



**FOR PUBLIC RELEASE**

**Finalised matters in respect of the:**

**Investigation into the procurement of, or contracting for goods, works and services, including the construction, refurbishment, leasing, occupation and use of immovable property, during, or in respect of the National State of Disaster, as declared by Government Notice No. 313 of 15 March 2020, by or on behalf of the State Institutions**

**Proclamation No R23 of 2020**

**23 July 2020 to 25 November 2020**

**February 2021**



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## **1. BACKGROUND TO THE ISSUANCE OF PROCLAMATION R23 of 2020**

On 15 March 2020, the Minister of Co-operative Governance and Traditional Affairs, as designated under section 3 of the Disaster Management Act, No. 57 of 2002, declared a national state of disaster having recognised that special circumstances exist to warrant the declaration of a national state of disaster.

The Minister's decision was informed by consideration of the magnitude and severity of the Covid-19 outbreak which had been declared a global pandemic by the World Health Organisation and classified as a national disaster by the Head of the (South African) National Disaster Management Centre.

Emergency procurement measures were subsequently implemented by the National Treasury ("NT"). A brief exposition of such measures is set out in the section of this Report which deals with the regulatory framework that is applicable to the matters under investigation.

Pursuant to the declaration of the national state of disaster, the allegations mentioned herein were reported to the SIU.

The allegations upon which the SIU's motivation for a proclamation was based emanated from:

- a) the Director-General ("DG") in the Office of the Premier ("OTP"), Gauteng;
- b) whistle-blowers whose identities are known to the SIU; and
- c) anonymous whistle-blowers via the SIU whistle-blowing hotline.

The allegations involved certain affairs of state institutions in the national, provincial and local spheres of government in relation to the procurement of goods, works or services in response to the Covid-19 pandemic.

The allegations reported to the SIU involved the procurement of Personal Protection Equipment ("PPE"), hospital and quarantine sites, catering services (food parcels), ventilators, disinfecting equipment and motorized wheelchairs.

It was alleged that-

- a) suppliers/service providers were paid in the absence of proof of delivery;
- b) duplicate payments were made to suppliers/service providers;
- c) suppliers/service providers did not have valid tax clearance certificates or were otherwise not tax compliant;
- d) PPE were procured at exorbitant prices; and

- e) officials disqualified legitimate service providers and replaced them with entities belonging to their friends and/or family.

In summary, it appeared that the procurement did not comply with section 217(1) of the Constitution of the Republic of South Africa, 1996 (“**Constitution**”) as well as the applicable measures announced by the NT in relation to procurement undertaken by state institutions in response to the Covid-19 pandemic.

After careful consideration and assessment of the allegations, the SIU applied to the President for a proclamation to investigate maladministration and corruption regarding procurement by all state institutions across all three tiers of government, in response to the Covid-19 pandemic.

## **2. SIU’S MANDATE**

On 23 July 2020, and with the publication of Proclamation No. R23 of 2020 (Government Gazette No. 43546 dated 23 July 2020) (“**Proclamation**”), the President referred certain allegations of impropriety in connection with the affairs of all State institutions (as defined in the SIU Act) to the SIU and provided the SIU with its terms of reference, which are fully set out in the Schedule to the Proclamation.

The investigation spans primarily the period 1 January 2020 and 23 July 2020 (i.e. the date of publication of the Proclamation), but also authorises investigations into matters which took place prior to 1 January 2010 or after 23 July 2020, but are relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule to the Proclamation or involve the same persons, entities or contracts investigated under authority of the Proclamation.

The Proclamation further specifically tasked and authorised the SIU to exercise or perform all the functions and powers assigned to, or conferred upon it by the SIU Act, including the recovery of any losses suffered by State Institutions or the State, in relation to the said matters in the Schedule to the Proclamation.

In terms of the SIU Act, as read with Proclamation No. R118 of 2001 and the Proclamation, among the matters that the SIU was required to investigate were:

Any alleged –

- a) serious maladministration in connection with the affairs of the State Institutions;
- b) improper or unlawful conduct by officials or employees of the State Institutions;
- c) unlawful appropriation or expenditure of public money or property;

- d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- e) intentional or negligent loss of public money or damage to public property;
- f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) ("PaCoCA Act") and which offences were committed in connection with the affairs of the State Institutions; or
- g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

in relation to following matter(s) as envisaged in the Schedule to the Proclamation, which took place between 1 January 2020 and 23 July 2020 (i.e. the date of publication of the Proclamation) or which took place prior to 1 January 2020 or after 23 July 2020, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of the Proclamation:

The procurement of, or contracting for, goods, works and services, including construction, refurbishment, leasing, occupation and use of immovable property, during, or in respect of the national state of disaster as declared by Government Notice No. 313 of 15 March 2020, by or on behalf of the State Institutions and payments made in respect thereof in a manner that was—

- a) not fair, competitive, transparent, equitable or cost-effective;
- b) contrary to applicable—
  - (i) legislation;
  - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the NT or the relevant Provincial Treasury; or
  - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the State Institutions;
- c) conducted by or facilitated through the improper or unlawful conduct of—
  - (i) employees or officials of the State Institutions; or
  - (ii) any other person or entity,

to corruptly or unduly benefit themselves or others; or

- d) fraudulent,



and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the State Institutions or the State.

Any improper or unlawful conduct by the officials or employees of the State Institutions or any other person or entity, in relation to the allegations set out in paragraph above, including the causes of such improper or unlawful conduct and any loss, damage or actual or potential prejudice suffered by the State Institutions or the State.

## **2.1. KEY OBJECTIVES**

The objectives of the investigation are as follows:

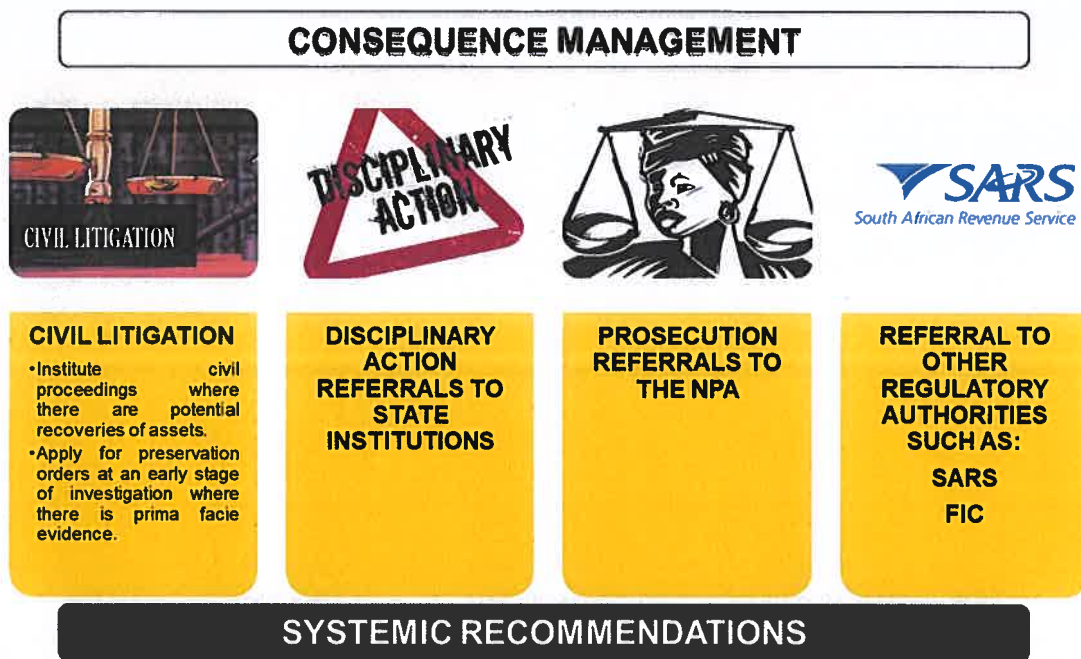
- Review compliance with the prescribed legislation, policies, procedures, directives and other relevant or applicable prescripts in respect of the procurement of goods and services by the State Institutions in response to the national state of disaster.
- Identify irregular/unlawful conduct on the part of the officials or employees of the State or any other person.
- Collect lawfully admissible evidence to institute civil proceedings to:
  - set aside contracts awarded by the State Institutions, if appropriate;
  - recover public money that was not due, owing or payable in respect of the procurement process that was followed by the State Institutions; and/or
  - prevent further losses to the State.
- Refer such evidence for the institution of appropriate disciplinary, administrative, executive and/or criminal proceedings against complicit parties.
- Provide recommendations on improvements of systemic weaknesses identified.

