bid at various buildings to five service providers;

1.1.2.2 Construction of roads to three service providers;

1.1.2.3 Contract: Intelligent Number Plate (INP);

1.1.2.4 Establishment of four new driver licence testing centres (DLTCs) and the turnaround strategy for DLTCs;

1.1.2.5 Biometric verification system; and

1.1.2.6 Construction at Derek Masoek building.

1.1.3 A letter of engagement for this investigation was signed by both the MEC and the Head of the Department (HoD) on 10 January 2011.

1.1.4 This report accordingly contains the AGSA's findings and recommendations in relation to the respective procurement processes followed.

#### **1.2 SUMMARY OF FINDINGS**

1.2.1 The findings in this report should be addressed decisively by the MEC with the support of the senior management of the department. However, corrective action limited to the specific individual findings would likely address the symptoms, but

not the underlying causes. This approach carries the risk of deficiencies recurring in future. It is therefore imperative that the underlying factors contributing to the deficiencies be properly understood and addressed as part of the corrective action to be taken in response to this report.

1.2.2 The underlying factors that affect sound management can be summarised under three interrelated key areas, namely:

1.2.2.1 **Quality of reporting:** This area includes the entity's ability to retain records appropriately and to use these as a basis for providing relevant, accurate and complete management information to the leadership, to those charged with governance and to the oversight authorities. Quality information management enables quality monitoring, proper decision-making and oversight.

1.2.2.2 **Effective governance arrangements:** This focus area covers the effectiveness of functions and tools such as audit committees, internal audit, enterprise risk management (including fraud risk management), internal control frameworks and policy frameworks.

1.2.2.3 **Adequate leadership oversight:** This category underscores the importance of leadership creating the correct environment in the organisation. It includes the manner in which leadership monitors performance and compliance and the way in which ethical behaviour is promoted. Leadership oversight is also about preventing an organisational culture of impunity and about acting decisively to correct deficiencies.

1.2.3 The findings in this report are predominantly due to non-adherence of prescribed SCM policies, processes and delegated authority by senior management of the department. These findings therefore point to a culture of non-compliance, where the "tone at the top" is not appropriate. The retention of documents were also adequate in instances. The following significant findings are indicative of inadequate monitoring and oversight by the leadership in the area of SCM in relation to the contracts under review.

- (a) The standard bidding documentation utilised by the department was not updated, resulting in prospective bidders not completing all the required documentation as prescribed by Practice Note (PN) No. 1 of 2003. *Refer to paragraphs 10.2.1.1 and 13.2.2.2.*
- (b) Bids were advertised for a period shorter than the prescribed 21 days. The reasons for the deviation were not recorded and approved as

required by Treasury Regulation TR16A6.3(c). *Refer to paragraphs 13.2.2.4 and 14.2.4.*

- (c) Bid specification committees were not always established for the compilation of bid specifications as required by TR16A6.2(b). *Refer to paragraphs 10.2.1.6; 13.2.2.3; 14.2.3 and 15.2.2.1.*
- (d) In one instance, the department deviated from the prescribed SCM prescripts with regard to the opening and recording of bids. *Refer to paragraphs 10.2.3.2.*
- (e) Competitive bidding processes were not always followed in the procurement of goods and/or services in accordance with the threshold values set by the National Treasury (NT) and the Departmental Supply Chain Management policy (GDRT SCM policy). The reasons for deviations were not always recorded as required by the NT prescripts and the GDRT SCM policy. *Refer to paragraphs 11.2.3; 12.2.1 and 12.2.2.*
- (f) In cases where the prescribed SCM processes were not followed, the deviations were not recorded and approved by the accounting officer or reported to the NT and the AGSA as required by TR16A6.4. *Refer to paragraphs 11.2.10.3 and 12.2.5.3.*
- (g) The department did not have a policy prescribing the processes to be followed in respect of the extension and/or variation of contracts. As a result, the financial obligation and respective scope of work in respect of the extensions/variations of contracts exceeded and differed from the original scope of the contract. This also hampered what should have been a competitive bidding process. *Refer to paragraphs 11.2.9.1 and 12.2.2.2.*
- (h) The department invited construction companies with a lower Construction Industry Development Board (CIDB) grading than the grading required for the contract amount, in contravention of section 17 of the CIDB regulations. *Refer to paragraph 14.2.7 (d).*
- (i) The department did not advertise the bids for the procurement of construction services on the CIDB website, in contravention of section 24 of the CIDB regulations. *Refer to paragraph 15.2.2.1 (d).*
- (j) In certain instances, the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) was not complied with.



- (i) In respect of all procurement in excess of R30 000, the application of the 80/20 and 90/10 principle was not adhered to as prescribed. *Refer to paragraphs 11.2.1.2; 13.2.2.7 and 15.2.3.2.*
- (ii) Contrary to section 11(a) of the PPPFA, the department did not perform proper costing exercises prior to going out on tender in order to establish the department's financial obligation before making a commitment. *Refer to paragraphs 12.2.3.1 and 15.2.2.2.*
- (k) The composition of the bid evaluation committees (BECs) and the cross-functional sourcing teams (CFSTs) was not always in accordance with paragraphs 3.24.3 and 3.24.4 of the GDRT SCM policy, as the committee/teams were not cross-functional or mainly members from the user departments in all instances. *Refer to paragraphs 10.2.4.1; 13.2.2.6 and 14.2.6.*
- (l) Bids were not evaluated by the BEC/CFST in accordance with the prevailing SCM prescripts.
  - (i) The evaluation criterion was changed after the closing of the bids, in contravention of section 4.11 of the SCM: A guide for accounting officers/authorities, February 2004 (SCM guide). *Refer to paragraphs 10.2.4.2; 13.2.2.7 and 14.2.7.*
  - (ii) The bids were not always evaluated in accordance with the criteria as specified in the bid specifications. This is in contravention of paragraph 3.24.2 of the GDRT SCM policy and PN No. 2 of 2006. *Refer to paragraphs 10.2.4.2; 13.2.2.7 and 14.2.7.*
  - (iii) The scoring and awarding of points to bidders during the evaluation process were inconsistent and inaccurate. *Refer to paragraph 10.2.4.3.*
- (m) The objections raised by the members in the DAC meetings were overridden in certain instances. *Refer to paragraph 15.2.4.3.*
- (n) In certain instances, inaccurate information was presented to the DAC on which decisions/awards were based. *Refer to paragraphs 10.2.5.5 and 11.2.7.*

- (o) DAC meetings where decisions were made did not always represent a quorum as prescribed by the NT circular and the DAC charter. *Refer to paragraph 15.2.4.3.*
- (p) In one instance, a service provider was appointed essentially to implement a process that involved the review of the service provider's own work. This is a conflict of interest and was not addressed as such by the department. *Refer to paragraphs 12.2.3.4 and 12.3.4.*
- (q) Contrary to section 66 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA), approval was not obtained from the MEC of Finance prior to the conditional appointment of bidders. *Refer to paragraph 15.2.1.2.*
- (r) Contrary to TR16A9.1(c), the department did not perform checks to ensure that the successful bidders were not listed as "restricted suppliers" by NT. *Refer to paragraphs 10.2.5.4; 11.2.10.2; 12.2.5.4; 14.2.9 and 15.2.3.4.*
- (s) In certain instances, proper vendor assessments were not performed as required by section 4.12 of the SCM guide. *Refer to paragraph 10.2.5.1.*
- (t) A centralised filing system to maintain all documentation relating to SCM policies and processes was not available. This is in contravention of section 217 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (Constitution) and section 38(1)(a)(iii) of the PFMA which promote a transparent system.

### 1.3 RECOMMENDATIONS

Specific recommendations are contained in the main body of the report. Overall, the department's executive management should compile and implement a proper corrective plan to:

- (a) address the irregularities and deficiencies identified by the AGSA during the investigation
- (b) enhance the adequacy of leadership oversight, which includes setting the correct "*tone at the top*" and organisational culture by, among others, leading by example, focusing on promoting ethical conduct, addressing issues of non-compliance decisively and directing and closely monitoring the operations and activities of the department

- (c) improve the quality of management information and reporting which facilitate proper and continuous monitoring by the leadership. This includes optimising system functionality and enhancing record management.

## **2. INTRODUCTION**

- 2.1 On 20 December 2010, the MEC requested the AGSA to conduct an investigation into the awarding of certain bids by the DAC to establish whether or not the decisions taken were in accordance with established legal and regulatory prescripts of SCM within the government sphere. After reviewing the request, the scope of the investigation was defined and agreed with the MEC and HoD.
- 2.2 Following an investigation by the AGSA, a draft report was submitted to the department for comment on 26 April 2011. The draft report contained the AGSA's preliminary findings and recommendations. The department provided their response to the draft report on 13 May 2011. These comments have been summarised in paragraph 16 below and incorporated in the respective detailed findings, where relevant.
- 2.3 This report accordingly contains the AGSA's findings and recommendations on the respective procurement processes followed, a summary of the department's management comments on the report and the AGSA's subsequent response, where appropriate.
- 2.4 The functions of the AGSA in supporting constitutional democracy in South Africa are described in section 188 of the Constitution as well as in the Public Audit Act, 2004 (Act No. 25 of 2004) (PAA). Furthermore, section 5(1)(d) of the PAA specifically authorises the AGSA 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.

### **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 the management of the entity and those charged with its governance. Management needs to set the proper tone, as well as create and maintain a culture of honesty and a 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 MEC is the executive authority of the department. In terms of section 4.1 of the Explanatory Memorandum on the PFMA, the executive authority of a department is responsible for policy matters and outcomes. Furthermore, in terms of section 85(2) of the Constitution, the executive authority is also responsible for implementing national policies and for coordinating the functions of the department.
- 3.4 The HoD, in her capacity as the accounting officer of the department, is responsible for outputs and implementation and is accountable to Parliament for managing the implementation of the department's budget. Furthermore, in terms of section 38(1)(a)(iii) of the PFMA, the accounting officer 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.
- 3.5 The findings and recommendations in this report are intended to enable the MEC and HoD to implement the necessary measures and steps to ensure effective accounting and internal control systems.

### **4. SCOPE OF THE INVESTIGATION**

- 4.1 The scope of the investigation, as set out in the engagement letter, was to identify:
- (a) any irregularities and/or non-compliance with the prevailing prescripts during the procurement process leading to the awarding of certain bids

- (b) any conflict of interests and/or unethical conduct by officials directly or indirectly involved in the procurement process.

4.2 The investigation focused on the awarding of the following bids:

- 4.2.1 Security services bid at various buildings to five service providers
- 4.2.2 Construction of roads to three service providers
- 4.2.3 Contract: Intelligent Number Plate (INP)
- 4.2.4 Establishment of four new driver licence testing centres (DLTCs) and the turnaround strategy for DLTCs
- 4.2.5 Biometric verification system
- 4.2.6 Construction at Derek Masoek building.

4.3 The investigation covered the period July 2010 to 31 December 2010, unless indicated otherwise.

## **5. PURPOSE, OBJECTIVES AND APPROACH OF THE INVESTIGATION**

5.1 The purpose of the investigation was to assess the procurement process followed in the awarding of certain bids. The findings and recommendations in this report are aimed at enabling those charged with governance to implement measures to strengthen governance and prevent non-adherence to bid processes.

5.2 In line with the AGSA's *Policy, standards and guidelines for investigations*, due care was taken to confirm the factual accuracy of the findings in this report.

5.3 The investigation commenced on 10 January 2011 with a request for relevant information and/or documentation from the department and collation thereof. In this regard, the respective officials were provided with a list of information and/or documentation required by the AGSA during the execution phase of the investigation. The information and/or documentation-gathering process continued throughout the investigation as the department did not maintain a centralised filing system. The information and/or documentation received were scrutinised and compared to the relevant prescripts and policies.

5.4 In addition to the scrutiny and analysis of information and/or documentation, interviews were conducted with the relevant departmental officials and management. The department's management were provided with the opportunity to comment on the AGSA's preliminary findings and where facts were disputed to provide evidence to the contrary. Conclusions are therefore based on information and/or documentation provided up to 13 May 2011. The provision of any

additional information and/or documentation may influence the findings and conclusions made herein.

## **6. REGULATORY FRAMEWORK**

6.1 The following prescripts were utilised as reference in performing the investigation:

- (a) Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- (b) Public Finance Management Act, 1999 (Act No. 1 of 1999)
- (c) Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and its associated regulations
- (d) Treasury Regulations for departments, trading entities, constitutional institutions and public entities issued in terms of the PFMA, March 2005
- (e) Supply Chain Management: A guide for accounting officers/authorities, February 2004
- (f) SCM practice notes issued by NT
- (g) Departmental SCM policy approved on 2 March 2009 (GDRT SCM policy)
- (h) Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001) and its associated regulations (PSIRA)
- (i) Construction Industry Development Board Act, 2000 (Act No. 38 of 2000) and associated regulations (CIDB)
- (j) A charter for the DAC approved on 15 April 2010 (DAC charter)
- (k) NT circular on code of conduct for bid adjudication committees (issued on 24 March 2006)
- (l) NT instruction note on the amended guidelines in respect of bids, which include functionality as a criterion for evaluation (issued in September 2010).

The above list of prescripts is by no means exhaustive.

## **7. LIMITATIONS OF THE REPORT**

7.1 Although the work performed incorporates the AGSA's understanding of the relevant prescripts and the law as it stands, the AGSA does 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 This report is based on the facts established from information and/or documentation 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. In certain instances, the AGSA was not provided with evidence in this regard. This is highlighted accordingly in the sections of this report.

- 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.
- 7.4 The procedures applied were designed to enable the identification of irregular and unlawful acts, but the AGSA cannot provide assurance that the procedures applied have detected all such acts, if any.
- 7.5 The investigation focused on compliance with acts, regulations and prescripts during the SCM processes in awarding the contracts under review.

## **8. STRUCTURE OF THE DETAILED FINDINGS**

- 8.1 The detail of the AGSA's findings has been structured into seven main sections in line with the scope of the investigation. These sections are listed below for ease of reference and will be discussed in the ensuing paragraphs.
  - 8.1.1 Conflict of interest
  - 8.1.2 Award of the security bids
  - 8.1.3 Extension of a consultant's contract: INP project
  - 8.1.4 Appointment for the establishment and development of a turnaround strategy on the driver licence testing centres (DLTC's)
  - 8.1.5 Appointment for the biometric verification solution and other services from companies within a Group
  - 8.1.6 Construction at the Derek Masoek building
  - 8.1.7 Award of road construction bid.

## **9. CONFLICT OF INTEREST**

### **9.1 Context**

- 9.1.1 The AGSA conducted CIPRO searches on 15 entities to identify the directors or members of the entities. CIPRO's name changed to "Companies and Intellectual Property Commission (CIPC)" with effect from 1 April 2011 when CIPRO converted to a public entity. As the respective searches were completed prior to the name change, the AGSA refers to CIPRO for purposes of this report.

9.1.2 The CIPRO results were compared to Persal data. The Persal file used for the comparison included information on all officials in the employment of national as well as provincial government departments as at 31 December 2010.

9.1.3 In addition to the CIPRO and Persal comparisons mentioned above, the AGSA considered the following:

- Standard bidding documents (SBDs 4, 8 and 9); in which service providers declare their interest and commitments.
- Any conflict of interest in terms of the scope of work performed by the service providers.

## 9.2 Findings

9.2.1 Based on the comparison between CIPRO and Persal, no direct conflict of interest was identified i.e. where the directors of entities had direct relationships to employees of national and provincial government.

9.2.2 The completion of declaration of interest (SBD 4) and conflict of interest documentation in terms of the scope of work performed is discussed in sections 10 to 15, below.

## 10. AWARD OF THE SECURITY BIDS

### 10.1 Context

10.1.1 On 13 July 2010, a request for advertisement was approved by the acting DDG: AFC and also the DDG: Roads and submitted to the SCM unit to advertise bids for security services. The existing security contracts had expired in December 2009 and had been extended since January 2010 on a month-to-month basis. It was requested that the bids be advertised in the five regions where the department has offices.

10.1.2 The request for advertisement stated that a budget of R66 144 000 was available. It was further stated that only one bidder would be appointed per region and that only one region would be awarded to a successful bidder.

10.1.3 At a DAC meeting held on 16 July 2010, the DAC approved that five bids for the procurement of security services be advertised. The bids were to be advertised in the government tender bulletin and three local newspapers.



- 10.1.4 On 30 July 2010, the five bids were published in the newspapers with a closing date of 30 August 2010. It was indicated that compulsory information meetings would be held on 4 August 2010 for regions A, B and C and on 5 August 2010 for regions D and E.
- 10.1.5 On 3 August 2010, an erratum to the advertisement of 30 July 2010 was published as the advertisement did not specify for which services the bids were invited.
- 10.1.6 The bid documents were collected from the department's offices as from 30 July 2010 and a non-refundable bid deposit of R100 had to be paid on collection. In total, 501 bid documents were collected and purchased.
- 10.1.7 The compulsory information session for regions A, B and C was held on 4 August 2010 and for regions D and E on 5 August 2010.
- 10.1.8 The bid closed at 11:00 on 30 August 2010. In total, 315 bids were received for regions A to E.
- 10.1.9 The evaluation of bids was performed in five distinct stages:
- Stage 1: Preliminary evaluation
  - Stage 2: Price
  - Stage 3: Functionality
  - Stage 4: PSIRA compliance
  - Stage 5: Site visits
- 10.1.10 The CFST's recommendations were submitted to the DAC for consideration and approval at a meeting held on 8 November 2010. The DAC approved the award of the five security contracts, as recommended by the CFST, to the following service providers:
- Region A: Vendor A
  - Region B: Vendor B
  - Region C: Vendor C
  - Region D: Vendor D
  - Region E: Vendor E
- 10.1.11 Appointment letters were issued by the Director: SCM to the successful service providers on 9 November 2010.

- 10.1.12 The contracts with the successful service providers have to date not been signed. Finalisation of the contracts will take place pending the outcome of the AGSA's investigation.

## 10.2 Findings

The SCM guide, chapter 4, applicable to all government departments, specifies distinct stages in the bidding process. The findings detailed below are set out in accordance with these stages.

### 10.2.1 Compilation of bid documents

#### 10.2.1.1 Standard bidding documentation

- (a) In terms of TR16A6.3(a)(i), the accounting officer of departments must ensure that bid documents are in accordance with the instructions of NT.
- (b) The SBDs prescribed by NT are listed in PN No. 1 of 2003, and must be used by departments when bids are invited. These documents include the following:
- Invitation to bid
  - Application for tax clearance certificate
  - Pricing schedules
  - Declaration of interest
  - National Industrial Participation Programme (NIPP)
  - Preferential claim form in terms of the Preferential Procurement Regulations, 2001 (PPR)

The PN indicates that changes are allowed to these documents but must be confined to a minimum. No amendments should be made to the NIPP form and the application for tax clearance certificate.

- (c) Gauteng Shared Services Centre (GSSC), acting as the common service provider or buying organisation on behalf of the Gauteng Provincial Government (GPG) departments, has a document on their website that should be followed by all the GPG departments when bids are invited. This document sets out the forms that should be included in all bid documents issued to prospective bidders as well as the details that should be included in the said forms. The documents prescribed by GSSC are similar to the SBDs in PN No. 1 of 2003.

(d) Subsequent to issuing PN No. 1 of 2003, amended and new forms were issued by NT in the form of various PNs to prevent abuse of the SCM systems of institutions. Institutions were requested to include/replace these forms in the SBDs. The following new or amended documents were issued:

- PN No. 4 of 2006: Declaration of bidder's past supply chain management practices (SBD 8) effective from 1 April 2006.
- PN No. 7 of 2009-10: Amended declaration of interest (SBD 4) effective from 2 October 2009.
- NT PN signed on 21 July 2010: Certificate of independent bid determination (SBD 9) effective from 21 July 2010.

The GSSC prescription was, however, not updated to include the new or amended documents.

