

Report of the Auditor-General on a

performance audit of entities that
are connected with government
employees and doing business
with departments of the Eastern
Cape Provincial Administration

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REPORT OF THE AUDITOR-GENERAL ON A PERFORMANCE AUDIT OF ENTITIES THAT ARE CONNECTED WITH GOVERNMENT EMPLOYEES AND DOING BUSINESS WITH DEPARTMENTS OF THE EASTERN CAPE PROVINCIAL ADMINISTRATION

1. EXECUTIVE SUMMARY

- 1.1 The Auditor-General issued a report to Parliament in January 2006 on the approval for government employees to perform other remunerative work and the disclosure of financial interests by ministers, deputy ministers and senior managers. This report indicated that designated employees (senior managers) and certain ministers failed to declare their interests and that the majority of government employees did not have approval to perform remunerative work outside their employment in government, as prescribed by the relevant legislation and regulations.
- 1.2 Based on the above, a transversal performance audit was conducted on government employee-related entities doing business with national and provincial departments.
- 1.3 During the audit specific emphasis was placed on:
 - 1.3.1 Performance of remunerative work
 - 1.3.2 Declaration of interest on standard bidding documentation (SBD)
 - 1.3.3 Deviation from the supply chain management process in the awarding of tenders and quotations
 - 1.3.4 Non-compliance with value-added tax (VAT) legislation.
- 1.4 The audit revealed, inter alia, the following:
 - 1.4.1 The extent of business done by employee- or spouse-related companies in the Eastern Cape Provincial Administration for the period 1 April 2005 to 31 March 2007 amounted to approximately R32 million. Although some of the departments are still determining whether employees who are directors or members of companies and CCs that did business with departments of the Eastern Cape Provincial Administration had obtained approval, the majority of employees did not have approval to perform other remunerative work.
 - 1.4.2 Tenderers made misrepresentations by not declaring in the tender documentation that employees are related to the companies and CCs that are tendering.
 - 1.4.3 The following transversal findings were made where departments of the Eastern

Cape Provincial Administration deviated from the supply chain management process without the necessary approval and awarded tenders or quotations to employee-related entities. This could be an indication of preferential treatment of such employee-related entities or of fraudulent activities in the awarding of tenders or quotations.

- (a) Provincial departments did not always obtain three quotations for transactions with a value above R10 000 but not exceeding R200 000 in line with the regulations for the procurement of goods and services.
- (b) Provincial departments awarded bids to employee-related entities that did not score the highest points during the evaluation process, without providing reasonable and justifiable grounds for doing so.

1.5 There are inconsistencies between departments in rectifying the above shortcomings. In some instances departments charged employees with misconduct and discharged the employees or issued final warnings, while others indicated that disciplinary steps could not be taken as employees were not aware that they should have obtained approval to perform other remunerative work. A consistent approach, which includes awareness, training, disciplining and legal action as well as the blacklisting of entities, should be encouraged.

1.6 In response to the findings made by the Auditor-General, the Accountant-General, the Public Service Commission (PSC) and the Department of Public Service and Administration (DPSA) indicated that the current legislation and regulations would be reviewed and consideration would be given to amend them, if necessary, to limit and avoid the shortcomings identified in this report.

2. PURPOSE AND CONTENT OF THE REPORT

2.1 A performance audit was conducted of entities that are connected with government employees and are doing business with departments of the Eastern Cape Provincial Administration, as per section 188(4) of the Constitution of the Republic of South Africa, 1996, read in conjunction with sections 5(3) and 20(3) of the Public Audit Act, 2004 (Act No. 25 of 2004) (PAA). The purpose of this report is to facilitate public accountability by bringing to the attention of the provincial legislature the findings of the performance audit.

2.2 Sufficient audit work was performed to provide substantiating audit evidence for the findings set out herein.

2.3 It is anticipated that this report, which reflects comments received from various departments, would give rise to corrective steps that would contribute constructively to the establishment and implementation of appropriate management

measures and controls, and consequently to improved value for money.