## **2.2. KEY DELIVERABLES**

The deliverables of the investigation are as follows:

- To investigate allegations pertaining to the procurement of goods and or services.
- To institute civil proceedings in the Special Tribunal for the recovery of losses and/or the prevention of further losses.
- To refer evidence in respect of criminal, administrative, executive and/or disciplinary action, and to make systemic recommendations.
- To compile and submit progress Reports and a final Report to the President in respect of the investigation conducted.

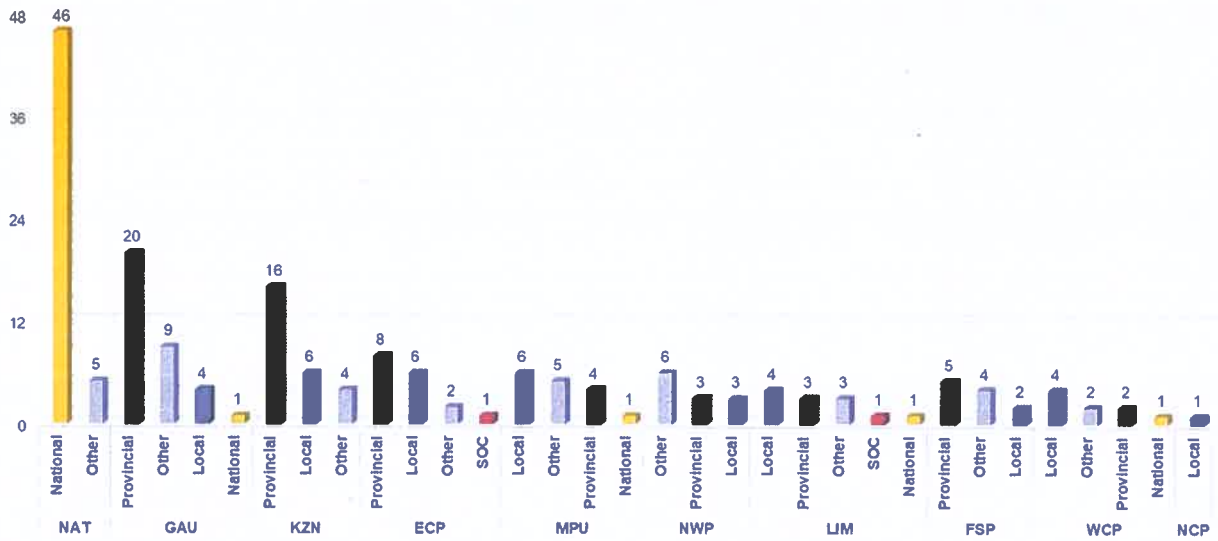
The key outcomes, which are underpinned by the need to ensure consequence management, may be illustrated as follows:



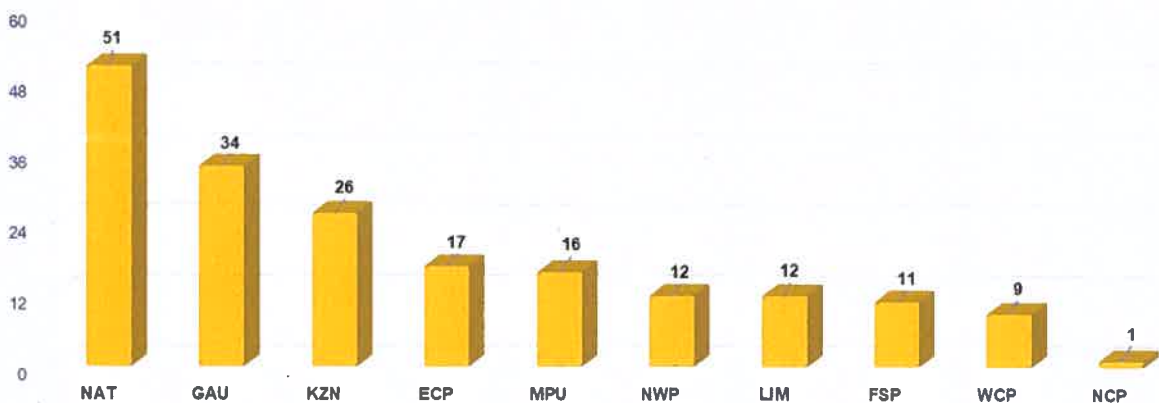
### 2.3. METHODOLOGY APPLIED TO IDENTIFY AND PRIORITISE MATTERS FOR INVESTIGATION

As can be seen from the graphs below, allegations were received from various sources including State institutions. The allegations were then registered and assessed against the investigative scope and period of the Proclamation. If the allegations were found to fall within the investigative scope and period of the Proclamation, these matters were then referred to the relevant SIU investigation team for investigation. Matters were prioritized based on potential outcomes to be realized in the shortest amount of time based on available resources.

**Covid-19 Allegations received by Province and Tier of Government**



**Covid-19 Allegations received by Province**



## 2.4. INVESTIGATION METHODOLOGY

The SIU investigation methodology includes the following:

- A review of all legislative prescripts governing the areas under investigation;
- The collection of documents utilizing the powers as set out in sections 5 and 6 of the SIU Act;
- A review of all applicable documents against the legislative prescripts;
- Interviews with keys witnesses, officials and whistle blowers;
- Conducting site visits;
- Obtaining computer forensic evidence through Cyber Forensic;
- Conducting Data analytics and searches on available data bases

- Quantification of losses for recovery/prevention of future losses through forensic accounting analysis.

### **3. LIMITATIONS**

This report is based on the facts established from documentation, records and data provided and/or information obtained during the course of the SIU investigation. The following are some of the limitations that the SIU has found/experienced during its investigations:

- Very limited original documentation was kept by the State institutions relating to the appointment of service providers for the procurement of PPE. Physical searches for documents were conducted to try and find the documents. The SIU managed to obtain some electronic documents and also obtain some documents from the service providers in order to re-create paper trails.
- Destruction of evidence (documentation, hardware devices such as computers and mobile phones).
- Some of the officials at the State institutions worked on a rotational basis so there were delays in collecting the required documents. Some State institutions also had to close their offices because of Covid-19 infections.
- Unavailability of officials who had to sign off affidavits that had been provided.
- Unavailability of officials who had to quarantine or were working from home and did not want to have face to face interviews.
- There was non-co-operation from many of the officials, particularly the officials in the SCM and the Finance departments. This was largely because of their involvement in the irregular procurement process.
- Local politicians' involvement in the administration of municipalities.
- Unavailability of witnesses because of Covid-19, specifically staff that had to be interviewed at hospitals. Witnesses also had to quarantine.
- Witnesses fear victimisation and/or feel unsafe and are hesitant to be interviewed, provide statements and/or evidence.
- Unavailability of staff in the banking industry. Most banks operated with skeleton staff because of Covid-19 which delayed the release of bank records that had been requested.
- Delays with receiving information from SABRIC, the Fusion Hub and the FIC.
- Non-availability of officials to receive and acknowledge our disciplinary referrals because no face to face meetings were allowed at some of the State institutions.