(e) The bid document utilised by the department was customised and included most of the documents as prescribed by PN No. 1 of 2003 and the GSSC although the wording and names of the documents were not in all instances the same. The new and amended documents, SBDs 4, 8 and 9 above, were not included in the bid documents utilised by the department.

As a result, the bidders for the security contracts did not sign the new declarations (SBDs 8 and 9) but signed the old declaration of interest forms that did not include the updated paragraphs as prescribed by NT.

Furthermore, the bid document issued by the department did not include the NIPP form that had to be completed by the bidders if the value of the contract exceeded R10 million.

#### **10.2.1.2 Validity period of bids**

The GSSC documents state that the standard validity period of bids is 90 days, which should be clearly indicated in the bid document. However, the bid documents issued for security contracts were valid for a period of 60 days from the closing date of the bid and not 90 days as required.

#### 10.2.1.3 Declaration of attendance of compulsory information sessions

- (a) In terms of the GSSC document, the declaration of attendance form must be included in the bid documentation when a compulsory site inspection/ briefing/meeting is set as a special condition for the bid. In this form the bidders must certify that they had attended the said site/ inspection/ briefing/ meeting and that they were fully aware of the extent of the task. Furthermore, the bidders must declare who had represented the entity, particulars of the entity and the date and place of the site/ inspection/ briefing/ meeting. The form must be signed by the bidder or his representative and countersigned by a representative of GPG to certify that the bidder had indeed attended.
- (b) Compulsory information sessions were held by the department on 4 and 5 August 2010. The representatives of the bidders signed the attendance register and provided particulars of the bidders.
- (c) However, no declaration forms as stated in paragraph (a) above were included in the bid documents on which a declaration in terms of the information sessions could be made by the bidders.

#### 10.2.1.4 Validity of bids

In terms of section 14(a-b) of the PPR, bidders must declare in their bid document that the information provided was true and correct and that the signatory to the bid document was duly authorised. The bid document issued by the department required that bidders “*confirm that they satisfied themselves that the tender submitted is correct and valid*” and that “*they are duly authorised to sign the tender*”. No provision was made in the bid document that any incorrect or misleading information furnished by a bidder may invalidate the bid.

#### 10.2.1.5 Certificate of bid commitment

- (a) Paragraph 3.14.4.1 of the GDRT SCM policy states that if the value of the bid is expected to exceed R10 million (VAT inclusive); the bidders should be requested to furnish a certificate signed by the bidder certifying the following:
  - If the bidder has any disputed commitments with regard to services provided to another department or service provider in respect of which payment is overdue for more than 30 days.

- Particulars of any contracts awarded to the bidder by an organ of state during the past five years.
- A statement indicating whether any portion of the goods and/or services is expected to be sourced from outside the Republic of South Africa.

- (b) It was noted in the “request for advertisement” document signed at the commencement of the SCM process that the estimated budget for the security tender was approximately R66 million for the five regions. In two of the regions, A and D, the estimated budgets exceeded R10 million per region.

The bid document should therefore have made provision for a certificate to be signed by the prospective bidders in the regions where the estimated budgets were above R10 million. The bid documentation contained no document for security bids where bidders had to certify commitments.

#### **10.2.1.6 Establishment of bid specification committees and approval of bid specifications**

- (a) In terms of TR16A6.2(b), the SCM system must provide for the establishment, composition and functioning of bid specification committees. In terms paragraphs 3.3.6 and 3.23.1.7 of the GDRT SCM policy, the bid specifications must be approved by the bid specification committee and the accounting officer prior to advertisement of the bid.

There was no evidence to indicate that a bid specification committee was established to compile the bid document and specifications for the security bids. The request for advertisement that was submitted to SCM on 13 July 2010 was only signed off by the Director: Security Management and acting DDG: AFC and not by the chairperson of the specifications committee as required.

- (b) The Deputy Director: SCM confirmed that no bid specifications committee was established and stated that she and the Director: Security Management compiled the bid specifications together.
- (c) There was no evidence provided to the AGSA that the bid specifications were approved by the accounting officer prior to the bid being advertised.

#### 10.2.1.7 Evaluation criteria

- (a) The bid advertisement indicated that the bids would be evaluated as follows:

- Price: 60 points
- Functionality: 30 points
- Equity: 10 points (HDI: 2, Gender: 2, Locality: 2, Disability: 2 and Youth: 2)

The bid document confirmed that the bids would be evaluated on the above criteria.

- (b) In terms of section 2.2 and 2.3 of PN No. 2 of 2006, the PPPFA prescribes that any goals for which points are awarded must be measureable and clearly specified in the invitation to bid. Therefore, when bids are invited, the specific goals to be promoted and the preference points to be allocated, together with measurables for promotion of each goal, must form part of the bid document. These measurables must clearly indicate how the bidders will be awarded a score out of the maximum points allocated.

Furthermore, section 13(5)(c) of the PPR stipulates which formula must be used in calculating the number of points for equity ownership by an HDI.

- (c) The security bid document only stated the formula that would be used to calculate price points and the weights per functionality criteria that would apply. No measurables were included as to how specific goals and equity ownership by HDI's would be scored and which criteria and formulae would apply in scoring those goals.

#### 10.2.2 Invitation of bids

- (a) In terms of section 4.9 of the SCM guide and TR16A.6.4, bids should be advertised in at least the Government tender bulletin for a minimum period of 21 days before closure. The bids may also be advertised in other appropriate media should an accounting officer deem it necessary to ensure greater exposure to potential bidders. The request for advertisement indicated that the bids should be advertised in the tender bulletin and three local newspapers. On 30 July 2010, the security bids were advertised with a closing date of 30 August 2010. The AGSA was

only provided with the advertisement that was published in “*The Star*” and the government tender bulletin.

- (b) It was noted, however, that an erratum to the advertisement on 30 July 2010 was published on 3 August 2010 due to an error that occurred in the initial advertisement. The department omitted to specify that the bids invited were for the provision of security services. This indicates that the bid advertisement was not checked prior to being published, which shows weak internal controls in the department.

### 10.2.3 Receiving of bid proposals

#### 10.2.3.1 Prescribed procedures

Section 4.5 of the SCM guide and paragraph 3.18 of the GDRT SCM policy prescribe procedures for handling, opening and recording bids, including the following:

- All bids should be opened at the time and place stipulated in the bid document.
- Bids should be opened in public and bidders and their representatives should be allowed to be present.
- No late bids should be considered and must be returned unopened.
- Bidders should have the right to request that the names of the bidders that submitted bids be read out and, if practical, their total bidding prices.
- The names of the bidders and their total prices should be recorded and made available for public inspection.
- The register with the bid entries should be published on the department’s website.

#### 10.2.3.2 Opening of bid documents

- (a) The Director: Security Management informed the AGSA during an interview that the tender box was not opened on 30 August 2010 as stated in the bid document, but later by the SCM unit without any bidders, representatives of bidders or representatives of Security Management being present to observe the process.
- (b) The Deputy Director: SCM stated as follows with regard to the closing of the security bids and subsequent opening of the tender box:

- The normal SCM process followed by the department when bids close is to remove the bid documents from the tender box on the day and at the time the bids close. If bidders are present, the names of the bidders will be read out with the prices, if required. It is important that observers are present to observe the process when the bids are taken out and opened.
  - On the day the security bids closed there was a public service strike. Most of the department's officials were striking and a decision was made, with the approval of the Director: SCM, not to open the tender box until the strike has settled down.
  - The bids were left in the tender box with an instruction to the security personnel not to allow anybody to deposit any further bids. However, the box was not sealed off and there is a possibility that bids were deposited after the closing date and time.
  - The bids were collected by the SCM officials after approximately three to four days when the strike came to an end.
  - The SCM officials took the bids to the SCM office for opening and recording. Only the SCM officials were involved in the opening and recording of the bids. No bidders, representatives of bidders or representatives of Security Management were present to observe the opening and recording of the bids.
- (c) Since the security cameras in the department building where the tender boxes were stationed are not operational, the AGSA was unable to verify whether any bids were deposited after the closing date or how the opening of the box was handled.

#### 10.2.3.3 Recording of bid proposals

The AGSA was unable to confirm when the bids were collected and opened as none of the sheets on which the bids were recorded were dated.

Furthermore, the sheet on which the bids were recorded provided for two signatories, namely one for SCM and one for Risk Management. None of the sheets were signed off by a representative of Risk Management and only 15 out of the 34 sheets were signed off by the representatives of SCM.



## 10.2.4 Evaluation of bid responses

### 10.2.4.1 Establishment of the CFST

- (a) In terms of TR16A6.2(b), the SCM system must provide for the establishment, composition and functioning of BECs. In the department, this committee is also referred to as the CFST.

In terms of paragraphs 3.24.3 and 3.24.4 of the GDRT SCM policy, the evaluation committee should be cross-functional and should as far as possible be composed of officials from the user department requiring the goods and/or services and at least one SCM practitioner.

- (b) The CFST that was established for the evaluation of the security bids was cross-functional and composed of SCM officials, an official of Security Management and an official of G-Fleet. However, most of the officials on the CFST were from SCM and not from Security Management (the user department), as required.
- (c) In terms of paragraph 3.3.4.4 of the GDRT SCM policy, the convener of the CFST must be appointed in writing by the HoD in consultation with the MEC.

The Deputy Director: SCM indicated that the CFST for the evaluation of security bids was appointed by the HoD.

The department could not provide the appointment letters, with the result that the AGSA was unable to confirm the appointments.

- (d) During the evaluation process, there was a change in the membership of the CFST. This was supported by an undated progress memorandum (memo) from the CFST to the Director: SCM.

The ASD: SCM and CFST team leader informed the AGSA that some members withdrew from the team due to other commitments.

- (e) In terms of PN No. 4 of 2003, SCM practitioners should declare any business, commercial and financial interest or activities undertaken for financial gain that may raise a conflict of interest.

The minutes of the CFST meeting held on 20 September 2010 indicate that the members of the CFST signed declaration of interest forms.

However, the AGSA was not provided with these declarations and was therefore unable to comment on whether the department had complied with the practice note.

#### 10.2.4.2 Evaluation of bids

Evaluation of security bids was performed in five distinct stages. The findings detailed below reflect the findings per stage.

##### (a) Preliminary evaluations

- (i) The evaluation criteria in the bid document issued to the prospective bidders required that mandatory documentation be submitted and that requirements be met. The following mandatory documentation had to be submitted:

- Certified copy of PSIRA certificate
- Valid tax clearance certificate
- Proof of liability insurance cover
- Financial statements for last two years
- Certified ID, copies of share certificate or copies of all company directors/ owners (CIPRO certificate)
- Certified copy of Unemployment Insurance Fund (UIF)
- Certified copy of Workman's Compensation (COIDA)
- Certified copy of Provident Fund
- Signed bid commitment and declaration of interest form
- All cancellations in the bid document must be signed by the bidder
- Compulsory site briefing attendance register must be signed by the bidder
- The total bid price and price schedule should be completed.

It was clearly stated that bidders who fail to comply with any of the requirements would automatically be disqualified.

- (ii) According to the undated progress memo from the CFST to the Director: SCM, the preliminary evaluations were performed on the 315 bids received as follows:

- Region A: 65
- Region B: 61

- Region C: 65
- Region D: 62
- Region E: 62

(iii) A checklist comprising all the compulsory requirements was compiled by the CFST to ascertain compliance. It was noted from the checklist, however, that the number of bids received and the number of bids reviewed for compliance did not correspond for one region. Table 2 below sets out the discrepancy noted in region A.

**Table 2: Discrepancy between number of bids received and the number of bids reviewed**

Region	Number of bids received	Number of bids reviewed
A	65	63

(iv) At the CFST meeting held on 20 September 2010, it was noted that CFST members had analysed the documentation that had to be submitted by the bidders. Bidders that did not meet the mandatory requirements had to be eliminated. However, a decision was taken by the CFST members to change the mandatory requirements to include only the following:

- Valid tax clearance certificate
- VAT registration number for companies charging VAT
- Form of offer to be signed
- Correction signed on bills
- Site meeting attendance
- PSIRA certificate
- COIDA certificate
- UIF certificate

It was agreed that bidders that fail to comply with the above-mentioned requirements would be disqualified.

(v) In terms of paragraph 3.24.2 of the GDRT SCM policy and section 1.2.3 of PN No. 2 of 2006, bids must be evaluated in accordance with the criteria specified in the bid specifications. In terms of section 4.11 of the SCM guide, amendments to the evaluation criteria after closure of the bids should not be allowed as this would jeopardise the fairness of the SCM system.

As a result of the evaluation criteria being changed, only a small number of the bidders were disqualified during the preliminary evaluations. Table 3 below reflects the number of bids that complied with the original evaluation criteria, the number of bids that should have been disqualified according to the initial mandatory requirements and the number of bids that were actually disqualified.

**Table 3: Number of bids that complied versus the bids that had to be disqualified and those that were actually disqualified**

Region	Number of bids reviewed	Number of bids that complied with original mandatory requirements	Number of bids that should have been disqualified	Number of bids that were disqualified
A	63	28	35	19
B	61	15	46	15
C	65	16	49	13
D	62	13	49	13
E	62	11	51	15

In terms of paragraph 4.10 of the DAC charter, the DAC has an oversight function to ensure that the evaluation of bids by the CFST takes place in accordance with the approved policies and regulations. No evidence was provided to indicate that the deviation had been reported to the DAC.

- (vi) During the investigation, the bid proposals submitted by the five successful bidders were compared to the checklist on which the bidders were measured for compliance with the original evaluation criteria. Table 4 below sets out the discrepancies that the AGSA noted with regard to the evaluation of mandatory requirements.

**Table 4: Discrepancies regarding the evaluation of mandatory requirements**

Region	Successful bidder	Discrepancies
A	Vendor A	<ul style="list-style-type: none"> <li>- The contract tendered for was for 24 months but the public liability insurance only covered the period 1 July 2010 to 30 June 2011, not a 24-month period.</li> <li>- Certified copies of the public liability insurance certificate, Black Economic Empowerment (BEE) verification certificate and proof of</li> </ul>

Region	Successful bidder	Discrepancies
		provident fund were not submitted.
B	Vendor B	<ul style="list-style-type: none"> <li>- It was indicated on the checklist that two years' financial statements were submitted. However, only financial statements for one year were included in the bid document.</li> <li>- The contract tendered for was for 24 months but the public liability insurance only covered the period 1 November 2009 to 31 October 2010, not a 24-month period.</li> </ul>
C	Vendor C	<ul style="list-style-type: none"> <li>- Only one year's financial statements were submitted.</li> <li>- The contract tendered for was for 24 months but the public liability insurance only covered the period 23 November 2009 to 30 November 2010, not a 24-month period.</li> <li>- No proof of a provident fund was submitted.</li> </ul>
D	Vendor D	<ul style="list-style-type: none"> <li>- The liability insurance certificate submitted was outdated as it was dated 11 November 2009. No new confirmation was submitted that the cover was still effective.</li> <li>- A UIF compliance certificate was not submitted by the bidder to confirm that his UIF status was in order at the time of submission of the bid. Only a UIF certificate dated 3 August 2005 was submitted which confirmed that the bidder was registered for UIF purposes.</li> </ul> <p>Information obtained from the compliance officer at UIF on 8 &amp; 9 March 2011 indicates that Vendor D would not have qualified for a certificate of compliance at the time of the bid, as the declarations of employees stopped in July 2009 and the UIF contributions stopped in November 2009.</p> <ul style="list-style-type: none"> <li>- It was indicated on the checklist that a CIPRO certificate was provided. However, the document provided was the amended founding statement of the bidder dated 11 November 2009. There was no certificate of confirmation</li> </ul>

Region	Successful bidder	Discrepancies
		from CIPRO to indicate the status of the bidder at the time of the submission of the bid.
E	Vendor E	<p>- It was indicated on the checklist that two years' financial statements were submitted. However, financial statements for only one year were included in the bid document.</p> <p>- A UIF compliance certificate was not submitted by the bidder to confirm that his UIF status was in order at the time of submission of the bid. Only a UIF certificate dated 2 August 2004 was submitted which confirmed that the bidder is registered for UIF purposes.</p> <p>Information obtained from the compliance officer at UIF on 8 &amp; 9 March 2011 indicates that Vendor E would not have qualified for a certificate at the time of the bid, as the declaration of employees was outstanding, all the employees had been terminated on the UIF system in August 2010 and contributions were stopped in December 2010.</p>

Based on the discrepancies identified above, all five successful bidders should have been disqualified in the preliminary stage of the evaluation process. However, they proceeded to the next stage of the evaluation and ultimately became the successful bidders. This is as a result of the CFST not scrutinising the mandatory documentation properly during the preliminary evaluations and the CFST changing the mandatory requirements.

(vii) In addition to the above, the following discrepancies were identified with regard to the tax clearance certificate submitted by Vendor D, which did not confirm the following:

- VAT registration number
- PAYE registration number
- SDL registration number
- UIF registration number

Vendor D included VAT in the amount tendered and provided a VAT registration number in their tender proposal. On 28 February 2011,

the AGSA conducted a VAT vendor search on the South African Revenue Services (SARS) website to verify the VAT number provided. The search revealed that the VAT number was invalid and that there were “no records” for the VAT number provided.

The CFST did indicate on the preliminary evaluation checklist that Vendor D had not provided proof of registration for VAT. However, the CFST did not disqualify Vendor D based on the fact that they included VAT in the amount tendered although they are not registered for VAT purposes.

Vendor D provided incorrect and misleading information by stating an invalid VAT registration number in their bid proposal and by quoting a VAT-inclusive price despite not being a registered VAT vendor. Vendor D should have been disqualified on the basis that they had not submitted a valid tax clearance certificate and had included VAT in their tendered amount although not registered for VAT purposes.

Furthermore, the owner of Vendor D, made a misrepresentation to the department when she signed the bid document indicating that the information stated in the bid proposal was correct and valid. Based on the misleading information provided by Vendor D, their bid should have been invalidated.

**(b) Price evaluations**

- (i) The CFST team leader said it had been agreed among CFST members during the pricing evaluations that the PSIRA rates applicable from 1 September 2010 were to be used as a basis for the evaluation of price. PSIRA prescribes the minimum salaries and rates that security companies should pay their officers.
- (ii) The approach followed by the CFST was to calculate a budget estimate per region based on the PSIRA rates. All the prices of the bidders per region were captured on a computer-generated spreadsheet which contained formulas to cut off all bidders that tendered below the budget estimates (PSIRA rates). The AGSA confirmed that all the bidders that quoted below the budget estimates were cut off.

- (iii) Thereafter, the PPPFA formula was applied to the tender amounts that were above the budget estimates to calculate the price points out of 60, as stipulated in the bid document.

The AGSA confirmed that the formula used to calculate the price points out of 60 was applied consistently and that no discrepancies were noted in the price points allocated to bidders.

- (iv) However, there were material price differences in the amount tendered by the bidders, although the market is regulated by PSIRA. Furthermore, bidders that tendered in all five regions tendered PSIRA rates in one region but used non-PSIRA rates in another region.

**(c) Functionality evaluations**

- (i) The bid document issued to the prospective bidders stated in the evaluation criteria that functionality would count 30 points. The 30 points were to be allocated as follows:

- Resources: 10 points
- Experience: 10 points
- Financial capability: 10 points

- (ii) An undated progress memo from CFST to the Director: SCM indicated that the CFST had a meeting on 29 September 2010 where it was agreed on how functionality would be scored. A score sheet was developed indicating the weights of the different categories of functionality.

The CFST team leader confirmed that a template had been compiled based on the functionality criteria stipulated in the bid document. Furthermore, the CFST agreed on the weights to be allocated and the method of scoring for the sub-criteria under each main criterion.

- (iii) The CFST team leader indicated that if bidders tendered in more than one region, only one functionality score sheet had to be completed for the specific bidder which would then be used in all the regions where the bidder tendered.



