



AUDITOR - GENERAL  
SOUTH AFRICA

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# **Report of the Auditor-General to the Eastern Cape Provincial Legislature on an investigation at the Department of Roads and Transport**

**July 2010**



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## LIST OF ABBREVIATIONS

| Abbreviation | Description   |
|--------------|---|
| AGSA         | Auditor-General of South Africa   |
| BAC          | Bid adjudication committee  |
| BAFO         | Best and final offer  |
| BEC          | Bid evaluation committee  |
| BEE          | Black economic empowerment  |
| DORT         | Department of Roads and Transport                                       |
| ECPA         | Eastern Cape Provincial Administration                                  |
| ECPG         | Eastern Cape Provincial Government                                      |
| ECPL         | Eastern Cape Provincial Legislature                                     |
| EXCO         | Executive committee   |
| FML          | Full maintenance lease  |
| HOD          | Head of department  |
| MEC          | Member of the executive council   |
| NPV          | Net present value   |
| PAA          | Public Audit Act, 2004 (Act No. 25 of 2004)                             |
| PFMA         | Public Finance Management Act, 1999 (Act No. 1 of 1999)                 |
| PPP          | Public-private partnership  |
| PPPFA        | Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) |
| RFP          | Request for proposal  |
| SBAC         | Special bid adjudication committee                                      |
| SBEC         | Special bid evaluation committee  |
| SCM          | Supply chain management   |
| SLA          | Service level agreement   |

# **REPORT OF THE AUDITOR-GENERAL TO THE EASTERN CAPE PROVINCIAL LEGISLATURE ON AN INVESTIGATION AT THE DEPARTMENT OF ROADS AND TRANSPORT**

## **1. EXECUTIVE SUMMARY**

### **1.1 BACKGROUND**

- 1.1.1 On 4 November 2009, the Auditor-General of South Africa (AGSA) was requested by the honourable speaker of the Eastern Cape Provincial Legislature (ECPL) to conduct an investigation into the tender process followed in the awarding of a fleet management tender by the Department of Roads and Transport (DORT) of the Eastern Cape Provincial Administration (ECPA) to a value of R2 876 197 760 over a five-year period.
- 1.1.2 After reviewing the request, the scope of the investigation was defined to address the following aspects:
- (a) Compliance with the relevant procurement prescripts and procedures
  - (b) Whether the appointed service provider met the specifications and the required financial guarantees
  - (c) Whether the preferred company ownership had been properly vetted
  - (d) Whether the cost-benefit analysis and affordability had been taken into account
- 1.1.3 The engagement in this respect was agreed upon with the speaker of the ECPL.
- 1.1.4 A letter was subsequently issued to the chairperson of the Eastern Cape Legislature's committee of roads and transport informing him of the progress on the engagement.
- 1.1.5 This report accordingly contains the AGSA's findings, recommendations, the DORT's management comments and the AGSA's subsequent response thereto, where deemed necessary.

### **1.2 FINDINGS**

- 1.2.1 The findings in this report should be addressed decisively by the member of the executive council (MEC) with the support of the senior management of the DORT. However, corrective action limited to the specific individual findings alone 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 causes contributing to the deficiencies be properly understood and addressed as part of the corrective actions to be taken in response to this report.

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

- **Quality of reporting:** This area includes the entity's ability to retain records appropriately and to use these as a basis to provide 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.
- **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.
- **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 acting decisively to correct deficiencies.

1.2.3 **COMPLIANCE WITH THE RELEVANT PROCUREMENT PRESCRIPTS AND PROCEDURES**

1.2.3.1 The scoring allocated to bidders in respect of the technical evaluation of the bids by members of the special bid evaluation committee (SBEC) displayed inconsistencies, despite the fact that the special bid adjudication committee (SBAC) requested a second round of scoring due to inconsistencies experienced in the first round of scoring.

1.2.3.2 The inconsistency in scores can be attributed to the following:

- (a) Individual members of the SBEC gave inappropriate scores in some instances.
- (b) Members of the SBEC used the scoring sheets incorrectly in some instances.
- (c) The transaction advisor did not ensure that scores were properly recorded for all members of the SBEC in respect of all questions.

- (d) The SBEC did not assess the outcome of the scoring and address inconsistencies.
- (e) The SBAC did not note the inconsistencies during the second round of scoring and did not take action to address these.

#### **1.2.4 WHETHER THE APPOINTED SERVICE PROVIDER MET THE SPECIFICATIONS AND THE REQUIRED FINANCIAL GUARANTEES**

##### **1.2.4.1 Mandatory requirements as stipulated in the tender documents were not complied with. This relates to the following:**

- (a) Non-compliance with the bid bonds submitted by service provider A (the preferred bidder) and service provider B.
- (b) Service provider B provided financial information in the executive summary of their technical proposal despite the tender requirement that the financial proposal must be separate from the technical proposal. This was not in accordance with the request for proposal (RFP), as bidders were explicitly requested in section 9.3 of the RFP not to include any pricing information in their technical and black economic empowerment (BEE) proposal, as failure to comply with this provision would result in automatic disqualification of the bid.

##### **1.2.4.2 The DORT did not adhere to the specific tender specifications due to the following:**

- (a) The SBEC did not properly interpret the specifications of the RFP.
- (b) The SBAC did not properly interpret the specifications of the RFP and did not note the incorrect approach of the SBEC and/or request the rectification thereof.
- (c) The transaction advisor did not advise the SBEC and the SBAC that non-compliance with the above specifications should have resulted in the disqualification of the said bidder.
- (d) The approach to the evaluation of the bid was faulty as the bid bond was treated as a technical element subject to scoring, rather than as a compliance issue, which would result in disqualification if not complied with.

## **1.2.5 VETTING OF THE PREFERRED COMPANY OWNERSHIP**

The DORT informed the investigating team that a vetting exercise was conducted on the preferred service provider, service provider A. However, the results of this could not be provided to the investigating team. The AGSA is therefore not in a position to conclude on this matter.

## **1.2.6 WHETHER THE COST-BENEFIT ANALYSIS AND AFFORDABILITY OF THE PROJECT WERE TAKEN INTO CONSIDERATION**

1.2.6.1 A cost-benefit analysis was conducted prior to the issuing of the tender through a feasibility study conducted and completed during December 2008.

1.2.6.2 The DORT did address the issue of affordability by requesting the two bidders that had qualified for the financial proposals to be opened, service provider A and service provider B, to enter into a best and final offer (BAFO) process. In addition, a request was also submitted to the National Treasury to enter into preliminary negotiations with the preferred bidder in an attempt to obtain a more affordable price.

## **1.2.7 IMPLICATIONS AS A RESULT OF NON-COMPLIANCE IN RESPECT OF THE SCORING AND THE TENDER SPECIFICATIONS**

1.2.7.1 The result of the inconsistent scoring process is that the outcome of the evaluation process cannot be considered to be fair to the bidders and consequently does not constitute an acceptable tender process. As a result of these inconsistencies, the DORT elected not to oppose an application to the High Court for the review of the adjudication process brought by an aggrieved service provider C subsequent to the awarding of the bid to service provider A.

1.2.7.2 Based on the inconsistent scoring and non-adherence to tender specifications, the tender submissions of service provider A and service provider B should have been disqualified. The fact that these tenders were not disqualified resulted in an irregular tender process. Service provider A should not have been appointed as the preferred bidder.

1.2.7.3 Given the reasons for the inconsistency in scores and the non-adherence to tender specifications, it is evident that the irregularity of the tender process is the result of the actions of the SBEC, the SBAC and the transaction advisor. As such, the SBEC, the SBAC and the transaction advisor should assume responsibility for the failure of the process.



## **1.2.8 UNDERLYING CAUSES**

1.2.8.1 The findings in this report should be addressed decisively by the executive authority and the head of department (HOD).

1.2.8.2 Based on the findings, the underlying causes contributing to the irregularity of this process can be summarised as follows:

- (a) The SBEC and the SBAC did not properly familiarise themselves with the requirements of the RFP and with the nature of the evaluation process.
- (b) The SBEC and the SBAC did not engage in internal debate to clarify the process and their role in the process and to resolve inconsistencies resulting from the process.
- (c) The transaction advisor did not appropriately guide the SBEC and the SBAC to properly fulfil their mandate.

## **1.2.9 RECOMMENDATIONS**

1.2.9.1 It follows from the above underlying causes that corrective action should be focused on the actions of:

- (a) the SBEC
- (b) the SBAC
- (c) the transaction advisor.

1.2.9.2 As part of the corrective actions implemented, the DORT should put in place steps to ensure the following when similar processes are followed in future:

- (a) Members of the committees responsible for the process are properly briefed and/or trained regarding their roles and responsibilities.
- (b) Members of the committees understand the factual requirements of the process.
- (c) Bids are scored consistently.
- (d) Bids are evaluated strictly and in accordance with the criteria as stipulated in the RFP.
- (e) Bids that do not comply with tender specifications are disqualified.

- (f) Relevant documentation relating to all supplier vetting exercises is maintained and/or retained on file at the DORT.

## **2. INTRODUCTION**

- 2.1 On 4 November 2009, the AGSA was requested by the honourable speaker of the ECPL to conduct an investigation into the tender process followed in the awarding of a fleet management tender by the DORT of the ECPA.
- 2.2 After reviewing the request, the scope of the investigation was defined and agreed with the speaker of the ECPL.
- 2.3 Following an investigation by the AGSA, a draft report was submitted to the DORT for comment on 3 June 2010. This report contained the AGSA's findings and recommendations. The DORT provided their comments to the AGSA on 17 June 2010. These comments have been included in paragraph 9.1 below.
- 2.4 This report accordingly contains the AGSA's findings, recommendations, the DORT's management comments on the draft report and the AGSA's subsequent response where appropriate.
- 2.5 The functions of the AGSA in supporting constitutional democracy in South Africa are described in section 188 of the Constitution of the Republic of South Africa, 1996 as well as in the Public Audit Act, 2004 (Act No. 25 of 2004) (PAA). Furthermore, section 5(1)(d) of the PAA specifically gives the AGSA the authority to carry out an appropriate investigation if the AGSA considers it to be in the public interest or upon the 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. THE 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 DORT. In terms of section 4.1 of the explanatory memorandum on the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA), the executive authority of a department is responsible for policy matters and outcomes. Furthermore, in terms of section 85(2) of the Constitution of South Africa, the executive authority is also responsible for developing and implementing national policy and for the coordination of the functions of the department.
- 3.4 The HOD, in his capacity as the accounting officer of the DORT, is responsible for outputs and implementation and is accountable to Parliament for the management of the implementation of the department's budget. Furthermore, in terms of section 38(1)(iii) of the PFMA, the accounting officer is responsible for ensuring that the department has and maintains an appropriate procurement and provisioning system that is fair, equitable, transparent, competitive and cost-effective.
- 3.5 It is intended that the findings and recommendations in this report will enable the MEC and the HOD to implement the necessary measures and steps to ensure effective accounting and internal control systems.

#### **4. SCOPE OF THE ASSIGNMENT**

- 4.1 The scope of the engagement, as set out in the engagement letter, was to investigate the following:
- (a) Compliance with the relevant procurement prescripts and procedures
  - (b) Whether the appointed service provider met the specifications and the required financial guarantees
  - (c) Whether the preferred company ownership had been properly vetted
  - (d) Whether the cost-benefit analysis and affordability had been taken into account
- 4.2 The investigation covered the period July 2007 to December 2009, unless indicated otherwise.