- SIU members were threatened and were intimidated by both officials and service providers.
- The geographical location of State institutions and having to travel extensive distances.

#### **4. OBSERVATIONS BASED ON INVESTIGATIONS CONDUCTED TO DATE**

- It appears that persons in positions of authority within Provincial Government believed that the declaration of a 'national state of disaster' meant that all procurement is automatically now conducted on an 'emergency' basis, and without compliance with any of the normal prescripts regulating public sector procurement, but without realising that even 'emergency' procurement must still be conducted in accordance with certain minimum prescripts to ensure (in as far as possible) that such processes remain fair, equitable, transparent, competitive and cost-effective as prescribed by section 217(1) of the Constitution (e.g. to motivate to the Accounting Officer/Authority of the State institution concerned why it is wholly or partially impractical to invite competitive bids, and have that Accounting Officer/Authority record the reason for such impracticality and approve a SCM Deviation in terms of Regulation 16A6.4 of the Treasury Regulations, which must be reported to the relevant Treasury and the Auditor General of South Africa etc.).
- Various officials of Provincial Government:
  - a) merely rubber-stamped decision taken by; and/or
  - b) accepted and gave effect to 'unlawful' instructions from, officials more senior than them, which resulted in a complete break-down of the checks and balances protection normally afforded by the principle of 'segregation of duties' (e.g. the first capture the transaction, the second approves the transaction and the third authorises the transaction etc.). Consequently, officials working within support services processed Commitment Letters, Purchase Orders, Invoices and payments without ensuring compliance with normal SCM prescripts and other control measures.

Furthermore, it appears that certain influential people within Provincial Government do not trust procurement processes undertaken by the National Government (e.g. the procurement processes undertaken by National Treasury to secure Transversal contracts), and hold, in the SIU's respectful considered view, the false, incorrect or unwarranted view that such procurement processes and resulting

contracts create monopolies in public sector procurement, which excludes fair opportunity for local, provincial, black empowerment and/or SMMEs (i.e. Small, Medium and Micro Enterprises) suppliers or service providers to compete fairly for such contracts. This perception seemingly resulted in the Provincial Government intentionally:

- a) avoiding the use of Transversal contracts, as inter alia prescribed by Practice Note 8 of 2019/2020; and
- b) ignoring the prescripts of Practice Note 3 of 2020/2021, which required from all State institutions to centralize all their procurement within the National Treasury Procurement Team (which comprised of the National Department of Health and the Chief Procurement Officer in National Treasury), as assisted by Business South Africa on a non-profit basis,

which resulted in procurement irregularities and grave loss and prejudice to the Provincial Government and the *fiscus*.

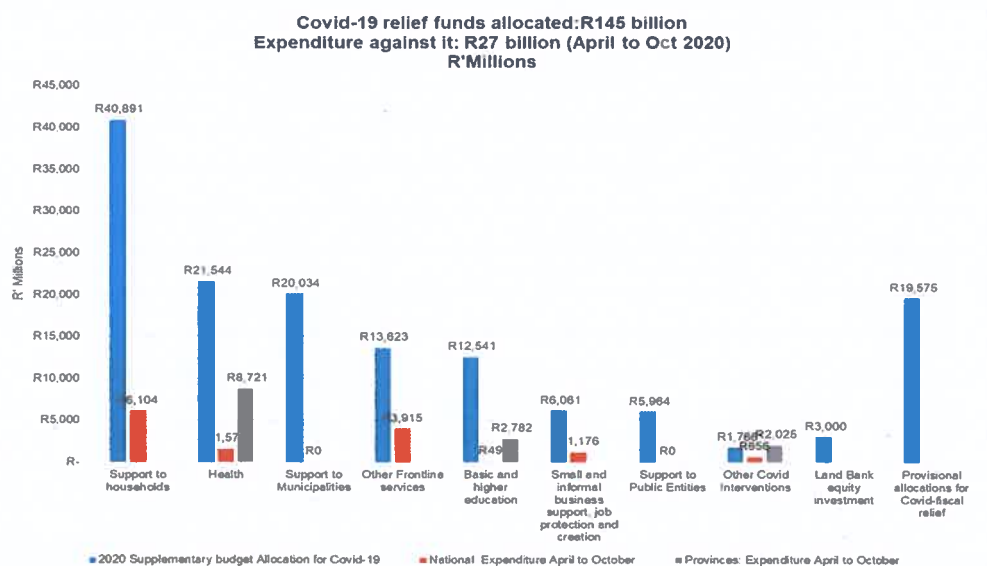
- Bearing in mind that the national state of disaster was declared on 15 March 2020, where after PPE procurement commenced in earnest certain service providers were found to have only been registered on the CIPC during February and March 2020 (and thus would and could not have had demonstrable track records).
- Companies awarded contracts were not registered on the CSD.
- Certain service providers were already in the de-registration process when they quoted and were awarded contracts (their tax status is being verified as this would have impacted on their registration on the CSD).
- The type of goods supplied were not consistent with the nature of the business registered on the CIPC, i.e. they should not have been requested to quote for the services.
- Product specifications were ignored and products that were not suitable for its intended purposes were purchased and in several instances against the advice of expert opinion on the usefulness of the product.
- Certain companies were awarded BBBEE points as level 1 contributors when they in fact did not qualify.
- Political pressure played a role in the procurement of PPE.
- It appears that the names of the service providers were determined before any SCM process commenced.
- The delivery of substandard and/or PPE that does not comply with the technical specifications contained in the invitation to submit quotations. Furthermore certain PPE were not packed according to predetermined standards.

- There was no attempt to negotiate with suppliers in bringing prices within the thresholds suggested by Treasury. This resulted in overpayment for goods.
- The Departments lack basic control measures that will establish correct product delivery. In several instances we found under delivery of items.
- There appears to be no verification protocols on supplier registration details. This has resulted in several suppliers claiming VAT when they were not registered with SARS as VAT vendors.
- Suppliers using front companies to obtain multiple contracts from a department.
- Cover quoting by officials and suppliers.
- Splitting of bids to meet the quotation and/or delegation threshold.
- Misrepresentation from suppliers by not disclosing their close friendships with officials who were involved in awarding PPE contracts.
- PPE was packaged under a false/forged, cloned label.