(iv) The functionality score sheets for the bidders in regions A to E were reviewed and the following was noted:

- Only a limited number of the functionality score sheets were provided for verification.
- The evaluation score sheets were not signed off by the CFST members.
- The bidders were not scored on financial capability.
- A separate functionality score sheet was not compiled after the evaluations. The scores were captured directly on the consolidated score sheets.

(v) In the undated progress memo from the CFST to the Director: SCM mentioned above, the CFST indicated that the management of SCM and Security Management had agreed during the functionality evaluation stage not to score the bidders on financial capability but to score this criterion during the site visits that would be conducted later in the evaluation process. The site visits are discussed in greater detail below.

**(d) PSIRA compliance**

- (i) After the preliminary price and functionality evaluations were finalised, 56 bidders were shortlisted. The next step in the evaluation process was to forward the 56 bidders' names to PSIRA to verify whether their status was in good standing with PSIRA.
- (ii) In a letter from the Director: SCM dated 8 October 2010, the 56 shortlisted bidders' names were forwarded to PSIRA, requesting PSIRA to verify whether the bidders were in good standing.
- (iii) On 15 October 2010 a report was received from PSIRA with the results of the verification. PSIRA cleared 34 of the 56 bidders. The other bidders were not cleared by PSIRA due to the following:
- Annual fees and/or fines were outstanding in respect of 10 bidders.
  - In the case of six bidders PSIRA had not been informed of a change in service providers' directors/ members.
  - Registration of a service provider was suspended at the request of the members.

- In the case of two bidders, PSIRA had not been informed of the change in the status of the service provider at CIPRO.
- A bidder was voluntary liquidated.
- Suspension of a bidder for non-compliance with PSIRA regulations.

A status report was not issued in respect of one bidder, no evidence was provided to the AGSA that the CFST had followed up with PSIRA as to why no report was issued.

- (iv) Four of the five successful bidders were cleared by PSIRA. One successful bidder for region D, Vendor D was not cleared by PSIRA because PSIRA had not been informed of the change in status of service provider with CIPRO. According to the CIPRO certificate of compliance obtained by PSIRA on 13 October 2010, the service provider had been deregistered.
- (v) The AGSA performed a CIPRO search on Vendor D on 25 January 2011. CIPRO records indicate the Vendor D is “*in business*”.

However, a CIPRO official indicated on 2 March 2011 that the bidder had been deregistered on 16 July 2010 by CIPRO because the bidder had failed to submit their annual return.

CIPRO apparently notified the bidder of the deregistration and the reasons for such deregistration in August/September 2010. Subsequent to the notification, Vendor D submitted their annual return, after which their status was restored on CIPRO to “*in business*” on 19 October 2010.

- (vi) Based on the above information from CIPRO, Vendor D were deregistered when the bid closed on 30 August 2010. By submitting the bid while they were deregistered, the bidder made a misrepresentation to the department in their bid proposal as they would not have met the requirements for bidding.

Since CFST had failed to scrutinise the mandatory documentation properly during the preliminary evaluations, Vendor D proceeded to the next stage of evaluations while they should in fact have been disqualified.

**(e) Site visits**

- (i) The site visits were conducted from 25 October 2010 to 5 November 2010. The team comprised five officials of SCM and two from Security Management. Since 56 sites had to be visited, the team was split in two groups. The teams used a checklist provided by the Director: Security Management, which was supposed to be distributed to the bidders prior to the site visits. However, the AGSA was not provided with any evidence indicating that the checklists had been distributed to the respective bidders prior to the site visits.
- (ii) Review of the completed checklists revealed the following:
- There was no pre-determined approach to conduct the site visits with the result that the scoring was unstructured and inconsistent. Some evaluators used only “yes” or “no” without allocating any points or remarks, whilst others used tick marks without any points or remarks and others only allocated points.
  - In most cases, the checklist was not fully completed.
  - The scores sheets were not signed off or dated by the evaluators who conducted the verifications.
  - No provision was made in the checklist to evaluate and score “*financial capability*” which was also not scored on the basis of bids submitted.
  - The checklists for two of the successful bidders, namely Vendor D and Vendor C, were not provided to the AGSA. As a result, the AGSA could not ascertain whether site visits had been conducted.
  - The AGSA noted that site visits were conducted at 56 bidders’ premises although only 34 bidders were cleared by PSIRA.
- (iii) The consolidated score sheets which included the results of the site visits were requested from the department. The CFST team leader confirmed on 10 February 2011 that no consolidated sheets had been compiled. The results were directly captured into the memo with the recommendations to the DAC.
- (iv) Internal communication within the department confirms that the security awards were finalised by SCM without the inputs of the officials of Security Management who formed part of the team that conducted the site visits. Therefore the final scores were not

discussed after the site visits as envisaged during the initial evaluation process.

#### 10.2.4.3 Recalculation and verification of scores on the evaluation sheets

##### (a) Price

- (i) Scrutiny of the individual price score sheets for regions A to E against the consolidated score sheets revealed discrepancies in respect of two service providers, as illustrated in table 5 below:

**Table 5: Discrepancies between price score sheets and consolidated score sheets**

Region	Bidder	Individual price score sheet	Consolidated score sheet
C	Vendor C	59.20	58.48
E	Vendor E	60.00	58.74

- (ii) The prices captured for the five successful bidders on the price evaluation sheets were compared to the bid proposals of the bidders. The following discrepancies were noted in respect of one bidder, Vendor A:

The prices captured for Vendor A, the successful bidder in region A, were incorrect. The tender amount as per the price evaluation sheet was R20 199 874.32, whereas the amount tendered as per the bid proposal was R20 799 874.20. This represents a price difference of approximately R600 000. The bidder was evaluated on an incorrect amount and the price points allocated and transferred to the consolidated score sheet were incorrect. This resulted in Vendor A scoring 56.99 for price instead of 55.11. Vendor A's final score was 81.99 instead of 80.11. Based on the incorrect price points, Vendor A scored the highest points in region A and received a contract to which they were not entitled.

- (iii) The other four successful bidders' tender amounts were correctly captured on the price evaluation sheets.

##### (b) Functionality

- (i) Scrutiny of the functionality score sheets of the five successful bidders against the consolidated score sheets and the respective bid

proposals revealed discrepancies as illustrated in tables 6 and 7 below:

**Table 6: Discrepancies between functionality score sheets and consolidated score sheets**

Region	Bidder	Functionality scores sheet		Consolidated score sheet	
		Resources	Experience	Resources	Experience
B	Vendor B	10	No score	10	10

**Table 7: Discrepancies between functionality score sheets and bid proposals**

Region	Bidder	Functionality scores sheet		Comment on discrepancies identified in bid proposals
		Resources	Experience	
B	Vendor B	10	No score	Not scored but verified in tender proposal that the bidder had eight years experience and therefore the 10 points awarded in consolidated score sheet appears correct.
C	Vendor C	10	10	<ul style="list-style-type: none"> <li>- Scored 10 for resources based on the fact that they indicated in their tender proposal that they have 10 cars. However, no proof was included in the bid proposal that the bidder had 10 cars.</li> <li>- Scored 10 points for experience. However, the bid proposal indicates that they only have four years experience and not the required five years or more.</li> </ul> <p>Thus, the bidder was incorrectly scored and an incorrect score was transferred to the consolidated score sheet.</p> <ul style="list-style-type: none"> <li>- No site visit checklist</li> </ul>

Region	Bidder	Functionality scores sheet		Comment on discrepancies identified in bid proposals
		Resources	Experience	
				was provided to the AGSA for this bidder. The AGSA was unable to confirm that the information provided in the bid proposal, such as the cars, the firearms, the control room, etc. had been verified during the site visit.
D	Vendor D	10	10	No site visit checklist was provided to the AGSA for Vendor D. The AGSA was unable to confirm that the information provided in the bid proposal such as the cars, the control room, the firearms, etc. had been verified during the site visit.

- (ii) The CFST team leader said if a bidder tendered in more than one region, only one functionality score sheet would be completed for the bidder. During the AGSA's verification of the functionality score sheets, it was noted that in some instances functionality score sheets were completed for the bidders twice or more often if they tendered in more than one region. However, inconsistencies were found between the scores awarded on the functionality scoring sheets in the different regions, for example: Vendor A scored 10 points in region A for resources but only five in region B whilst the requirements were the same in both regions.

**(c) Equity and RDP goals**

- (i) It was indicated in the bid document that RDP goals would count 10 points and that the bidders would be evaluated on the following goals:
- HDI: 2
  - Gender: 2
  - Locality: 2
  - Disability: 2
  - Youth: 2

- (ii) The AGSA was not provided with any evaluation sheets in respect of the RDP goals, with the result that the determination, allocation and subsequent transferring of the scores to the consolidated score sheets could not be verified.
- (iii) The AGSA performed a verification of the scores on the consolidated score sheets for the five successful bidders. Inconsistencies were noted in the points allocated for RDP goals where bidders tendered in more than one region, as set out in table 8 below.

**Table 8: Inconsistencies in RDP points scored in the different regions**

Bidder	Consolidated score sheet			
	Region	RDP points	Region	RDP points
Vendor D	A	8	D	7
Vendor C	C	8	D	7
Vendor E	A	3	B	4

- (iv) None of the bidders, including the five successful bidders, were scored on disability in any of the regions.

**(d) Verification of financial capability**

- (i) The bid document indicated that bidders were to be evaluated on financial capability as part of the functionality criteria. In this regard, bidders were required to provide confirmation of their minimum available working capital. The amounts were as follows for the respective regions:
  - Regions A & D: R1 million or more.
  - Regions B, C & E: R300 000 or more.
- (ii) The AGSA's review of the site visit checklist revealed that provision was not made in the checklist to score financial capability. However, according to the DAC, the CFST had confirmed that they verified the financial capability of the following bidders during the site visits:

**Table 9: Verification of financial capability**

Bidder	Financial capability (R)
Vendor A	1 million
Vendor B	1 million
Vendor E	984 000

It is unclear how the financial capability of Vendor A and Vendor E was established, as no evidence was attached to the site visit checklists nor included in their bid proposals to support the amounts stated above.

(iii) Two of the successful bidders, namely Vendor B and Vendor C, provided letters from the bank confirming that they have R1 million available for working capital. The AGSA's scrutiny of these bank letters revealed the following:

- Both letters were issued by the same branch of a bank.
- The letter for Vendor B was issued on 27 August 2010, one day after the letter of Vendor C.
- Both the letters confirmed that working capital to the amount of R1 million was available.
- Both letters were signed off by the same business account analyst at the bank.
- The respective bidders (directors) share common surnames.

## 10.2.5 Clearing successful bidders and awarding of contracts

### 10.2.5.1 Vendor assessments

- (a) In terms of section 4.12 of the SCM guide, service providers should be assessed by SCM practitioners for possible risks such as the availability of adequate facilities, financial standing, capacity and capability to deliver, previous performance in terms of quality and service delivery, as well as attainment of goals.
- (b) The site visits checklists were used to verify and assess the availability of the adequate facilities and resources of the following bidders:
- Vendor A
  - Vendor B



- Vendor E

The AGSA was unable to confirm that Vendor D and Vendor C were assessed on availability of adequate facilities and resources as no site visit checklists were provided.

- (c) No evidence was provided to the AGSA that the CFST had performed reference checks on the successful bidders in order to establish their good standing and performance in terms of quality and delivery. The financial capability of only two bidders, Vendor B and Vendor C, was confirmed by the CFST. The poor and incomplete assessment of vendors represents a risk that service providers that are unable to perform may be appointed, which defeats the objective of section 4.12 of the SCM guide.

#### 10.2.5.2 Clearance with the Department of Trade and Industry (DTI): National Industrial Participation Programme (NIPP)

- (a) In terms of section 4.12 of the SCM guide, clearance should be obtained from the DTI regarding NIPP before a contract in excess of R10 million is awarded.
- (b) The security contracts awarded to Vendor A and Vendor D were for amounts above R10 million as indicated in table 10 below.

**Table 10: Contract amounts above R10 million**

Bidder	Contract amount (R)
Vendor A	20 199 874.32
Vendor D	15 447 812.88

- (c) The CFST team leader informed the AGSA that GDRT had not in the past obtained clearance from the DTI in respect of bids above R10 million.

#### 10.2.5.3 Vetting of the successful service providers

- (a) In terms of section 2A(1) of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), the relevant members of the National Intelligence Structure may conduct a security screening investigation in the prescribed manner to determine the security competence of a person if such a person is rendering a service to an organ of state. The service may include providing such person with access to classified information and intelligence in the possession of the organ of state or providing him/her

with access to areas designated as national key points in terms of the National Key Points Act, 1980 (Act No. 102 of 1980).

- (b) The AGSA was provided with an email dated 13 December 2010 addressed to the Provincial Head of Gauteng: State Security Agency (SSA) in which the department requested confirmation that the five successful bidders had been vetted by SSA and that the necessary clearance certificates had been issued.
- (c) The SSA responded on 14 December 2010 confirming that four of the five companies had within the past 12 months been positively screened and certificates had been issued by SSA. However, no screening was done for Vendor E.
- (d) The SSA further indicated that the four companies were screened for another client and not for the department. Clearance is issued for specific projects and specific clients and the clearance of one client or project does not automatically imply clearance in respect of another client or project.
- (e) Based on the above, the department did not initiate a vetting exercise for the preferred bidders prior to the bids being awarded. The security service providers will have access to state information and designated areas. Should adverse security-related information come to light in respect of these service providers, the department will be at risk as a result of inadequate background screening.

#### **10.2.5.4 Restricted supplier list**

- (a) In terms of TR16A9.1(c), the accounting officer must check the NT's database prior to awarding a contract to ensure that no recommended bidder, nor any of its directors, is listed as a company or persons prohibited from doing business with the public sector. This requirement is also confirmed in paragraph 3.37.1.3 of the GDRT SCM policy and section 4.12 of the SCM guide.
- (b) The Director: SCM informed the AGSA that the department had not in the past checked any of the bidders against the NT database.

#### **10.2.5.5 Recommendations of the CFST to the DAC**

- (a) The CFST's recommendations were submitted to the Director: SCM after

evaluation of the security bids was finalised and the preferred bidders were identified. The results were captured in a memo addressed to DAC for approval of the appointment of the five security service providers in the five identified regions.

- (b) The memo to the DAC contained details on the invitation of security bids and the evaluation process followed from the preliminary evaluations to the respective site visits and the results thereof.

The memo to the DAC provided incorrect information, which may be construed as a misrepresentation of the facts. This is discussed in greater detail below in respect of the various stages of the process.

**(i) Invitation of bids**

The memo to the DAC states that the bids were invited on 30 July 2010 with a closing date of 30 August 2010. No mention was made that an erratum to the bid advertisement had to be published on 3 August 2010 due to a material error as the advertisement did not state that the bids were for the provision of security services.

**(ii) Opening of the bids**

The DAC was not informed that SCM had deviated from the prescribed SCM process in the opening and recording of the bids as a result of the strike action that took place at the time the bids closed.

**(iii) Preliminary evaluations**

- The memo to the DAC states that bidders were evaluated during the preliminary evaluations on compliance with the mandatory requirements, which included the submission of a PSIRA certificate, valid tax clearance, VAT registration, liability insurance cover, two years' financial statements, CIPRO, UIF, COIDA, provident fund, declaration of interest, signing of corrections and attendance of compulsory site briefings.
- The CFST, however, made a misrepresentation to the DAC by stating that compliance was measured against the above requirements. The requirements (evaluation criteria) were changed subsequent to the commencement of the evaluation process to exclude proof of signing of declaration of interest,

provident fund, two years' financial statements and CIPRO compliance.

- The memo to the DAC stated the number of bidders that complied with preliminary requirements. However, these numbers were calculated based on the new requirements and not the original requirements.
- The number of bidders that attended the site briefing sessions was incorrectly stated in the memo to the DAC. The discrepancies noted between the memo and the preliminary evaluation sheets in terms of attendance are set out below in table 11.

**Table 11: Discrepancies in the number of bidders that attended the site briefing sessions**

Region	Number of bidders in attendance as per the memo to the DAC	Number of bidders in attendance as per preliminary evaluation sheets
A	139	47
B	139	45
C	139	56
D	122	49
E	122	48

#### **(iv) Price evaluations**

The DAC memo stated that PSIRA rates were used during the price evaluations as a benchmark to filter bidders, after which bidders that had quoted PSIRA rates and above proceeded to the next stage (functionality evaluations). However, the consolidated score sheets indicate that the number of bidders evaluated on functionality differed from the number of bidders stated in the memo to the DAC. Table 12 below sets out the discrepancies that were noted in regions A and B:

**Table 12: Discrepancies between the number of bidders evaluated on functionality as per the DAC memo and as per the consolidated score sheets**

Region	Number per memo to the DAC	Number of bidders evaluated on functionality as per consolidated score sheet
A	33	34
B	30	31

**(v) PSIRA compliance**

- The memo to the DAC indicated that PSIRA had cleared 34 bidders and that 19 bidders received qualified reports for various reasons.
- However, the actual PSIRA report indicates that 34 bidders had been cleared; that 21 bidders received qualified reports and that no status report was provided in respect of one bidder.
- The PSIRA results were copied into the memo to the DAC. However, one bidder's name, Vendor D, which was not cleared by PSIRA, was deleted from the results included in the memo to the DAC.
- Because Vendor D's name had been deleted, the DAC was not aware that PSIRA had not cleared Vendor D and therefore approved the appointment of Vendor D based on the incorrect facts contained in the memo to the DAC.

**(vi) Site visits**

- The memo to the DAC contained a schedule with the results of the site visits. These results showed that the site visit team confirmed compliance by the bidders in that they had a 24 hour control room and financial capability.
- The AGSA received no evidence as to how the financial capability of the bidders was assessed. The site visit checklists did not make provision for the financial capability assessment.
- No site visit results were included for Vendor D and Vendor E.

## (vii) Summary of bid results based on evaluation

A summary schedule per region was included in the memo to the DAC stating the results of the evaluations and listing six preferred bidders per region. The AGSA identified various discrepancies on the summary schedules. The discrepancies are as follows:

- The price points were carried forward incorrectly from the consolidated scoring sheets to the summary schedules. Table 13 below sets out the discrepancies.

**Table 13: Discrepancies between the price points on consolidated score sheets and price points carried forward in the memo to the DAC**

Region	Bidder	Price points per evaluation sheets and consolidate score sheets	Price points carried forward to the memo to DAC
A	Vendor F*	54.11	57.17
A	Vendor G*	54.11	47.47
B	Vendor B	59.13	57.13
B	Vendor C	53.79	57.79
C	Vendor H*	59.34	60.00
C	Vendor C	59.20	57.71
C	Vendor I*	59.05	57.28
C	Vendor J*	58.61	56.55
E	Vendor K*	55.65	56.92

\*Unsuccessful bidders

- The functionality scores were carried forward incorrectly from the consolidated scoring sheets to the summary schedules. Table 14 below sets out the discrepancies.

**Table 14: Discrepancies between the functionality points on the consolidated score sheets and the functionality points carried forward in the memo to the DAC**

Region	Bidder	Functionality points per consolidate score sheets	Functionality points carried forward to the memo to the DAC
D	Vendor L*	15	20
D	Vendor J*	18	15

\*Unsuccessful bidders

- The RDP scores for Vendor G in region A were carried forward incorrectly from the consolidated scoring sheets to the summary schedules. On the consolidated score sheet the bidder scored four points but only two points were carried forward in the memo to the DAC.
  - RDP scores for regions B to E were not included in the summary schedules.
  - The total points on which the bids were awarded were not included in the summary schedules. Only the rankings of the bidders per region were included. The rankings were incorrect because not all the points and totals were included and incorrect scores were transferred from the consolidated score sheets.
- (c) Based on the evaluation results set out in the memo to the DAC, the CFST recommended the appointment of the bidders to render security services at the respective department offices:
- Region A: Vendor A
  - Region B: Vendor B
  - Region C: Vendor C
  - Region D: Vendor D
  - Region E: Vendor E
- (d) The memo was signed off by the Director: SCM on 8 November 2010 recommending that the DAC approve the awards of the security contracts as per the evaluation results. However, the acting DDG: AFC did not sign off on the recommendations.

