

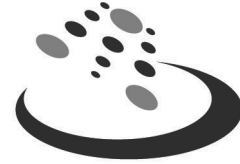


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A U D I T O R - G E N E R A L
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Report of the Auditor-General

**to the North West Provincial Legislature on an investigation into an
alleged illegal contract and irregular expenditure at the Ngaka
Modiri Molema District Municipality**

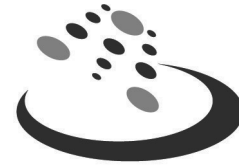


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“The Auditor-General of South Africa has a constitutional mandate and, as the Supreme Audit Institution (SAI) of South Africa, it exists to strengthen our country’s democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence.”



AUDITOR - GENERAL
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REPORT OF THE AUDITOR-GENERAL TO THE NORTH WEST PROVINCIAL LEGISLATURE ON AN INVESTIGATION INTO AN ALLEGED ILLEGAL CONTRACT AND IRREGULAR EXPENDITURE AT THE NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY

1. EXECUTIVE SUMMARY

- 1.1 On 26 January 2009, the Director-General of the National Treasury requested the Auditor-General of South Africa (AGSA) to conduct an investigation into an alleged illegal contract and irregular expenditure by the Ngaka Modiri Molema District Municipality (district municipality).
- 1.2 The executive mayor of the district municipality, in Ribeiro Preto, Sao Paulo State in Brazil on 23 July 2008, entered into a contract on behalf of the district municipality with a football club for the training and education of minor soccer players in Brazil for a period of 14 months. In terms of the contract, a consultant would be responsible for the intermediation of the contract and would be a controlling and coordinating agency for the contract. The minor soccer players went to Brazil during the second week of December 2008. The contract price was US\$756 000 for 18 delegates; however, the exchange rate and rand value were not stipulated. Other costs that were not quantified included visas, air tickets, monthly subsistence allowance per delegate, et cetera. Non-compliance with applicable legislation and deviations from the required supply chain management process were identified, which included the following:
 - 1.2.1 The training of minor soccer players in Brazil does not fall within the functions and powers of a district municipality as prescribed in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (MSA).
 - 1.2.2 Notwithstanding the provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA), which prohibit a mayor from interfering with the administrative processes of the municipality, the executive mayor of the district municipality entered into a contract on behalf of the district municipality for the training of minor soccer players in Brazil and thereby committed the district municipality to a financial liability.
 - 1.2.3 A competitive bidding process was not followed in awarding the contract and appointing the consultant and the reasons for deviating were not recorded and reported to the council of the district municipality (council).
 - 1.2.4 The liability in terms of the contract is payable in a foreign currency, which is prohibited by the MFMA.
 - 1.2.5 Although the training of minor soccer players in Brazil does not fall within the functions and powers of a district municipality as prescribed in the MSA, the district municipality did include the project in their budget for the 2008-09 financial year. The budget



available for the project for the 2008-09 financial year was R1 million only and the contract liability of US\$756 000 calculates to at least R7,56 million if an exchange rate of only R10 per US\$ is used as being the exchange rate at the time of signing the contract. A significant portion of the liability was therefore not budgeted for, which is in contravention of the MFMA.

- 1.3 As the contract was signed in contradiction to various sections of the MFMA, the expenditure in terms of the contract is regarded as irregular.
- 1.4 In terms of the MFMA any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure. The executive mayor, the then acting chief financial officer (CFO) and the chief operations officer (COO) could therefore be held liable for any expenditure incurred in terms of the contract.
- 1.5 By signing/approving the expenditure, the then acting CFO and the COO possibly committed financial misconduct by incurring or permitting irregular expenditure.
- 1.6 In order to address the issues raised above, the AGSA recommends as follows:
 - 1.6.1 The MEC of Developmental Local Government and Housing should take appropriate action, in terms of the applicable legislation and with particular emphasis on paragraph 14(4) of the Code of Conduct for Councillors, to address, amongst others, the following:
 - The possible breach of the Code of Conduct for Councillors by the executive mayor by signing the contract without having the authority to do so; signing a contract in a foreign currency; and thereby committing the district municipality to a liability for which sufficient funds were not budgeted, all of which is in contravention of the MFMA and the MSA.
 - The conduct of the council in endorsing the contract by adopting resolution 64/2008, through which allocations to various votes were reduced to make up funds for this project, although it was not budgeted for originally. This is essential, particularly because this resolution was taken against the advice of the then municipal manager.
 - Action against any other councillor who might have contributed by action or omission in this matter.
 - 1.6.2 The acting municipal manager should address the following:
 - Determine the total cost of the contract with the football club, assess the extent of the commitment and initiate the actions required to deal with this matter.