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

- 5.1 The purpose of the investigation was to assess the tender process followed in the awarding of the fleet management tender. The findings and recommendations in this report are aimed at enabling those charged with governance to implement measures to strengthen governance and prevent failure to adhere to tender processes.
- 5.2 In line with the AGSA's *Policy, standards and guidelines: investigations*, due care was taken to confirm the factual accuracy of the findings in this report.
- 5.3 In order to obtain clarity on the issues that the ECPL had raised, the AGSA conducted interviews with officials of the ECPL, the DORT, the treasury of the ECPA and the transaction advisor appointed to oversee the process. The investigation commenced with the request and collation of relevant documentation from the DORT. In this regard, the DORT was provided with a list of documentation and information required by the AGSA on 20 January 2010. The requested documentation was subsequently received from 25 January 2010 to 22 February 2010. The documentation received was scrutinised and compared to the relevant prescripts and policies discussed below.
- 5.4 The investigating team relied on documentation and other information provided by the DORT and the joint portfolio committees of roads and transport. This documentation and information included, but are not limited to, the following:
- (a) Final diagnostic study report dated 12 February 2007
  - (b) Feasibility study report dated December 2008
  - (c) RFP document relating to bid number SCMU 10-08/09-123
  - (d) Attendance register from the briefing meeting as well as the tender register completed upon the closure of the bid
  - (e) Bid documents of the nine bidders (technical, BEE and financial proposals)
  - (f) Minutes of meetings of the SBEC and the SBAC
  - (g) Supply chain management (SCM) memorandums, scoring sheets and final recommendations
  - (h) Value-for-money reports (May 2009)
  - (i) Correspondence submitted to and received from the National Treasury

- (j) Service level agreement (SLA) entered into between the ECPA and service provider A
- (k) SLA of the transaction advisor
- (l) Legal opinions of the representatives of the DORT
- (m) Other internal correspondence and memorandums

5.5 The initial phase of the investigation was conducted on site at the offices of the DORT. This was followed by a review of the documentation and information collated and the compilation of a draft management report dated 14 June 2010. Therefore, conclusions are based on documentation and information provided to us up to that date. The provision of any additional documentation or information may influence the findings and conclusions made in this report.

## **6. REGULATORY FRAMEWORK**

6.1 The documentation and information collated were compared against the following prevailing prescripts:

- (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) (PFMA)
- (c) Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) and its associated regulations
- (d) Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
- (e) SCM framework published in *Government Gazette 25767 of 5 December 2003* as part of the Treasury Regulations issued in terms of section 76(4) of the PFMA
- (f) National Treasury's guidelines for accounting officers/authorities
- (g) National Treasury's public-private partnership (PPP) manual
- (h) National Treasury's SCM practice notes

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

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

- 7.1 Although the work performed incorporates our understanding of the relevant prescripts and the law as it stands, we do not express an opinion on the legal effect of the facts or the guilt or innocence of any person(s) or party, but merely state the facts as they have come to our attention. In the case of disciplinary hearings or civil and criminal litigation, this report may only be used as a reference document.
- 7.2 This report is based on the facts established from documentation and information provided or obtained during the course of the investigation. Should further documentation or information be obtained, this may influence the findings and conclusions.
- 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 fleet management tender process.

## **8. DETAILED DISCUSSION OF THE PROCESS AND FINDINGS**

- 8.1 During 2003, the Eastern Cape Provincial Government (ECPG) entered into a five-year agreement with a fleet service provider for the following:
- Provision of long-term rental vehicles on a full maintenance lease (FML) basis, provision of short-term or ad hoc rental vehicles to the ECPG
  - Lease of the ECPG garages, namely Zwelitsha, East London, Mthatha and Port Elizabeth
  - Procurement of fuel, oil and toll payments
  - Implementation of a fleet reduction programme for the ECPG to ensure affordability of the contract
- 8.2 This agreement was effective from 1 August 2003 to 31 July 2008 and was extended by agreement between the ECPG and the fleet service provider until 31 July 2009. The contract was again extended for a further six months until 31 January 2010.

- 8.3 The ECPG conducted a feasibility study to ascertain whether the provincial fleet and fleet management services should be outsourced. Following the finalisation of this feasibility study in December 2008, a tender process was followed inviting bids from interested parties. The tender process was completed during September 2009 with service provider A being nominated as the preferred bidder. Subsequent to service provider A being announced as the successful bidder, allegations were raised by unsuccessful bidders that service provider A did not have the required fleet management experience as requested in the RFP. Furthermore, another unsuccessful bidder, service provider C, lodged an application in the High Court to overturn the decision to appoint service provider A. In addition, the DORT had to cancel the tender during December 2009 when service provider A's financial guarantee was withdrawn by their sponsors.
- 8.4 The DORT settled the High Court application with service provider C out of court on the advice of their legal representatives.
- 8.5 The ECPL in conjunction with the joint portfolio committees of finance and transport therefore required an investigation into the awarding of the fleet management tender to service provider A.
- 8.6 After the cancellation of the tender, the DORT again extended the agreement with the fleet service provider from 1 February 2010 to 31 January 2012.
- 8.7 The monetary value of the High Court settlement and the total cost incurred as a result of the extension of the contract with the fleet service provider had not been made available to the AGSA at the time this report.
- 8.8 The detailed discussion in respect of the process followed by the DORT and the findings has been structured into four main sections in line with the scope of the investigation. These sections are listed below for ease of reference:
- **Section A:** Compliance with the relevant procurement prescripts and procedures
  - **Section B:** Whether the appointed service providers met the specifications and the required financial guarantees
  - **Section C:** Vetting of the preferred company ownership
  - **Section D:** Whether the cost-benefit analysis and affordability of the project were taken into consideration

## **8.9 SECTION A: COMPLIANCE WITH THE RELEVANT PROCUREMENT PRESCRIPTS AND PROCEDURES**

### **8.9.1 Introduction**

8.9.1.1 During the investigation, the AGSA considered the relevant procurement prescripts and procedures as applicable to each stage of the process as follows:

- (a) **Stage 1:** Project inception
- (b) **Stage 2:** Procurement process
- (c) **Stage 2.1:** Advertising of tender
- (d) **Stage 2.2:** Issuing of tender and briefing session
- (e) **Stage 2.3:** Closing of tender
- (f) **Stage 2.4:** Process for the formation and composition of the SBEC and the SBAC and the role of the transaction advisor
- (g) **Stage 2.5:** Evaluation criteria as per the RFP
- (h) **Stage 2.6:** Evaluation and adjudication process of the tender by the SBEC and the SBAC
- (i) **Stage 2.7:** Financial assessment and announcement of the preferred bidder

8.9.1.2 Our findings in respect of each of the matters listed above are discussed in more detail below.

### **8.9.2 Detailed discussion**

#### **8.9.2.1 Stage 1: Project inception**

8.9.2.1.1 The senior manager: DORT, project officer of the fleet management PPP project and chairperson of the SBEC (project officer) and the director: SCM: DORT confirmed that for a project of this magnitude, the DORT is led by the National Treasury Regulations on how to successfully engage in a PPP arrangement.

8.9.2.1.2 Paragraph 16 of the National Treasury Regulations entitled *Public private partnerships* intends to regulate the process of appointing and successfully managing a prospective PPP and states the following in paragraph 16.3:



*“Project inception*

*16.3.1 As soon as the institution identifies a project that may be concluded as a PPP, the accounting officer or accounting authority must in writing-*

- (a) register the PPP with the relevant treasury;*
- (b) inform the relevant treasury of the expertise within that institution to proceed with a PPP;*
- (c) appoint a project officer from within or outside the institution; and*
- (d) appoint a transaction advisor if the relevant treasury so requests.”*

8.9.2.1.3 The DORT was contractually obliged to indicate to the fleet service provider whether they would continue utilising them as a service provider or whether the fleet management project would go out on tender one year prior to the expiry of the contract. As such, the DORT informed the fleet service provider during July 2007 that the project would go out tender.

8.9.2.1.4 The AGSA reviewed correspondence addressed to the superintendent general: DORT dated 18 July 2007 from the National Treasury's PPP unit pledging its support and funding to the DORT to conduct a feasibility study for the appointment of fleet service providers. This correspondence further required the DORT to request registration of the project at the National Treasury's PPP unit and advised that the current contract manager be retained as project officer for the new process.

8.9.2.1.5 The superintendent general: DORT responded on 2 August 2007, accepting the National Treasury's support with regard to the feasibility study and the procurement processes regardless of the procurement method as determined by the outcome of the feasibility study. The contract manager at the time was retained as project officer.

8.9.2.1.6 In a letter dated 16 August 2007 to the National Treasury's PPP unit, the superintendent general: DORT requested that the ECPG fleet project be re-registered as a PPP project for inception by 1 September 2008. This letter confirmed that a diagnostic study had been completed by the National Treasury's technical unit who conducted the study on behalf of the National Treasury's PPP unit upon the request from the provincial treasury.

8.9.2.1.7 The diagnostic study was conducted to assist the ECPG in managing a complex and transversal contract, to provide findings and to make recommendations to the DORT for the remaining period of the fleet service provider contract. A report in this regard was dated 12 February 2007.

8.9.2.1.8 The former head of the National Treasury's PPP unit issued correspondence dated 29 August 2007 to the superintendent general: DORT confirming the registration of the DORT fleet project as project "P031" and assistance with the appointment of a transaction advisor for the project. The correspondence further requested a response to the issues raised in the diagnostic study.

8.9.2.1.9 The project officer confirmed that a consulting company had been appointed as the transaction advisor for this PPP project. The AGSA obtained the signed but undated SLA between the DORT and the transaction advisor. The project officer confirmed that the transaction advisor had been appointed in March 2008. The role of the transaction advisor is discussed in paragraph 8.9.2.6.3 below.

8.9.2.1.10 Paragraph 16.4 of the National Treasury Regulations entitled *Feasibility study – treasury approval: I* states the following:

*"16.4.1 To determine whether the proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority of that institution must undertake a feasibility study that-*

- (a) explains the strategic and operational benefits of the proposed PPP for the institution in terms of its strategic objectives and government policy;*
- (b) describes in specific terms –*
  - (i) in the case of a PPP involving the performance of an institutional function, the nature of the institutional function concerned and the extent to which this institutional function, both legally and by nature, may be performed by a private party; and*
  - (ii) in the case of a PPP involving the use of state property, a description of the state property concerned, the uses, if any, to which such state property has been subject prior to the registration of the proposed PPP and a description of the types of use that a private party may legally subject such state property to;*
- (c) in relation to a PPP pursuant to which an institution will incur any financial commitments, demonstrates the affordability of the PPP for the institution;*
- (d) sets out the proposed allocation of financial, technical and operational risks between the institution and the private party;*
- (e) demonstrates the anticipated value for money to be achieved by the PPP; and*

- (f) *explains the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP.”*

8.9.2.1.11 The AGSA obtained and reviewed the feasibility study report compiled by the transaction advisor dated December 2008. This feasibility study incorporated and addressed the guidelines for establishing PPPs as regulated by the above-mentioned paragraph of the National Treasury Regulations as well as the guidelines in module 4 in the PPP manual dealing with feasibility studies. The feasibility study comprised of the following, amongst others:

| Key requirements of National Treasury Guidelines/PPP manual | Incorporated into feasibility study      |
|---|--|
| Needs analysis  | Yes – section 2 of the feasibility study |
| Options analysis  | Yes – section 4 of the feasibility study |
| Project due diligence                                       | Yes – section 5 of the feasibility study |
| Value assessment  | Yes – section 7 of the feasibility study |
| Economic valuation  | Yes – section 8 of the feasibility study |
| Procurement plan  | Yes – section 8 of the feasibility study |

8.9.2.1.12 Page 88 of the above-mentioned feasibility study concludes that *“the option that achieves optimum risk transfer and also presents value for money for the province is Option 2 (as well as Option 2a), the Full Maintenance Leasing (FML) Public Private Partnership option. **Therefore the recommended option is Option 2 – Public Private Partnership**”.*

8.9.2.1.13 Paragraph 16.4.2 of the National Treasury Regulations further provides as follows:

*“16.4.2 An institution may not proceed with the procurement phase of a PPP without prior written approval of the relevant treasury for the feasibility study.”*

8.9.2.1.14 The above-mentioned feasibility study was completed during December 2008 upon which the provincial executive committee (EXCO), HODs and the provincial treasury supported the option of outsourcing the provincial fleet in terms of value for money and risk optimisation. In a letter dated 5 December 2008, the DORT’s acting superintendent general requested the National Treasury to approve the selected option through the issuing of Treasury Authorisation I (TA I).