#### 10.2.5.6 DAC meeting and approval

- (a) The memo to the DAC with the recommendations on the appointment of the five security service providers was submitted to DAC at a meeting held on 8 November 2010.
- (b) According to the DAC attendance register, the Director: SCM had not signed the attendance register that was circulated. However, the DAC recordings indicated that he had in fact attended the said meeting but omitted to sign the register.

- (c) According to the DAC minutes, one of the permanent members of the DAC, the Director: Legal had not attended the DAC meeting.
- (d) According to the DAC minutes, the members had signed declaration of interest forms. These declarations could, however, not be provided to the AGSA during the investigation.
- (e) The transcripts of the DAC meeting indicate that the DAC members had raised a concern about the incorrect information included in the memo to the DAC compiled by CFST and signed off by the Director: SCM. The concerns related to the incorrect rankings in the summary schedules in the memo and consolidated score sheets attached to the memo to the DAC.
- (f) During the DAC meeting, the rankings on the consolidated score sheets were corrected manually. Based on the new rankings, the awarding of contracts was considered. As set out in table 15 below, the appointment of the following five security providers was approved by the DAC:

**Table 15: Successful bidders per region**

Region	Bidder	Contract amount (R)
A	Vendor A	20 199 874.32
B	Vendor B	4 173 841.20
C	Vendor C	4 717 903.44
D	Vendor D	15 447 812.88
E	Vendor E	5 307 624.00

- (g) In terms of sections 4(4) and 9 of the PPR, only the bidder with the highest number of points scored may be selected. However, a contract may on reasonable and justified grounds be awarded to a bidder that had not scored the highest number points.

According to the DAC minutes, there was one instance in which the contract was not awarded to the bidder that scored the highest as per the information provided in the memo to the DAC. The reason provided was based on the following provision that was included in the bid advertisement:

*“Tenders shall be awarded on the basis of a principle that work shall be fairly or equitably distributed amongst contractors/entities that had not been awarded contracts previously”.*



- (h) According to the consolidated score sheet results, Vendor D scored the highest number of points in regions B and D. In applying the above principle of distributing work amongst bidders, the DAC decided to award the contract in region D, which had a higher contract value, to Vendor D and the contract in region B to second highest scorer, Vendor B.

From the consolidated score sheets it was noted that Vendor A was the second highest scorer in region B, whilst Vendor B was the third highest scorer.

- (i) Vendor B previously had a contract with the department. A BAS report for the period 1 April 2008 to 3 February 2011 indicated that payments were made to Vendor B from May 2008 to 31 January 2011 on a monthly basis amounting to approximately R5.6 million. This indicates that they were rendering security services to the department prior to the invitation of the security bid and at the time the bid was awarded as all the previous security contracts were extended to 30 November 2010, pending the appointment of the new service providers.

Vendor B disclosed in their bid proposal under "*List of contract references*" that they had a 24-month contract with the department which commenced on 1 November 2008.

Therefore, at the time the contract was invited and awarded, Vendor B already had an existing contract with the department. Despite the principle in the bid advertisement, Vendor B received a new security contract. Furthermore, the DAC members were not informed that Vendor B still had an existing contract with the department.

#### 10.2.5.7 Appointment letters

- (a) Appointment letters were issued to the successful bidders on 9 November 2010 indicating that the bidders should contact the acting DDG: AFC within three working days to arrange for signing of the contracts.
- (b) On review of the letters, it was noted that the amounts for which the bidders were appointed did not agree with the amounts they tendered for. Table 16 below sets out the discrepancies between the tender amount and the appointment amount.

**Table 16: Discrepancies between tender amounts and appointment amounts**

Region	Bidder	Tender amount (R)	Appointment amount (R)
A	Vendor A	20 799 874.32	20 199 874.32
E	Vendor E	5 307 624.00	5 323 380.48

#### 10.2.5.8 Signing of contracts

- (a) The contracts with the successful service providers had not been signed pending the outcome of the AGSA's investigation.
- (b) Currently, the previous service providers are still rendering security services at the respective department offices. However, their contracts were extended only until 31 December 2010.

New extension letters were not approved for the service providers and they are currently rendering security services at the department's offices without binding legal agreements.

#### 10.2.5.9 Letter to unsuccessful bidders

There is no proof to indicate that the letters to unsuccessful bidders have been issued by the department.

#### 10.2.5.10 Notice in government tender bulletin

- (a) In terms of TR16A6.3(d), the accounting officer must ensure that awards are published in the government tender bulletin and other media in which the bids were advertised.
- (b) The awards had not been published, pending the outcome of the AGSA's investigation.

### 10.3 Conclusion

10.3.1 Whilst the department followed a competitive bidding process in awarding the security contracts, the overall process was flawed in view of the following:

- No specifications committee was established for compilation and approval of the bid specifications.

- The appointment and composition of the CFST was in contravention of the prevailing SCM prescripts.
- The tender box was not opened on the date and time the tender closed as a result of the strike action.
- The mandatory evaluation criteria changed subsequent to closing of the bids.
- There were shortcomings in the site visit process and recording thereof.
- Scoring of the bidders was inconsistent and inaccurate.
- Misrepresentations of information were made in the memo to the DAC.
- No vendor assessments and security screening were performed on the successful bidders.
- Incorrect rankings of bidders led to bidders being awarded higher value contracts.
- The five successful bidders were awarded security contracts while they should already have been disqualified at the preliminary evaluation stage. As a result, these bidders received contracts to which they were not entitled to.

#### 10.4 **Recommendations**

- 10.4.1 Compliance with the relevant prescripts in the evaluation of bids and appointment of service providers should be strictly enforced by the department, as non-compliance may potentially lead to litigation and lawsuits against the department by those service providers who feel they had been unfairly treated.
- 10.4.2 Corrective action should be considered against the CFST officials for their failure to ensure that security bids were fairly evaluated and for consenting to amend the evaluation criteria after the closing of bids.
- 10.4.3 Disciplinary action should be considered against the CFST's team leader for including incorrect information and misleading facts in the memo to the DAC.
- 10.4.4 The appointment of the identified service providers should be reconsidered by the department based on the findings highlighted in this report.

**11. EXTENSION OF A CONSULTANTS CONTRACT: INTELLIGENT NUMBER PLATE (INP) PROJECT**

**11.1 Context**

- 11.1.1 In a letter dated 2 July 2010 addressed to the HoD, the Premier's office requested a progress report on the integrated transport system and other projects that emanated from the January Executive Council Lekgotla. This letter was forwarded via email by the HoD to the DDG: Project Management Branch (PMB) in order for him to attend to the request.

The email indicated that the due date for submission to the office of the Premier was 12 July 2010. As a result of capacity and time constraints within the PMB, the DDG: PMB sought the assistance of consultants to deal with the Premier's request. This request to use consultants for reports was also supported by the HoD and the former MEC.

- 11.1.2 On 8 July 2010, terms of reference (ToR) were issued by the DDG: PMB via email to four service providers inviting them to submit proposals.

- 11.1.3 In an unsigned memo dated 16 July 2010, the DDG: PMB sought approval from the DAC for the appointment of consultants to support the PMB over the next five months.

- 11.1.4 An 'emergency' request was put forward to the DAC for approval of the procurement of a service provider to provide transaction advisory services to the department as a result of numerous challenges that have plagued the department. The overall challenges related mainly to weak project and contract management, leading to missed deadlines, inefficiencies and a lack of technical capacity. The following projects were involved:

- The DLTC turnaround strategy
- The roll-out of the Intelligent number plate (INP)
- Government's approach to tolling
- Develop intelligent transport systems
- Integrated transport strategy and plan

- 11.1.5 As a result of inefficiencies on the part of the department's transport branch, the DLTC and INP projects and corresponding budgets were handed over to the PMB by the HoD in order to meet the deadlines, according to an undated letter signed by the HoD.

11.1.6 The memo to the DAC was compiled by the DDG: PMB on the understanding that emergency/urgency implied that his department had to act quickly in order to meet the former MEC's requirements. The former MEC had to fulfil his mandate as there was a risk of non-performance. The urgent situation arose as a result of poor project management, which was mentioned in the memo to the DAC.

11.1.7 The DDG: PMB received proposals from three service providers namely Vendor M, Vendor N and Vendor O. According to the quotations received, the proposed costing on the respective dates was as follows:

**Table 17: Proposed costing as per the three proposals**

No.	Service Provider	Date	Proposed costs (VAT inclusive) (R)
1.	Vendor M	9 July 2010	494 760
2.	Vendor N	11 July 2010	535 800
3.	Vendor O	Undated	(Option 1) 500 000 (Option 2) 499 950

11.1.8 The memo recommended the appointment of both Vendor M and Vendor N on the basis that the different sets of expertise were required in order for the PMB to meet their tight time frames. The memo proposed that the workload be shared between the two service providers. The costs were not to exceed R500 000 per appointment.

11.1.9 According to the approved minutes of the DAC meeting held on the 16 July 2010, the appointment of the consultants had been discussed. The DAC granted approval on condition that:

- *"The Branch develops a new specification with a reduced scope of work.*
- *Specifications to be clear and unambiguous.*
- *The branch issue specifications to the service providers and request them to re-quote.*
- *All prices must be VAT inclusive.*
- *The duration of the project must not exceed 3 months".*

The DAC requested that once the revised quotations from the service providers were received, the submission with a clear recommendation be presented to the HoD for final approval.

On 16 July 2010, in another unsigned memo to the DAC, the PMB requested the DAC's approval for the advertisement of a request for a proposal for the provision of specialised consulting services. Two different simultaneous processes were initiated by the PMB in respect of the appointment of consultants. According to

the Director: PMB, the panel of consultants were intended to assist the department in the long run, while the three quotations were part of an emergency process.

In a subsequent unsigned memo to the DAC dated 30 July 2010, the PMB sought to provide clarification on the matters previously raised by the DAC in order to finalise the contractual obligation in respect of the conditional appointments of Vendor M and Vendor N. The PMB provided the responses to the DAC and recommended permanent approval for:

- Vendor M to provide specialised consulting services with regard to reviewing and amending project reports, developing project implementation plan assessment tools and capacitating staff to utilise the tool at a cost not exceeding R240 540 (VAT inclusive) for a period of three months.
- Vendor N to provide specialised consulting in respect of intelligent number plates and the establishment of a dashboard report not exceeding R258 780 (VAT inclusive) for a period of three months.

- 11.1.10 On 6 August 2010, the DAC approved the appointment of Vendor M and Vendor N. The DAC directed that the contracts be drafted by legal services.
- 11.1.11 On 17 September 2010, Vendor M's contract was finalised. The contract indicated that the agreement shall commence on the effective date (1 August 2010) and shall continue for a period of three months. The fees stipulated in the contract were for an amount of R238 780.
- 11.1.12 Vendor M issued an invoice to the department dated 30 September 2010 for an amount of R238 780 for work done. The costs were allocated to the PMB.
- 11.1.13 On 24 September 2010, Vendor N's contract was finalised on the basis of a revised budget. The contract indicated that the agreement shall commence on the effective date (1 August 2010) and shall continue for a period of three months. The fee stipulated in the contract was for an amount of R240 540.
- 11.1.14 Vendor N issued an invoice to the department dated 27 October 2010 for an amount of R240 255 in respect of consulting work on the INP project for the months of July, August and September. The costs were allocated to the Driver Registration & Licence Centre.
- 11.1.15 In a memo to the DAC dated 21 October 2010, the PMB sought approval from the DAC to extend the scope for Vendor N until the end of March 2011.

On 1 November 2010, the DAC referred the submission back to the PMB requesting that the memo be rewritten as a deviation from the normal bid processes and extension of scope. The DAC further requested that a report on the work done on the initial scope and the detailed project plan of the new extension must be submitted.

- 11.1.16 In a revised memo to the DAC dated 4 November 2010, the PMB sought the DAC's approval to deviate from the normal procurement processes and extend the scope of Vendor N until the end of March 2011.

The motivation for Vendor N's extension was based largely on the premise of a revised INP project plan. The INP project plan had been revised as a result of the challenges experienced by the department in relation to the radio frequency identification (RFID) tags. This led to the INP project's failure to roll out as scheduled in October 2010.

The department requested Vendor N to provide a quotation for certain activities relevant to the next phase of the revised INP project plan. The main activity would be for Vendor N to conduct research into alternative solutions in order to meet the objectives of the INP project. To this end, Vendor N submitted a quotation amounting to R1 354 200, VAT inclusive.

- 11.1.17 On 8 November 2010, the DAC granted an extension to Vendor N for a period of five months from 1 November 2010 to 31 March 2011 for an amount of R1 354 200.
- 11.1.18 The addendum in respect of Vendor N's extension was signed and finalised on 10 December 2010.
- 11.1.19 Vendor N issued an invoice to the department dated 9 December 2010 for an amount of R542 070 in respect of the extended scope relating to the consulting work on the INP project. According to the department's finance section, this payment has not as yet been effected.

## 11.2 Findings

### 11.2.1 Invitation of proposals and the ToR

- 11.2.1.1 According to TR16A8.3, an SCM official or other role player must treat all suppliers and potential suppliers equitably.

According to email correspondence between Vendor M and the DDG: PMB, Vendor M was given preferential treatment as they had commenced work prior to the ToR being issued and they were subsequently awarded a contract with the department. This is so, despite the fact that Vendor M later received the same ToR provided to the rest of the service providers.

- 11.2.1.2 The PPPFA requires that the 80/20 preference point system be used to calculate the points for price in respect of procurements with a rand value equal to, or above R30 000 and up to a rand value of R500 000.

In contravention of the PPPFA, the ToR issued by the DDG: PMB via e-mail did not stipulate the preference point system (80/20) to be used and there is no evidence that the point system was used for evaluation of the quotations.

- 11.2.1.3 The department failed to comply with paragraph 3.11.2 of the GDRT SCM policy which requires that invitations for formal written quotations in excess of R30 000 (VAT inclusive) be advertised for at least seven days on the GSSC website and that an official notice be placed on the notice board.

#### 11.2.2 **Receipt of submissions**

- 11.2.2.1 The DDG: PMB informed the AGSA that he had received the respective quotations from the bidders via email. Whilst the AGSA has received soft copies of the respective quotations, it was not provided with the original email submissions made by the respective bidders.

- 11.2.2.2 The AGSA was unable to ascertain the date the proposal of Vendor O was submitted as it was undated and did not include a cover letter. It was noted that Vendor N's proposal was dated 11 July 2010, whereas the ToR requested that the quotations be submitted by 9 July 2010. Furthermore, based on the dates of Vendor M and Vendor N's proposals, it is clear that the proposals from the respective bidders were not received on the same date, which may have compromised the integrity of the procurement process.

Furthermore, this is in contravention of paragraph 3.11.7 of the GDRT SCM policy on the procedure for the procurement of goods and services through written quotations which states that *proper records must be kept for all transactions under this policy*. As a result, the AGSA was unable to ascertain whether the procurement process as envisaged by section 38(1)(a)(iii) of the PFMA was fair, equitable, transparent, competitive and cost-effective.



- 11.2.2.3 The AGSA found that neither Vendor M's nor Vendor N's proposals were signed by the respective company officials. However, the names of the directors as indicated on the unsigned cover letters were duly authorised by their respective board members. Furthermore, Vendor M's and Vendor O's proposals were submitted in Word format and not in PDF format. As a result, a risk exists that unauthorised changes could have been effected to the respective proposals.
- 11.2.2.4 In accordance with TR16A9(1)(d), Vendor M and Vendor N submitted an original tax clearance certificates from SARS certifying their tax status.
- 11.2.2.5 All three proposals quoted amounts under the R500 000 threshold and in close range to each other. However, the amount quoted by Vendor N was R470 000 (excluding VAT) whilst the other quotations were VAT inclusive.

This effectively means that Vendor N was the most expensive bid at R535 800. The process in respect of transactions greater than R500 000 (VAT inclusive), as stipulated in paragraph 3.12.1 of the GDRT SCM policy, is discussed further below.

### 11.2.3 **The process followed**

- 11.2.3.1 According to paragraph 3.12.1 of the GDRT SCM policy, all goods and services above a transaction value of R500 000 (VAT inclusive) may only be procured through a competitive bidding process. The policy further states that no requirements for goods or services above an estimated value of R500 000 (VAT inclusive) may be split into parts or items of a lesser value merely for the sake of procuring the goods and services otherwise than through a competitive bidding process.
- 11.2.3.2 The PMB unit initiated a three-quotation process and subsequently split the scope of work to be performed between two service providers.

It is unclear why a quotation process was followed as the PMB initially recommended that the DAC appoint Vendor M at a cost not exceeding R500 00 and Vendor N at a cost not exceeding R500 000. The joint appointment would have amounted to a cost not exceeding R1 million rand. As a result, the appointment of Vendor M and Vendor N was in contravention of the prescribed policy.

#### **11.2.4 Request to DAC and the memo to the DAC**

11.2.4.1 The PMB's request to DAC for approval of Vendor M and Vendor N's appointment was in accordance with the requirements of the DAC charter which states that procurement in excess of R100 000 must be presented to the DAC.

11.2.4.2 The understanding of urgency and emergency as portrayed in the memo to the DAC is contrary to paragraph 3.32.1 of the GDRT SCM policy, which specifically states that emergency situations are circumstances that could not be foreseen, where the procurement of goods and services could avoid a dangerous situation or where the delivery of goods and services is of critical importance. The HoD's application of the policy cannot be utilised in circumstances where the emergency could be attributed to bad or poor planning. These delegations can only be used in the event of life-threatening situations and where the occurrence could not have been foreseen.

Furthermore, paragraph 3.32.1 of the GDRT SCM policy states that in the case of emergency/urgency, the HoD must certify that the situation requires immediate action and must be treated as an emergency/urgent. The memo to the DAC did make reference to an 'emergency' situation and included a reason. Contrary to the prescripts, the reason "*lagged behind*" is attributed to poor planning and the memo is not signed by the HoD.

11.2.4.3 As a member of the DAC, the DDG: PMB has a duty in terms of the NT's circular from which the DAC charter was derived. In order to meet their obligations, committee members must be familiar with and adhere to all relevant SCM legislation, policy, guides, practice notes and circulars.

11.2.4.4 In terms of TR16A9.2(a), the department must take into account previous experience and the fact that the successful service provider had not failed to perform on any previous contract. The memo to the DAC dated 16 July 2010 indicates that Vendor M and Vendor N were selected based on previous working relationships and that these companies had done work with the department and provided quality projects. Based on payment history and reports, the AGSA has confirmed the department's compliance in respect of this regulation.

#### **11.2.5 Conditional and final approval**

11.2.5.1 Paragraph 3.23.1.1 of the GDRT SCM policy states that the specifications must be drafted in an unbiased manner to allow potential service providers to offer their goods.

11.2.5.2 In respect of the conditional appointments of Vendor M and Vendor N, the DDG: PMB informed the AGSA that a revised set of specifications had been provided to each bidder. In this regard:

- the AGSA was not provided with the revised specification that was provided to Vendor N in respect of the INP project.
- the revised ToR for Vendor M was drafted by a director of Vendor M in consultation with the DDG: PMB

This was contrary to the prescribed policy and, as a result, the bid specifications were restrictive and therefore biased to favour Vendor M and Vendor N.

11.2.5.3 Vendor M's revised proposal was for two months as opposed to a three-month period that was recommended and finally approved by the DAC. The total cost of R240 540 as approved by the DAC remained the same.

Vendor N's proposal provided for a three-month time frame at a cost of R258 780, in accordance with the recommendation and final approval of the DAC.

#### 11.2.6 **Commencement of work and signing of contracts**

11.2.6.1 Vendor M and Vendor N commenced work in July 2010, the month in which the executive committee (EXCO) reports were due. This is despite the fact that the DAC only granted final approval for their respective appointments on 6 August 2010.