- In terms of section 171(4) of the MFMA, consider actions to be taken against the officials whose actions constituted financial misconduct.
- Take action in terms of section 32(4) of the MFMA, by informing the executive mayor, the MEC for Developmental Local Government and Housing in the province and the Auditor-General, in writing, of the irregular expenditure incurred by the district municipality; indicate whether any person is responsible or under investigation for such irregular expenditure; and mention the steps that have been taken to recover or rectify such expenditure and prevent a recurrence of such expenditure.
- Follow up the payment of R798 000 (paragraph 11.1.10) made as part of the cheque paid to the consultant on 3 December 2008 to determine the nature thereof. If it is confirmed that this was an overpayment, steps should be taken to recover the amount.

2. MANDATE OF THE AUDITOR-GENERAL OF SOUTH AFRICA

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 (Constitution). Section 5(1)(d) of the Public Audit Act, 2004 (Act No. 25 of 2004) gives the Auditor-General the authority to carry out an appropriate investigation if the Auditor-General considers it to be in the public interest or upon the receipt of a complaint or request. On 26 January 2009, the Director-General of the National Treasury requested the AGSA to conduct an investigation into an alleged illegal contract and irregular expenditure by the district municipality.

3. RESPONSIBILITIES OF MANAGEMENT

- 3.1 Primary responsibility for the prevention and detection of fraud and error rests with both those charged with the governance and the management of an entity. Management, with the oversight of those charged with governance, needs to set the proper tone, create and maintain a culture of honesty and high ethics and establish appropriate controls to prevent and detect fraud and error within the entity.
- 3.2 It is the responsibility of those charged with the governance of an entity to 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 It is the responsibility of the management of an entity to establish a control environment and maintain policies and procedures to assist in achieving the objective of ensuring, as far as possible, the orderly and efficient conduct of the entity's business. This responsibility includes implementing and ensuring the continued operation of accounting



and internal control systems that are designed to prevent and detect fraud and error. Such systems reduce but do not eliminate the risk of misstatements. Accordingly, management assumes responsibility for any remaining risk.

4. PURPOSE AND LIMITATIONS OF THE REPORT

- 4.1 The purpose of the report is to report to the North West Provincial Legislature on the findings emanating from the investigation conducted into an alleged illegal contract and irregular expenditure by the district municipality.
- 4.2 The report is to be used solely for the purpose of, and subject to, the limitations set out in this paragraph. The report serves merely to inform the North West Provincial Legislature and other interested parties (the Director-General of the National Treasury, Ngaka Modiri Molema District Municipality and the provincial Department of Developmental Local Government and Housing) of the outcome of the investigation and may not be used for any other purpose. In the case of disciplinary hearings or civil and criminal litigation, this report may only be used as a background document.
- 4.3 The investigation was performed in terms of the AGSA *Internal Guidelines for the Planning, Execution, Reporting and Follow-up of Investigations*.
- 4.4 Although the work performed incorporates our understanding of 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.
- 4.5 The report is based on the facts established from documentation provided and/or information obtained during the course of the investigation. Should any further information be obtained, it may influence the conclusion.

5. BACKGROUND

- 5.1 The executive mayor of the district municipality, in Ribeiro Preto, Sao Paulo State in Brazil on 23 July 2008, entered into a contract on behalf of the district municipality with a football club for the training and education of minor soccer players in Brazil for a period of 14 months. In terms of the contract, a consultant would be responsible for the intermediation of the contract and would be a controlling and coordinating agency for the contract. The contract price was US\$756 000 for 18 delegates; however, the exchange rate and rand value were not stipulated. Other costs, which have not been quantified, included visas, air tickets, monthly subsistence allowance per delegate, et cetera.
- 5.2 This contract flows from a comprehensive agreement with the farming sector in Brazil that was signed in May 2007. The intended benefits of this comprehensive agreement would be assistance, training, crop farming techniques, cattle farming techniques, exchange programmes and youth development.