- 2.4 The responsibility for instituting these management measures rests with management. The primary objective of performance auditing is to confirm independently that these measures do exist and are effective, and to provide the executive and legislative bodies with findings and examples of the effects thereof by means of a structured reporting process.

3. AUDIT SCOPE

- 3.1 This performance audit focused on the following aspects:

3.1.1 Employees of departments of the Eastern Cape Provincial Administration who are directors or members of companies and CCs where these companies and CCs did business with the departments at which such employees work (annexure A refers).

3.1.2 Transactions by employees' spouses who are directors or members of companies and CCs that did business with departments where the husband/wife is employed (annexure B refers).

3.1.3 Employees of departments who are directors or members of companies and CCs that did business with other departments of the Eastern Cape Provincial Administration (annexure C refers).

3.2 The transactions included in this report cover the period 1 April 2005 to 31 March 2007.

3.3 The scope was limited to the procurement process up to the approval of payments. The scope also included determining whether employees who had an interest in the company or CC that rendered the service or supplied the goods to the department were involved in the procurement process.

3.4 The objective of the performance audit was to identify companies and CCs that are primarily profit driven and are transacting with departments. For this reason the following types of companies were excluded from the scope of the performance audit:

3.4.1 Section 21 (not for profit) companies as defined in the Companies Act, 1973 (Act No. 61 of 1973).

3.4.2 Public entities listed under the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA).

3.4.3 Companies where the person is appointed as an independent contractor or board

member in an executive capacity at a department. The reason for this is that in those cases the person's details are loaded onto the Personnel and Salary System (Persal) for income tax purposes, and not because he/she is a permanent employee of the department.

3.4.4 Employees who hold shares in listed companies.

3.5 The objectives of the procedures performed were the following:

3.5.1 To identify the extent of employee-related entities that did business with departments of the Eastern Cape Provincial Administration.

3.5.2 To enhance transparency and adherence to relevant legislation.

3.5.3 To identify and report on findings in the current processes and systems.

3.5.4 To possibly reduce the risk of corruption.

4. SCOPE LIMITATION

4.1 Due to cost implications and time constraints, the Auditor-General only focused on entities connected to employees of the departments of the Eastern Cape Provincial Administration that did business with the departments during the 2005-06 and 2006-07 financial years. Furthermore, departments were requested to investigate internally the transactions not included in the audit sample and to report the outcome of the internal investigations to the Auditor-General. The extent of transactions that the departments were requested to follow up on is included in annexures A and B. At the time of compiling this report, various departments were still in the process of investigating these transactions and therefore the outcomes of these investigations have not yet been communicated to the Auditor-General.

4.2 The Auditor-General requested payment documentation and confirmation of employees' approval from the **Department of Education** to perform remunerative work outside public practice. Subsequently, the department engaged the services of Deloitte to perform the investigation on their behalf. The investigation was finalised by Deloitte and a copy of the report was provided to the Auditor-General. The findings as contained in Deloitte's report were included in this report although the Auditor-General had not evaluated the correctness of their findings.

4.3 The audit at the **Department of Health** was seriously hampered as the department had only provided 5% of the supporting documentation for payments selected as part of the sample.

5. MODUS OPERANDI

- 5.1 Performance audits are conducted in accordance with the internal guidelines for the planning, execution, reporting and follow-up of performance audits.
- 5.2 Computer-assisted audit techniques (CAATs) were used extensively to compile exception reports, while procedures were developed for following up on these exceptions. The following databases were used in the compilation of exception reports during the performance audit:
 - 5.2.1 Database of the Companies and Intellectual Property Registration Office (CIPRO) of directors of companies and members of CCs as at 31 January 2006. Actual dates of appointments and resignations were confirmed with CIPRO.
 - 5.2.2 Persal payroll data for March 2006.
 - 5.2.3 Consolidated Basic Accounting System (BAS) payment data for the period 1 April 2005 to 31 March 2007, unless stated otherwise. This file included accounts payable data for government departments on BAS during this period.
- 5.3 The relevant supporting documentation was requested from the departments and audited. After the performance audit of each of the departments had been finalised, a management letter/report was submitted to the department for comments. The comments received were considered and incorporated into this report.