11.2.6.2 The early commencement of work was also prior to the effective date of August 2010 as per the respective service level agreements (SLAs). As a result, there was no legally binding document in place when the service providers commenced work.

This is in contravention of paragraph 3.40.1 of the GDRT SCM policy which requires the signing of a contract or SLA after the approval of a bid.

**11.2.7 Discrepancies between the memo to the DAC, the respective projects and the work performed**

11.2.7.1 The request from the Premier's office was to have the requisite reports done by 12 July 2010 and not 16 July 2010 as incorrectly indicated in the memo to the DAC.

11.2.7.2 The instruction from the Premier's office made reference mainly to the integrated transport system project. The other four projects that were presented as a motivation for the consultants to the DAC were not mentioned.

The DDG: PMB concurred that the letter from the Premier's office was vague. He stated that the request also stemmed from the regular "Friday meetings" held between the HoD and the previous MEC.

Whilst the AGSA was not provided with the minutes of the relevant "Friday meetings", the HoD did in fact confirm that this was the case and made reference to the MEC's plan of action. The HoD further stated that there was a risk of non-performance on her part and she instructed the DDG: PMB to seek assistance from consultants in order to deal with the sluggish progression of the respective projects.

11.2.7.3 The initial memo to the DAC mentioned five projects, namely the DLTC turnaround strategy, the roll-out of the INP, governments approach to tolling, the integrated transport strategy and plan, and the intelligent transport system.

Ultimately, Vendor N worked only on the INP project. Vendor M was involved in the review and amendment of the intelligent transport system and toll road reports for EXCO. Vendor M also developed an assessment tool for 20 other projects which was not included in the presentation to DAC.

Based on the evidence provided to the AGSA, there is no indication that Vendor M or Vendor N worked on any of the other two projects (DLTCs and integrated transport system) as originally presented to DAC. Whilst there was a scope revision at the DAC's request, the revised scope explicitly mentioned only the INP project.

11.2.7.4 Another service provider was utilised by the PMB. A variation order for an amount of R176 130 (VAT inclusive) was approved by the DAC for the third service provider.

- 11.2.7.5 According to the Director: PMB, it was this service provider, the DDG: PMB and herself who had compiled the EXCO reports that were eventually discussed by EXCO on 11 August 2010.

This is contradictory to the motivation presented to the DAC for the appointment of Vendor M and Vendor N as the motivation was based on the EXCO reporting deadlines. Furthermore, the memo made no reference to a third service provider.

The DDG: PMB stated that there was no duplication with regard to the review of reports by Vendor M and the third service provider. He said the third service provider provided a technical/operational viewpoint on the reports whilst Vendor M provided an overall review.

- 11.2.7.6 It should be noted that the third service provider did not form part of the AGSA's scope of work and, as a result, the AGSA has not reviewed the procurement processes followed by the department in that regard.

#### 11.2.8 Price differences

There were several differences found in the pricing for Vendor M and Vendor N during the various phases of the appointment process:

- Vendor M quoted VAT inclusive prices and Vendor N quoted prices excluding VAT. The initial price comparisons were incorrectly presented to the DAC as it did not take this into account.
- The DAC approved an amount of R240 540 for Vendor M and an amount of R258 780 for Vendor N. However, the amounts in the respective SLAs differed to those.

The price differences are shown in table 23 below which compares initial quotations to the final payments:

**Table 18: Price differences**

No.	Service provider	Initial quote (R)	Initial memo to DAC (R)	Revised quote (R)	Revised memo to DAC (R)	SLA (R)	Payment (R)
1.	Vendor M	494 760	494 760	240 540	240 540	238 780	238 780
2.	Vendor N	470 000*	470 000*	227 000*	258 780	240 540	240 255

#### **11.2.9 Vendor N's extension**

11.2.9.1 The GDRT SCM policy is silent on extensions for existing service providers.

11.2.9.2 The DAC approved the extension in accordance with the DAC charter which requires the DAC to provide a ruling on all variations, extensions, etc.

11.2.9.3 In respect of TR16A6.4, the accounting officer or authority may, if in a specific case it is impractical to invite competitive bids, procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

Paragraphs 3.32.1 and 3.33.1 of the GDRT SCM policy further provides that in respect of urgent/emergency situations, the HoD must certify that the situation requires immediate action and be treated as such.

Whilst the DAC granted approval for the deviation from normal bid process, the reasons for the deviation were not formally recorded and approved as prescribed. Furthermore, there was no evidence that the HoD had certified the situation as an urgency/emergency, as required by the policy.

11.2.9.4 The DDG: PMB acknowledged that given the regulatory criteria of the term 'urgency/emergency', the extension of Vendor N's contract was not an emergency as such. The work to be performed by Vendor N needed to be done in order for the department to meet its timelines.

With regard to the timelines, the INP project deadline was revised, with the proposed date for the roll-out being June 2012, whereas the normal procurement process was bypassed in order to extend Vendor N's appointment in December 2010.

#### **11.2.10 General**

11.2.10.1 No evidence was provided to indicate that the respective service providers had completed and signed the declaration of interest (SBD 4) and that no conflict of interest was identified, as required by PN No. 7 of 2009-10.

This is particularly relevant as it was presented to the DAC that Vendor N had no vested interest in any specific technology, product or implementation relating to the INP project. The current INP manager informed the AGSA that the department had not verified this.

11.2.10.2 According to the Director: SCM, the department had not performed checks to ensure that the successful service provider was not a "*restricted supplier*" as listed by NT. This is in contravention of TR16A9.1(c), which requires this check to be performed. This requirement is also confirmed in paragraph 3.7.1.4 of the GDRT SCM policy in respect of written quotations.

11.2.10.3 In respect of deviations in all cases where goods and services above the value of R1 million (VAT inclusive) are procured, PN No. 6 of 2007-08 requires the accounting officers to report within 10 working days to the relevant treasury and the AGSA.

The AGSA has received no such report on the deviation in respect of Vendor N's extended appointment to the value of R1 354 200. Furthermore, this transaction does not appear on the department's SCM deviation listing. As a result, this PN was not complied with.

### 11.3 **Conclusion**

11.3.1 The procurement process followed in the initial appointment of Vendor M, Vendor N and Vendor N's extension is flawed because of several contraventions of prescribed policies and regulations such as the PPPFA, TR and GDRT SCM policy.

11.3.2 Whilst the DAC initially declined the approval of consultants for a five-month period and requested that the time frame be revised to three months, the DAC ultimately approved the appointment of Vendor N for a total of eight months (the initial three months followed by an extended period of five months) without following the normal procurement process.

11.3.3 The normal procurement processes were bypassed in order to fast-track service delivery. However, the sluggish service delivery was as a result of poor management, which is essentially attributed to poor planning. The relevant prescripts specifically prohibit deviations arising from poor planning and foreseen circumstances.

11.3.4 Several discrepancies in the memo to the DAC may be construed as a misrepresentation of the facts.

11.3.5 The DDG: PMB was involved in the drafting and dissemination of the ToRs, soliciting the respective quotations, the compilation of the memo to DAC, compiling the revised ToRs in conjunction with Vendor M, the evaluation and the selection of service providers and the splitting of work. He also authorised

payments to Vendor M and sat as a committee member on the DAC. As a result, there was limited segregation of duties in the appointment of Vendor M and Vendor N.

#### 11.4 **Recommendations**

11.4.1 The DAC members must obtain a good understanding of the factual requirements of the SCM procurement process and meet their commitments as outlined by the NT's circular.

11.4.2 The user departments must familiarise themselves with the GDRT SCM policy and consult with SCM prior to initiating a procurement process in order to ensure that they follow the prescribed process.

11.4.3 The SCM procedures followed by the department should be revisited to ensure that adequate segregation of duties for the respective functions is in place.

11.4.4 The department should implement policies in respect of extension of existing service provider contracts.

11.4.5 Disciplinary action should be instituted against the DDG: PMB in view of the following:

- He disseminated information in order to favour Vendor M.
- He is responsible for the misleading information presented to the DAC.
- He failed to keep proper records in certain instances.

#### 11.5 **Summary of management comments**

11.5.1 Management's comments in respect of paragraph 11.3.5: The PMB did not have staff other than the two administrative assistants at the time, it was therefore impossible to function without undertaking multiple tasks. Staff was only appointed in August 2010.



## **12. APPOINTMENT FOR THE ESTABLISHMENT AND DEVELOPMENT OF A TURNAROUND STRATEGY ON THE DRIVER LICENCE TESTING CENTRES (DLTCS)**

### **12.1 Context**

#### **12.1.1 The initial appointment**

- 12.1.1.1 The DLTCs experienced backlogs of 55 000 learner drivers. These individuals were struggling to secure appointments to get tested in order to obtain both learner and driver licences. The backlog is largely attributed to the 30 DLTCs being unable to cope with the demand for licences. The department also received poor media coverage as a result of the backlogs. The department and the GSSC came up with a solution to address the backlog crisis. In order to do this, the required material for the DLTCs had to be procured immediately. To this end, the former HoD, granted approval on 10 September 2007 for deviation from the normal SCM procedure of obtaining three quotations and/or following a bidding process.
- 12.1.1.2 In a memo dated 21 September 2007, the former HoD informed, the DDG: PMU, that Vendor P would be appointed to deal with the licence crisis and the establishment of the new DLTCs. The former HoD also stated that the cost of the full project was to be borne by the Urban Transport Fund (UTF).
- 12.1.1.3 On 10 October 2007, Vendor P's appointment was approved by the Trading Entities Acquisition Committee (TEAC). A TEAC progress report on awarding of tenders for the 2007-08 financial year indicated that the contract was for a period of six months, while the contract value column reflected a question mark symbol indicating that the contract value was unknown.
- 12.1.1.4 The UTF Project Charter dated 31 October 2007 outlines the goal of providing project management support to eliminate the current backlog of learner drivers and to lay the foundation for the ultimate development and maintenance of a model DLTC. This charter contains the total cost estimates for managing the existing DLTCs and establishing new DLTCs at a monthly amount of approximately R561 689 (VAT inclusive).
- 12.1.1.5 According to the Director: Transport, there were two DLTCs, namely Funda and Westhoven that were managed by Vendor P as from 2007.

#### **12.1.2 Extension of contract**

12.1.2.1 On 14 April 2008, the PMU requested the DAC to extend the services rendered by Vendor P for a period of 24 months. The memo indicated the following:

- The TEAC had previously approved the appointment of Vendor P as the project was housed under the UTF.
- The project is currently managed by the PMU, which is the reason why the request was addressed to the DAC.
- The approved cost estimate of R561 689 would be maintained in respect of the extension.
- The total cost for the 24-month duration of the contract was approximately R13 480 546.
- The project was to be funded by the PMU.

12.1.2.2 On 16 April 2008, the DAC conditionally approved the extension of Vendor P's services for 24 months as per PMU's request pending the provision of certain documents that were to be submitted to the TEAC. The DAC granted final approval on 7 May 2008.

12.1.2.3 On 27 March 2009, the department and Vendor P concluded a SLA for a 36-month period effective from 20 March 2009 to 19 March 2012 for the establishment and operational management costs in respect of two DLTCs, namely Xavier and Three Rivers. This SLA provided for a cost of approximately R8.33 million.

#### **12.1.3 Re-allocation of projects**

12.1.3.1 An undated letter was issued by the HoD to the respective DDG's of Transport, PMB, Corporate Services, Roads and AFC informing them of a project re-allocation from the Transport Branch with effect from 1 August 2010. The establishment of the new DLTCs and management of the DLTC project and respective budgets were reallocated to the PMB. The HoD's letter also indicates a budget for the establishment of the new DLTCs at an amount of R52 million and an amount of R6.5 million for the management of the DLTCs.

#### **12.1.4 The variation order and the turnaround strategy**

12.1.4.1 The department's operational efficiency turnaround implementation plan for the DLTCs in the Gauteng Province (DLTC turnaround strategy) was endorsed by the Chief Director: PMB and the HoD during September 2010. This plan highlighted the inefficiencies pertaining to service delivery, operational systems

and management of the DLTCs. The plan, comprising of three phases, was to be completed by March 2011.

- 12.1.4.2 In a memo to the DAC dated 20 September 2010, the PMB requested approval for a variation order in respect of Vendor P's existing 24-month contract.

The motivation for the variation order was that the turnaround strategy and the establishment of the new DLTCs formed part of the MEC's plan of action which must be implemented by March 2011. Negotiations with the existing service provider will speed up delivery with a view to meeting the deadline. In this regard, the monthly fee of R1.9 million to Vendor P was to be revised and realigned with the estimated project cost in excess of R26 million.

The DAC approved the variation order on condition that the SLA did not include security, cleaning services and capital expenditure.

- 12.1.4.3 In a letter signed on 6 October 2010, the Chief Director: PMB informed the Director: SCM of Vendor P's appointment and requested SCM to issue an appointment letter requesting Vendor P to submit a proposal and costing for the implementation of phase one (the turnaround strategy). A proposal in respect of phase two (the establishment of four DLTCs) would be required once phase one is completed.
- 12.1.4.4 In a letter dated 8 October 2010 and signed by the HoD on 13 October 2010, Vendor P was informed that they had been appointed to implement the turnaround strategy for the DLTCs at an amount of R8.9 million. The letter further states that the department would advise Vendor P regarding the submission of a proposal and cost structure for the establishment and management of the four new DLTCs.
- 12.1.4.5 Vendor P submitted a proposal in respect of the turnaround strategy for the DLTCs. The proposal quoted an amount of R8.9 million and was signed by the managing director of Vendor P on 4 October 2010.
- 12.1.4.6 A letter dated 26 November 2010 from the department's legal services and contract management to the Chief Director: PMB notified her that legal services had drafted and checked the agreement and that it was ready for the HoD's signature.
- 12.1.4.7 On 14 December 2010 an agreement was entered into between Vendor P and the department for the implementation of the turnaround strategy.

#### 12.1.5 **Project's current status and financial implications**

- 12.1.5.1 According to the Deputy Director: PMB and Chief Director: PMB, Vendor P is currently executing the turnaround strategy and is project-managing four DLTCs, namely Xavier Junction, Westhoven, Funda and Three Rivers. The Director: Transport also confirmed that the turnaround strategy was in its execution phase.

According to the Deputy Director: PMB, the budget for the DLTCs was R148 million, while the department spends about R2.4 million per month to manage the four DLTCs.

The department's BAS report indicates that the amount paid to Vendor P from 16 May 2008 to 8 March 2011 was approximately R49 564 766.

#### 12.1.6 **International trips**

- 12.1.6.1 In a memo signed on 20 July 2010, the HoD sought approval from the department's former MEC for two of the department's officials to attend an international exhibition and conference in India. The memo further states that all costs except the subsistence allowance for the officials would be covered by Vendor P. The department was to cover the subsistence costs. The former MEC approved this request.

- 12.1.6.2 In a letter dated 22 October 2010, Vendor P extended a second invitation to the HoD requesting that she nominate two department officials to accompany Vendor P to India and Canada. The trip was to *"attend the official operation of the driving simulators that are used to test drivers licence applicants as well as issue drivers licence in India and to conduct a study and analysis of Public Private Partnership management model operated by drivers in Canada"*.

The HoD subsequently provided motivation for the trip to the MEC and sought his approval. Four department officials were nominated to accompany Vendor P to India and Canada from 27 November 2010 to 8 December 2010. The costs for the trip in respect of the two officials were covered by Vendor P. The department was to pay an amount of approximately R113 780 in respect of one official in addition to the subsistence allowances of the three officials. The trip was approved by the MEC on 18 November 2010.

## 12.2 Findings

### 12.2.1 The initial appointment

- 12.2.1.1 Normal procurement processes were not followed in the initial appointment of Vendor P in 2007. The former MEC approved the deviation from normal procurement processes in order to deal with the backlogs experienced at the DLTCs and the poor media coverage. As the executive authority, he duly approved the deviation in accordance with TR16A6.4.

In terms of PN 6 of 2007/2008, the provision of TR 16A6.A is intended for cases of emergency where immediate action is necessary or if the goods/services required are produced by a sole service provider. The AGSA is unable to comment on whether the deviation was approved in accordance with the PN based on the information provided to the AGSA.

- 12.2.1.2 There was no evidence to indicate that an SLA had been finalised between Vendor P and the department in respect of the initial appointment. According to the Director: Transport, there was no such agreement as the initial appointment was in the form of a letter.

This is in contravention of paragraph 4.12 of the SCM guide which states that a formal contract should be entered into with the successful bidder after the award of the bid.

### 12.2.2 The extension and variation order

- 12.2.2.1 The normal procurement process was again not followed in respect of Vendor P's extension and variation order. This is discussed in greater detail below.

- 12.2.2.2 Paragraph 3.12.1 of the GDRT SCM policy requires all goods and services above a transaction value of R500 000 (VAT inclusive) to be procured through a competitive bidding process.

It serves to mention that the GDRT SCM policy is silent on extension and variation orders.

- 12.2.2.3 The extension of Vendor P was approved by the DAC. This deviation was not approved in accordance with paragraph 3.31.1 of the GDRT SCM policy.

In terms of this policy the accounting officer may dispense with official procurement processes in cases of an emergency, where there is a sole provider

or in exceptional circumstances where it is impractical/impossible to follow the procurement processes. In terms of paragraph 3.32.1.1 of the GDRT SCM policy, these delegations can only be used in the event of life-threatening situations and where the occurrence could not have been foreseen.

It may be argued that the circumstances were unforeseen in respect of Vendor P's initial appointment. Given that the backlog situation at the DLTCs arose more than six months prior to the extension, and approximately three years prior to the variation order, the situation was known and foreseen.

- 12.2.2.4 In accordance with the DAC charter, the DAC was requested to approve Vendor P's extension and variation order.

12.2.3 **The variation order and the turnaround strategy**

- 12.2.3.1 In respect of the variation order, Vendor P was initially appointed by the DAC and subsequently requested to provide a proposal and cost estimate. Whilst the DAC had initially approved a cost estimate in excess of R26 million, a benchmarking exercise on the running cost was not performed, with the result that DAC had no real idea as to the costs of the variation order.

This is in contravention of paragraph 11(a) of the PPPFA which requires that prior to inviting bids, an organ of state must properly plan and as far as possible, accurately estimate the cost of the provision of services or goods for which an invitation to bid is to be made.

- 12.2.3.2 In a report dated 16 August 2010, and titled "*Analysing the costs of running the provincial DLTCs versus revenue generation*", and compiled by the department's revenue collection section for the HoD, it was recommended that Vendor P's contract be reviewed or cancelled as it was extremely expensive. The report further states that service delivery would not be negatively affected should the contract be cancelled. Notwithstanding the recommendations in this report, Vendor P's contract was subsequently varied by the department for a cost in excess of R26 million.
- 12.2.3.3 The proposal submitted by Vendor P to the department in respect of the variation order was signed on 4 October 2010, whereas the letter of appointment signed by the HoD on 13 October 2010. This indicates that Vendor P had prepared and submitted a proposal prior to the department's request for such proposal.
- 12.2.3.4 Vendor P's variation order was essentially to improve the accountability and efficiency of the management of DTLCs. At the time, Vendor P was already

managing two DLTCs. This extended scope will inevitably create independence and conflict of interest issues as Vendor P will ultimately be evaluating the DLTCs under their management.

In terms of paragraph 5 of PN No. 3 of 2003, a consultant or any of their affiliates should not be hired for any assignment which, by its nature, may be in conflict with another assignment of the consultant.

#### **12.2.4 International trips**

12.2.4.1 Vendor P sponsored international trips on two separate occasions for officials of the department.

12.2.4.2 This creates a possible conflict of interest as the officials who accompanied Vendor P on the trips were involved in the SLA review process and prepared documents that were presented to DAC on 20 September 2010.

#### **12.2.5 General**

12.2.5.1 In terms of PN No. 7 of 2009-10, the successful service provider is required to sign and complete the SBD 4, which is a declaration of interest. This PN was not complied with as Vendor P did not complete the requisite document in respect of the variation order.