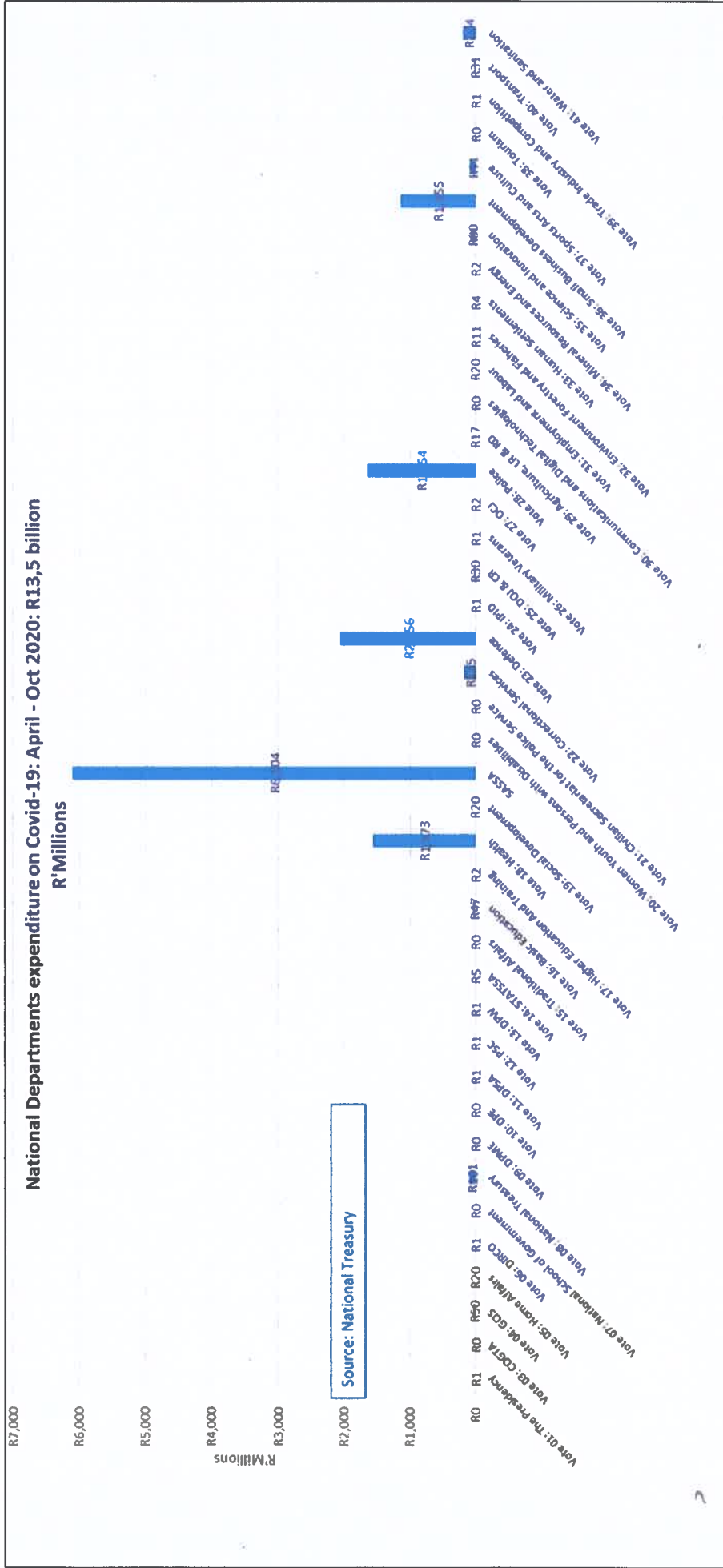
## 5. RELEVANT EXPENDITURE STATISTICS ON COVID-19 PANDEMIC

The SIU has obtained relevant expenditure statistics on Covid-19 from National Treasury that indicates expenditure per tier of Government, and where relevant, contrasted it to the value of contracts under investigations. It provides some valuable overall financial context to the cumulative expenditure on Covid-19, and what is currently being investigated. See graphs below:

- Supplementary budget allocations for Covid-19 vs National and Provincial expenditure against it