8.9.2.1.15 In a letter dated 12 January 2009, the DORT’s acting superintendent general requested the provincial treasury to be in accordance with the outcomes of the feasibility study. The acting HOD of the provincial treasury responded to this request on 20 January 2009 stating that the provincial treasury supports the application for TA I after reviewing the contents and recommendations of the feasibility study.

8.9.2.1.16 Paragraph 16.4.3 of the National Treasury Regulations further provides as follows:

*“16.4.3 The treasury approval referred to in regulation 16.4.2 shall be regarded as Treasury Approval: I.”*

8.9.2.1.17 In light of the above-mentioned submissions, the National Treasury’s PPP unit approved the request on 9 March 2009, which paved the way for the project to proceed to the procurement stage. This written approval was only granted at *“current affordability levels set in feasibility study for 2888 vehicles, excluding ad hoc rentals”*.

8.9.2.1.18 It should also be noted that TA I issued by the National Treasury on 9 March 2009 stated that *“the signing of the contract with the Private Party is dependent upon final Treasury Approval of all budgetary commitments which must not deviate significantly from what is contained in the original feasibility study”*.

8.9.2.1.19 Paragraph 16.5 of the National Treasury Regulations further provides as follows:

*“16.5 Procurement – Treasury approvals IIA and IIB*

*16.5.1 Prior to the issuing of any procurement documentation for a PPP to any prospective bidders, the institution must obtain approval from the relevant treasury for the procurement documentation, including the draft PPP agreement.*

*16.5.2 The treasury approval referred to in regulation 16.5.1 shall be regarded as Treasury Approval: IIA.”*

8.9.2.1.20 The RFP, including the draft PPP agreement, was then formalised and compiled by the transaction advisor and their legal team. This documentation was considered by the ECPG, before being submitted to the National Treasury’s PPP unit on 6 March 2009. This submission included a letter from the DORT that requested National Treasury Authorisation IIA (TA IIA). The National Treasury’s PPP unit officially responded to this letter on 11 March 2009 stating that TA IIA would only be issued following a review of the RFP documentation. This response also confirmed that advertisements for the tender may be placed on 15 March 2009, with all RFP documentation being made available to the public by 20 March 2009.

8.9.2.1.21 The AGSA reviewed correspondence from the National Treasury’s PPP unit to the DORT’s acting superintendent general dated 20 March 2009 confirming the issuing of TA IIA, following the successful review and incorporation of proposed changes to the RFP for the fleet management project.

8.9.2.1.22 Accordingly, the DORT did comply with paragraphs 16.3, 16.4.1, 16.5.1 and 16.5.2 of the National Treasury Regulations during the project inception phase of the tender.

#### 8.9.2.2 Stage 2: The procurement process

##### 8.9.2.2.1 Paragraph 16.5.3 of the National Treasury Regulations provides as follows:

*“16.5.3 The procurement procedure –*

- a) must be in accordance with a system that is fair, equitable, transparent, competitive and cost-effective; and*
- b) must include a preference for the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination in compliance with relevant legislation.”*

##### 8.9.2.2.2 To determine whether the DORT had adhered to paragraph 16.5.3 of the National Treasury Regulations, the AGSA reviewed the process of issuing the tender, inviting bids and closing the tender as well as the evaluation and adjudication of the bids received.

#### 8.9.2.3 Stage 2.1: Advertising the tender

##### 8.9.2.3.1 The tender was formally advertised in accordance with the instructions from National Treasury and the requirements of module 3, part 3 of the PPP manual. The tender appeared in the *City Press* and *Sunday Times* on 15 March 2009 and in the *Daily Dispatch* and *The Herald* on 16 March 2009.

##### 8.9.2.3.2 The bid was also formally advertised in the *Government Tender Bulletin* on 13 March 2009 and closed officially on 16 April 2009. The notice thereof is located on the DORT's website. This ensured that the DORT achieved compliance with section c of Treasury Regulation 16A6.3 which requires that bids be *“advertised in at least the Government Tender Bulletin for a minimum of 21 days before closure”*.

#### 8.9.2.4 Stage 2.2: Issuing the tender and briefing session

##### 8.9.2.4.1 The ECPG issued an RFP on 20 March 2009 to procure the services of a private party to manage its fleet and fleet-related services through a PPP with a compulsory briefing session on 25 March 2009. The attendance register and minutes of the compulsory briefing session held on 25 March 2009 indicated that all nine bidders completed the attendance register and that all questions that arose during the compulsory briefing session were addressed by officials of the DORT. Certificates were issued at the briefing session indicating attendance at the session, which had to be attached to the bids submitted by the bidders.

8.9.2.4.2 The compulsory briefing session was held in accordance with section 10.2 of the RFP and module 3, section 7.5 of the PPP manual.

8.9.2.5 Stage 2.3: Closing the tender

8.9.2.5.1 The final bid submission date was 16 April 2009 at 11:00. Nine submissions were formally received on this date.

8.9.2.5.2 The fleet management tender followed a bid format of a two-envelope system in accordance with the requirements of the RFP. Bidders were strictly required to submit their technical and BEE proposals in envelope one and their financial proposal in envelope two. Bidders were also explicitly requested in section 9.3 of the RFP to not include any pricing information in their technical and BEE proposal, as failure to comply with this provision would result in the automatic disqualification of the bid.

8.9.2.5.3 The AGSA reviewed the tender register dated 16 April 2009. This register was signed by various departmental officials responsible for receiving and closing the tender. The register revealed that only five bidders had adhered to the two-envelope system. The other four bidders were therefore disqualified in accordance with section 9.3 of the RFP on the bid format.

8.9.2.6 Stage 2.4: Process for the formation and composition of the SBEC and the SBAC and the role of the transaction advisor

8.9.2.6.1 The AGSA reviewed section 13.3 of the RFP on evaluation teams, which clearly outlined the evaluation and adjudication process that the DORT would follow in awarding the bid. Our review of the RFP confirmed that *“the evaluation process will be tightly monitored and controlled by the ECPG and its advisors (including Transaction Advisors and National Treasury) to assure integrity and transparency throughout, with all processes and decisions taken being approved and auditable.”*

8.9.2.6.2 The DORT’s superintendent general appointed an SBEC and an SBAC for the purposes of evaluating the tender. This was apparently done due to the high-profile nature of the tender and because of the enormous capital outlay that the project attracted. The committees were made up of senior and experienced delegates from various government institutions, including officials from the provincial treasury and the National Treasury. The SBEC was further supported by a bid evaluation committee (BEC) support team consisting of provincial treasury and National Treasury delegates as well as the transaction advisor.

#### 8.9.2.6.3 The role of the transaction advisor

8.9.2.6.3.1 The transaction advisor for the fleet management PPP project confirmed that he was responsible for providing the ECPG with the necessary advice and guidance throughout the PPP process.

8.9.2.6.3.2 The AGSA extracted the following definition from National Treasury Regulation 16:

*“**Transaction advisor** means a person or persons appointed in writing by an accounting officer or accounting authority of an institution, who has or have appropriate skills and experience to assist and advise the institution in connection with a PPP, including the preparation and conclusion of a PPP agreement.”*

8.9.2.6.3.3 Section 2 of the transaction advisor’s signed terms of reference dealing with the scope of work stated that his scope of work included:

*“If a PPP solution is decided on the basis of the feasibility study, and if the Department requires it, will be required to provide the necessary technical, legal and financial advisory support for the procurement of a private partner. This must be in compliance with all elements of Treasury Regulation 16 to the PFMA.”*

8.9.2.6.3.4 In addition, section 5.1 of the signed terms of reference required the following:

*“The transaction advisor must also give the Department all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process to be conducted in accordance with law and policy, and to the highest standards of efficiency, quality and integrity.”*

8.9.2.6.3.5 This is further enhanced by section 5.1.3 which stated that:

*“The transaction advisor must: set up a bid evaluation system and criteria; design a suitable bid process that will ensure comparable bids; devise effective systems for communicating with bidders; inspire market confidence; and incorporate all BEE requirements for the project. If appropriate, a system that allows for variant bids may be designed.”*

#### 8.9.2.6.4 The SBEC

8.9.2.6.4.1 The project officer confirmed that he was responsible for selecting the members of the SBEC team. He stated that he identified senior individuals that would add value as well as have experience in the fleet management process and verbally requested their willingness to serve on the SBEC. Once this was obtained, he drafted a memorandum to the DORT’s superintendent general indicating the members he had

identified, which was approved by her. However, the investigating team was not provided with this memorandum.

8.9.2.6.4.2 According to the value-for-money report dated 23 May 2009, an SBEC was appointed and was responsible for the following:

- (a) Reviewing the bids for completeness and administrative compliance
- (b) Establishing a point scoring system to rank bids in terms of the evaluation criteria
- (c) Evaluating the bidders' BEE proposals
- (d) Evaluating the bidders' technical proposals and conducting site visits
- (e) Evaluating the bidders' pricing proposals for those bidders that met the BEE and technical requirements
- (f) Conducting a BAFO process if necessary
- (g) Evaluating the revised bids received in terms of the BAFO if applicable
- (h) Formulating a recommendation to the bid adjudication committee (BAC) of the preferred bidder and the reserve
- (i) Drafting a value-for-money report to be submitted to the National Treasury.

8.9.2.6.4.3 The National Treasury's circular on the implementation of SCM dated 28 October 2004 also prescribed certain responsibilities of the BEC. The BEC is responsible for the evaluation of bids received, which includes the verification of:

- (a) the capability/ability of the bidder to execute the contract
- (b) tax clearance certificate issued by SARS.

8.9.2.6.4.4 The SBEC consisted of the following members:

- (a) Project officer
- (b) General manager: SCM, Eastern Cape Provincial Treasury
- (c) Senior state law advisor, Eastern Cape Office of the Premier
- (d) Senior manager: Emergency Medical Services, Eastern Cape Department of Health



- (e) Senior manager: SCM, DORT
- (f) An official from the SCM secretariat, Eastern Cape Office of the Premier, who assisted the SBEC as secretary

#### 8.9.2.6.5 The SBAC

8.9.2.6.5.1 The project officer confirmed that a similar process to the appointment of the SBEC members was followed in appointing the SBAC members.