12.2.5.2 In accordance with TR16A9(1)(d), Vendor P submitted an original tax clearance certificate from SARS certifying their tax status in respect of the variation order.

12.2.5.3 In respect of deviations in all cases where goods and/or services above the value of R1 million (VAT inclusive) were procured, PN No. 6 of 2007-08 required the accounting officers to report within 10 working days to the relevant treasury and the AGSA.

The AGSA has received no such report in respect of Vendor P's deviations. Furthermore, these transactions do not appear on the department's SCM deviation listing. As a result, this PN was not complied with.

12.2.5.4 In terms of TR16A9.1(c), the accounting officer must check the NT's database to ensure that no recommended bidder or any of its directors is listed as companies or persons prohibited from doing business with the public sector. This requirement is also confirmed in paragraph 3.37.1.3 of the GDRT SCM policy. According to the Director: SCM, the department had not previously performed these checks.

### 12.3 Conclusion

- 12.3.1 The initial appointment, the subsequent extension and the variation order of Vendor P were not in accordance with the normal competitive bidding process.
- 12.3.2 The appointment of Vendor P to conduct a turnaround strategy raises a conflict of interest as Vendor P has a direct interest in the process as they are managing four of the DLTCs; and
- 12.3.3 The sponsoring of International trips for department officials by Vendor P also raises a possible conflict of interest. The international trips were for department officials who were directly involved in the procurement process of Vendor P.

### 12.4 Recommendation

It is recommended that the department, in consultation with legal services, re-consider terminating Vendor P's contract as the appointments were made without following the normal competitive bid process and according to internal reports are costly.

## 13. APPOINTMENT FOR THE BIOMETRIC VERIFICATION SOLUTION AND OTHER SERVICES FROM COMPANIES WITHIN A GROUP

During July 2010 to November 2010, the department engaged companies within a Group to render various services. The details of these engagements are summarised in the table 24 below:

**Table 19: Group Company**

No.	Service Provider	Description of service
1.	Vendor Q	Vetting of senior officials and INP service providers.
2.	Vendor R	Criminal checks on INP service providers, training and enablement of an official of the department to conduct criminal checks.
3.	Vendor S	Biometric verification

These engagements will be discussed in the sub-sections as follows:

- Vendor Q and Vendor R
- Vendor S



## **13.1 VENDOR Q AND VENDOR R**

### **13.1.1 Context**

- 13.1.1.1 According to the HoD, she wanted the senior officials of the department to be vetted as such an exercise had not previously been done. The HoD was reluctant to use the National Intelligence Agency (NIA) as she was of the view that they would take too long, based on her previous experience with them. Therefore, she opted to make use of a private firm. She made her own enquiries outside the department and was subsequently informed that Vendor Q was on the supplier database and should be used to conduct the vetting.
- 13.1.1.2 Vendor Q was the only service provider approached for the vetting of senior officials. The HoD indicated that the reason for approaching one service provider was that the vetting of senior officials was a security-related matter and she wanted to keep the process closed and short.
- 13.1.1.3 The HoD and the Director: Security Management subsequently liaised with Vendor Q to find out more about their services. The HoD purports that she approved a quotation of approximately R100 000 for the vetting of senior officials by Vendor Q.
- 13.1.1.4 According to the acting DDG: AFC, the HoD appointed Vendor Q with a mandate to perform background checks on all senior officials of the department and he was instructed to ensure that the process was executed.
- 13.1.1.5 The acting DDG: AFC issued a letter dated 1 July 2010 to Vendor Q, informing them of their appointment to perform background checks relating to credit, qualifications, criminal, deeds, fraud alerts, employment confirmations and identity verifications. The fees were to be paid upon completion of the assignment. To this end, 58 senior officials of the department were vetted. The department paid Vendor Q an amount of R57 684 for this service. Two payments totalling R57 684 were made to Vendor Q on 21 December 2010 and 28 February 2011, respectively.
- 13.1.1.6 During October 2010, the acting DDG: AFC requested that an investigator in the AFC unit to assist with the vetting of the potential service providers for the INP project.
- 13.1.1.7 Subsequent to the acting DDG: AFC's instruction, an employee from Vendor R trained the investigator to perform criminal record checks using a fingerprint

scanner and the SAPS database. The investigator received a laptop, a biometric device and software licence to perform these checks. Once the training was completed, the investigator was presented with an invoice from Vendor R of R23 444 for the laptop, biometric device and software licence. The department subsequently received two other invoices totalling R8 772 from Vendor R.

13.1.1.8 According to the investigator, he was responsible for performing the criminal record checks on the directors of the potential service providers on the INP project. Vendor Q performed the other background checks on the potential service providers of the INP project. This was supported by the acting DDG: AFC appointment letters to Vendor Q on 4 November 2010 and 8 December 2010, respectively. In these letters, Vendor Q was requested to perform fraud listing, verify director's credit records and directorship and to verify company credit checks in respect of the INP service providers. Vendor Q's fees would be paid upon completion of the assignment. To this end, Vendor Q conducted vetting on 106 of the INP service providers.

13.1.1.9 The department received two invoices from Vendor Q totalling R32 930 which have not been paid as yet.

## 13.1.2 Findings

### 13.1.2.1 Invitation of price quotations

- (a) Paragraph 3.4.1.3 of the GDRT SCM policy stipulates that formal written price quotations must be obtained for the procurement of a transactional value exceeding R10 000 (VAT inclusive). Paragraphs 3.9.1.1 and 3.9.1.3 of the GDRT SCM policy further stipulate that quotations must be obtained from at least three different service providers should the three-quotation process not be possible and that the reasons should be recorded and reported on accordingly. The ad hoc appointments of Vendor Q and Vendor R to the value of R90 614 and R32 222 respectively, were in contravention of the aforementioned policy. The prescribed process was not followed as only one service provider was approached and the reasons for not following the process were not recorded or approved by the accounting officer.
- (b) The HoD informed the AGSA that the reason for approaching only one service provider was that the vetting of senior officials was a security-related matter and she wanted to keep the process closed and short. This is in contravention of section 38(1)(a)(iii) of the PFMA which promotes a system that is fair, equitable, transparent, competitive and

cost-effective.

- (c) The AGSA was not provided with Vendor Q's quotation for approximately R100 000 in respect of their initial appointment. The only document submitted to the AGSA in this regard was a price list from Vendor Q indicating the unit costs for the respective background checks.
- (d) The AGSA confirmed that Vendor Q is on the GSSC database. However, Vendor R is not on the GSSC database and as a result has not yet been paid by the department.

#### 13.1.2.2 Tax clearance certificates

According to paragraph 6 of PN No. 8 of 2007-08, the accounting officer/authority must be in possession of an original valid tax clearance certificate for all price quotations and competitive bids exceeding the value of R30 000 (VAT inclusive). The department was in possession of tax clearance certificate for Vendor Q. However, the AGSA was not provided with a tax clearance certificate for Vendor R.

#### 13.1.2.3 Appointment letter

- (a) The AGSA identified the following in respect of the letter of appointment to Vendor Q:
  - (i) According to the acting DDG: AFC, the appointment letters were signed by him on behalf of the HoD.
    - In respect of the vetting of the potential service providers for the INP Project, the acting DDG: AFC did so at the INP manager's request to assist with the roll-out of the INP project.
    - The HoD informed the AGSA that she only issued the instruction to perform vetting on the department's senior officials. She did not include an instruction to conduct vetting on the INP service providers or a request that the department capacitate itself by performing the criminal checks in-house.
  - (ii) There were no supporting documents for Vendor R's appointment other than an invoice issued by Vendor R to the department.
- (b) According to the invoices received from Vendor Q, services were

rendered in July 2010, prior to the letter of appointment which was only signed by the acting DDG: AFC on 19 November 2010.

### 13.1.3 **Conclusion**

- (a) Vendor Q and Vendor R were appointed without following a procurement process, in contravention of the SCM policies and prescripts.
- (b) The appointment letters sent to Vendor Q were ad hoc requests for services and no SLA was in place between the department and Vendor R.
- (c) The only evidence available for Vendor R's appointment in respect of training on the biometric device and criminal records check was the invoice.

## 13.2 **Vendor S**

### 13.2.1 **Context**

- 13.2.1.1 The department experienced an increase in fraud and corruption at the DLTCs and the operating licence registration offices. The fraud occurred primarily through the presentation of falsified identity documentation which was difficult to detect as the system used by the department did not have sufficient auditable tracing mechanisms to pinpoint fraudulent transactions.
- 13.2.1.2 The acting DDG: AFC was ultimately responsible for eliminating fraud and corruption within the department. The AFC branch derived a plan to curb fraud and corruption within the department. The AFC plan included the biometric fingerprint solutions to track and trace the transaction details of officials and operators. The plan included the financial implications of the biometric identification solution and it was estimated that it would cost R6 million.
- 13.2.1.3 The acting DDG: AFC compiled the specifications for the biometric verification bid. On 20 September 2010, the DAC granted approval to advertise a request for proposal (RFP) for the biometric verification solution. This advertisement was published in the newspapers on 1 October 2010. The advertisement invited qualified service providers to propose solutions for the biometric verification of persons and staff who interact with the department.
- 13.2.1.4 The RFP closed at 11:00 on 18 October 2010. The register recorded the receipt of five bids in response to the advertisement.

- 13.2.1.5 An evaluation process followed and the bidders were evaluated on functionality, price and preference RDP goals.
- 13.2.1.6 On 8 November 2010, the BEC recommended the appointment of Vendor S as the service provider for the biometric verification contract to the DAC. The DAC approved the appointment on condition that clarity was provided on compliance in terms of the State Information Technology Agency Act, 1998 (Act No. 88 of 1998) (SITA Act) and that the service provider submit proof of vetting.
- 13.2.1.7 On 15 November 2010, the department issued a letter to Vendor S informing them of their appointment to provide biometric verification solutions for an amount of R4 205 414.
- 13.2.1.8 In a letter dated 30 November 2010, the legal department informed the acting DDG: AFC that the Vendor S contract had been drafted and should be signed by the HoD. The contract has not yet been finalised, pending the outcome of the AGSA's investigation.

## 13.2.2 Findings

### 13.2.2.1 Needs analysis

- (a) The need was determined in accordance with the demand considerations as per section 3.2 of the SCM guide. This is supported by the following:
- (i) The department experienced an increase in fraud and corruption at the DLTCs and the operating licence registration offices. The fraud occurred primarily through the presentation of falsified identity documentation which was difficult to detect as the system used by the department did not have sufficient auditable tracing mechanisms to pinpoint fraudulent transactions.
  - (ii) The AFC plan included the biometric fingerprint solutions to track and trace the transaction details of officials and operators. The plan included the financial implications for the biometric identification solution and it was estimated that it would cost R6 million.
  - (iii) The CFO confirmed that funds were available for the biometric verification system.

#### 13.2.2.2 **Standard bidding documentation**

- (a) In terms of TR16A6.3, the accounting officer of departments must ensure that bid documents are in accordance with the instructions of NT.
- (b) The bid documents used by the department did not include a declaration of interest form (SBD 4) as prescribed by PN No. 1 of 2003.
- (c) The preferential claim form, as prescribed by PN No. 1 of 2003, was not included in the bid documents. However, the bid documents included a schedule that allowed for the provision of names, HDI status, etc. This schedule, however, did not include a column for the percentage ownership of the individuals. As a result, the schedule could not be used for the preference point determination. This is discussed further in the price and RDP goal evaluation below.

#### 13.2.2.3 **Establishment of bid specification committees and approval of bid specifications**

- (a) In terms of TR16A6.2(b), the SCM system must provide for the establishment, composition and functioning of bid specification committees.

The department does not have a specifications committee. This is contrary to TR 16A6.2(b) and paragraph 3.21.1.1 of the GDRT SCM policy, which requires the establishment of a bid specification committee.

- (b) Paragraph 3.23.1.7 of the GDRT SCM policy provides that the specifications of goods and services to be procured must be approved by the accounting officer prior to publication of the invitation for bids.

The minutes of the DAC meeting held on 20 September 2010 indicated that the DAC had approved of the advertisement for a RFP for the biometric verification of persons and staff. Whilst the AGSA was provided with the advertisement, there was no evidence indicating that the bid specifications had been discussed and approved at the DAC meeting.

- (c) In terms of section 4.8 of the SCM guide, the bid documents should specify clearly and precisely the work to be carried out, the location, the goods to be supplied, etc.

Contrary to the SCM guide, the bid documents did not include clear and

precise specifications of the work to be performed by the successful bidder. This resulted in bidders quoting prices that were not comparable as some of them provided a total cost whereas others provided a unit cost. This is discussed further in the price and RDP goal evaluation below.

#### **13.2.2.4 Invitation of bids**

- (a) In terms of TR16A6.3(c), the accounting officer must ensure that bids are advertised at least in the government tender bulletin for a minimum period of 21 days before closure, except in urgent cases where bids may be advertised for such shorter period as the accounting officer may determine.
- (b) The bid was advertised for a shorter period of 18 days. The AGSA was not provided with evidence that the deviation had been duly approved.
- (c) The bid was not advertised in the government tender bulletin as required by TR16A6.3(c). Apparently, advertisements for bids are usually published in the “*Sowetan*, *The Star* and *Beeld*” newspapers. Whilst the AGSA was provided with a copy of the advertisement, we were unable to confirm the publication of the advertisement in the respective newspapers as SCM did not file the advertisements.

#### **13.2.2.5 Receiving of bid proposals**

The department received five proposals in response to their advertised bid. The names of the bidders and their total prices were recorded in a register as prescribed by section 4.10 of the SCM guide and paragraph 3.18 of the GDRT SCM policy.

#### **13.2.2.6 Establishment of the BEC**

- (a) In terms of TR16A6.2(b), the SCM system must provide for the establishment, composition and functioning of BECs. Paragraphs 3.24.3 and 3.24.4 of the GDRT SCM policy provide that the evaluation committee should be cross-functional and should as far as possible be composed of officials from the user department requiring the goods and/or services and at least one SCM practitioner.
- (b) The BEC which was established for the biometric verification project was

composed of only three SCM officials. This is in contravention of paragraphs 3.24.3 and 3.24.4 of the GDRT SCM policy, as there were no officials from the AFC branch (the user department).

- (c) No signed appointment letters were available for the BEC members.
- (d) In terms of PN No. 4 of 2003, SCM practitioners should declare any business, commercial and financial interest or activities undertaken for financial gain and conflicts of interest. The attendance register for the initial BEC meeting contained the declarations of interest, which was duly signed by the BEC.

#### 13.2.2.7 Evaluation of bids

It should be mentioned that besides the BEC's memo to the DAC, the AGSA was provided with no evidence in respect of the evaluation process followed on the biometric verification project.

##### (a) Preliminary evaluations

- (i) According to the BEC's memo to the DAC signed on 8 November 2011, the BEC had screened the proposals for responsiveness. The companies were deemed to be responsive if they had a valid tax clearance certificate, form of offer and did not use "tippex".

The evaluation criteria for responsiveness were not stipulated in the bid documents. This is in contravention of paragraph 3.24.2 of the GDRT SCM policy and section 1.2.3 of PN No. 2 of 2006, which states that bids must be evaluated in accordance with the criteria specified in the bid specifications.

- (ii) Based on the BEC's evaluation, four of the five bidders, including Vendor S, were deemed responsive. The one bidder was disqualified as they did not submit a tax clearance certificate and a form of offer.
- (iii) Whilst the AGSA received a copy of the bid proposal for the successful bidder, Vendor S, we have not received originals. As a result, the AGSA is unable to comment on whether Vendor S had complied with the requirements for responsiveness by submitting an original valid tax clearance certificate and an original signed form of offer and had not used "tippex".



**(b) Functionality evaluations**

- (i) In terms of section 5.9.3 of the SCM guide, the evaluation criteria, their respective weights, the minimum qualifying score for functionality and the values that would be applied for evaluation should be clearly indicated in the bid documents. The bid documents did not make any specific reference to functionality, the respective weights or the minimum qualifying score, contrary to the SCM guide.
- (ii) According to the BEC memo to the DAC, no mention was made of functionality. However, the experience of the respective bidders was discussed. The Director: SCM informed the AGSA that the bidders were in fact evaluated on functionality. Based on the limited information provided to the AGSA, we are unable to comment further on the evaluation in respect of functionality.

**(c) Price and RDP goal evaluations**

- (i) The PPPFA provides for the use of the 90/10 preference point system to calculate the points for price in respect of bids with a rand value above R500 000. Furthermore, PPR 7 provides that the bid documents should clearly state the preference point system which would be applied in the adjudication of tenders.
  - The bid documents and specifications did not stipulate that the 90/10 preference point system would be used for evaluation purposes, contrary to the requirements of PPPFA and PPR 7.
  - During the evaluation process, the BEC only awarded points to the bidders on their equity ownership, with no points awarded for price. This is in contravention of PPPFA which provides that the 90/10 formula must be used to calculate the points for price in respect of a bid with a rand value above R500 000.
- (ii) During the evaluation process, the maximum number of points to be awarded to a bidder for equity ownership was 10. This is in accordance with section 4(2) of the PPR, which provides for a maximum of 10 points for HDI/achieving specific goals. According to the Deputy Director: SCM, the company's CIPRO documents are used to calculate BEE points. BEE certificates were not used by the department to confirm the equity status.

The AGSA was not provided with evidence of how the BEC determined the BEE status and subsequent point allocation in relation to the respective bidders. As a result, the AGSA is unable to comment further on the RDP goals point allocation.

(iii) According to the Director: SCM, the reason for not awarding points for price was that the prices quoted by the bidders varied. In this regard, the AGSA noted the following:

- There were large differences between price quotations, which varied from R61 000 to R67 million.
- The BEC recommended the appointment of Vendor S in accordance with the estimated budget of R6 million.

(iv) Two bidders quoted prices per units whereas the other two service providers quoted prices in total. Based on the information provided to the AGSA, the quoted prices per unit were not extrapolated to obtain a total figure. As a result, the prices were not comparable and there were large differences in the quoted price ranges. Therefore the BEC did not perform a proper evaluation in terms of price, which means the evaluation process was flawed.

**(d) Presentation by bidders**

The bid documents indicated that the short-listed companies would be invited to make a presentation on 5 November 2010. There was no evidence indicating that such presentations had been made.

**13.2.2.8 Recalculation and verification of scores on evaluation sheets**

As a result of the limited information provided to the AGSA, we were unable to recalculate and verify the scores as determined by the BEC. The overall evaluation process followed, the point allocation and subsequent determination of the successful bidder were flawed as discussed above.

**13.2.2.9 Recommendations of the BEC to the DAC**

(a) The bidder with the highest score was selected by the BEC and recommended to the DAC in accordance with PPR 8(8) which states that: *“only the tender with the highest number of points scored may be*

*selected*". However, the scores calculated by the BEC only included points for RDP goals and not price as mentioned above.

- (b) Whilst the BEC made the recommendation to the DAC as prescribed, the overall evaluation process was flawed, based on the information provided to the AGSA.

#### **13.2.2.10 DAC meeting and approval**

- (a) On 8 November 2010, the DAC approved the appointment of Vendor S in accordance with the BEC's recommendation. The approval, however, was granted on condition that clarity was given on compliance in terms of the SITA Act and that the service provider submits proof of vetting. The AGSA was not provided with evidence that these conditions had been subsequently met.
- (b) There was no evidence indicating that the DAC granted final approval for the contract to be awarded to Vendor S after receiving clarity regarding the SITA Act and proof of vetting, mentioned above.
- (c) The Director: SCM was a member of both the BEC and DAC. This is in contravention of section 4.1(c) of the NT circular: Implementation of SCM, which provides that the evaluation and adjudication committees should be composed of different members to ensure a transparent review of the evaluation.

#### **13.2.2.11 Appointment letter**

On 15 November 2010, the Director: SCM issued a letter to Vendor S informing them of their appointment to provide biometric verification solutions to the department to the value of R4 205 414, subject to the signing of a contract.