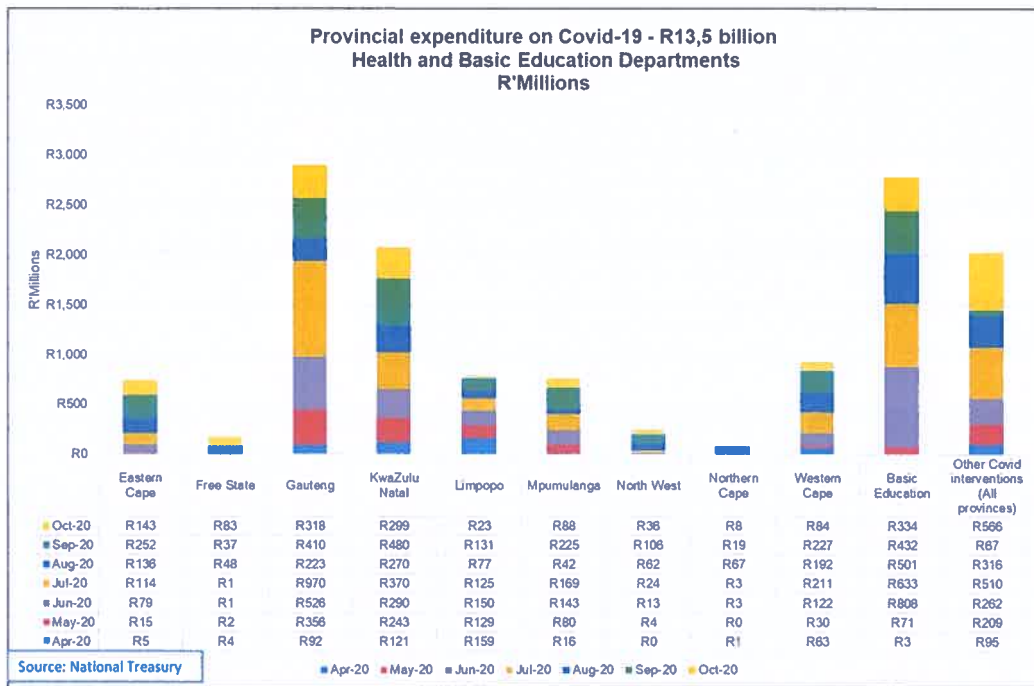


• Covid-19 Expenditure per National Department

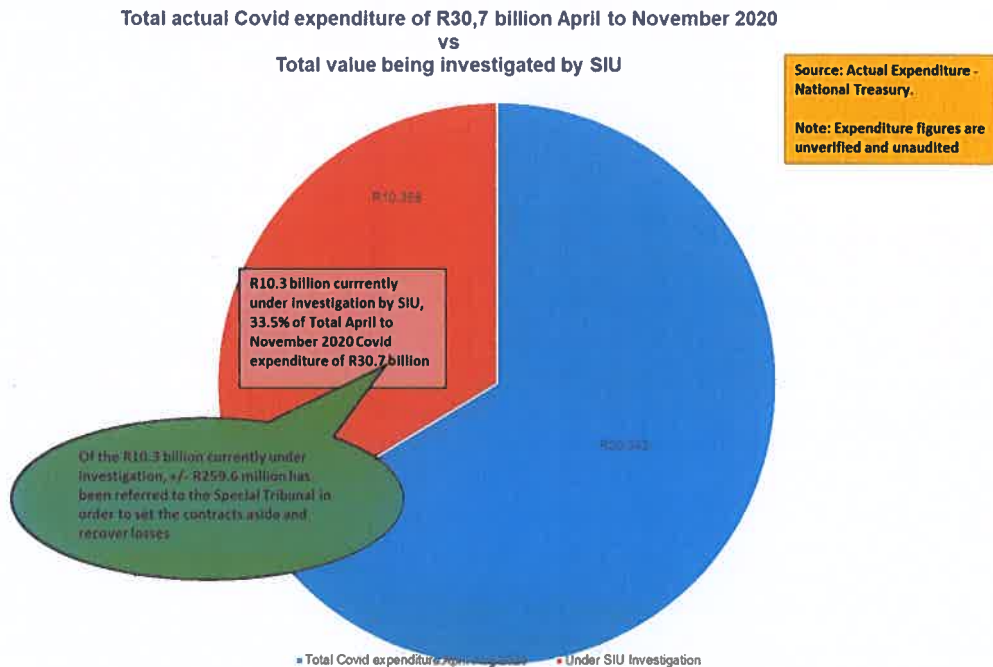




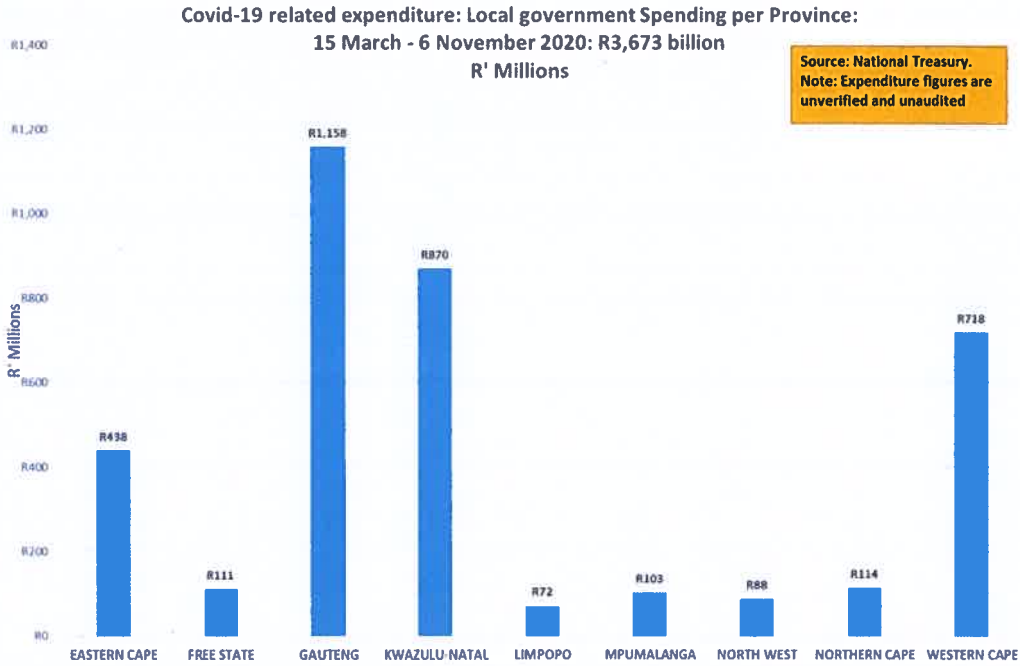
• Covid-19 expenditure per Province for Health and Basic Education



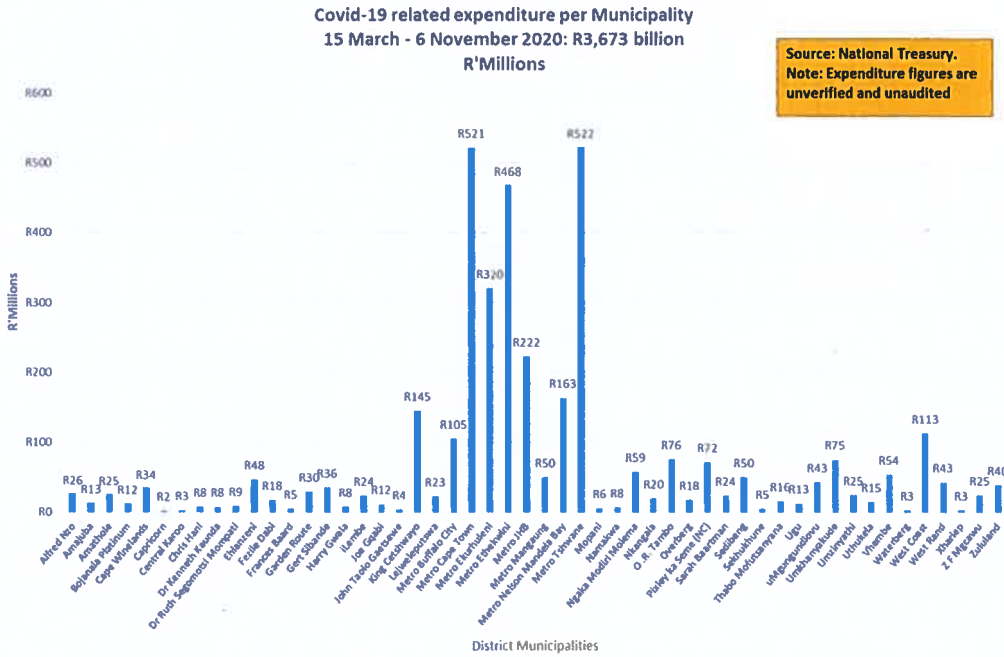
• Value of Covid-19 spend vs Value under investigation by the SIU



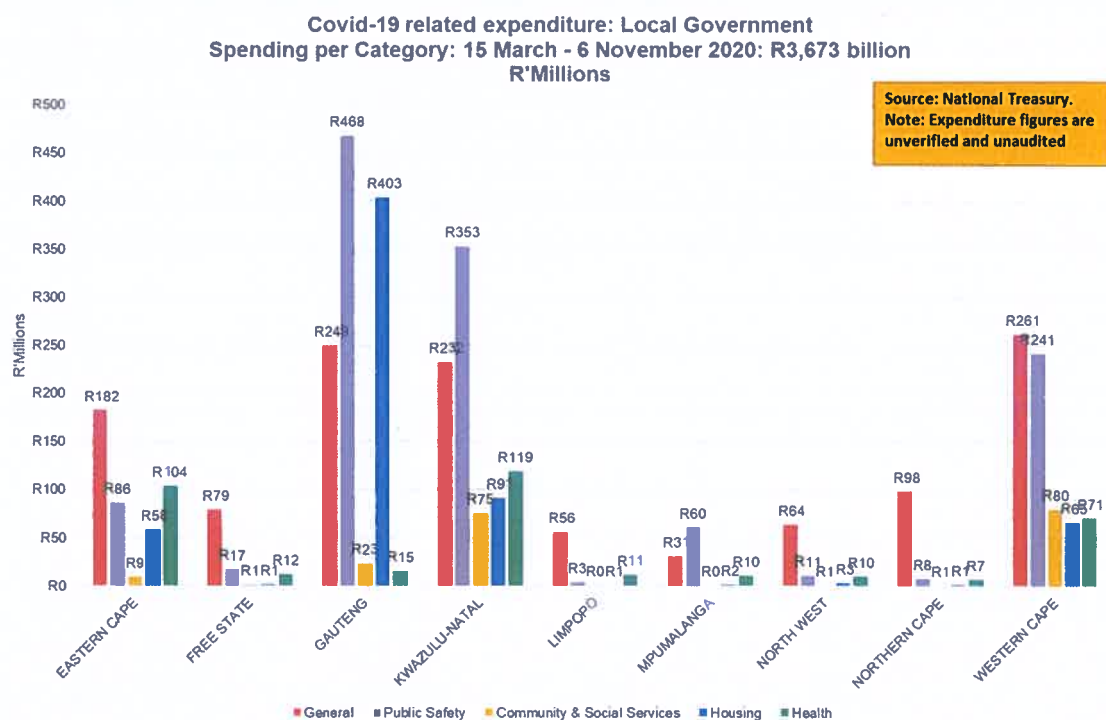
## Covid-19 expenditure for Municipalities, per Province



## Covid-19 expenditure per individual Municipality



- Covid-19 expenditure for Municipalities, per Main category of expenditure



## 6. NUMBER AND VALUE OF CONTRACTS UNDER INVESTIGATION

Allegations were received in respect of 189 State institutions and entities. The SIU obtained documents in respect of the approved allegations and from that 2 556 PPE contracts awarded for Covid-19 related services were identified for investigation. These contracts were awarded to 1 774 service providers. By value, 26% of these contracts have been finalised, 51% are currently being assessed and 22% have yet to commence. Allegations are still being received.

### Summary of Progress to date

Contracts' Investigation Status	No. of Service Providers	No. of Contracts awarded to service providers	Value of contracts awarded to service providers	Percentage of matters under investigation by value
Finalised	141	164	3 510 461 786	26%
Ongoing	777	1 541	6 847 544 412	51%
Investigation to still commence	856	851	2 976 234 383	22%
<b>Total</b>	<b>1 774</b>	<b>2 556</b>	<b>13 334 240 581</b>	<b>100%</b>

7. CURRENT CIVIL LITIGATION CASES INSTITUTED IN THE SPECIAL TRIBUNAL (“ST”)

Rand value and number of matters instituted in the Special Tribunal				
Province	Description	Value of outcome	Date instituted	Progress to date
Eastern Cape (ECP)	Department of Health: SIU v Fabkomp (Pty) (Ltd) and Others: (EC04/2020)	R10 148 750	18/09/2020	The cause of action is based on the irregular procurement by the Eastern Cape Department of Health of motorcycles with a “sidecar” to transport patients, which resulted in a process that was not fair, competitive or cost-effective. The matter was heard in the ST and the Eastern Cape DoH was interdicted from making any payments to the supplier and from accepting delivery of any goods from the supplier, pending the finalisation of the Review proceedings to challenge the validity of the award and resulting contract. The Review proceedings have been instituted in the ST and the matter will be heard on 22/04/2021.