8.9.2.6.5.2 In terms of the value-for-money report dated 23 May 2009, an SBAC was appointed and was responsible for the following:

- (a) Accepting the bids as complete and compliant
- (b) Questioning the evaluation of the bids as performed by the SBEC
- (c) Receiving and evaluating the value-for-money report and recommendations of the SBEC of the preferred and reserve bidder

8.9.2.6.5.3 The National Treasury's circular on the code of conduct for BACs dated 24 March 2006 also prescribed the responsibilities of the BAC. Paragraph 2.5 of this circular stated that the BAC must ensure the following:

- (a) All necessary bid documents have been submitted
- (b) Disqualifications are justified and that valid and accountable reasons or motivations were furnished for passing over bids
- (c) Scoring has been fair, consistent and correctly calculated and applied
- (d) Bidders' declarations of interest have been taken cognisance of

8.9.2.6.5.4 The SBAC consisted of the following members:

- (a) HOD: Eastern Cape Department of Agriculture, chairperson of the SBAC
- (b) Deputy director-general: Eastern Cape Office of the Premier
- (c) Previous HOD: Eastern Cape Department of Social Development
- (d) An official from Government Motor Transport, national Department of Transport

- (e) Deputy director-general: Eastern Cape Department of Health
- (f) An official from the National Treasury's PPP unit

#### 8.9.2.6.6 The support and advisory team to the SBEC and the SBAC

8.9.2.6.6.1 The SBEC and the SBAC were further supported and advised by the following team:

- (a) An official from the National Treasury's PPP unit
- (b) The transaction advisor
- (c) An official from the provincial treasury's PPP unit
- (d) An official from the SCM secretariat, Eastern Cape Office of the Premier
- (e) Another official

#### 8.9.2.7 Stage 2.5: Evaluation criteria as per the RFP

8.9.2.7.1 This stage provides information on the key specifications and requirements of the RFP that bidders needed to comply with. The actual compliance with these key specifications and requirements is discussed in detail within stage 7 below.

8.9.2.7.2 Section 13.5 of the RFP dealing with evaluation criteria stated that bids for the fleet management tender were to be evaluated based on the following criteria:

| Evaluation criteria | Weighting  |
|---------------------|------------|
| Technical           | 50         |
| Pricing             | 40         |
| <b>Subtotal</b>     | <b>90</b>  |
| BEE                 | 10         |
| <b>TOTAL</b>        | <b>100</b> |

8.9.2.7.3 Based on the above evaluation criteria, a maximum of 10 points would be available as BEE points, to be allocated and awarded to bidders in terms of special criteria as set out in detail in section 5.6 of the RFP under the heading *Black economic empowerment*.

8.9.2.7.4 Section 9.4 of the RFP on the technical proposal specified the required information to be submitted as part of the technical proposal. This consisted of:

- *“An Executive Summary;*
- *The unique Value-Proposition presented by this Bid;*

- *Other relevant information*
- *SPV profile, including a designation of the lead member;*
- *SPV Shareholder Agreement or Memorandum of Understanding;*
- *Letter of commitment by Bidder with respect to the project*
- *Annual Report and audited financial statement for the past 3 years for each SPV member;*
- *Equity, ownership and directorship of the SPV;*
- *Fleet management experience;*
- *Previous relationship(s) with government of any SPV member;*
- *Skill and experience of fleet provider in projects of a similar nature;*
- *Full details on other existing and previous contracts similar in nature of any SPV member;*
- *Project management capability of the SPV lead member;*
- *Contact / Reference details for existing contracts of any SPV member;*
- *Capacity to deliver and current workload of fleet provider;*
- *Approach to the Project and integration of deliverables;*
- *Demonstration of understanding key project demands and complexities;*
- *Commitment and capacity to meet project timetable;*
- *Risk management capability and quality assurance systems;*
- *Acceptance of all risks identified for transfer in the draft Agreement;*
- *Risk mitigation strategies dealing with each risk;*
- *Comments on the output specifications addressing each requirement;*
- *Comments on the SLA addressing each requirement (mark-up – track changes)*
- *Comments on the Agreement addressing each requirement (mark-up – track changes);*
- *Comments on the premises lease agreement addressing each requirement (mark-up – track changes);”*

8.9.2.7.5 Section 9.5 of the RFP dealing with the BEE proposal detailed the required information to be presented as part of the BEE proposal. This consisted of:

- *“Ability to fulfil the Project’s BEE and socio-economic objectives;*
- *Duly completed BEE Project Scorecard in format provided;*
- *Historical and current approach to social responsibility by each member of the SPV;*
- *The SPV’s corporate social responsibility strategy for this project; and*
- *The BEE status of each SPV member in terms of the Department of Trade and Industry’s BEE requirements.”*

8.9.2.7.6 Section 9.6 of the RFP regarding the financial proposal specified the required information to be submitted as part of the financial proposal. This consisted of:

- *“How the financial proposal addresses the issues of affordability and value-for-money;*
- *The SPV’s ability to raise debt and equity and to provide security;*
- *The completed Rate Card – Annexure 1A and Annexure 1B – including all financial assumptions; and*
- *A premises rental offer for each of the government garage premises to be leased – Schedule 1 to the Premises Lease Agreement.”*

8.9.2.7.7 Section 10 of the RFP on compliance issues and information required listed information that was considered critical for any bid being submitted. It included amongst others:

**“10.1 Bid Bond**

*Bidders must lodge a bid bond of R600 000,00 (six hundred thousand ZA Rand) in respect of their participation in the RFP Process when their Bids are submitted. This Bid Bond must be in the form of a bank guarantee which must be valid for a period of 180 days from the closing date. The bid bond is intended to regulate the activities of Bidders to ensure that integrity and good faith are maintained throughout the RFP process and that the time and resources of ECPG are not wasted on spurious bids. The bid bond shall be unconditional.*

**10.2 Compulsory RFP briefing and optional site visit**

*A compulsory briefing session will be held. Bidders who fail to attend or fail to obtain an attendance certificate shall be disqualified from the RFP process and Bids submitted shall not be considered for evaluation by the ECPG. Each Bidder must lodge the attendance certificate with the ECPG when its Bid is submitted.*

**10.3 Tax clearance**

*Each Bidder must provide a valid Tax Clearance Certificate obtained from the offices of the South African Revenue Services for each SPV members. **Failure to provide such by any of SPV member shall result in automatic disqualification of the Bidder.***

**10.4 Department’s Forms**

*Bidders must ensure that all the forms attached to this RFP are completed and submitted with their Bid.”*

8.9.2.7.8 In addition, section 13.2 of the RFP on the evaluation and scoring methodology indicated the following levels to be utilised in the evaluation of proposals:

| Level  | Description   |
|--|---|
| <i>“Completeness</i>                             | <i>The Bid is checked for completeness and whether all required documentation, certificates (sic); verify completeness warranties and other Bid requirements and formalities have been complied with. Incomplete Bids will be disqualified.</i>   |
| <i>Compliance</i>                                | <i>The Bids are checked to verify that the minimum RFP requirements have been met. <b>Non-compliant Bids will be disqualified.</b></i>  |
| <i>Evaluation of technical and BEE proposals</i> | <i>Detailed analysis of Bids to determine whether the Bidder is capable of delivering the Project in terms of its business credentials, financial standing, empowerment and technical capacity and /experience.</i><br><br><i><b>A minimum score of 65/100 for technical and 50/100 for BEE shall be required to be achieved by Bidders in order to be considered for financial evaluation.</b></i> |
| <i>Evaluation of Financial Proposal</i>          | <i>Only Bids that have passed the technical and BEE threshold shall have their financial proposal evaluated.</i>  |
| <i>Scoring</i>                                   | <b>Scoring of Bids using the evaluation criteria.</b>   |
| <i>Recommendation</i>                            | <i>Report formulation and recommendation of Preferred and Reserve Bidders</i>   |
| <i>Best and Final offer</i>                      | <i>The ECPG may undertake a Best and Final Offer process in the instance where no Bid meets the requirements of the RFP or the Bids are too close in terms of points awarded.</i>   |
| <i>Approval</i>                                  | <i>Approval and notification of the final Bidder.”</i>  |

8.9.2.7.9 Section 14.3 of the RFP under the heading *Bidder disqualification* stated that “*Bids which do not comply with the obligatory Bid formalities and Bidder conduct which fails to adhere to the requirements and terms and conditions prescribed by this RFP may be disqualified by the ECPG from further participation in the RFP Process.*”

8.9.2.8 Stage 2.6: The evaluation and adjudication process of the tender by the SBEC and the SBAC

8.9.2.8.1 The evaluation and the adjudication of the fleet management tender were to be done in accordance with section 13.3 of the RFP dealing with evaluation teams. Bids were formally received and opened. The SCM secretariat verified the completeness of the bids against the prescribed information as set out in the RFP.

8.9.2.8.2 Module 5 of the PPP manual, stage 3, part 1 under the heading *Evaluate the bids* required various levels of evaluation during a PPP procurement process.

8.9.2.8.3 The process of evaluating the tenders in this particular instance is set out below.

8.9.2.8.4 The responsibility of the SCM secretariat with regard to this tender was to verify the completeness of the bids against the prescribed information as set out in the RFP. This included confirming whether the bidders had attached the following information as part of their bid submissions:

- (a) Certificate of attendance at the compulsory briefing session
- (b) Two CD-ROMs to be attached to the original bid document
- (c) One original bid document to be accompanied by six copies of the bid documents
- (d) Tax clearance certificate of bidder and any other member of a SPV
- (e) Completed ECBD forms
- (f) Memorandum of understanding between the companies of a consortium (if applicable)

8.9.2.8.5 A formal memorandum dated 17 April 2009 was then compiled and submitted to the SBEC by the SCM secretariat containing the results of the verification exercise. This memorandum was signed by the SCM secretariat and the project officer on 23 April 2009.

8.9.2.8.6 The SBEC initially met on 17 April 2009 to discuss the formal unsigned memorandum as drafted by the SCM secretariat. The SBEC convened again from 23 to 25 April 2009 to discuss and agree on the criteria for awarding points for the BEE and technical proposals. The actual point scoring of the BEE and technical proposals for each bidder who qualified as per the compliance requirements was then done by each of the SBEC members.

- 8.9.2.8.7 The SBEC evaluated and scored the five bidders who were not disqualified in terms of their submitted proposals. This occurred during April 2009 and included a site visit to the shortlisted bidders on 29 and 30 April 2009.
- 8.9.2.8.8 The project officer confirmed that the SBEC had verified the results of the SCM secretariat with respect to the administrative compliance of bids and confirmed the secretariat's findings. According to the project officer, this was largely a verification process for completeness of the bids rather than a detailed verification of compliance with all bid requirements.
- 8.9.2.8.9 The verification of completeness resulted in the disqualification of four bidders. These disqualifications were in accordance with section 14.3 of the RFP. This aspect was discussed in paragraph 8.9.2.5.3 above. The four bidders were disqualified for various reasons, such as the submission of only a technical proposal or the submission of a letter with no detailed proposal document.
- 8.9.2.8.10 These four bidders were consequently disqualified from the bidding process due to non-adherence to the RFP requirements of a two-envelope system and because six copies and two CD-ROMS of their bid submission were not attached as part of their proposal.
- 8.9.2.8.11 The memorandum from the SCM secretariat reflected that service provider B had failed to attach the SCM ECDB forms of the DORT. The review confirmed that the completed forms were indeed provided, but that it was included as part of annexure 6 within service provider B's financial proposal and not as part of their technical proposal. As such, it would not have been available to the SBEC for inspection during the initial phase of the assessment. This appears to be the reason why these forms were marked as not submitted by the secretariat, as financial proposals were only opened for evaluation after the SBEC had evaluated the BEE and technical proposals and established that the bidder had met the required minimum scores. Further evaluation of the bid by the SBEC is discussed in more detail below.
- 8.9.2.8.12 The project officer indicated that a methodology for the awarding of points was agreed upon in an initial SBEC meeting. The SBEC utilised scoring sheets as drafted and compiled by the transaction advisor. The project officer and the transaction advisor confirmed that SBEC members scored the bids individually on the scoring sheets provided. The SBEC members had the opportunity to clarify their understanding should they wish to do so, but they were also encouraged to apply their minds to the various aspects. The project officer confirmed verbally that several issues were brought to the attention of the entire SBEC in order to obtain clarity on how other members would interpret a complicated area. This was also confirmed per the minutes of the SBEC meeting held from 23 to 25 April 2009, which indicated the formulae for evaluating the proposals submitted.