- 5.3 The then municipal manager compiled a document during November 2008 in which he advised the council of the district municipality on the legal position as well as the financial implications of entering into the agreement, in terms of section 32 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA).
- 5.4 The then municipal manager also informed the head of the department (HoD) of the Provincial Treasury of this matter in terms of section 32(4) of the MFMA on 17 November 2008. The HoD of the Provincial Treasury, in turn, informed the Member of the Executive Committee (MEC) for Finance on 21 November 2008 and the MEC informed the National Treasury in this regard.
- 5.5 The Director-General of the National Treasury requested the Auditor-General on 26 January 2009 to conduct an investigation into this matter. The investigation formally commenced on 12 February 2009. The National Treasury indicated that they had reviewed the legality of the contract and of the actions of the executive mayor, councillors and officials involved in this matter in terms of the MFMA. The following comments were made by the National Treasury in their request to the AGSA for an investigation:

1. Section 15 of the MFMA states that a municipality may only incur expenditure in terms of an approved budget; and this should be within the limits of amounts appropriated for the different votes in an approved budget.

- The expenditure envisaged by the contract has not been budgeted for by the municipality in its current budget.*

2. Section 110(1) of the MFMA requires that the procurement of all goods and services must be in terms of the municipality's supply chain management policy.

- The process that gave rise to the contract was not in accordance with the municipality's supply chain management policy. Indeed, the process and the contract contravene a range of regulations governing supply chain management.*

3. Section 117 of the MFMA states that no councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

- The contract was negotiated by the executive mayor purporting to act on behalf of the municipality.*

4. Section 163 of the MFMA prohibits a municipality from incurring a liability or risk payable in a foreign currency.

- The contract is denominated in a foreign currency, and the exemption*



contemplated in section 163(2) does not apply since the rand value was not determined at the time of procurement and the risk is substantial.

5. Section 1 of the MFMA – definition of 'irregular expenditure' means (a) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170.

- Given that the contract was concluded in contravention of sections 15, 110, 117 and 163, any expenditure incurred in terms of the contract would be irregular expenditure.*

6. Section 32(1)(c) of the MFMA states that any political office-bearer of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure.

- The executive mayor and a councillor, who allegedly compiled a budget adjustment, appear to have disregarded all normal processes, as well as the advice of the accounting officer, and should therefore be held liable for any expenditure that is incurred in terms of the contract.*

7. Section 11 of the MFMA sets out procedures for the authorisation of withdrawals from the municipal bank accounts.

- If payments have been made in terms of this contract, then the officials that authorised such payments will have contravened a number of provisions in this section, and in terms of section 171 of the MFMA.*

6. PURPOSE, OBJECTIVES AND APPROACH OF THE INVESTIGATION

The purpose and objectives of the investigation were to:

- identify possible non-compliance by the district municipality with applicable legislation when they entered into the alleged illegal contract
- identify deviations from the required supply chain management process leading up to the signing of the contract between the parties involved
- determine whether funds were budgeted before the signing of the contract and whether funding was available to cover the total financial commitment of the contract
- report on the outcome of the investigation.

7. SOURCES OF INFORMATION

The investigating team relied on documentation and other information provided by the

district municipality during the course of the investigation. Interviews were also conducted with the executive mayor and the then municipal manager. 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 to the contrary.

8. PROCEDURES PERFORMED

8.1 The procedures performed and methods used were based on documentation provided and/or information obtained during the investigation.

8.2 The procedures performed were also based on facts that are supported by documents made available to and obtained by the investigating team.

9. REGULATORY FRAMEWORK

The following prescripts were used in performing the investigation:

- The Constitution of the Republic of South Africa, 1996
- The Municipal Finance Management Act, 2003 (Act No. 56 of 2003)
- The Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)
- The Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)
- The Municipal Supply Chain Management Policy of the District Municipality dated 15 June 2006

10. RESPONSES OF THE ACCOUNTING OFFICER AND MEC

Responses to the management report were received from the current MEC of the North West Department of Developmental Local Government and Housing as well as the acting municipal manager of the Ngaka Modiri Molema District Municipality on 12 June 2009 and 1 July 2009 respectively and where deemed appropriate, the responses were incorporated in the report.