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
ECP	The OR Tambo Municipality "Door-to-door" case: (EC06/2020)	R4 899 000	26/10/2020	This matter relates to an investigation into the irregular procurement of an awareness campaign that was conducted in the Eastern Cape. Civil proceedings have been instituted against an entity called Phathilizwi Training in the ST to review and set aside the award and the resulting contract. The matter is not being opposed and will be set down on the unopposed roll in the Special Tribunal.
ECP	The Alinani Trading-matter (EC05/2020)	R2 785 276	30/10/2020	This matter relates to the procurement of PPE for the Department of Education in the Eastern Cape. The SIU successfully applied to the ST to have the bank accounts of the first four Respondents frozen and to interdict the Department from making any further payments to them. The SIU will issue summons to recover losses suffered by the Department.

**Rand value and number of matters instituted in the Special Tribunal**

Province	Description	Value of outcome	Date instituted	Progress to date
Gauteng (GAU)	The SIU v Ledla Structural Development (Pty) Ltd and 43 Others: (GP07/2020)	R139 000 000	06/08/2020	<p>In this matter a contract to deliver PPE was irregularly awarded by the Gauteng Department of Health, while unit prices were also artificially inflated by between 211% and 542%.</p> <p>Notwithstanding the fact that the Department was aware that the SIU was investigating the contract and the Department had stopped almost all payments in respect of suppliers under investigation by the SIU, on 3/08/2020, the Department made payment of R38 758 155 to the supplier. This had immediate clearance and substantial amounts were moved from the bank account of the supplier to the bank accounts of two other entities, who in turn transferred/paid the funds to at least 36 other entities.</p>

**Rand value and number of matters instituted in the Special Tribunal**

Province	Description	Value of outcome	Date instituted	Progress to date
				<p>On or about 06/08/2020, at the request of the SIU, the FIC implemented a directive to freeze a total of R26 449 526 in the bank accounts of 39 entities. This attachment was only valid for 10 working days.</p> <p>Civil proceedings were instituted in the ST under Case No. GP 07/2020 and it was enrolled for 20/08/2020. On 20/08/2020, the ST granted, inter alia, the following interim orders:</p> <ul style="list-style-type: none"> <li>• The 1<sup>st</sup> to 39<sup>th</sup> Respondents were prohibited from dealing with the funds to the value of R26 449 526 that were frozen in their bank accounts;</li> <li>• The implementation of the contract between the Department and the 1<sup>st</sup> Respondent was suspended and the 1<sup>st</sup> to 42<sup>nd</sup> Respondents were interdicted from giving effect thereto;</li> </ul>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
				<ul style="list-style-type: none"> <li>The 43<sup>rd</sup> and 44<sup>th</sup> Respondents (i.e. the GEPF and GPAA) were interdicted from releasing the pension benefits due to the 42<sup>nd</sup> Respondent (a former Chief Financial Officer of the Department), pending the outcome of a damages claim to be instituted against the 42<sup>nd</sup> Respondent;</li> <li>The Department was interdicted from making any further payments to the 1<sup>st</sup> Respondent.</li> </ul> <p>The return date for the interim order was 06/10/2020. A case management meeting was held by the ST on 09/09/2020.</p> <p>The case was opposed by almost all the Respondents.</p> <p>On 06/10/2020, the Special Tribunal postponed the matter to 20 and 21/11/2020, and the interim order was extended to 20/11/2020.</p>



**Rand value and number of matters instituted in the Special Tribunal**

Province	Description	Value of outcome	Date instituted	Progress to date
				<p>Prior to the hearing, the SIU withdrew the Application against:</p> <p>(a) the Twenty Sixth Respondent, after it agreed to refund the R2 000 000 that it received from the Third Respondent to the Third Respondent and for that amount to also be attached as part of the funds frozen in the account of the Third Respondent (i.e. the amount frozen in the account of the Third Respondent increased from R9 670.37 to R2 009 670.37); and</p> <p>(b) the Thirty Fifth Respondent, because it had never received any payments from Ledla, and the relevant bank had erroneously provided the FIC and the SIU with incorrect information.</p> <p>The matter was heard on 20/11/2020 wherein judgement was reserved.</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
				<p>Judgement was then handed down on 10/12/2020.</p> <p>On 10 December 2020 the matter was heard and the Special Tribunal:</p> <p>(a) Reviewed and set aside the R139 million contract that was concluded between the Department and Ledla;</p> <p>(b) Extended its interim order made on 20 August 2020 to interdict the GEPP from paying out the pension benefits due to a former Chief Financial Officer of the Department until the finalisation of the action proceedings that the SIU instituted against that former CFO in which the SIU seeks to hold the former CFO and one other liable for losses and damages allegedly suffered by the Department;</p> <p>(c) Confirmed the interim orders that were granted against the First Respondent,</p>

**Rand value and number of matters instituted in the Special Tribunal**

Province	Description	Value of outcome	Date instituted	Progress to date
				<p>the Second Respondent, the Thirteenth Respondent and the Fourteenth Respondent, and the ST declared the funds held in their bank accounts (i.e. a total amount of approximately R16 661 065.23) forfeit to the State;</p> <p>(d) Discharged the interim orders that were granted against the Fifth Respondent, the Twelfth Respondent, the Twenty Second Respondent, the Twenty Eight Respondent, the Thirty First Respondent and the Thirty Seventh Respondent, and the funds held in their bank accounts (i.e. a total amount of approximately R173 944.74) were released; and</p> <p>Ordered the SIU to obtain an independent audit report in respect of the remaining Respondents who may have sold PPE</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
GAU	SIU v Kabelo Mantsu Lehloenyana, Professor Mkhululi Lukhele and MEC for Gauteng Health (GP11/2020)	R43 532 709	11/09/2020	directly or indirectly to Ledla to quantify the loss suffered by the Department in having paid more for PPE than the maximum prices prescribed by National Treasury and to submit that report to the ST no later than 22/01/2021, where after the ST will consider making supplementary orders, and the interim order of 20/08/2020 was extended to 26/01/2021, and later again extended to 02/02/2021 and again to 04/02/2021.  In the Ledla matter, the ST interdicted the 43rd and 44th Respondents (i.e. the GEPP and GPAA) from releasing the pension benefits due to Ms Lehloenyana (i.e. the 42nd Respondent, who is a former CFO of the Department), pending the outcome of a damages claim to be instituted against her. On 11/09/2020, the SIU issued Summons in the ST under Case No. GP11/2020

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
				against Ms Lehloenyana (1st Defendant), Professor Lukhele (a former Head of Department for the Department) (Second Defendant) and the MEC for Gauteng Health (3rd Defendant – who represents the Department as an interested party and against whom no relief is sought) in which the SIU seeks to recover losses suffered by the Department in the total amount of R43 532 709. Both Defendants are defending the civil case. The matter has been sent down for hearing from 01/06/2021 to 18/06/2021.
KwaZulu-Natal (KZN)	Department of Social Development: Rosette Investments (KN01/2020); Gibela (KN02/2020); LNA Communications (KN03/2020); Zain Brothers (KN04/2020)	R4 899 000 R4 899 000 R3 960 000 R4 800 000	25/10/2020 25/10/2020 25/10/2020 25/10/2020	This matter relates to the irregular procurement of blankets for the Department of Social Development in KZN. The investigation revealed that in fact less blankets were distributed than the Department had in its stores prior to embarking on the procurement process.