6. SCOPE EXCLUSION

- 6.1 The scope of the performance audit did not include the verification of shares held in companies, as this information is not available on the CIPRO database. Consequently, where an individual resigned as a director of a company, it was not possible to confirm that the employee had also sold his/her shares in the company unless this was discovered by chance. A risk exists therefore that employees might have resigned as directors of companies, but had not sold their shares in the companies. If the shareholding was not declared, or the employee had not requested permission to perform other remunerative work outside his/her employment at the department, it was not possible to identify employees who held shares in companies that conducted business with departments of the Eastern Cape Provincial Administration.
- 6.2 Similarly, the procedures conducted in this performance audit will not reveal collusion between employees employed at a department and the company that did business with the department. This relates to employees who may be receiving another form of gratuity or emolument from the company that did business with the department.

7. OVERVIEW OF EMPLOYEE-RELATED COMPANIES AND CCs DOING BUSINESS WITH DEPARTMENTS OF THE EASTERN CAPE PROVINCIAL ADMINISTRATION

7.1 During the performance audit, a significant number of cases were identified where the employee had resigned as a director or member of the company or CC. This could possibly be attributed to the impact of the report of the Auditor-General on the declarations of interest by ministers, deputy ministers and government employees that covered the 2004-05 financial year [RP 19/2006]. Where the employee had resigned before the transaction occurred, the information was omitted from the final summary. The following table is a summary of the number of employees, number of companies and/or CCs and amounts paid to companies or CCs that transacted with the departments. Refer to annexures A to C for details.

Summary of employee-related companies and CCs doing business with departments of the Eastern Cape Provincial Administration

	Number of employees	Number of entities	Amount paid for the period 01/04/2005 to 31/03/2007	Annexure
Employee-related companies and/or CCs doing business with own departments	91	93	16 729 067	A
Employees' spouse-related companies and/or CCs doing business with own departments (<i>Note</i>)	32	32	5 226 240	B
Employee-related companies and/or CCs doing business with other departments of the Eastern Cape Provincial Administration	139	134	10 042 886	C

Note: This exception report was compiled to audit the procurement process followed in awarding tenders/contracts to spouse-related companies and/or CCs

8. KEY FINDINGS, RECOMMENDATIONS AND COMMENTS FROM DEPARTMENTS

8.1 Performance of remunerative work

Regulations with respect to the performance of remunerative work by government employees differ in certain instances between departments of the Eastern Cape Provincial Administration. Where relevant, these differences were taken into account.

8.1.1 Regulations

- (a) Chapter VII, sections 30 and 31 of the Public Service Act, 1994 (Act No. 103 of 1994) (PSA) stipulates: *Unless it is otherwise provided for in his or her conditions of employment every officer and employee shall place the whole of his or her time at the disposal of the State. No officer or employee shall*

perform or engage himself or herself to perform remunerative work outside his/her employment in the public service, without permission granted by the relevant executing authority or officer authorised by the said authority. If an officer receives any remuneration, allowance or other reward, other than in accordance with this act, an amount equal to such remuneration received should be paid into the revenue account.

- (b) Chapter 7, section 33 of the Employment of Educators Act, 1998 (Act No. 76 of 1998) states: *Unless an Educator's conditions of service provide otherwise, an educator shall place such time as the Minister may determine at the disposal of the Employer; no educator shall without permission of the employer perform or undertake to perform remunerative work outside the educator's official duty or work.*
- (c) Paragraph 4.5.5 of the *Explanatory manual on the code of conduct for the public services* (a practical guide to ethical dilemmas in the workplace) discusses employees who undertake remunerative work outside their official employment without approval and states that *employees are expected to place their undivided attention, time and skills at the disposal of the public service as employer. The nature and demands of the job in the public service are such that the interests of both the public service and community may be prejudiced by a public servant undertaking remunerative work outside official duties. It is therefore mandatory to obtain prior approval to perform remunerative work outside official hours.*