11. FINDINGS, RESPONSES OF THE ACCOUNTING OFFICER AND MEC, CONCLUSIONS AND RECOMMENDATIONS

11.1 FINDINGS

11.1.1 In terms of the following legislation, a mayor, which by definition of the MFMA includes an executive mayor, or councillor or any other person of a municipality may not interfere in the administration of a municipality:

- In terms of section 52 of the MFMA, the mayor of a municipality must provide general political guidance over the fiscal and financial affairs of the municipality and in providing such general political guidance, may monitor and, to the extent



provided in this act, oversee the exercising of responsibilities assigned in terms of this act to the accounting officer and the chief financial officer, but may not interfere in the exercise of those responsibilities.

- In terms of paragraph 11(a) of schedule 1 – Code of Conduct for Councillors as mentioned in section 54 of the Local Government: Municipal Systems Act, a councillor may not interfere in the management or administration of any department of the municipal council unless mandated by the council.
- Section 115 of the MFMA states, inter alia, that the accounting officer of a municipality must implement the supply chain management policy of the municipality and that no person may impede the accounting officer in fulfilling this responsibility.
- Section 118 of the MFMA states that no person may interfere with the supply chain management system of a municipality.

Notwithstanding the provisions of the MFMA which prohibit a mayor from interfering with the administrative processes of the municipality, the executive mayor of the district municipality, on behalf of the district municipality, entered into a contract with the football club and consultant, for the hosting of athletes for the practice and training of sporting skills under an international exchange programme on 23 July 2008 and thereby committed the district municipality to a financial liability.

11.1.2 By signing the contract the following sections of the MSA, the MFMA and the supply chain management process and policy of the district municipality were contravened:

11.1.2.1 The contract that the executive mayor concluded in Brazil for an amount of US\$756 000 for the training of minor soccer players in Brazil is not in line with the stipulated functions and powers of the district municipality as prescribed in section 84(1) of the MSA.

11.1.2.2 Section 110(1) of the MFMA requires that the procurement of all goods and services must be in terms of the municipality's supply chain management policy. The supply chain management process is prescribed in the Municipal Supply Chain Management Policy that was approved by the council on 15 June 2006. Paragraphs 12(1)(d)(i) and (ii) of the policy state that goods and services above R200 000 (VAT inclusive) must be procured by way of a competitive bidding process. In addition, paragraph 36 states that the accounting officer may dispense with the official procurement processes as prescribed in cases such as an emergency, if the goods or service is only available from a single supplier and any other exceptional case where it is impractical or impossible to follow the official procurement processes. It also states that the accounting officer must record reasons for such deviations and report these to council.

For both contracts, the one with the football club and the consulting agreement with the



consultant, amounting to US\$756 000 and R700 000 respectively, a competitive bidding process was not followed. The reasons for deviating and not following the official procurement processes regarding these contracts were not documented and reported to council.

11.1.2.3 Although section 163 of the MFMA prohibits a municipality from incurring a liability or risk payable in a foreign currency, the contract that was signed by the executive mayor is in US\$. The exemption contemplated in section 163(2) does not apply in this case since the rand value of the contract was not determined at the time of procurement and the risk associated with the contract is substantial.

11.1.2.4 Section 15 of the MFMA states that a municipality may incur expenditure only in terms of an approved budget and within the limits of the amounts appropriated for the different votes in an approved budget.

The training of minor soccer players in Brazil does not fall within the functions and powers of a district municipality as prescribed in the MSA; however, the district municipality did provide R1 million for the project in their budget for the 2008-09 financial year. Although the district municipality budgeted R1 million for the 2008-09 financial year for a soccer academy, the liability of US\$756 000 in terms of the contract, signed by the executive mayor, to train minor soccer players in Brazil translates to at least R7,56 million if an exchange rate of only R10 per US\$ is used as being the exchange rate at the time of signing the contract. In terms of the contract the amount was payable in two equal instalments of US\$378 000, the first instalment having been due 30 days after the signing of the contract and the second in the 5th month of the contract, which was December 2008.

11.1.3 On 21 July 2008, the consultant electronically sent an agreement for the training of minor soccer players in Brazil to, among others, the then municipal manager. The consultant indicated that the executive mayor would sign the agreement on 23 July 2008 and the then municipal manager was requested to supply his comments as soon as possible. In an interview held by the investigating team with the then municipal manager on 13 March 2009, he indicated that he had no knowledge of this email.