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
National	National Department of Public Works and Infrastructure: The SIU v Caledon River Properties (Pty) (Ltd) and Others Beitbridge Border matter: (GP12/20 and LP01/2020)	R40 800 000	18/11/2020	Civil proceedings have been instituted against the suppliers in the ST to review and set aside the award and the resulting contracts to the value of R18.5 million, and to recover losses suffered by the Department.  This matter relates to the procurement process of a service provider/contractor for the erection of a fence along the SA border with Zimbabwe, near Beitbridge.  The SIU investigation found evidence that the procurement process was irregular. The contract has a value of R40 million.  The SIU instituted civil proceedings in the ST for an order to "freeze" the bank account of the First and Second Respondents, alternatively for the Respondents to provide bank guarantees of R21 819 878 (Magwa Construction) and R1 843 004 (Profteam CC).

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
				<p>The initial application was withdrawn by agreement between the parties, an undertaking not to make any further payments was obtained from the Department and a fresh application was launched in the ST on 18/11/2020. In the application the SIU seeks to set aside the contract.</p> <p>The respondents raised points in law, challenging the jurisdiction of the ST to grant the relief sought by the SIU. The hearing was held on 26/01/2021 and the judgement was reserved.</p>
	<b>Total</b>	<b>R259 624 735</b>		

Note: The value of the outcome is subject to any just and equitable order that may be issued by the Special Tribunal.

## **8. MATTERS IN THE HIGH COURT**

On 23 October 2020, the former MEC of Gauteng Provincial Department of Health (“Gauteng DoH”) (“MEC”) filed an urgent application in the High Court of South Africa (Gauteng Division, Pretoria) under Case No. 555372/2020 to review and set aside the SIU referrals as being unlawful, unconstitutional and therefore invalid. The SIU opposed the application. The matter was set down for hearing on 21 January 2021 before the full bench of the High Court. On 21 January 2021, Sutherland ADJP, Raulinga J and Siwendu J presided over the hearing of the application that was brought by the former MEC, and judgment was reserved.

## **9. NUMBER OF REFERRALS MADE FOR DISCIPLINARY ACTION AGAINST OFFICIALS**

**25 Referrals** have been made to various State institutions which points to misconduct on the part of their employees:

- Free State (FS) Provincial Treasury – 1 referral was made in respect of SCMQ608 & /609/20/21 and SCMQ3/2020 against a Senior Manager on 9 November 2020. The SIU is currently assisting the Provincial Treasury with this matter.
- Gauteng DoH – 1 referral was made against a Middle Manager on 18 September 2020. The SIU met with the evidence leaders appointed in the matter. The matter is set down to be heard on 15 March 2021.
- Gauteng DoH – 1 referral was made against another Senior Manager on 18 September 2020. The SIU met with the evidence leaders appointed on the matter. The disciplinary hearing was scheduled to be heard on 11 to 15 January 2021, but it was postponed following an application by the Senior Manager for further information. The new date for the disciplinary hearing is 1 to 5 February 2021. The SIU will follow up on the outcome of the hearing.
- Gauteng DoH – 2 referrals were made against another Senior Manager on 23 September 2020 and 25 September 2020. The official resigned from the Department on or about 3 October 2020.
- Gauteng DoH – 1 referral was made against the Spokesperson of the President on 10 November 2020. The SIU was informed that the Office of the President is reviewing the evidence submitted and will be taking relevant steps.
- KwaZulu-Natal Department of Education (KZN DoE) – 6 referrals were made on 5 November 2020 against 2 Senior Managers and 4 Middle Managers. In respect



of all disciplinary referrals made, the SIU have been in contact with the Department. Although the Department is at various stages of actioning the recommendations none of the matters have been finalised to date. The SIU will follow up on the outcome of the hearings.

- Sekhukhune District Municipality in Limpopo – 5 referrals were made on 30 September 2020 against Middle Management and Senior Management officials. 4 of the officials are on suspension pending finalisation of the disciplinary process. 1 official resigned before being served with a letter of suspension. The disciplinary process is delayed due to Covid-19 infections within the Municipality. The SIU will follow up on the outcome of the hearings.
- Mpumalanga Department of Health (MPU DoH) – 2 referrals were made on 29/10/2020 against a Middle Manager and a Senior Manager. The HoD has informed the SIU that the referrals have been sent to their lawyers for review and a decision on the way forward. The SIU will follow up on the outcome of the hearings.
- North West Department of Education (NW DoE) – 2 referrals were made on 30 September 2020 and 13 November 2020 against a Middle Manager and an Administrative Clerk. Proceedings in respect of 1 referral were scheduled to begin on 18 December 2020 but have been postponed to a date to be announced later. Proceedings in respect of the other referral have not yet started and the SIU is awaiting a response from the Department.
- Ratlou Local Municipality in the North West – 2 referrals were made on 6 October 2020 against a Senior Manager and a Middle Manager. The SIU held a meeting on 28 January 2021 with the newly appointed Administrator and she undertook to fast track the process.
- JB Marks Local Municipality in the North West – 2 referrals were made on 8 October 2020 against 2 Senior Managers. A law firm was appointed to deal with one of the disciplinary referrals. The SIU consulted with the law firm on 19 November 2020 and the second meeting will be scheduled around February before the hearing can continue. The newly appointed MEC of COGHSTA is following up on the other disciplinary referral.

Note: The SIU will follow up on all the above matters to ensure that consequence management is implemented.

## **10. NUMBER OF REFERRALS MADE TO THE RELEVANT PROSECUTING AUTHORITY**

**38 Referrals** have been made to the National Prosecuting Authority which points to the commission of offences such as fraud and corruption:

- Eastern Cape Department of Health (EC DoH) – 2 referrals were made on 12 November 2020 against 2 Senior Managers. The offence is corruption. A criminal case (CAS 08/09/2020) is under investigation by the Hawks and the SIU is collaborating with the NPA and the DPCI (Hawks). An NPA Prosecutor was assigned to this matter.
- OR Tambo District Municipality in the Eastern Cape – 3 referrals were made on 13 November 2020 against the 2 Senior Managers and the Director of an entity. The offence is fraud and contravention of section 61(1) and section 173 of the MFMA (financial misconduct). A criminal case is already under investigation by the Hawks (CAS 64/07/2020). The Hawks arrested the Director of the service provider and 1 of the Senior Managers. The criminal case was remanded until 15 February 2021. An NPA Prosecutor was assigned to this matter.
- FS Provincial Treasury – 6 referrals were made in respect of SCMQ608 & 609/20/21 and SCMQ3/2020, on 30 September 2020 and 12 November 2020 against a Senior Manager and the CEO of an entity and the entity. The offence is fraud. Criminal cases were registered at Parkroad Police Station and are currently being investigated by the Directorate Priority Crime Investigations under CAS 933/11/2020 (SCMQ608 & 609/20/21) and CAS 665/10/2020 (SCMQ3/2020). A prosecutor has been assigned to the matters and are currently consulting the SIU investigator.
- Gauteng DoH – 2 referrals were made on 22 September 2020 and 25 September 2020 against a Senior Manager. The offence is financial misconduct in terms of Section 86(1) of the PFMA. A criminal Case was opened with reference Johannesburg CAS 484/12/2020. The matters are under investigation by the SAPS.
- Gauteng DoH – 2 referrals were made on 23 October 2020 against an entity and the Director. The offence is fraud. A criminal case was opened with reference Johannesburg CAS 360/12/2020. The matters are under investigation by the SAPS.