#### **13.2.2.12 Signing of contracts**

The contract with Vendor S has not yet been signed pending the outcome of the AGSA's investigation.

#### **13.2.2.13 Notice of tender award**

The contract awarded to Vendor S for the biometric verification solution has not been published in the government tender bulletin and other media. This is in contravention of TR16A6.3(d) which stipulates that the accounting officer or

accounting authority must ensure that awards are published in the government tender bulletin and other media in which the bids were advertised.

### 13.2.3 **Conclusion**

13.2.3.1 Whilst the department followed a competitive bidding process in the appointment of Vendor S, the overall process was flawed in view of the following:

- A specifications committee was not in place and the specifications were not approved.
- The specifications were not clear and precise, with the result that some bidders quoted prices per unit whilst others quoted total prices.
- The bid was advertised for a shorter period without the deviation being duly approved.
- The appointment and composition of the BEC were not in accordance with the prescripts.
- The determination and basis of point allocation in respect of the RDP goals were not transparent.
- The BEC did not award points for price.
- The BEC did not perform a proper price comparison, which resulted in the company with the lowest price not receiving the award.

13.2.3.2 There was limited segregation of duties, as a member of the BEC was also a member of the DAC.

13.2.3.3 Based on the above, Vendor S should not have been the successful bidder to receive the biometric verification contract as they had not presented the most cost-effective option.

### 13.2.4 **Recommendations**

13.2.4.1 The department should revisit their existing SCM procedures and take steps to:

- Establish a specifications committee to ensure that specifications are clear and precise.
- Ensure that the requirements of a conditional approval are met prior to approval.
- Implement proper procedures for a transparent and fair evaluation process.

- 13.2.4.2 The HoD should adhere to the SCM policies and prescripts and set the tone of the organisation.
- 13.2.4.3 Corrective action should be considered against the BEC officials for their failure to ensure that the bids were fairly evaluated.
- 13.2.4.4 The appointment of Vendor S should be reconsidered in consultation with legal services.

## **14. CONSTRUCTION AT DEREK MASOEK BUILDING**

### **14.1 Context**

- 14.1.1 On 7 June 2010, the Senior Executive Management Committee (SEMC) resolved that the Chief Directorate: Registration and Operating Licensing would be relocated to the Derek Masoek building.
- 14.1.2 Once the decision was made for the relocation to the Derek Masoek building, the department realised that the building did not have sufficient office space to house the entire Chief Directorate: Registration and Operating Licensing. Whilst approximately 13 people currently occupy the office space at the Derek Masoek building, the existing office space can accommodate 132 people. Additional office space was required in order to accommodate 224 people, as the Registration and Operating Licensing unit intended to fill vacancies. An additional floor in the Derek Masoek building was needed for storage of all the application files.
- 14.1.3 The acting DDG: AFC was instructed by the HoD to assist in the process of upgrading the Derek Masoek building. This was done as a section of the acting DDG: AFC's portfolio would also be relocated to the Derek Masoek building.
- 14.1.4 The AFC branch developed a plan to curb fraud and corruption in the department. The AFC plan included R25 million for the refurbishment of the Derek Masoek building.
- 14.1.5 The acting DDG: AFC contacted Vendor T, the company that originally built the Derek Masoek building to assist him with the compilation of bid specifications for the additions and alterations to the Derek Masoek building.
- 14.1.6 In October 2010 a meeting was held to discuss the office plans and proposed additions and alterations to the Derek Masoek building with the different role players that would be involved in the upgrading process. The two directors and

the DDG: Transport was invited to this meeting to ensure that their specific needs were considered during the planning phase of the upgrade. The outlay of their offices and parking area was discussed during this meeting. The specific needs of the role players were documented by Vendor T and incorporated in the bid specifications. According to the acting DDG: AFC, no minutes were taken at this meeting, with the result that the AGSA was not provided with evidence. To this end, Vendor T provided the department with the bidding documents as well as the specifications.

- 14.1.7 On 1 November 2010, the DAC granted approval for the advertisement of a bid for the additions and alterations to the Derek Masoek building. The bid was advertised in the newspapers on 5 November 2010.
- 14.1.8 On 11 November 2010, a compulsory site meeting was held between the department and 23 potential bidders.
- 14.1.9 The bid closed on 18 November 2010, and 12 proposals were received by the department. Thereafter the bids were subjected to a three-phased evaluation process. The outcome of the evaluation indicated that the bidder with the highest ranking points based on price and preference RDP goals was Vendor U with a total of 97 points.
- 14.1.10 In a memo signed on 2 December 2010, the BEC requested the DAC to appoint the service provider to render the services for the additions and alterations to the Derek Masoek building. On 10 December 2010, the DAC approved the appointment of Vendor U.
- 14.1.11 On 13 December 2010, the department issued a letter of appointment to Vendor U, informing them of the appointment to render the services for the additions and alterations to the Derek Masoek building.
- 14.1.12 On 14 December 2010, the department's legal services were requested to draft the SLA for the appointment of Vendor U for an amount of R20 259 302.
- 14.1.13 The SLA with Vendor U has not been finalised by the department, pending the outcome of the AGSA's investigation.

## **14.2 Findings**

### **14.2.1 Needs analysis**

The need to refurbish Derek Masoek building was determined in accordance with the demand considerations as per section 3.2 of the SCM guide in view of the following:

- The needs of the respective department officials were taken into account at the meeting held in October 2010.
- The development of the AFC plan, which included R25 million for the refurbishment of the Derek Masoek building.

### **14.2.2 Standard bidding documentation**

In terms of TR16A6.3(a)(ii), the accounting officer of departments must ensure that bid documents are in accordance with the prescripts of the CIDB in the case of a bid relating to the construction industry. The bid documents used by the department for the additions and alterations to the Derek Masoek building were in accordance with the procurement documents as prescribed by CIDB.

### **14.2.3 Establishment of bid specification committees and approval of bid specifications**

- (a) Paragraph 3.23.1.7 of the GDRT SCM policy provides that the specifications of goods and/or services to be procured must be approved by the accounting officer prior to publication of the invitation for bids. In a meeting held on 1 November 2010, the DAC approved the publication of the advertisement for the additions and alterations to the Derek Masoek building. The AGSA was not provided with any evidence that the bid specifications had been discussed and approved at that DAC meeting.
- (b) The bid specifications were compiled by Vendor T, an external service provider to the department, in October 2010 as the department does not have a specifications committee. This is contrary to TR 16A6.2(b) and paragraph 3.21.1.1 of the GDRT SCM policy, which requires the establishment of a bid specification committee.

### **14.2.4 Invitation of bids**

- (a) In terms of TR16A6.3(c), the accounting officer must ensure that bids are advertised at least in the government tender bulletin for a minimum period

of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine.

The bid was not advertised in the government tender bulletin as required by TR 16A6.3(c). Whilst the AGSA was provided with a copy of the advertisement, we were unable to confirm publication of the advertisement in the respective newspapers as SCM did not file the advertisements. The bid was advertised for a shorter period of 14 days. The AGSA was not provided with any evidence that the deviation for the shorter advertisement period had been duly approved.

- (b) Paragraph 3.15.2.1 of the GDRT SCM policy provides that transactions over R10 million (VAT inclusive) should be advertised for a minimum of 30 days. The budgeted cost of the contract was R25 million. The bid was advertised for 14 days in contravention of this policy.
- (c) In terms of section 24 of the CIDB regulation, the invitation to bid should be advertised on the CIDB's website. According to CIDB, the bid for the additions and alterations to the Derek Masoek building was not advertised on their website, contrary to the regulation.

#### **14.2.5 Receiving of bids**

The department received 12 proposals in response to their advertised bid. The names of the bidders and their total prices were recorded as prescribed by section 4.10 of the SCM guide and paragraph 3.18 of the GDRT SCM policy.

#### **14.2.6 Establishment of the BEC**

- (a) In terms of TR16A6.2(b), the SCM system must provide for the establishment, composition and functioning of BECs. Paragraphs 3.24.3 and 3.24.4 of the GDRT SCM policy state that the evaluation committee should be cross-functional and should as far as possible be composed of officials from the user department requiring the goods and/or services and at least one SCM practitioner.
- (b) The BEC that was established for the Derek Masoek building project composed of two SCM officials and an official from Roads. Thus most of the officials on the BEC were from SCM and not from the user department (Roads), as required.



- (c) The appointment letters for the BEC members were signed on 29 November 2010 by the HoD. This was after the commencement of the evaluation on 25 November 2010.
- (d) In terms of PN No. 4 of 2003, SCM practitioners should declare any business, commercial and financial interest or activities undertaken for financial gain and conflicts of interest. The attendance register for the BEC meeting held on 25 November 2010 contained the declarations of interest and this document was signed by the BEC in accordance with the PN.

#### 14.2.7 Evaluation of bids

The evaluation of the bids was performed in three phases:

- (a) Preliminary evaluations
- (b) Functionality
- (c) Price and RDP goals.

The detailed findings have been categorised in accordance with the respective phases and are discussed below.

##### (a) Preliminary evaluations

- (i) The 12 bids received were subjected to a preliminary evaluation to ensure that all the relevant documentation was complete. The bids were also evaluated for responsiveness. A bidder was deemed to be responsive if all the mandatory requirements were met as per the evaluation criteria stipulated in the bid documents. The following mandatory documentation, *inter alia*, had to be submitted:

- Original valid tax clearance certificate
- Letter of intent from either an insurance company or bank undertaking to provide the performance bond.
- Original CIDB certificate with level 6 General building works (GB) or higher grading
- Certificate of attendance at clarification meeting
- Certified ID copies
- The compulsory enterprise questionnaire
- Letter of good standing from the Compensation Fund.

- (ii) At the BEC meeting where the bids were evaluated, it was indicated that the BEC members had screened the proposals for the submission of the following items:
- Valid tax clearance certificate
  - CIDB registration on level 6 GB
  - Company registration (CIPRO)
  - Site meeting attendance
  - National Home Builders Registration Council (NHBRC) certificate.

It was further indicated by the BEC that failure by the bidders to comply with the mandatory requirements would result in disqualification. The BEC evaluated the bids on the mandatory criteria that differed to what was requested in the bid documents. For instance, CIPRO documents were evaluated as a mandatory criterion despite the fact that it was not stipulated as such in the bid documentation.

Paragraph 3.24.2 of the GDRT SCM policy and section 1.2.3 of PN No. 2 of 2006 state that bids must be evaluated in accordance with the criteria specified in the bid specifications.

As discussed above, the proposals were not evaluated according to the department's policy and the PN.

- (iii) According to the BEC evaluation, five bidders complied with all the mandatory requirements and qualified to be evaluated on functionality.
- (iv) The AGSA verified the preliminary evaluation based on the mandatory requirements as stipulated in the bid documents and noted that Vendor U, the successful bidder, had not submitted the following mandatory documents:
- Letter of intent from either an insurance company or bank undertaking to provide the performance bond.
  - Certified ID Copies.
  - Letter of good standing from the Compensation Fund.

As a result, Vendor U should have been disqualified subsequent to the preliminary evaluation.

The original bid proposal for one bidder was not submitted to the AGSA, thus the AGSA could not ascertain whether this bidder had complied with the mandatory requirements as stipulated in the bid documents.

**(b) Functionality evaluations**

- (i) According to section 3.3 of the NT instruction note on functionality, all bids issued after 15 September 2010 must indicate the weight of the evaluation criteria for measuring functionality. The department used the term quality instead of functionality in the bid documents. The bid documents did not indicate the weightings for functionality/quality in terms of the evaluation criteria, contrary to the requirements.
- (ii) According to the bid documents, the following criteria were used to evaluate quality:
  - Experience of key personnel
  - Work experience of the company
  - Work plan and quality control.
- (iii) Each evaluation criterion for quality was supposed to be assessed in terms of four indicators as follows:
  - Poor – 40%
  - Satisfactory – 70%
  - Good – 90%
  - Very Good – 100%

However, the evaluation of functionality/quality was not performed in accordance with the above-mentioned indicators. The actual scoring was done by awarding full points (100%) for complying and a zero (0%) was awarded for non-compliance.

**(c) Price and RDP goals evaluation**

- (i) The BEC minutes indicated that two bidders including Vendor U scored more than 60% for functionality and were further evaluated on price and RDP goals.

The BEC minutes indicated that the two bidders were evaluated on the preferential procurement system of 90/10, where 90 points were for price and 10 points were for RDP goals. This was in accordance with PPPFA, which provides that tenders above R500 000 should be evaluated on the 90/10 preference point system.

Based on the AGSA's recalculation and verification, the points to the two bidders, including Vendor U for price were accurately allocated by the BEC. This is so, notwithstanding the fact that Vendor U should have been disqualified after the preliminary evaluation.

- (ii) In respect of the evaluation pertaining to RDP goals, the bid documents required bidders to complete the preferencing schedule for evaluation purposes. This preferencing schedule was not completed by Vendor U.

According to the Deputy Director: SCM, the bidder's CIPRO document is used to calculate HDI points. Preference points were awarded to Vendor U based on their equity ownership. BEE certificates were not used by the department in order to confirm the equity status.

As a result of Vendor U's incomplete preferencing schedule (including HDI data) and the lack of supporting documents, the AGSA was unable to verify the point allocation in respect of RDP goals and whether the HDI points were accurately determined.

**(d) CIDB compliance**

- (i) In terms of section 18(1) of the CIDB Act, contractors in the building industry should be registered with the CIDB. According to CIDB, Vendor U is registered with them and therefore meets this requirement.
- (ii) In terms of section 17 of the CIDB regulations, contractors should be registered in the class of construction works to which the contract relates, and in the grading designation which is suitable for the value of the contract.
  - Vendor U is registered in the general building work class. This class is in line with the requirements of the contract, namely

additions and alterations to a commercial building.

- Vendor U has a CIDB grading of 6. According to section 17 of the CIDB regulations, a contractor with this CIDB grading is considered to be capable of undertaking a contract up to the value of R13 million. However, the department appointed Vendor U for a value of approximately R20 million. This is in contravention of section 17 of the CIDB regulations, as Vendor U's grading is not suitable for the value of the contract.

#### **14.2.8 Recalculation and verification of scores on evaluation sheets**

As a result of the limited information provided to the AGSA, we were unable to perform a total recalculation and verification of the scores on the evaluation sheets and on the overall evaluation process.

#### **14.2.9 Restricted supplier list**

In terms of TR16A9.1(c), the accounting officer must check the NT's database prior to the awarding of a contract to ensure that no recommended bidder, nor any of its directors, is listed as companies or persons prohibited from doing business with the public sector. This requirement is also confirmed in paragraph 3.37.1.3 of the GDRT SCM policy and section 4.12 of the SCM guide. According to the Director: SCM this check had not been performed.

#### **14.2.10 Recommendations of the BEC to the DAC**

- (a) The recommendations of the BEC were captured in a memo addressed to the DAC that was signed on 2 December 2010 for the approval of the appointment of the bidder for the additions and alterations to the Derek Masoek building. The evaluation process, as well as the respective outcomes, was discussed in this memo.
- (b) The memo to the DAC indicated that only two bidders qualified on the criteria of obtaining a minimum score of 60% for functionality. These two bidders were further evaluated on price and BEE points and were ranked as follows:
  - Vendor U - 97 points
  - The other bidder - 95.44 points.
- (c) Based on the evaluation results set out in the DAC memo, the BEC

recommended the appointment of any of the two qualified bidders.

**14.2.11 DAC meeting and approval**

At a meeting held on 10 December 2010, the DAC approved Vendor U as the service provider to render the service of the additions and alterations to the Derek Masoek building for approximately R20 million. The approval was based on the fact that Vendor U was the bidder with the highest points. This was in accordance with section 2(1)(f) of the PPPFA, which states that the contract should be awarded to the bidder that scores the highest points.

**14.2.12 Appointment letters and awarding**

The department issued a letter of appointment to Vendor U on 13 December 2010.

The advertisement for competitive bids for the additions and alterations to the Derek Masoek building stated that “*bids shall be awarded on the basis of a principle that work shall be fairly or equitably distributed amongst contractors / entities that had not been awarded contracts previously*”.

Despite this principle, a contract was awarded to Vendor U although they had a previous contract with the department.

**14.2.13 Signing of contracts**

The SLA with Vendor U has not been signed pending the outcome of the AGSA's investigation.

**14.2.14 Letter to unsuccessful bidders**

The letters to the unsuccessful bidders have not been issued.

**14.2.15 Notice of tender award**

- (a) In terms of TR16A6.3(d), the accounting officer must ensure that all awards of bids are published in the government tender bulletin and other media in which the bids were advertised.

The AGSA was not provided with any evidence that this award had been published.

- (b) In terms of section 22(3) of the CIDB Act, contracts awarded above

R200 000 should be registered in the register of construction contracts with the CIDB within 21 working days.

- (c) According to CIDB, the awarded contract to Vendor U has not been registered.

#### 14.3 **Conclusion**

14.3.1 Whilst the department followed a competitive bidding process in the appointment of Vendor U, the overall process was flawed in view of the following:

- The department did not appoint a specifications committee to compile the specifications, nor were the specifications approved.
- The bid was advertised for a shorter period without the deviation being duly approved.
- The appointment and composition of the BEC were not in accordance with the prescripts.
- The evaluation criteria changed after the closing of the bids.
- The determination and basis of point allocation in respect of the RDP goals were not transparent.
- Vendor U only had a CIDB grading level 6 and was qualified for a contract up to R13 million; however, the department awarded them a contract of approximately R20 million, in contravention to the CIDB regulations.

As a result of the above, Vendor U should not have been the successful bidder to do the additions and alterations to Derek Masoek building.

#### 14.4 **Recommendations**

14.4.1 The department should revisit their existing SCM procedures and take steps to:

- (a) Establish bid specifications committees to ensure that the specifications of bids are in line with the department's needs and applicable prescripts.
- (b) Adhere to an evaluation process which is transparent, fair and in line with the applicable prescripts.

14.4.2 Corrective action should be considered against BEC officials for their failure to ensure that the bids were fairly evaluated and in the prescribed manner and for recommending the award contrary to the CIDB prescripts.

- 14.4.3 The appointment of Vendor U should be reconsidered in consultation with legal services.

14.5 **Summary of management comments and the AGSA's response**

- 14.5.1 Management's comments in respect of paragraphs 14.2.7 (d)(ii) and 14.3.1: The tender was advertised on CIDB level 6 GB. According to the CIDB prescript, a contractor who has been awarded a grade 6 GB PE (in the case of Vendor U) qualifies to tender for a job at grade 7. The department provided section 25(8) of the CIDB regulations as evidence to the AGSA in support of this.

AGSA response: The AGSA considered the information provided by the department and consulted directly with officials at the CIDB in order to obtain clarity on Vendor U's grading and correlating appointment.

The tender was advertised by the department on CIDB level 6 GB. This grading 6GB relates to contracts up to the value of R13 million. However the contract to Vendor U was awarded to the value of R20 million. Therefore the advertisement and subsequent appointment by the department was incorrect and not in accordance with CIDB prescripts.

Had the department's advertisement called for contractors registered in grade 7 GB or higher and indicates that grade 6 GB PE will also be considered, only then would a grade 6 GB PE be allowed to tender for one level higher. This was not done by the department as the advertisement expressly stated advertised by the department on CIDB level 6 GB.

On this basis, the finding remains unchanged as the appointment of Vendor U was essentially done outside the tender range of a level 6 GB contractor which is R13 million.

15. **AWARD OF THE ROAD CONSTRUCTION BID**

15.1 **Context**

- 15.1.1 The department experienced challenges in completing their capital projects, including road construction, as there was a constrained budget. As a result, there was a need to explore methods of funding in respect of the road construction projects.