8.9.2.8.13 The SBEC then concluded their scoring of the BEE and technical responses of the remaining five bidders. This was followed by opening the financial proposals of the two bidders (service provider A and service provider B) who qualified for this stage, upon which the prices of the two bidders were evaluated. As both bidders' price proposals were in excess of the predetermined affordability level, a BAFO process was proposed and initiated.

8.9.2.8.14 The SBAC and the SBEC met on 19 May 2009 to discuss the findings and proposed outcome of the fleet management tender as evaluated by the SBEC. Following a presentation by the transaction advisor, the SBAC resolved that the point scoring be referred back to the SBEC for reconsideration with particular emphasis on:

*“(a) Re-examining and checking common understanding that may lead to the difference in scoring.*

*(b) Giving explanation where possible to the differences in opinion.”*

8.9.2.8.15 The AGSA reviewed the first scoring sheets and noted several instances where SBEC members awarded scores inconsistently. These inconsistencies related to various technical aspects.

8.9.2.8.16 The SBEC reconvened on 21 and 22 May 2009 to implement the recommendations made by the SBAC and to revise their scoring, particularly with respect to the areas where major inconsistencies were identified.

8.9.2.8.17 The project officer confirmed that the SBAC had referred the evaluation back to the SBEC due to inconsistencies in points awarded in some areas as well as to ensure that the final point scoring document was of a neater and more organised nature.

8.9.2.8.18 The project officer stated that the revised evaluation only focused on the factual requirements. He emphasised that the SBEC established new criteria and clarity on the factual items and that the transaction advisor assisted the SBEC in setting new criteria for scoring these items in a more consistent way. He again emphasised that although consultations did take place, the eventual scoring was done on an individual basis. The project officer confirmed that the transaction advisor never questioned the SBEC members' point allocations.

8.9.2.8.19 The SBEC then presented their revised findings and scoring to the SBAC at a meeting held on 26 May 2009. During this meeting the SBAC recommended to the HOD that service provider A be accepted as the preferred bidder. The minutes reflected the recommendations as follows:



*“1. Having received the report of the SBEC and the briefing of the transaction advisor, having referred the matter back to the SBEC to verify calculations and processes, and having scrutinized the reports received, the SBAC accepts the SBEC assurance that all due processes were followed in evaluating the tender.”*

8.9.2.8.20 For the purpose of this report, where possible, reference will be made to the initial score a bidder had received for their BEE and technical proposal as well as the subsequent revised score.

8.9.2.8.21 The SBEC decided at the meeting held from 23 to 25 April 2009 *“that the first step will be the calculations for BEE score card, followed by calculation of Technical proposal”*.

8.9.2.8.22 The SBEC further agreed on the following criteria for the awarding of BEE points:

*1 “40% will be equal to 1 mark*

*2 55% will be equal to 2*

*3 70% will be equal to 3*

*4 85% will be equal to 4*

*5 100% will be equal to 5*

*To get an average of the total amount = Add all the rows for points and divide by 5 which is the number of the member”*

8.9.2.8.23 The RFP indicated in section 5.6.1 that *“the ECPG’s BEE strategy has been guided and informed by the Code of Good Practice for BEE issued by the PPP Unit as part of their PPP Practice Notes”*.

8.9.2.8.24 In addition, section 5.6.7 of the RFP included a detailed BEE scorecard which the ECPG required to be completed in substantially the same format to allow for the evaluation of the bidders’ BEE points. The evaluation criteria utilised for allocating BEE points were as follows:

| Evaluation criteria                     | Weighting |
|---|-----------|
| Private party equity                    | 25%       |
| Private party management and employment | 15%       |
| Subcontracting                          | 50%       |
| Local socio-economic impact             | 10%       |
| <b>TOTAL</b>                            | 100%      |

8.9.2.8.25 The AGSA reviewed module 2, part IV of the PPP manual dealing specifically with the PPP BEE balanced scorecard, which requires that *“The PPP BEE elements (A, B, C, D) and their sub-elements shown in column 1 in the table below should be reflected in all PPP Agreements as appropriate to the project.”*

8.9.2.8.26 The review confirmed that the fleet management PPP BEE balanced scorecard as per the RFP did indeed include the four elements as required by the PPP manual. The SBEC scored each bidder's BEE proposal based on the completed fleet management PPP BEE balanced scorecard as per the RFP. However, the information as per the scorecard was not vetted or confirmed by the SBEC at the time of the evaluation.

8.9.2.8.27 The BEE points for each of the shortlisted bidders were evaluated and the following results were obtained:

| Name of bidder         | BEE – initial | Percentage (%) | BEE – revised | Percentage (%) |
|------------------------|---------------|----------------|---------------|----------------|
| Service provider A     | 6,15          | 61,5           | 6,36          | 63,60          |
| Service provider C     | 6,90          | 69,00          | 6,28          | 62,80          |
| Fleet service provider | 5,02          | 50,20          | 5,50          | 55,00          |
| Service provider D     | 5,96          | 59,60          | 5,50          | 55,00          |
| Service provider B     | 5,46          | 54,60          | 5,30          | 53,00          |

8.9.2.8.28 As can be seen in the above table, all five bidders achieved a BEE score equal to or in excess of 50/100, a criterion that was required in terms of the RFP. Therefore, all five bidders progressed to the next phase of the evaluation process.

8.9.2.8.29 Our review of the scoring sheets pertaining to the SBEC's assessment of the BEE points revealed no major inconsistencies in the points awarded to the bidders according to their submitted BEE scorecards. The AGSA did not verify whether the points allocated to each bidder for the BEE aspects were correct. The review merely confirmed whether the points allocated by the SBEC members relating to the various aspects were consistent.

8.9.2.8.30 The changes to the points allocated to the various bidders during the initial and the subsequent scoring of the BEE points related to more specific guidelines being provided to the SBEC members on exactly how to go about scoring the various elements.

8.9.2.8.31 Page 15 of the value-for-money report dated 23 May 2009 reflects that *"Prior to opening of the bids, each element's impact level was assessed by the BEC and rated accordingly and the weightings was also determined. Those elements whose impact level was assessed as high were allocated a maximum of 50 points, the elements assessed as medium were allocated a maximum of 30 points and the elements that were assessed as low were allocated 20 points. However note that none of the elements were assessed as having a low impact."*

8.9.2.8.32 The technical evaluation criteria attached to each component to be utilised for the purposes of evaluating the technical proposal were set out in the value-for-money report dated 23 May 2009 as follows:

| Evaluation criteria   | Points weighting<br>(maximum points) | Impact level |
|---|--------------------------------------|--------------|
| Ability to fund project   | 50                                   | High         |
| Bid bond  | 30                                   | Medium       |
| Capacity and experience   | 50                                   | High         |
| Understanding of key project demands/complexities               | 50                                   | High         |
| <b>Service levels</b>   |                                      |              |
| 1. PPP contract governance                                      | 50                                   | High         |
| 2. Project resources  | 50                                   | High         |
| 3. Management information systems (MIS)                         | 50                                   | High         |
| 4. Call centre  | 50                                   | High         |
| 5. Invoicing and payment for services                           | 30                                   | Medium       |
| 6. Fleet management services                                    |                                      |              |
| 6.1 Operational availability                                    | 50                                   | High         |
| 6.2 Fleet reduction and advisory services                       | 30                                   | Medium       |
| 6.3 Maintenance   | 30                                   | Medium       |
| 6.4 Fuel and related facilities                                 | 30                                   | Medium       |
| 6.5 Breakdown and roadside assistance                           | 50                                   | High         |
| 6.6 Abuse detection and prevention                              | 30                                   | Medium       |
| 6.7 Training  | 30                                   | Medium       |
| 6.8 Scheduling and administrative requirements                  | 30                                   | Medium       |
| 6.9 Insurance and safety of assets                              | 50                                   | High         |
| 6.10 Other services   | 30                                   | Medium       |
| 7. Project implementation, programme management and termination |                                      |              |
| 7.1 General principles  | 30                                   | Medium       |
| 7.2 Project phase out   | 30                                   | Medium       |

8.9.2.8.33 The AGSA identified that the bid bond was evaluated as part of the technical elements rather than as a compliance issue. It was also noted that the weighting allocated to it was only “medium”. Section 10.1 of the RFP reflected the importance of the bid bond and therefore it should have played a critical role in respect of the bidders’ compliance with the RFP.

8.9.2.8.34 An evaluation of the technical points for each of the shortlisted bidders was conducted after the site visits were conducted. The scoring of points pertaining to the site visits was conducted in a consistent manner over a two-day period where members of the SBEC physically visited the sites of the prospective service providers. The AGSA's review of the minutes of the SBEC meeting held on 29 and 30 April 2009 confirmed that points were allocated to bidders in terms of specific requirements as set out within the RFP.

8.9.2.8.35 The initial and revised technical results are illustrated below:

#### **Initial technical scoring**

| <b>Bidder</b>          | <b>Technical score<br/>(weighting out of<br/>45)</b> | <b>Site visit<br/>score</b> | <b>Total score<br/>(weighting<br/>out of 50)</b> | <b>Percentage<br/>(%)</b> |
|------------------------|--|-----------------------------|--|---------------------------|
| Service provider C     | 27,26  | 3,25                        | 30,51  | 61,02                     |
| Fleet service provider | 24,24  | 3,30                        | 27,54  | 55,08                     |
| Service provider B     | 33,05  | 4,28                        | 37,33  | 74,66                     |
| Service provider A     | 30,21  | 4,01                        | 34,22  | 68,43                     |
| Service provider D     | 0,51   | 0,00                        | 0,51   | 1,01                      |

#### **Revised technical scoring**

| <b>Bidder</b>          | <b>Technical score<br/>(weighting out of<br/>45)</b> | <b>Site visit<br/>score</b> | <b>Total score<br/>(weighting<br/>out of 50)</b> | <b>Percentage<br/>(%)</b> |
|------------------------|--|-----------------------------|--|---------------------------|
| Service provider C     | 26,29  | 3,25                        | 29,54  | 59,07                     |
| Fleet service provider | 24,38  | 3,30                        | 27,68  | 55,37                     |
| Service provider B     | 32,24  | 4,28                        | 36,52  | 73,05                     |
| Service provider A     | 30,42  | 4,01                        | 34,43  | 68,87                     |
| Service provider D     | 0,61   | 0,00                        | 0,61   | 1,22                      |

8.9.2.8.36 As can be seen in the above revised scoring table, only two bidders (service provider A and service provider B) achieved a technical score equal to or in excess of 65/100, a criterion that was required in terms of the RFP. Thus, only service provider A and service provider B progressed to the next phase of the evaluation process, being the financial assessments.