8.1.2 Findings

- (a) A total of 91 employees were identified who were directors or members of companies or CCs that did business with the provincial department where the person was employed (annexure A refers). With respect to obtaining approval to perform remunerative work, it was found that none of these employees, as verified by a respective department, had approval to perform other remunerative work. However, in various instances the departments were still determining whether employees had approval to perform remunerative work outside their official employment at the department. The total amount paid to these companies and CCs during the period under review was R16,7 million.
- (b) In addition, 139 employees were identified who were directors or members of companies or CCs that did business with other provincial departments (annexure C refers). With respect to obtaining approval to perform remunerative work, it was found that one of these employees had approval to perform other remunerative work. However, in various instances the departments were still determining whether employees had approval to

perform other remunerative work. The total amount paid to these companies and CCs during the period under review was R10 million.

- (c) One instance was identified at the **Department of Education** where an employee performed administrative tasks and functions on behalf of his/her entity, i.e. the employee was listed as the contact person in the bid document and also signed the bid documents on behalf of the entity. Total payments of R20 069 were made to this employee in this regard. Therefore, a possibility exists that this employee did not place all of his/her time at the disposal of the state as stipulated in section 30 of the Public Service Act and paragraph 4.5.5 of the *Code of Conduct for the Public Service*.

8.1.3 **Recommendations by the Auditor-General**

- (a) As indicated in paragraph 8.1.2(a) and (b) above, only one employee had requested and received approval to perform other remunerative work. Therefore the relevant departments should take disciplinary action against employees whose companies or CCs did business with the departments of the Eastern Cape Provincial Administration but had not requested approval to perform other remunerative work.
- (b) The departments should implement action plans to monitor the progress made with regard to the disciplinary action taken against the employees who had not applied for and received approval to perform other remunerative work. The departments should also report back to the provincial legislature on the outcomes of the disciplinary action and the action plans implemented.
- (c) The departments should monitor on a yearly basis the extent of business conducted by their employees. If it is found that the extent of business conducted by these entities is excessive and impacts on the employees' ability to perform their duties at the departments, the departments should consider withdrawing the approval granted. Approval to perform other remunerative work should not be granted if an executive authority is certain that the approval would lead to work being performed for a government department.
- (d) The departments should implement and actively monitor the systems of control to manage the performance of other remunerative work by employees. This could include the annual issuing of letters to employees, informing them of the requirement to obtain approval to perform other remunerative work. Copies of the letters of approval should either be kept centrally or placed in the employees' files. Where possible, the completeness of certain aspects of the declarations should also be verified by, for example, conducting CIPRO searches to confirm the completeness of

the declared directorships and memberships of companies and/or CCs.

- (e) Designated employees should be informed of the requirement that they should also request approval to perform other remunerative work. The fact that disclosure in the financial disclosure forms is not sufficient, should be emphasised.
- (f) Companies should be requested to supply their shareholding, and not just directorship, in the tender documentation to allow departments to identify related-party transactions.
- (g) Consideration should be given to amending the existing regulations with regard to the declaration of interests and the performance of other remunerative work by government employees as follows:
 - (i) Non-designated employees who hold directorships or memberships of companies and/or CCs should disclose such directorships and memberships. According to the DPSA the matter of extending the system to non-designated employees and supply chain management officials had been considered before and it was decided not to extend the system. However, in view of the recommendations and findings made in this report, the extension of the system should be reconsidered.
 - (ii) Non-designated and designated employees should specifically disclose details of directorships and memberships of companies and/or CCs that had previously transacted with government. An overview of the transactions with government should also be provided.
 - (iii) Non-designated and designated employees should disclose their spouses' directorships and memberships of entities that are transacting with the specific government institution where they are employed.
- (h) Newly appointed government employees should make the disclosures within 30 days of appointment, while government employees who are transferred from one government department to another should again make the required disclosures at the new department within 30 days of transfer.
- (i) The policy should require government employees to disclose changes in circumstances that could have an impact on the completeness or accuracy of the declarations they had provided. Such disclosure should be made within 30 days of the change in circumstances. For example, a newly acquired directorship or membership should be disclosed by a government employee within 30 days of obtaining it.