11.1.4 In the interview with the then municipal manager he also indicated that he only became aware of the contract when he learnt that it was the intention of the district municipality to make payments in this regard. The then municipal manager then compiled a document during October 2008 in which he advised the council of the district municipality on the legal position as well as the financial implications of entering into the agreement, in terms of section 32 of the MFMA. Furthermore, in the document he advised the council of the decision taken that the budgets for 2008-09 be reduced to accommodate the shortfall in the budget for the training of minor soccer players in Brazil.

- 11.1.5 The then municipal manager confirmed, on 13 March 2009, that he had presented the document containing his advice to the council to the Speaker of the council for inclusion in the points of discussion of the council meeting scheduled for 20 November 2008. According to him, the discussion of the document was removed from the agenda of the council meeting of 20 November 2008 and it was therefore not discussed.
- 11.1.6 The then municipal manager brought the matter to the attention of the Provincial Treasury in a letter dated 17 November 2008 and mentioned the following:
- The expenditure was not provided for in the budget.
 - There was a concern regarding expenditure and the budget adjustment, as the development of soccer was assigned to a different department.
 - There were risks in getting involved in this type of project.
- 11.1.7 On 20 November 2008 against the above advice of the municipal manager the council discussed a budget adjustment allegedly compiled by a councillor for the Soccer Academy and resolution 64/2008 was adopted. The involvement of the councillor could not be substantiated. According to the resolution the total cost of the project amounted to R10 million and the relevant department had only made a provision of R1 million in 2008-09 financial year's budget. Management decided to compromise on its initial plans and projects and contributed towards the R10 million for the project. The following table summarises amounts sacrificed/compromised by the different votes/departments. For details see annexure B.

Vote/Department	Amount R
Community Services	1 093 892
Fire and Emergency Services and Disaster Management	2 000 000
Local Economic Development	1 731 000
Corporate Services	1 000 000
Technical/Project Management Unit	4 500 000

- 11.1.8 On 26 November 2008, which was four months after he had signed the contract, the executive mayor wrote a letter to the then municipal manager requesting him to review the content of the contract for the training of minor soccer players in Brazil and to advise the office of the mayor with regard to the implementation thereof. The advice should also have included possible amendments.
- 11.1.9 Section 1 of the MFMA defines irregular expenditure as expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the MFMA, and which the National Treasury has not condoned in terms of section 170. Due to the contract having been concluded in contravention of sections 15, 110, 118 and 163

of the MFMA, any expenditure incurred in terms of the contract would be irregular expenditure.

- 11.1.10 In addition, sections 171(2)(c) and (3)(c) of the MFMA stipulate that the CFO, a senior official or other official of a municipality commits an act of financial misconduct if that officer deliberately or negligently makes or permits an irregular expenditure. The following two payments which the investigating team could trace up to the end of February 2009 were signed/approved by the then acting CFO and the COO. This approval was possibly given in contravention of sections 171(2)(c) and (3)(c) of the MFMA:

Payments made to Central Route Trading 325 CC		
Payment date	Cheque number	Cheque amount R
2008/11/21	53808	5 000 000
2008/12/03	53927	3 831 450
Total		8 831 450

Details of these payments are set out in the table below:

Payment date	Cheque number	Details of payment	Amount R	Cheque amount R
2008/11/21	53808	Payment for 8.75 months as per contract	4 959 738	
		Visa fees	40 262	5 000 000
2008/12/03	53927	Payment for 5.25 months as per contract	3 033 450	
		Not specified in invoice *	798 000	3 831 450

* This amount is possibly the consultant fee of R700 000 and VAT although a claim in this regard was not attached to the payment documentation obtained.

11.2 RECOMMENDATIONS BY THE AGSA

- 11.2.1 In order to address the findings raised above, the AGSA recommends as follows:

- 11.2.1.1 The MEC of Developmental Local Government and Housing should take appropriate action, in terms of the applicable legislation and with particular emphasis on paragraph 14(4) of the Code of Conduct for Councillors, to address, amongst others, the following:

- The possible breach of the Code of Conduct for Councillors by the executive mayor by signing the contract without having the authority to do so, signing a contract in a foreign currency and thereby committing the district municipality to a liability for which sufficient funds were not budgeted, all of which was in contravention of the MFMA and the MSA.
- The conduct of the council in endorsing the contract by adopting resolution 64/2008, through which allocations to various votes were reduced to make up



funds for this project, although it was not budgeted for originally. This is essential, particularly because this resolution was taken against the advice of the then municipal manager.