8.9.2.8.37 However, the review of the tender documents confirmed that service provider A's bid bond was only valid for a period of 107 days, which is contrary to the requirement of 180 days as stipulated in the RFP. Service provider A should therefore also have been disqualified.

8.9.2.8.38 The bid bond that service provider B submitted provided for a guarantee of a payment up to a maximum of R600 000 only in the event of service provider B:

- (a) being awarded the fleet management contract
- (b) failing to sign the contract in terms of the tender
- (c) withdrawing their tender before the expiry of the guarantee without the consent and approval of the ECPG.

8.9.2.8.39 Service provider B's bid bond could therefore be viewed as being "conditional" and would not have applied if they had made *"any material misrepresentations in its RFP bid"*. Therefore, service provider B did not comply with section 10.1 of the RFP and, accordingly, should also have been disqualified from the evaluation and adjudication processes.

8.9.2.8.40 Our review also confirmed that the executive summary of service provider B, which formed part of service provider B's technical and BEE bid, contained the estimated cost of the services to be performed. Service provider B should thus have been disqualified from the tender evaluation process due to a breach of the stipulations of section 9.3 of the RFP, which required a separate technical and financial proposal.

8.9.2.8.41 The above aspects relating to non-compliance with the tender requirements are discussed in more detail below.

8.9.2.8.42 The AGSA reviewed the scoring sheets completed by the SBEC members for the second round of scoring and found it to contain a number of inconsistencies with regard to the scoring of certain technical elements.

8.9.2.8.43 The following table reflects significant inconsistencies in respect of the scoring of service provider C. The table layout was compiled by the AGSA for the purpose of this report and that all information included within the tables below were extracted from the actual scoring sheets pertaining specifically to the second round of scoring of the five SBEC members.

| Technical element   | Bidder             | Max. points | SBEC members' scoring |   |   |   |   |
|---|--------------------|-------------|-----------------------|---|---|---|---|
|   |                    |             | A                     | B | C | D | E |
| All private party staff shall be able to converse fully (orally and in writing) in English and one other South African language | Service provider C | 10          | 6                     | 0 | 6 | 9 | 5 |
| Staff appointment and allocation must be in   | Service provider C | 5           | 3                     | 0 | 3 | 4 | 5 |

| Technical element  | Bidder             | Max. points | SBEC members' scoring |    |    |    |    |
|--|--------------------|-------------|-----------------------|----|----|----|----|
|  |                    |             | A                     | B  | C  | D  | E  |
| accordance with the skills, knowledge and suitable educational standard of training to perform their duties in a professional and competent manner                               |                    |             |                       |    |    |    |    |
| All private party staff shall at all times have suitable South African legal driver's licences to perform their duties and be duly authorised to operate specific fleet vehicles | Service provider C | 5           | 3                     | 0  | 3  | 5  | 5  |
| Providing a facility to procure fuel (e.g. tag), pay for toll fees etc., which is available to the authorised driver at all times  | Service provider C | 7           | 3                     | 5  | 0  | 6  | 5  |
| General requirements: training   | Service provider C | 10          | 5                     | 7  | 6  | 20 | 5  |
| Industry best practice project and programme management principles, such as PMBOK and PMI requirements, shall be in place at all times from the effective date                   | Service provider C | 30          | 15                    | 10 | 20 | 27 | 20 |
| At the end of the PPP agreement term or in the event of termination, the private party must make all necessary timeous arrangements for phase-out or handover                    | Service provider C | 30          | 15                    | 10 | 20 | 27 | 20 |

8.9.2.8.44 The table below reflects significant inconsistencies identified in the scoring of service provider B:

| Technical element  | Bidder             | Max. points | SBEC members' scoring |    |    |    |    |
|--|--------------------|-------------|-----------------------|----|----|----|----|
|  |                    |             | A                     | B  | C  | D  | E  |
| All private party staff shall be able to converse fully (orally and in writing) in English and one other South African language  | Service provider B | 10          | 6                     | 0  | 6  | 9  | 10 |
| Staff appointment and allocation must be in accordance with the skills, knowledge and suitable educational standard of training to perform their duties in a professional and competent manner | Service provider B | 5           | 3                     | 0  | 3  | 4  | 5  |
| All private party staff shall at all times have suitable South African legal driver's licences to perform their duties and be duly authorised to operate specific fleet vehicles               | Service provider B | 5           | 3                     | 0  | 3  | 5  | 5  |
| The private party shall prevent any unauthorised access, corruption or loss of fleet data  | Service provider B | 10          | 7                     | 7  | 0  | 7  | 10 |
| Providing a facility to procure fuel (e.g. tag), pay for toll fees etc., which is available to the authorised driver at all times  | Service provider B | 7           | 5                     | 6  | 0  | 6  | 7  |
| Industry best practice project and programme management principles, such as PMBOK and PMI requirements, shall be in place at all times from the effective date                                 | Service provider B | 30          | 15                    | 15 | 12 | 27 | 25 |
| At the end of the PPP agreement term or in the   | Service provider B | 30          | 15                    | 15 | 13 | 27 | 20 |

| Technical element  | Bidder | Max. points | SBEC members' scoring |   |   |   |   |
|--|--------|-------------|-----------------------|---|---|---|---|
|  |        |             | A                     | B | C | D | E |
| event of termination, the private party must make all necessary timeous arrangements for phase-out or handover |        |             |                       |   |   |   |   |

8.9.2.8.45 The table below reflects significant inconsistencies identified in the scoring of service provider A:

| Technical element  | Bidder             | Max. points | SBEC members' scoring |    |    |    |    |
|--|--------------------|-------------|-----------------------|----|----|----|----|
|  |                    |             | A                     | B  | C  | D  | E  |
| All private party staff shall be able to converse fully (orally and in writing) in English and one other South African language  | Service provider A | 10          | 5                     | 0  | 7  | 8  | 10 |
| Staff appointment and allocation must be in accordance with the skills, knowledge and suitable educational standard of training to perform their duties in a professional and competent manner | Service provider A | 5           | 3                     | 0  | 3  | 4  | 5  |
| All private party staff shall at all times have suitable South African legal driver's licences to perform their duties and be duly authorised to operate specific fleet vehicles               | Service provider A | 5           | 3                     | 0  | 3  | 5  | 5  |
| The ECPG requires 95% up-time / useable operational availability during operating hours  | Service provider A | 50          | 25                    | 45 | 35 | 30 | 45 |
| Industry best practice project and programme management principles, such as PMBOK and PMI  | Service provider A | 30          | 15                    | 17 | 21 | 25 | 20 |



| Technical element   | Bidder             | Max. points | SBEC members' scoring |    |    |    |    |
|---|--------------------|-------------|-----------------------|----|----|----|----|
|   |                    |             | A                     | B  | C  | D  | E  |
| requirements, shall be in place at all times from the effective date  |                    |             |                       |    |    |    |    |
| At the end of the PPP agreement term or in the event of termination, the private party must make all necessary timeous arrangements for phase-out or handover | Service provider A | 30          | 15                    | 18 | 21 | 25 | 20 |

8.9.2.8.46 The table below reflects significant inconsistencies identified in the scoring of the fleet service provider:

| Technical element  | Bidder                 | Max. points | SBEC members' scoring |    |    |    |    |
|--|------------------------|-------------|-----------------------|----|----|----|----|
|  |                        |             | A                     | B  | C  | D  | E  |
| All private party staff shall be able to converse fully (orally and in writing) in English and one other South African language  | Fleet service provider | 10          | 4                     | 0  | 6  | 3  | 0  |
| Staff appointment and allocation must be in accordance with the skills, knowledge and suitable educational standard of training to perform their duties in a professional and competent manner | Fleet service provider | 5           | 0                     | 0  | 3  | 1  | 0  |
| All private party staff shall at all times have suitable South African legal driver's licences to perform their duties and be duly authorised to operate specific fleet vehicles               | Fleet service provider | 5           | 0                     | 0  | 3  | 1  | 0  |
| General principles: call centre  | Fleet service provider | 50          | 25                    | 20 | 30 | 15 | 40 |

| Technical element  | Bidder                 | Max. points | SBEC members' scoring |    |    |    |    |
|--|------------------------|-------------|-----------------------|----|----|----|----|
|  |                        |             | A                     | B  | C  | D  | E  |
| Driver verification  | Fleet service provider | 6           | 3                     | 0  | 3  | 3  | 6  |
| The private party is responsible for ensuring all fleet vehicles are fully and comprehensively insured at all times  | Fleet service provider | 20          | 10                    | 10 | 13 | 15 | 0  |
| Industry best practice project and programme management principles, such as PMBOK and PMI requirements, shall be in place at all times from the effective date | Fleet service provider | 30          | 20                    | 10 | 20 | 15 | 20 |
| At the end of the PPP agreement term or in the event of termination, the private party must make all necessary timeous arrangements for phase-out or handover  | Fleet service provider | 30          | 15                    | 10 | 20 | 15 | 20 |

8.9.2.8.47 The AGSA emphasises that the inconsistencies reflected in the scoring as set out in the tables above were not always the result of scoring by an individual but in some instances appear to have been the result of incorrect scoring sheets or the incorrect utilisation of scoring sheets.

8.9.2.8.48 The AGSA did not compile a table of points scored by service provider D as their technical response was severely lacking and non-compliant with the necessary technical requirements. Although they adhered to the administrative completeness, they basically failed to achieve any meaningful scores relating to technical compliance.

8.9.2.8.49 It appears that the scoring template did not make provision to indicate an error message when the incorrect points were allocated to a particular technical element, for example, a bidder scoring 20 points where the maximum score for an item is only 10 points.

8.9.2.8.50 The SBAC accepted the subsequent revised scoring as reflected in the minutes of the meeting held on 26 May 2009. Given the inconsistencies in the revised scoring,

this is contrary to paragraph 2.5 of the National Treasury's circular on the code of conduct for BACs dated 24 March 2006, which stated the following, among others:

*"2.5 The Bid Adjudication committee must ensure that scoring has been fair, consistent and correctly calculated and applied;"*

8.9.2.9 Stage 2.7: The financial assessment and preferred bidder stage

8.9.2.9.1 The AGSA reviewed the minutes of the SBEC meeting held on 29 and 30 April 2009, which confirmed that the financial proposals submitted by both service provider A and service provider B were well in excess of the ECPG's affordability levels. The affordability levels are discussed in detail below.

8.9.2.9.2 As mentioned above, the pricing portion of the tender equated to 40 points of the overall 100. The SBEC utilised the net present value (NPV) of the cash flows over the five-year period of the contract as the foundation for evaluating and scoring the qualified bidders' point scoring. A decision was taken by the SBEC that the points be allocated and scored in relation to the other bidders' pricing and not in relation to the affordability levels.

8.9.2.9.3 The value-for-money report dated 23 May 2009 confirmed this statement by the transaction advisor as it reflects that *"The lowest bidder's NPV would score maximum points (i.e.40 points), and other bidders will be scored with reference to that lowest bidder."* This was done in accordance with the requirements of section 4 of the PPPFA.

8.9.2.9.4 As mentioned above, the feasibility study recommended that the FML PPP option be selected for the fleet management project. As part of this feasibility study, a cost-benefit analysis was conducted to establish the affordability and budgetary levels for the project.