- (j) Non-designated and designated employees should take personal responsibility for ensuring that CIPRO processes their resignation/termination of directorships and memberships.

8.1.4 Responses from provincial departments

- (a) The **Department of Education** indicated that memos had been sent to all district directors and chief directors reminding employees to disclose their business interests. A further reminder will be sent to emphasise the importance thereof.
- (b) The **Department of Health** indicated that the main reason cited by most employees for not applying for and obtaining approval to perform other remunerative work was ignorance in the part of the PSA. The employees also denied receiving income from the entities that did business with the departments. The department indicated that follow-up letters would be issued to the affected employees to respond to the allegations of misconduct. On the basis of the investigation and responses received from the various employees, the department would initiate disciplinary action against the relevant employees in accordance with applicable disciplinary procedures in the public service.
- (c) In its response, the **Provincial Legislature** indicated that it had referred the matter to the legal unit in terms of their code of conduct to advise whether disciplinary steps should be taken and that, upon receipt of their advice, would inform the Auditor-General accordingly.
- (d) In its response, the **Provincial Treasury** indicated that it would instruct the relevant component of the department to institute disciplinary steps against the employee concerned.
- (e) The **Department of Public Works** risk management unit indicated that it had started to create awareness around such disclosures. The exercise had started with the senior managers in the department and they plan to reach all employees. Furthermore, the department had taken note of these observations for verification during their procurement or any other relevant audits for monitoring purposes.
- (f) The comments of the **Departments of Agriculture; Housing, Local Government and Traditional Affairs; Roads and Transport; Sport, Recreation, Arts and Culture** and **Social Development** merely indicated whether the employees had approval to perform remunerative work and did not address the corrective measures to be implemented.

8.2 Declaration of interest in standard bidding documentation

8.2.1 Regulations

- (a) The National Treasury issued *Practice note number SCM 1 of 2003* on 5 December 2003, which prescribes the declaration of interest by using the SBD 4 (declaration of interest) form. In the Eastern Cape Provincial Administration the SBD 4 form is referred to as ECBD 4.
- (b) The ECBD 4 form issued as part of the standard bidding documents utilised for tenders requires the bidder to declare the following:
 - (i) If any person connected to the bidder is employed by the principal.
 - (ii) If any person connected to the bidder has any relationship with a person employed by the principal and may be involved with the evaluation and/or adjudication of the bid.
 - (iii) If any person connected to the bidder is aware of any relationship between the bidder and any person employed by the principal who may be involved with the evaluation and/or adjudication of the bid.
- (c) Furthermore, paragraph 2.8.1 of the *Fraud and corruption of the supply chain management – a guide for accounting officers/authorities* (guide) defines “fraudulent practice” as a misrepresentation of facts in order to influence a selection process.

8.2.2 Finding

One instance was identified where an entity made a misrepresentation on the ECBD 4 form (declaration of interest form) by not declaring that a spouse of an employee of the **Department of Social Development** was a member of a CC that had submitted a tender and was subsequently awarded a tender. The Department of Social Development had paid R1 421 360 to this CC during the period under review.

8.2.3 Recommendation by the Auditor-General

The department should investigate the contracts awarded to the entity that made false declarations of interest in their bidding documents and the department should consider cancelling contracts with these entities. The department should furthermore consider blacklisting these entities at the National Treasury.

8.2.4 Response from the Department of Social Development

- (a) No response received from the **Department of Social Development**.