- Action against any other councillor who might have contributed by action or omission in this matter.

11.2.1.2 The acting municipal manager should address the following:

- Determine the total cost of the contract with the football club, assess the extent of the commitment and initiate the action required to deal with this matter.
- In terms of section 171(4) of the MFMA, consider actions to be taken against the officials whose actions constitute financial misconduct.
- Take action in terms of section 32(4) of the MFMA, by informing the executive mayor, the MEC for Developmental Local Government and Housing and the Auditor-General, in writing, of the irregular expenditure incurred by the district municipality; indicating whether any person is responsible or under investigation for such irregular expenditure; and mentioning the steps that have been taken to recover or rectify such expenditure and prevent a recurrence of such expenditure.
- Follow up the payment of R798 000 (paragraph 11.1.10) made as part of the cheque paid to the consultant on 3 December 2008 to determine the nature thereof. If it is confirmed that this was an overpayment, steps should be taken to recover the amount.

11.3 **RESPONSE OF THE ACTING MUNICIPAL MANAGER OF THE NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY**

- (a) In response to the recommendations of the Auditor-General the acting municipal manager conducted a separate investigation. The findings and analysis of this investigation were included in a report to the full council of the Ngaka Modiri Molema District Municipality. In this report the acting municipal manager indicated the following with regard to the contract:

- The remuneration of US\$756 000 in terms of the contract had been duly paid by the district municipality. The total of the cost thus far, for 2007 and 2008, was R16 047 504.55. This figure did not include further costs such as athletes' subsistence allowances, medical costs, administrative costs, visit costs and consequential costs of the cancellation of the agreement.
- The expenditure arising out of the agreement was far in excess of what was available in the applicable vote.
- In the context of both the Constitution and other legislation, the activities of the contract, and the fact that the municipality incurred a liability and an expense in a foreign currency, fell outside the provisions of law in general and outside the

competency of a district municipality in particular.

- The acting municipal manager also agreed that due supply chain processes were not followed in the awarding of the contract and the appointment of the consultants.
- (b) The acting municipal manager also expressed the view that the actions of the executive mayor not only had the propensity to interfere with the Supply Chain Management System of the District Municipality but were also in breach of the Code of Conduct for Councillors in terms of the Municipal Systems Act.
- (c) The acting municipal manager further also concluded that the actions of the then acting CFO, the COO and the CFO were in contravention of the MFMA and consequently they should face misconduct proceedings.
- (d) The acting municipal manager agreed that any expenditure arising from the contract was irregular beyond any cure unless it was condoned. However, the irregularities could not be cured by the council but needed to be condoned by the National Treasury.
- (e) The acting municipal manager concluded by recommending to the council that:
- the accounting officer should be authorised to proceed with the cancellation of the agreement under consideration as the agreement was illegal and could not be continued with
 - all the parties implicated in one way or another in respect of the agreement under consideration should be subjected to a due process of law.

11.4 RESPONSE BY THE MEC OF THE NORTH WEST DEPARTMENT OF LOCAL GOVERNMENT AND HOUSING

The current MEC of the North West Department of Developmental Local Government and Housing commented that the findings of the report had been noted and that the provisions of the Code of Conduct for Councillors would be invoked. The MEC further commented that the implementation of the other recommendations in the report would be supported and monitored as part of his oversight role.

11.5 CONCLUSION

- 11.5.1 Section 32(1)(c) of the MFMA states that any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular



expenditure, is liable for that expenditure. In this regard, the executive mayor contravened sections 15, 118 and 163 by signing an agreement while not having the authority to do so, signing a contract in a foreign currency and committing the district municipality to a liability for which sufficient funds were not budgeted. The executive mayor may therefore be held liable for any expenditure that is incurred in terms of the contract if he acted deliberately or negligently.

11.5.2 In terms of the same section 32(1)(c) above, the then acting CFO and the COO may, by approving the irregular payments, also be held liable for the expenditure.

12. APPRECIATION

The assistance rendered by the Ngaka Modiri Molema District Municipality during the investigation is appreciated.

Auditor General

Pretoria

September 2009



**AUDITOR - GENERAL
SOUTH AFRICA**

Auditing to build public confidence