8.9.2.9.5 The AGSA reviewed the feasibility study as well as the RFP and noted that *"The total ECPG cash budget for the Fleet Solutions, including fuel costs, is R 505,415,021 for the first year of the PPP Agreement. The budget will be escalated by CPI Inflation Rate annually."*

8.9.2.9.6 Bidders were required to complete a rate card attached to the RFP which would constitute their financial proposal. The RFP specifically stated:

***"Annexure 1A – Quotes are required from Bidders for each category of vehicles based on each vehicle travelling 2000 kms per month and EMS specialised vehicles travelling 4000 per month."***

**Annexure 1B** - Quotes are required from Bidders for each category of vehicles based on each vehicle travelling 4000 kms per month and EMS specialised vehicles travelling 7000 per month.”

8.9.2.9.7 The AGSA reviewed the financial bid submissions of service provider A and service provider B, and established that they quoted the following amounts:

**Rate card 1A – 2 000 km**

|            | Feasibility study | Service provider B | Service provider A |
|------------|-------------------|--------------------|--------------------|
| Cash flows | 3 222 483 983     | 4 150 787 431      | 3 874 459 917      |
| NPV        | 2 437 720 251     | 3 137 983 106      | 2 929 080 317      |

**Rate card 1B – 4 000 km**

|            | Feasibility study | Service provider B | Service provider A |
|------------|-------------------|--------------------|--------------------|
| Cash flows | 3 222 483 983     | 4 101 376 475      | 3 834 717 641      |
| NPV        | 2 437 720 251     | 3 100 628 568      | 2 899 035 273      |

8.9.2.9.8 Although the proposals submitted by both parties for the 4 000 kilometre rate card were the cheaper option, the bids were not within the affordability levels as determined during the feasibility study.

8.9.2.9.9 Section 13.6 of the RFP stated that “*The ECPG reserves the right to undertake a Best and Final Offer Process where:*

- *“None of the Bids meet the RFP requirements;*
- *None of the Bids are Affordable; and*
- *There is no clear Preferred Bidder.”*

8.9.2.9.10 As neither of the two financial proposals under assessment were affordable, the project officer submitted a BAFO request to the two bidders via email on 1 May 2009 with revised financial proposals to be submitted by 7 May 2009. The SBEC reconvened on 8 May 2009 to discuss and consider the BAFO submissions of both bidders.

8.9.2.9.11 The outcome of the financial proposals contained in the BAFO submissions by the said two bidders appears in the tables below.

**BAFO rate card 1A – 2 000 km**

|            | Feasibility study | Service provider B | Service provider A |
|------------|-------------------|--------------------|--------------------|
| Cash flows | 3 222 483 983     | 4 082 535 809      | 3 800 493 257      |
| NPV        | 2 437 720 251     | 3 086 385 080      | 2 873 161 739      |

**BAFO rate card 1B – 4 000 km**

|            | <b>Feasibility study</b> | <b>Service provider B</b> | <b>Service provider A</b> |
|------------|--------------------------|---------------------------|---------------------------|
| Cash flows | 3 222 483 983            | 4 023 313 670             | 3 804 509 173             |
| NPV        | 2 437 720 251            | 3 041 613 317             | 2 876 197 760             |

8.9.2.9.12 The SBEC was of the opinion that although both bidders had decreased their pricing, both were still unaffordable. However, the SBEC decided to recommend service provider A as the preferred bidder because although both service providers scored similarly in the BEE and technical proposals and achieved the envisaged risk transfer that the ECPG required, service provider A's tender presented value for money as it was more affordable than that of service provider B. The SBEC also concluded that the feasibility study was compiled in June 2008 and that almost a year had elapsed and that goods and services had become more expensive due to economic conditions.

8.9.2.9.13 The rate card that was selected was rate card 1B: 4 000 km with an NPV of R2 876 197 760 over the five-year period. The final evaluation scoring for service provider A and service provider B for BEE compliance, technical evaluation and pricing is reflected in the table below:

| <b>Name of bidder</b> | <b>BEE score</b> | <b>Technical score<br/>(weighting out of 50)</b> | <b>Pricing (R)<br/>(rate card 1B – 4 000 km)</b> |
|-----------------------|------------------|--|--|
| Service provider A    | 6,36             | 34,43  | 2 876 197 760                                    |
| Service provider B    | 5,30             | 36,52  | 3 041 613 317                                    |

8.9.2.9.14 The process discussed above therefore implies that the DORT had adhered to the prescripts of paragraph 16.5.3 of the National Treasury Regulations.

8.9.2.9.15 Paragraph 16.5 of the National Treasury Regulations further provides as follows:

*“16.5.4 After the evaluation of the bids, but prior to appointing the preferred bidder, the institution must submit a report for approval by the relevant treasury, demonstrating how the criteria of affordability, value for money and substantial technical, operational and financial risk transfer were applied in the evaluation of the bids, demonstrating how these criteria were satisfied in the preferred bid and including any other information as required by the relevant treasury.*

*16.5.5 The treasury approval referred to in regulation 16.5.4 shall be regarded as Treasury Approval: IIB.”*

- 8.9.2.9.16 As mentioned above, the financial proposals still did not meet the affordability levels after the BAFO request, as the preferred bidder still exceeded the affordability limit by approximately R438 million. The DORT's superintendent general then submitted an application to the National Treasury on 8 July 2009 requesting them to issue a conditional Treasury Authorisation IIB (TA IIB) in order to allow the DORT to attempt to negotiate a more cost-effective solution with the preferred bidder before submitting the value-for-money report. This application was approved by the National Treasury's PPP unit on 9 July 2009 on condition that provincial treasury representatives were involved in discussions with the preferred bidder. A letter from the acting superintendent general of the provincial treasury dated 24 July 2009 confirmed their involvement in the process of exploring possible avenues of cost reduction with the preferred bidder.
- 8.9.2.9.17 A letter dated 11 July 2009 from the project officer informed service provider A that they had been identified as the preferred bidder for the fleet management project. The formal appointment was still pending the successful finalisation of all negotiations.
- 8.9.2.9.18 Service provider A accepted an invite on 14 July 2009 with respect to a negotiating meeting held on 15 July 2009. At this meeting, the DORT requested service provider A to lower their price to bring it in line with the affordability levels of the ECPG. It is unclear whether a lower price was indeed agreed upon.
- 8.9.2.9.19 The DORT then submitted a request for a formal TA IIB to be issued on 28 July 2009 in conjunction with the final value-for-money report dated 23 May 2009 recommending the preferred bidder. An undated letter received from the National Treasury's PPP unit signed by the head of the National Treasury's PPP unit confirmed the granting of TA IIB to the DORT.
- 8.9.2.9.20 Paragraph 16.6 of the National Treasury Regulations provides as follows:

*"16.6 Contracting PPP agreements - Treasury Approval: III*

*16.6.1 After the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution concludes a PPP agreement, that accounting officer or accounting authority must obtain approval from the relevant treasury –*

- (a) that the PPP agreement meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer as approved in terms of regulation 16.4.2 or as revised in terms of regulation 16.4.4;*

- (b) *for a management plan that explains the capacity of the institution, and its proposed mechanisms and procedures, to effectively implement, manage, enforce, monitor and report on the PPP; and*
- (c) *that a satisfactory due diligence including a legal due diligence has been completed in respect of the accounting officer or accounting authority and the proposed private party in relation to matters of their respective competence and capacity to enter into the PPP agreement.*

*16.6.2 The treasury approval referred to in regulation 16.6.1 shall be referred to as Treasury Approval: III."*

8.9.2.9.21 The DORT submitted a request to the National Treasury's PPP unit to issue a Treasury Authorisation III (TA III) when final negotiations with the preferred bidder, service provider A, were concluded. The National Treasury's PPP unit approved the request and issued TA III to the DORT on 23 September 2009 *"for the expenditure of up to R558 million per annum including VAT"*.

8.9.2.9.22 The SLA was signed on the same day by the DORT's superintendent general, acting on behalf of the ECPG, and the managing director of service provider A.

### **8.9.3 Conclusion**

8.9.3.1 Based on the above discussion, the tender process followed in the awarding of the fleet management tender was flawed with regard to inconsistent scoring. The scoring allocated to bidders in respect of the technical evaluation of the bids by members of the SBEC displayed inconsistencies. This is despite the fact that the SBAC requested a second round of scoring due to inconsistencies experienced in the first round of scoring.

8.9.3.2 Considering the roles and responsibilities of the SBEC, the SBAC and the transaction advisor as discussed in stage 2.4 above, the inconsistency in scores can be attributed to the following:

- (a) Individual members of the SBEC gave inappropriate scores in some instances.
- (b) Members of the SBEC incorrectly used the scoring sheets in some instances.
- (c) The transaction advisor did not ensure that scores were properly recorded for all members of the SBEC in respect of all questions.

- (d) The SBEC did not assess the outcome of the scoring and did not address the inconsistencies.
- (e) The SBAC did not note the inconsistencies during the second round of scoring and take action to address these.

## **8.10 SECTION B: WHETHER THE APPOINTED SERVICE PROVIDER MET THE SPECIFICATIONS AND THE REQUIRED FINANCIAL GUARANTEES**

### **8.10.1 Introduction**

- 8.10.1.1 During the course of our investigation, the AGSA reviewed the compliance by the respective bidders with specifications of the tender as outlined in the RFP.

### **8.10.2 Detailed discussion**

- 8.10.2.1 The AGSA has noted in the discussion above that four of the bidders were disqualified as a result of non-compliance with certain aspects of the RFP.
- 8.10.2.2 As the submissions of service provider A and service provider B were accepted and considered for financial evaluation, the AGSA deemed it prudent to also assess whether the submissions of these two tenderers complied with the tender specifications as reflected in the RFP of the fleet management tender issued by the DORT.
- 8.10.2.3 Section 10 of the RFP under *Compliance issues and information required* listed information that was considered critical for any bid being submitted, and included amongst others:

#### ***“10.1 Bid Bond***

*Bidders must lodge a bid bond of R600 000,00 (six hundred thousand ZA Rand) in respect of their participation in the RFP Process when their Bids are submitted. This Bid Bond must be in the form of a bank guarantee which must be valid for a period of 180 days from the closing date. The bid bond is intended to regulate the activities of Bidders to ensure that integrity and good faith are maintained throughout the RFP process and that the time and resources of ECPG are not wasted on spurious bids. The bid bond shall be unconditional”.*



8.10.2.4 In addition, section 13.2 of the RFP under *Evaluation and scoring methodology* indicated the levels to be utilised in the evaluation of the proposals as follows:

| Level                | Description   |
|----------------------|---|
| <i>“Completeness</i> | <i>The Bid is checked for completeness and whether all required documentation, certificates (sic); verify completeness warranties and other Bid requirements and formalities have been complied with. Incomplete Bids will be disqualified.</i> |
| <i>Compliance</i>    | <i>The Bids are checked to verify that the minimum RFP requirements have been met. <b>Non-compliant Bids will be disqualified.</b></i>  |

8.10.2.5 Furthermore, section 14.3 of the RFP under *Bidder disqualification* stated that “*Bids which do not comply with the obligatory Bid formalities and Bidder conduct which fails to adhere to the requirements and terms and conditions prescribed by this RFP may be disqualified by the ECPG from further participation in the RFP Process.*”

8.10.2.6 The AGSA’s review of the tender documents revealed that service provider A’s bid bond was only valid for a period of 107 days, which is contrary to the requirements of the RFP that required a 180-day period of validity. In view of the above requirements, the bid submitted by service provider A should therefore have been disqualified.