(b) In this regard the **Accountant-General** also responded as follows:

- (i) Form SBD4 should be amended to also indicate the position occupied by the shareholder/director/member in the department, as well as the name of the department. Directors/members/shareholders of companies tendering should also declare their interests in other related companies, whether or not such related companies are tendering.
- (ii) Spouses' directorship/shareholding/membership in companies that had transacted with the state in the past 12 months of the financial year should be declared. A database of all closed projects, with their performance results, should be kept and where bids are subsequently received from companies that had previously tendered with government departments, reference should be made to their previous performance and the decision to award the tender should be influenced by the latter.
- (iii) An integration of the Public Service Commission (PSC) system and CIPRO should be considered. An investigation into whether the forms are kept manually or electronically will have to be made. If the system is manual, a feasibility study on whether to change from manual to electronic forms is recommended.

8.3 Deviation from the supply chain management process in the awarding of tenders and quotations

8.3.1 Inviting tenders and quotations

8.3.1.1 Regulation

Paragraph 3.1 of *Practice note number SCM 2 of 2005* prescribes the procurement process of goods and services for the different thresholds as follows: *Above the value of R10 000,00 but not exceeding R200 000 (VAT included) the accounting officer should invite and accept written price quotations from as many suppliers as possible.* Furthermore, paragraph 3.3 states: *If it is not possible to obtain at least three (3) quotations, the reasons should be recorded and approved by accounting officer/authority or his/her delegate.*

8.3.1.2 Finding

The following cases were identified where three written quotations had not been obtained for transactions above R10 000 but not exceeding R200 000, and quotations were awarded to employee-related entities. The deviation from paragraph 3.1 of *Practice note number SCM 2 of 2005* was not approved by the

accounting officers and no reasons were supplied for the deviation from the prescripts.

Three written quotations not obtained		
Department	Number of instances	Transaction value R
Agriculture	2	85 423
Education	2	173 964
Total	4	259 387

8.3.1.3 Responses from provincial departments

No response received from the **Department of Agriculture** and **Department of Education**.

8.3.2 Conflict of interest

8.3.2.1 Regulation

Paragraph 16A8.4 of the Treasury Regulations states: *If a supply chain management official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must disclose that interest; and withdraw from participating in any manner whatsoever in the process relating to that contract.*

8.3.2.2 Finding

One instance was identified at the **Department of Health** where a supply chain official participated in a meeting where a contract to the value of R15 890 was awarded to the employee's spouse's entity. According to the minutes of the meeting, the employee had not disclosed such conflict of interest and had not withdrawn from participating in the process relating to the awarding of the contract.

8.3.2.3 Response from the Department of Health

The **Department of Health** indicated that all cases where officials had not adhered to the policies and procedures, such as withdrawing from the procurement process where their spouse-related companies were involved, were being investigated with a view to disciplinary action.

8.3.3 Awarding of tenders

8.3.3.1 Regulations

- (a) Paragraphs 3(4) and 4(4) of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) stipulates that *only the tender with the highest number of points scored may be selected.* Paragraph 9 of the PPPFA stipulates: *despite regulations 3(4) and 4(4), a contract may, on reasonable and justifiable grounds, be awarded to a tender that did not score the highest number of points.*
- (b) Paragraph 2.6 of the *Code of conduct for bid adjudication committees* states that the accounting officer/authority or the delegated official may, after consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee.

8.3.3.2 Findings

In the following instances departments had awarded tenders to employee-related entities that had not scored the highest points during the evaluation process. However, justifiable and reasonable grounds for these deviations were not submitted and approved by the accounting officer.

Awarding of tenders/quotations to entities that did not score the highest points				
Department	Number of instances	Value of tender/quotation accepted R	Value of tender/quotation that scored the highest points R	Difference R
Department of Sport, Recreation, Arts and Culture	1	425 094	370 000	55 094
Roads and Transport	1	125 064	111 211	13 853
Total	2	550 158	481 211	68 947

8.3.3.3 Responses from provincial departments

No response received from the **Department of Roads and Transport and Sport, Recreation, Arts and Culture.**

8.3.4 Collusive tendering

8.3.4.1 Regulation

Section 4 of the Competition Act, 1998 (Act No. 89 of 1998) states: (1) *an*

agreement between, or concerted by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship (a relationship between competitors) and if it involves collusive tendering. (2) An agreement to engage in a restrictive horizontal practice referred to in subsection (1) is presumed to exist between one or more firms if they have at least one director or substantial shareholder in common.