- 15.1.2 On 5 March 2010, a breakfast meeting was held between the former MEC, businesses and stakeholders. This meeting was held in order to determine areas of possible partnerships and cooperation in line with the department's five-year strategic direction plans, which included road construction.
- 15.1.3 Following the breakfast meeting, Vendor V and Vendor W submitted the following letters of intent for bridging finance:
- (a) Vendor V presented the department with a letter of intent dated 7 May 2010 according to which a financial institution would provide bridging finance of R600 million for the Sharpville project, should their tender be accepted.
  - (b) Vendor W presented the department with a letter to confirm the availability of finance amounting to R600 million for the construction of the Gauteng roads. In another letter dated 28 July 2010, Vendor W indicated they had already obtained R200 million repayable from 2012.
- 15.1.4 The department accepted the two letters of intent as unsolicited proposals. However, according to section 4.2.1 of PN No. 11 of 2008/-09 the letters will not be considered as unsolicited bids as the entities are not sole providers and the service/product is not unique.
- 15.1.5 The department engaged with Provincial Treasury (PT) to obtain advice on the proposed funding model and the implementation of the road construction programme in Sedibeng, one of the prioritised areas. The department proposed funding of road construction using a deferred payment methodology, which relates to the construction of roads by a private entity, with the department paying them in the next financial years.
- 15.1.6 The PT provided the department with a memo dated 12 July 2010 advising the department about the process to be followed in terms of the PFMA, and also raising concerns on the deferred payment method as they were of the opinion that it does not provide value for money due to the premiums involved and financial risk which would reside with the department. Also, the appointment would be questionable in view of the acceptance of an unsolicited proposal and the fact that an open and transparent process has not been followed.
- 15.1.7 The DDG: PMB compiled a memo for the DAC dated 6 August 2010. The purpose of the memo was to seek approval for the appointment of Vendor V and Vendor W in terms of the deferred payment methodology. It was proposed that Vendor W construct roads to the value of R200 million and that Vendor V

construct roads to the value of R600 million. In response to this initial request, the DAC referred the submissions back for clarification.

- 15.1.8 On 30 August 2010, the DAC discussed this matter for the second time. The DAC did not approve the request for the appointment of Vendor V and Vendor W.
- (a) The DAC was of the view that the request was for an unsolicited bid due to its uniqueness and that the need for this service was established by the department at a strategic planning and budgeting process.
- (b) The DAC instructed that the bid be advertised as the submission did not comply with the 'sole service provider' requirement of an unsolicited bid.
- 15.1.9 An advertisement was placed in the "Sowetan" on 30 September 2010. The advertisement indicated the department's need to fast-track service delivery and requested interested parties to respond with proposals in respect of a workable public funding model. The following five road construction projects were listed as being in critical need of an upgrade:
- Pinehaven Interchange (P126) (Pinehaven)
  - Voortrekker Road (K55/K71 Phase 2) (Voortrekker)
  - Adcock Road (K15 Phase 3) (Adcock)
  - William Nicol (K46 Phase 2) (William Nicol)
  - Sedibeng Roads (Sharpville) (Sedibeng).
- 15.1.10 The advertisement was for a shorter period of 14 days and was approved by the DAC.
- 15.1.11 The tender closed on 15 October 2010. Twenty-five proposals were received and recorded in the tender register.
- 15.1.12 The bids were evaluated by members of the DAC, namely the DDG: PMB, the acting DDG: AFC and the Director: SCM.
- 15.1.13 On 8 November 2010, a memo to the DAC was presented subsequent to the advertisement of the bid. The memo provided motivation for the approval of Vendor V, Vendor W and Vendor X for the road construction project.
- 15.1.14 The DAC granted approval for the appointment of Vendor V, Vendor W and Vendor X in respect of a phased process not exceeding R100 million per annum. The contracts and the bills of quantities were to be finalised within one month of

the appointment letters being issued and the budget statement 3 was to be adjusted.

- 15.1.15 On 16 November 2010, the department issued letters of appointment to Vendor V, Vendor W and Vendor X informing them of their appointment to construct roads. A second letter dated 22 November 2010 was issued to Vendor W informing them that the appointment was also subject to the MEC for Finance approving the alternative funding method.
- 15.1.16 On 13 December 2010, the department's legal services were requested by the DDG: PMB to finalise the contracts in respect of Vendor V and Vendor W. In this regard, the AGSA was presented with draft unsigned contracts. The details thereof are illustrated in table 20 below:

**Table 20: Service providers awarded contracts**

No.	Service providers	District	Duration	Total projected cost (R)
1.	Vendor V	Sedibeng	3 years	300 million
2.	Vendor W	William Nicol	Not stipulated	630 million
3.	Vendor X	Adcock	5 years	500 million

## 15.2 Findings

### 15.2.1 Discussion on the deferred funding methodology

- 15.2.1.1 The HoD informed the AGSA that the department ultimately required funding. In this regard, it was her understanding that there were no prescribed processes/guidelines on deferred payment method, which was the reason why numerous consultations between the department, Gauteng Funding Agency (GFA) and PT took place. This was despite the fact that the DAC viewed the bids received as unsolicited and recommended that a competitive bid process be followed.
- 15.2.1.2 Despite the consultations with PT and their instructions to the department not to proceed with the appointment until there was agreement on the modalities of the proposed deferred payment etc., the department continued with the process and approved the appointment of the three service providers. This was also done prior to the approval of the MEC for Finance, as requested by PT. This is apparent from the following communications:

- (a) In a letter signed on 11 August 2010, the DDG: PT requested the DDG: PMB to provide the Department of Finance with details of the R200 million to be utilised in the deferred payment in terms of the 2011-12 medium-term expenditure framework (MTEF). The letter also advises the department not to proceed with the appointment of Vendor V until both the department and the Department of Finance had agreed on the modalities of the proposed deferred payment.
- (b) In letter signed on 20 October 2010, the Divisional Head of Gauteng Treasury instructed the HoD not to proceed with deferred payment until all parties are satisfied with the necessary information. The letter also informs the HoD of the respective contraventions in terms of the PFMA and states that no DAC deliberations should be entertained until further notice by Treasury. The letter further states the MEC for Finance should first be afforded an opportunity to grant such approval after considering the enabling legislature.

## 15.2.2 **Competitive bidding process**

15.2.2.1 In respect of the competitive bid process followed by the department, the AGSA noted the following:

- (a) The advertisement was published for a shorter period of 14 days as opposed to 21 days. The deviation was approved by the DAC, of which the HoD is the chairperson.
- (b) Contrary to paragraph 3.22.1 of the GDRT SCM policy, a bid specification committee was not in place and specifications were not compiled. The department issued an open-ended request when they advertised for a *“workable public funding model”*.
- (c) The AGSA was only provided with evidence that the advertisement was published in the *“Sowetan”*. There was no evidence that the advertisement was published in the government tender bulletin, as required by TR16A6.3(c).
- (d) In terms of section 24 of the CIDB regulations, procurement in respect of construction is to be advertised on the CIDB website. The department acted contrary to the CIDB requirements as they did not advertise as prescribed.

- 15.2.2.2 In terms of the section 11(a) of the PPPFA, an organ of state is required, before inviting bids, to properly plan as far as possible and have an accurate estimate of the costs of goods or services for which the bid is required.

The department did not establish the costs of the respective projects and the service providers were requested to provide the bills of quantity subsequent to their appointment. As a result, the process followed does not guarantee that the department will obtain good value for money.

The HoD informed the AGSA that whilst there were no bills of quantity, the department's main interest was to secure funding and the respective appointments were in line with that.

### 15.2.3 **Evaluation of bids**

- 15.2.3.1 The AGSA was not provided with evidence for the appointment of the BEC.

- 15.2.3.2 In respect of the evaluation process, the DDG: PMB informed the AGSA that there was no document supporting the process and that no scoring was performed. The only information available in this regard is the summary that was presented to the DAC, dated 8 November 2010.

The PPPFA requires that the evaluation be performed on 90/10 preference point system when dealing with procurement above R500 000. The department did not use any point system when evaluating the bids.

- 15.2.3.3 The evaluation was based on 26 bids, whereas only 25 responded to the advertised bid. Vendor X, one of the successful bidders did not respond to the advertisement and was therefore the 26<sup>th</sup> bidder.

- 15.2.3.4 According to the Director: SCM, the department did not perform checks to ensure that the successful service provider was not a "restricted supplier" as listed by NT. This is in contravention of TR16A9.1(c), which requires this check to be performed.

### 15.2.4 **DAC presentations and conditional appointment**

- 15.2.4.1 The memo to the DAC made reference to the Vendor X bid in respect of the K46. The AGSA was not provided with this bid.

15.2.4.2 The three members of the BEC were also members of the DAC and had duly recused themselves from the DAC decision-making process as prescribed by the NT circular.

15.2.4.3 During the DAC deliberations, objections were noted by the members. In this regard, the AGSA identified the following:

- (a) The members present did not form a quorum and the appointments of the service providers could not be finalised. The objection was overruled by the HoD.

The HoD informed the AGSA that the quorum was established at the beginning of the meeting and was not reassessed for the duration of the meeting. This is the manner in which she has always conducted her meetings.

- (b) In terms of the DAC charter, the quorum for DAC is formed by six present members. However, during the awarding of bids only four members were present at the meeting.

- (c) There were no bills of quantity, except for Sedibeng district.

15.2.4.4 The conditional appointment of the three service providers was in contravention of section 38(2) of the PFMA, which provides that an accounting officer may not commit a department, trading entity or constitutional institution to any liability for which money has not been appropriated.

## 15.2.5 **Value for money**

15.2.5.1 The three service providers were appointed on the basis that they had immediate funding available. However, none of these companies were financial institutions and they were relying on financial institutions for funding. As a result, the department would be paying premiums that do not necessarily reflect good value for money. This is supported by PT communication on 12 July 2010 where such concerns were raised.

15.2.5.2 The respective service providers were evaluated on their ability to fund and not their road construction capabilities. As a result, there is no guarantee that the department will receive good quality road construction.

15.2.5.3 As a result of the deferred payment method, the department would require funds in order to repay the service providers. This means that the department would be

bound to future payment. In terms of section 66 (1)(a) and 2(b) of the PFMA, an institution to which this act applies may not borrow money or issue a guarantee, indemnity or security or enter into any other transaction that binds or may bind that institution or the revenue fund to any future financial commitment, unless authorised by the Act. Furthermore, approval from the MEC for Finance must be obtained in accordance with the Borrowing Powers of Provincial Governments Act, 1996. The department did not have the necessary funds for payments. This is supported by the following:

- (a) During August 2010, there were several interactions between the DDG: PMB and the Director: Roads. The Director: Roads informed the DDG: PMB on the unavailability of budget in respect of the budget statement 3 alignments and suggested that the road budget for the following year be realigned.
- (b) The financial implication, as per the memo to the DAC dated 8 November 2010, was that the budget statement 3 would need to be adjusted to accommodate the respective projects over the MTEF period. The department would need to budget R400 million annually for these projects. The memo further states that this would ensure alignment with the MTEF and therefore not require approval from PT.
- (c) During December 2010, interactions took place between the HoD and the Head of GFA. In response to the HoD's request for immediate funding, the GFA stated that they did not support the funding of the respective road construction projects and proposed that the project be funded out of department's budget allocation pending the availability of funds over the MTEF.

#### **15.2.6 Discrepancies identified in respect of Vendor X**

15.2.6.1 Based on the information provided to the AGSA, the following discrepancies were identified in respect of Vendor X in relation to the competitive bidding process.

- (a) Vendor X did not submit a bid subsequent to the advertisement of the competitive bid. The DDG: PMB informed the AGSA that Vendor X only submitted a proposal in the form of a contract and that there were no other documents. This is contrary to the SCM guide which prescribes the use of standard bidding documents.
- (b) Vendor X was mentioned for the first time on 8 November 2010 in the memo to the DAC and after the bid advertisement.

The HoD and the DDG: PMB indicated that the award to Vendor X was to provide funding for the project and not for the actual construction itself. The draft contract provided to the AGSA does not indicate the entity that would construct the road.

15.2.6.2 Based on the information provided to the AGSA, the following discrepancies were identified in respect of Vendor X in relation to the two draft contracts presented to the AGSA:

- (a) The first version was dated 2010 and reflected the name of the former HoD.
- (b) The second version, which the DDG: PMB purported to be the most updated version, was dated 2009 and also reflected the name of the former HoD. It indicated that 'building' services were to be rendered.
- (c) The second version contained the name of Vendor X (Pty) Ltd. According to CIPRO records, this company does not exist. However, an entity called Vendor X CC does exist and had been converted into Vendor Y (Pty) Ltd on 3 November 1997.
- (d) These draft contracts indicate that the department did not ascertain the service provider's current name and/or legal company status. It remains unclear why the documents did not correctly reflect the name of Vendor Y as opposed to Vendor X.

#### 15.2.7 **The current status of the road construction project**

15.2.7.1 According to the DDG: PMB, the MEC for Finance had granted approval for the deferred payment model. The AGSA was not provided with the copy of the approval. The department is awaiting the outcome of the AGSA's investigation prior to proceeding with the contract finalisation.

15.2.7.2 The HoD informed the AGSA that the department had funding available for the next financial year in respect of the repayments to be made to the service providers for road construction. However, the AGSA received no evidence confirming this.

#### 15.2.8 **General**

15.2.8.1 In terms of PN No. 7 of 2009-10, the successful service provider is required to sign and complete the SBD 4, which is a declaration of interest. This PN was not



complied with as the three service providers did not complete the requisite document.

- 15.2.8.2 The overall procurement process was also handled by the department's PMB. This is in contravention of paragraph 3.3.3.1 of the GDRT SCM policy, which provides that SCM must procure all goods and services on behalf of the department.

### 15.3 **Conclusion**

- 15.3.1 Based on the information provided to the AGSA, the DDG: PMB compiled the memos presented to the DAC and such presentations may be construed as a misrepresentation as the DAC was not informed of the PT's instructions and advice. Furthermore, Vendor X was recommended for appointment in the memo to the DAC, despite the fact that they had not submitted a competitive bid.
- 15.3.2 The department prepared and issued appointment letters to the three service providers, even though no funds were available. The department did not know how much the entire road construction project was going to cost as there were no bill of quantities.
- 15.3.3 The HoD did not ensure that proper procurement processes are followed as she failed to wait for the MEC of Finance's approval. The HoD proceeded with the appointments even after she was instructed by PT not to proceed. The HoD's failure to comply with PT's advice and instructions placed the department in a situation where an irregular expenditure amounting to millions of rands could have been incurred.
- 15.3.4 The purpose of the competitive bidding process which was ultimately followed was defeated as the bidders that were appointed during the competitive process were the very same bidders that initially submitted unsolicited bids.
- 15.3.5 The overall procurement process was in contravention of section 38(1)(a)(iii) of the PFMA, which requires that the procurement system must be fair, equitable, transparent, competitive and cost-effective.

### 15.4 **Recommendations**

- 15.4.1 It is recommended that the MEC, in consultation with legal advisors, consider the following:
- (a) Withdrawing the appointment letters of the three bidders as the awarding

of bids was irregular in that it was done without the approval by MEC of Finance

- (b) Instituting disciplinary action against department officials for financial misconduct.

## **16. RESPONSE FROM THE DEPARTMENT'S MANAGEMENT**

- 16.1 The HoD provided a response on behalf of the department in respect of the AGSA's draft management report dated April 2011 on the 13 May 2011. An excerpt of this response is as follows:

*"It is important to establish the context in the management of the establishment of the DRT. Following the May 2009 elections the GPG subsequently began a reconfiguration process which saw the GDPTRW being split into two Departments: The Department of Infrastructure Development; and the Department of Roads and Transport (DRT) consequently. During the transitional period covering May 2009- December 2010 the department experience two different Members of the Executive Council and two Heads of Department.*

*The process resulted in loss of critical staff to the Department of Infrastructure Development (DID). This included the Chief Financial Officer (CFO) who moved to the DID formally in May 2010 together with other Supply Chain Management (SCM) staff. The reconfiguration led to the need for a new organisational structure which to date has not as yet been approved while the skill audit needs was identified in 2010, this exercise still awaits conclusion of the organisational structure.*

*On the other hand, the DRT inherited weak institutional systems, and procedures from the DPTRW that relied heavily on consultancies. Therefore, the reconfiguration process partly focused on establishing new and appropriate systems and operational procedures, and the development of an organisational structure and self allocations which started from March 2010 and is still not yet completed given the absence of an approved organisational structure.*

*Policies had to be reviewed and revised in line with the new functional mandate of the Department. This process began in April 2010. Whilst many policies were approved and old DPTRW policies adapted to operate as transitional measures, the SCM policy was delayed due to the absence of a CFO, Risk Manager and*

*SCM practioner. The GDRT SCM Policy referred to by AGSA in the report is still in draft and not approved by the Accounting Officer as yet. While the Operational Policy Document is one identified as Project SCM Policy signed by the Accounting Officer in February 2010.*

*DRT developed and implemented various cross functional committees in early April 2010 to set in motion a process for implementing appropriate new governance structures that were absent in the previously GDPTRW.*

*A new CFO was appointed in August (nine months after the Department utilised acting CFO, including three months there was no acting at all). The SCM was appointed in June three months after the Department operated without one, and Risk Manager was appointed in September 2010 nine months after the Department operated without one having had to wait for the conclusion of the disciplinary action.*

*Whilst the establishment of a sound DRT procurement regime was at an advanced stage, it was adversely affected by further change of political leadership in October 2010. The new MEC undertook a review of the SCM regime.*

*Contrary to the assertion that ..."Management is not focused on public accountability or acting in the best interest of the department." DRT management took several steps to ensure public accountability and to ensure performance in the interest of the Department.*

*An Anti-Corruption and Fraud Branch, and headed by a Deputy-Director General in order to give focus on the prevention of fraud and corruption. Where violation of prescripts was found, corrective and disciplinary measures were taken against some senior managers. This includes: two DDGs; two CDs; and two senior G Fleet officials who have been arrested for theft of vehicles.*

*Over 300 contracts concluded by the DPTRW were reviewed in order to save the department funds, and redirect these to service delivery programmes and projects. Two high spending entities with no evidence of service delivery were dissolved in order to improve service delivery.*

*A Project Management Branch, headed by a DDG, to ensure an organisation wide effective programme and project implementation was established. This had a major positive result in fulfilling the DRT Provincial Executive Council Programme of action on matters of transportation. Cross-functional committees are to ensure DRT wide integration and coordination of its programmes and projects were established.*

*What is referred to by AGSA report as a “culture of non-compliance” is actually a “systems” inadequacy that is actually in the process of being corrected’.*

## **17. RESPONSE FROM THE AGSA**

### **17.1 The AGSA’s response in respect of management’s comments is as follows:**

The AGSA provided management with an opportunity to respond to the draft management report dated April 2011. In this regard, the AGSA specifically requested that *“Should any facts in the report be disputed, evidence to the contrary should be provided”*.

Whilst management did provide responses to the AGSA’s findings, there was little or no evidence to support management’s comments with regards to the disputed facts. In the absence of supporting evidence, no changes were made to the AGSA’s findings. In the instances where the department provided the AGSA with additional evidence, the evidence was considered by the AGSA and the findings were amended accordingly.

The AGSA does consider the current political climate and culture within which the department has been operating in and it is for that reason that management’s comments with regards to the circumstances of the department have been included above.

As at the date of this report the AGSA was provided with only one approved GDRT SCM policy. The AGSA has not received any other approved policy. The GDRT SCM policy was provided by the department’s legal services and SCM confirmed that no other approved SCM policy was in place. The AGSA would like to highlight that most of the findings made in this report have been made in

relation to the National Treasury prescripts as far as possible and the GDRT SCM policy was considered where applicable.

The AGSA disagrees with management's perception that the cause of the findings is due to a sheer system inadequacy. The extent of non-compliance is clear.

The AGSA urge's the management of the department to take the corrective actions in relation to the findings in this report as soon as possible and that management take steps to improve the organisation in terms of quality of reporting, effective governance arrangements and in particular adequate leadership oversight.

## **18. APPRECIATION**

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



**Auditor-General**

**Pretoria**

**June 2011**