8.10.2.7 The bid bond that service provider B submitted provided for the guarantee of a payment up to a maximum of R600 000 only in the event of service provider B:

- (a) being awarded the fleet management contract
- (b) failing to sign the contract in terms of the tender
- (c) withdrawing its tender before the expiry of the guarantee without the consent and approval of the ECPG.

8.10.2.8 Service provider B’s bid bond could therefore be viewed as being “conditional” and would not have applied if they had made “*any material misrepresentations in its RFP Bid*”. Therefore, service provider B did not comply with section 10.1 of the RFP and, accordingly, should have been disqualified from the evaluation and adjudication processes.

8.10.2.9 The AGSA’s review also confirmed that the executive summary of service provider B, which formed part of service provider B’s technical and BEE bid, contained the estimated cost of the services to be performed. Service provider B

should therefore have been disqualified from the tender evaluation process due to a breach of the stipulations of section 9.3 of the RFP.

8.10.2.10 The memorandum submitted by the secretariat to the SBEC also reflected that service provider B had failed to attach the SCM ECDB forms of the DORT. The AGSA's review confirmed that the completed forms were indeed provided, but were included as part of annexure 6 within service provider B's financial proposal and not as part of their technical proposal. As such, it would not have been available to the SBEC for inspection during the initial phase of the assessment. This appears to be the reason why these forms were marked as not submitted by the secretariat, as financial proposals were only opened for evaluation after the SBEC had evaluated the BEE and technical proposals and established that the bidder had met the required minimum scores.

8.10.2.11 The above non-compliance by service provider A and service provider B should have resulted in them being disqualified from further evaluation and adjudication processes, including the financial assessment.

### **8.10.3 Conclusion**

8.10.3.1 Mandatory tender requirements as stipulated in the tender documents were not complied with. These relate to the following:

- (a) Non-compliance of the bid bonds submitted by service provider A and service provider B.
- (b) Service provider B provided financial information in the executive summary of their technical proposal, which was not in accordance with the stipulations of the RFP and despite the tender requirement that the financial proposal should be separate from the technical proposal.

8.10.3.2 In consideration of the roles and responsibilities of the SBEC, the SBAC and the transaction advisor as discussed in stage 2.4, section A above, the non-adherence to the above specific tender specifications can be attributed to the following:

- (a) The SBEC did not properly interpret the specifications of the RFP.
- (b) The SBAC did not properly interpret the specifications of the RFP and did not note the incorrect approach of the SBEC and request the rectification thereof.
- (c) The transaction advisor did not advise the SBEC and the SBAC that non-compliance with the above specifications should have resulted in the disqualification of the said bidders.

- (d) The approach to the evaluation of the bid was faulty as the bid bond was treated as a technical element subject to scoring, rather than as a compliance issue, which would result in disqualification if not complied with.

## **8.11 SECTION C: VETTING OF THE PREFERRED COMPANY OWNERSHIP**

### **8.11.1 Introduction**

- 8.11.1.1 In terms of paragraph 16.6.1 of the National Treasury Regulations, after the procurement procedure had been completed but before the accounting officer concludes the PPP agreement, the accounting officer must ensure that approval has been obtained from the National Treasury *“that a satisfactory due diligence including a legal due diligence has been completed in respect of the accounting officer or accounting authority and the proposed private party in relation to matters of their respective competence and capacity to enter into the PPP agreement”*.

### **8.11.2 Detailed discussion**

- 8.11.2.1 The AGSA requested the project officer to provide us with details of the vetting exercise performed of the preferred company. The project officer confirmed that this aspect of the procurement process was handed over to the risk manager at the DORT.
- 8.11.2.2 The AGSA contacted the risk manager to request this information. The risk manager confirmed that the vetting exercise was conducted by utilising the National Intelligence Agency. The risk manager has since left the employ of the DORT and he was not in a position to supply us with the required information. He did, however, provide us with the contact details of another individual who could possibly assist us. This individual could not be contacted despite numerous attempts.
- 8.11.2.3 Bidders were also required to submit a detailed company profile of themselves as well as any other entity within their consortium. The review by the AGSA of the bid submission of service provider A confirmed that they had indeed submitted such a profile.
- 8.11.2.4 The AGSA conducted an independent background check on service provider A. The results thereof did not indicate any direct conflict of interests.

### **8.11.3 Conclusion**

- 8.11.3.1 The DORT was unable to provide the AGSA with proof that a vetting exercise had been performed for the preferred bidder.

## **8.12 SECTION D: WHETHER THE COST-BENEFIT ANALYSIS AND AFFORDABILITY OF THE PROJECT WERE TAKEN INTO CONSIDERATION**

### **8.12.1 Introduction**

- 8.12.1.1 As indicated above, a feasibility study was undertaken prior to inception of the tender. The feasibility study included a cost-benefit analysis of the project and determined an affordability limit for the project. This affordability limit was published as part of the RFP and was therefore known to all potential bidders. The affordability limit was also considered during the evaluation and adjudication process.

### **8.12.2 Detailed discussion**

- 8.12.2.1 In our discussion of the financial assessment above, the AGSA has referred in detail to the affordability limit for this transaction and how it was considered during various phases of the project. In order to avoid unnecessary repetition, the detailed discussion thereof is not repeated here, but reference should be made to the discussion in paragraph 8.9.2.9 for a proper understanding of how this was considered during the process.
- 8.12.2.2 The feasibility study was compiled and conducted by the transaction advisor during 2008 and finalised in December 2008, which implies that the information contained in the study was obtained prior to this. The bid submission date was 16 April 2009, which represented a 10-month gap from the time that the transaction advisor had obtained his costing and financial information to the actual date of submission by the bidders.
- 8.12.2.3 The feasibility study utilised the June 2008 actual expenditure per department in the Eastern Cape and extrapolated this value for 12 months to project the total estimated expenditure for the 2008-09 financial period.
- 8.12.2.4 The feasibility study covered the topics as required by the PPP manual and especially focused on two key elements, being risk transfer and affordability.
- 8.12.2.5 In respect of risk transfer, a detailed risk matrix was compiled, which included potential risks, a description thereof and how these risks could be mitigated. The matrix concluded by allocating the various risks between a private party (should the fleet contract be outsourced) and the ECPG (should it run the fleet services in its own capacity). Based on the results of the matrix, the feasibility study concluded that the outsourcing to a private party presented an optimum transfer of risks.
- 8.12.2.6 For affordability, the June 2008 figures per department were utilised. This included the FML costs, fuel charges, tyre costs, fleet maintenance costs and roadside assistance costs. These figures were extrapolated for a 12-month period to obtain

affordability levels, which were adjusted by inflationary assumptions. A detailed cost comparison was also done on the cost implications of the ECPG purchasing its own fleet versus the option of an FML agreement with a private party.

- 8.12.2.7 The feasibility study concluded by stating that *“the option that achieves optimum risk transfer and also presents value for money for the province is Option 2 (as well as Option 2a), the Full Maintenance Leasing (FML) Public Private Partnership option. Therefore the recommended option is Option 2 – Public Private Partnership.”*

### 8.12.3 Conclusion

- 8.12.3.1 The issue pertaining to affordability was addressed by the SBEC and the SBAC as this led to the BAFO process as well as a request to the National Treasury to enter into preliminary negotiations with the preferred bidder in an attempt to obtain a more affordable price.

- 8.12.3.2 It also needs to be mentioned that the financial proposals of the other bidders were not considered, as they did not comply with the technical requirements and therefore their financial proposals were not opened or considered by the SBEC or the SBAC.

## 9.1 RESPONSE FROM THE DEPARTMENT OF ROADS AND TRANSPORT

- 9.1.1 The DORT's acting superintendent general provided the following response on behalf of the DORT to the AGSA's management report on 17 June 2010:

“We refer to the above matter and to the draft management report by the Auditor-General.

We have read the draft report, and one of the more glaring omissions is the role of National Treasury in terms of section 16 of the Treasury Regulations, which provides guidance to departments in PPP bids. Whilst reference is made to the process in terms of section 16 of the Regulations, it underscores the exact nature and extent of the critical role that the PPP unit of the National Treasury played during this process.

The report is silent on the fact that the Department sought, and was granted approval through the stages as envisaged by the section 16. This was done after a report was submitted by the Department with every request submitted to National Treasury namely Treasury Approval 1, Treasury Approval 11A and B as well as finally the Treasury Approval 111. All these steps which are the checks and balances of the regulation the department received approvals as mentioned.

It fails further to state that the former head of department would not sign the PPP agreement with the successful bidder until at National Treasury confirmed that all

processes (including the content thereof) had been compiled with.”

## **9.2 RESPONSE FROM THE AGSA**

9.2.1 The AGSA discussed the DORT’s response with them and our response is as follows:

The report indicates the different stages to be followed in the PPP process and also reflects that the DORT did comply with the necessary specifications as indicated in the applicable Treasury Regulations and the PPP manual. This is reflected in paragraphs 8.9.2.1.14, 17, 18, 21 and 22; 8.9.2.9.14, 16 and 20; as well as 8.9.2.9.22 of the report.

It needs to be reiterated that although all stages of the PPP process were approved by the National Treasury, the actual evaluation and adjudication of the bid documents and bidders were performed by DORT officials and members of the ECPG. The execution failures of these members and the transaction advisor are discussed and summarised in paragraphs 1.2.3.2 and 1.2.4.2 of the executive summary of the report as well as paragraphs 8.9.3 and 8.10.3.

The National Treasury and provincial treasury officials representing the PPP unit acted as observers but did not actively take part in the evaluation and adjudication process of the bidders.

The AGSA disagrees with the last paragraph of the DORT’s response as this issue is addressed in paragraphs 8.9.2.9.21 and 8.9.2.9.22 of the report. These paragraphs indicate that National Treasury approval was requested by the DORT and received on 23 September 2009, whereafter the agreement with the preferred bidder was signed by the former HOD on the same day.

## **10.1 UNDERLYING CAUSES**

10.1.1 The findings in this report should be addressed decisively by the executive authority and the HOD.

10.1.2 Based on our findings, the underlying causes contributing to the irregularity of this process can be summarised as follows:

- (a) The SBEC and the SBAC did not properly familiarise themselves with the requirements of the RFP and with the nature of the evaluation process.
- (b) The SBEC and the SBAC did not engage in internal debate to clarify the process and their role in the process and to resolve the inconsistencies

resulting from the process.

- (c) The transaction advisor did not appropriately guide the SBEC and the SBAC to properly fulfil their mandate.

## **10.2 RECOMMENDATIONS**

10.2.1 It follows from the above underlying causes that corrective action should be focused on the actions of:

- (a) the SBEC
- (b) the SBAC
- (c) the transaction advisor.

10.2.2 As part of the corrective actions implemented, the DORT should put in place steps to ensure the following when similar processes are followed in future:

- (a) Members of the committees responsible for the process are properly briefed and/or trained regarding their roles and responsibilities.
- (b) Members of the committees understand the factual requirements of the process.
- (c) Bids are scored consistently.
- (d) Bids are evaluated strictly and in accordance with the criteria as stipulated in the RFP.
- (e) Bids that do not comply with tender specifications are appropriately disqualified.
- (f) Relevant documentation relating to all supplier vetting exercises is maintained and/or retained on file at the DORT.

**11. APPRECIATION**

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

A handwritten signature in black ink that reads "Auditor-General". The word "Auditor" is written in a cursive style, and "General" is written in a more formal, slightly cursive style. A horizontal line is drawn under the word "General".

**Auditor-General**

**Pretoria**

**30 July 2010**