8.3.4.2 Finding

Various instances were identified at the **Department of Education** where the department had procured goods/services from entities in which employees of the department have interests. In these instances quotations were supplied by individuals connected to the successful suppliers, therefore there may have been horizontal relationships between potential suppliers, which is prohibited because it has the effect of substantially preventing or lessening competition in the market. The following are indicators that the entities were engaged in restrictive horizontal practices as prohibited by the Competition Act, 1998 (Act No. 89 of 1998).

Restrictive horizontal practices at the Department of Education		
No.	Transaction amount	Similarities in quotations received by the department
1	148 772	Quotes from two suppliers had similar layouts and fonts, incorrect spelling for items quoted, omission of quotes for items required as per the specification, no supplier numbers reflected on the quotation and similar signatures on the quotations.
2	42 030	The structure and layout of all three quotes received were similar.
3	27 250	All three quotes had the same formatting: either the contact numbers or postal address of the employee-related entity, and the other two suppliers were the same.
4	53 991	All three quotes had the same formatting and style. Two of the other suppliers' quotations have similar residential addresses, table quantity description and table format. All three quotes contained the same misspelled word.
Total	272 043	

8.3.4.3 Response from the Department of Education

The **Department of Education** indicated that the internal audit directorate had been requested to investigate the anomalies and to recommend actions to be taken against employees who are colluding with suppliers.

8.4 Non-compliance with VAT legislation

8.4.1 Regulations

- (a) Section 23(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) (VAT Act) states: *All trading entities must register for VAT if taxable supplies or services rendered during a 12-month period, exceeded or are likely to exceed R300 000.*
- (b) Paragraph 7.1 of *Practice note number SCM 2 of 2005* states that *accounting officers/authorities must be in possession of a valid tax clearance certificate for all price quotations/competitive bids over R15 000 (VAT included) (increased to R30 000 after 23 January 2006).*

8.4.2 Findings

- (a) Cases were identified at the following departments where companies and CCs of which employees were directors or members had done business with departments in excess of R300 000 and where the companies or CCs were not registered for VAT:

Companies or CCs not registered for VAT		
Department	Transaction value R	Number of companies
Sports, Recreation, Arts and Culture	425 094	1
Roads and Transport	1 292 185	1
Total	1 717 279	2

- (b) Cases were identified at the following departments where companies or CCs had charged VAT on their invoices, although they were not registered for VAT according to the South African Revenue Service:

Department	VAT claimed by entities R	Number of entities
Roads and Transport	15 359	1
Education	34 375	4
Total	49 734	5

8.4.3 Responses from provincial departments

No response received from the **Department of Education; Roads and Transport** and **Sports, Recreation, Arts and Culture**.

9. APPRECIATION

- 9.1 The assistance of all role players involved during the performance audit is sincerely appreciated.

Auditor-General

Pretoria

December 2008



AUDITOR - GENERAL

ABBREVIATIONS AND ACRONYMS

Word or phrase	Description
Auditor-General	(a) As an institution, means the institution contemplated in section 181(1)(e) of the Constitution (b) As an individual, means the individual appointed as Auditor-General, Mr Terence Nombembe
BAS	Basic Accounting System
CAATs	Computer-assisted audit techniques
CIPRO	Companies and Intellectual Property Registration Office
CC	Close corporation
Designated employee	Any person occupying a post on SMS grade C (13) in a department
DPSA	Department of Public Service and Administration
Employee-related companies/CCs	Companies/CCs that are connected with government employees in terms of directorship or membership
Government employee	A person in the public service who holds a post on the fixed establishment of a state institution
Non-designated employee	Employees other than designated employees
PAA	Public Audit Act, 2004 (Act No. 25 of 2004)
Persal	Personnel and Salary System
PFMA	Public Finance Management Act, 1999 (Act No. 1 of 1999)
PPPFA	Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
PSA	Public Service Act, 1994 (Act No. 103 of 1994)
PSC	Public Service Commission
SARS	South African Revenue Service
SBD	Standard bidding documentation
SCM	Supply chain management
SMS	Senior management staff
VAT Act	Value-Added Tax Act, 1991 (Act No. 89 of 1991)
VAT	Value-added tax

ANNEXURE A

EMPLOYEE-RELATED COMPANIES AND/OR CCs DOING BUSINESS WITH OWN DEPARTMENTS

The table is a summary of employees who are directors or members of companies and/or CCs that did business with the departments where they are employed.

List of employees doing business with their own department						
No.	Department	Number of employees	Number of companies	Amount paid for the period 01/04/2005 to 31/03/2007 R	Number of employees with approval already verified by the departments	Value of transactions to be followed up by the departments R
1	Agriculture	1	1	5 984	0	5 984
2	Economic Development and Environmental Affairs	None	None	None	None	None
3	Education	58	65	4 004 954	0	790 600
4	Health	31	26	12 695 342	0	517 358
5	Housing, Local Government and Traditional Affairs	None	None	None	None	None
6	Office of the Premier	None	None	None	None	None
7	Provincial Legislature	None	None	None	None	None
8	Provincial Treasury	None	None	None	None	None
9	Public Works	None	None	None	None	None
10	Provincial Safety and Liaison	None	None	None	None	None
11	Roads and Transport	None	None	None	None	None
12	Sport, Recreation, Arts and Culture	1	1	22 787	0	22 787
13	Social development	None	None	None	None	None
	Total	91	93	16 729 067	0	1 336 729

ANNEXURE B

EMPLOYEES' SPOUSE-RELATED COMPANIES AND/OR CCs DOING BUSINESS WITH OWN DEPARTMENTS

The table is a summary of employees' spouses who are directors or members of companies and/or CCs that did business with the departments where their spouses are employed.

Employees' spouses doing business with departments where their spouses are employed					
No.	Department	Number of employees	Number of companies	Amount paid for the period 01/04/2005 to 31/03/2007 R	Value of transactions to be followed up by the departments R
1	Agriculture	2	2	240 719	125 873
2	Economic Development and Environmental Affairs	None	None	None	None
3	Education	8	8	430 577	127 832
4	Health	16	16	2 991 470	329 245
5	Housing, Local Government and Traditional Affairs	None	None	None	None
6	Office of the Premier	None	None	None	None
7	Provincial Legislature	None	None	None	None
8	Provincial Treasury	None	None	None	None
9	Public Works	2	2	116 792	92 333
10	Provincial Safety and Liaison	None	None	None	None
11	Roads and Transport	1	1	9 970	9 970
12	Sport, Recreation, Arts and Culture	1	1	1 802	1 802
13	Social development	2	2	1 434 910	5 175
	Total	32	32	5 226 240	692 230

ANNEXURE C

EMPLOYEE-RELATED COMPANIES AND/OR CCs DOING BUSINESS WITH OTHER DEPARTMENTS OF THE EASTERN CAPE PROVINCIAL ADMINISTRATION

The table is a summary of employees who are directors or members of companies and/or CCs that did business with other departments.

List of employees doing business with other departments					
No.	Department	Number of employees	Number of companies	Amount paid by other departments to employee-related entities for the period 01/04/2005 to 31/03/2007 R	Number of employees with approval already verified by the departments
1	Agriculture	5	5	442 856	1
2	Economic Development and Environmental Affairs	None	None	None	None
3	Education	107	100	7 141 002	0
4	Health	17	17	1 507 596	0
5	Housing, Local Government and Traditional Affairs	1	1	59 244	0
6	Office of the Premier	None	None	None	None
7	Provincial Legislature	1	1	28 636	0
8	Provincial Treasury	1	1	8 819	0
9	Public Works	2	2	12 268	0
10	Provincial Safety and Liaison	None	None	None	None
11	Roads and Transport	4	6	570 710	0
12	Sport, Recreation, Arts and Culture	1	1	271 755	0
13	Social development	None	None	None	None
	Total	139	134	10 042 886	1