- KZN Department of Social Development (KZN DSD) – 1 referral was made on 8 October 2020 against a Senior Manager. The offence is financial misconduct. A prosecutor has since been assigned and briefed by the SIU.
- KZN DoE – 9 referrals were made on 15 October 2020, 20 October 2020 and 27 October 2020 against 3 entities, their directors and their managers. The offence is fraud, alternatively forgery and uttering. A prosecutor has since been assigned and the SIU has met with the NPA and DPCI for a briefing on this matter. The SIU is providing ongoing support to the prosecuting team.
- Sekhukhune District Municipality – 2 referrals were made on 30 September 2020 against 2 Middle Managers. The offence is fraud and financial misconduct. The NPA has assigned a prosecutor and a criminal case was opened with CAS 33/07/2020.
- National Department of Public Works and Infrastructure - Beitbridge Matter – 7 referrals were made on 28 September 2020 against 2 entities, their directors and the Project Managers. The offence is fraud. The NPA has appointed a prosecutor.
- Ratlou Local Municipality – 1 referral was made on 08 October 2020 against a Senior Manager. The offence is financial misconduct. The matter was referred back to SIU to finalise queries that were raised by the NPA. The SIU has agreed to finalise the queries and send the documents back by 3 February 2021.
- JB Marks Municipality – 1 referral was made on 14 October 2020 against a Senior Manager. The offence is financial misconduct. The matter is still under review by the NPA.
- Western Cape Department of Environment, Forestry and Fisheries – 2 referrals were made on 08 October 2020 against an entity and the Director. The offence is fraud, alternatively forgery and uttering. A criminal case was opened at Pretoria Central under CAS 26/11/2020.

## **11. NUMBER OF REFERRALS MADE FOR EXECUTIVE AND/OR ADMINISTRATIVE ACTION**

**2 Referrals** have been made to State institutions which points to misconduct or irregular conduct on the part of employees such as Members of the Executive Council, Executive Mayors and Councillors:

- Gauteng DoH - 1 referral was made on 18 September 2020 in respect of the former MEC who according to the SIU's investigation failed to fulfil his obligations to comply with the Constitution; with his general oversight responsibilities in respect of the Department which contributed thereto that the Department failed to comply with the prescripts of the Constitution, and his obligations in terms of the PFMA. The MEC has since been discharged. On 23 October 2020, the former MEC filed an urgent application in the High Court of South Africa (Gauteng Division, Pretoria) under Case No. 555372/2020 to review and set aside the SIU referrals as being unlawful, unconstitutional and therefore invalid. The SIU opposed the application. The matter was set down for hearing on 21 January 2021 before the full bench of the High Court and on the same day judgment was reserved.
- JB Marks Local Municipality – 1 referral was made on 12 November 2020 for disciplinary action to be taken against an office bearer in respect of the awarding of a donation to an entity. The newly appointed MEC of COGHSTA is following up on this matter and will update the SIU on the outcome.

## **12. RAND VALUE OF POTENTIAL CASH AND/OR ASSETS TO BE RECOVERED**

This is the rand value in cash and/or assets that is potentially recoverable. Acknowledgement of Debt documents (AoDs) are signed and the debtor agrees to repay the money in one lump sum or repays the money in month instalments until the debt is fully repaid. The SIU also makes recommendations to State institutions to withhold payments to service providers (usually where irregularities have been uncovered by the investigations and pending civil proceedings in the ST or the High Court).

- Gauteng DoH – recommendations were made to withhold payments to 5 service providers to the value of R116 622 500. The Department have confirmed that no further payments will be made pending the finalization of the SIU investigations and civil proceedings.
- Gauteng DoH – The Special Tribunal granted an order to freeze funds in the bank accounts of 39 service providers to the value of R26 million.
- Gauteng DoH – 1 AoD was signed to the value of R247 500. The service provider was contracted to supply surgical masks and the value of the contract is R7 256 606. The AOD was signed because of an overpayment in respect of Vat that was made on one invoice submitted.

- KZN DoE – 3 AoDs were signed to the value of R1 201 542 for the under-delivery of goods supplied and for overcharging the Department for VAT. 3 service providers were contracted to supply PPE with a cumulative contract value of R15 129 064.40. 1 AoD at a value of R176 191 is being repaid in monthly installments and to date R44 047.80 has been repaid. The other 2 AoDs totaling R1 025 351 have been repaid in full.
- KZN DSD – a recommendation was made to withhold payment to 1 service provider to the value of R2 040 000. The Department have confirmed that no further payments will be made pending the conclusion of the litigation process that the SIU has instituted.
- KZN DSD – 1 AoD was signed to the value of R276 450 for charging the Department VAT while they were not registered as VAT vendors. The service provider was contracted to supply PPE and the value of the two contracts was R2 570 174.
- MPU DSD – 1 AoD was signed to the value of R76 090 because the service providers inflated the price of the PPE that was procured. The AoD signed was based on the fact that the investigation revealed there was a difference between what was supposed to be charged and what they actually charged. The debtor is making monthly repayments and so far R15 000 has been repaid.
- MPU DoH – 2 AoDs were signed to the value of R150 800 based on the fact that the investigation revealed the service providers inflated the price of stationery that was procured with the PPE. The AoDs signed were for the difference they were supposed to charge and what they actually charged. Both these AoDs have been repaid in full.
- NW Department of Health – 2 AoDs were signed to the value of R19 592 based on the fact that the investigation revealed the service providers were paid VAT by the Department but were not registered VAT vendors. Both these AoDs have been repaid in full.
- Matzikama Local Municipality in the WC – a recommendation was made to withhold payment to 1 service provider to the value of R80 000. The Department have confirmed that no further payments will be made pending the finalization of the SIU investigations.

### **13. DOMESTIC PROMINENT INFLUENTIAL PERSONS AND THEIR IMMEDIATE FAMILY**

- There is a general public outcry about the involvement of domestic prominent influential persons (as defined in the Financial Intelligence Centre Act, Act 38 of 2001 ("FICA")) and their immediate family (as defined in FICA), benefitting from PPE procurement by State Institutions.
- Currently such involvement does not necessarily render the awarding of contracts to such people, or entities that they are involved in, unlawful and such contracts must be scrutinized for compliance with the principles of section 217(1) of our Constitution and the PFMA and the MFMA.
- The need exists for considering additional safeguards for situations where State Institutions contract with persons in these categories.
- FICA currently regulates the conclusion of contracts between "accountable institutions" and domestic prominent influential persons and their immediate family, but the schedule listing "accountable institutions" does not include State Institutions, such as national, provincial, or municipal entities, or even State Owned Entities.
- In addition, FICA only envisages remedial action through "administrative sanctions".
- FICA also does not create a statutory offence if its provisions are not complied with.

#### **13.1. SYSTEMIC RECOMMENDATIONS**

- The SIU recommends that legislative amendments be considered to provide for safeguards when State Institutions are to contract with domestic prominent influential persons and their immediate family, as well as entities in which they have an interest, or are beneficial owners of.
- All State Institutions should be bound by such safeguards.
- It is not suggested that the mere fact that someone falls in this category would render the contract unlawful, but it should be a prerequisite of all supply chain management processes that a disclosure must be made that a potential service provider falls within the category set out above.

- Failure to make such a disclosure must be unlawful and should constitute a statutory cause of action to attack the validity of the process.
- Intentional non-compliance with such a prescript, should be a criminal offence.

#### **14. SECONDMENT TO DEPARTMENT OF EMPLOYMENT AND LABOUR**

The SIU received allegations relating to the payment of the Temporary Employment Relief Scheme (TERS) paid by the Unemployment Insurance Fund (“UIF”). However these matters fall outside the mandate of the Proclamation. A secondment agreement was entered into between the Department and the SIU. The secondment came to an end on 15 December 2020.

During the secondment, the secondment team worked closely with the SAPS and the Hawks. A total of 75 criminal cases have been opened and are currently under investigation.

#### **15. MATTERS FINALISED**

##### **15.1. GAUTENG PROVINCE**

##### **15.1.1. Gauteng Department of Health (“Gauteng DoH”)**

##### **15.1.1.1. E-Recruitment**

##### **a) Nature of Allegation**

This matter forms part of the allegations referred to the SIU by the Gauteng Office of the Premier (“OTP”) on 5 June 2020. The allegation relates to the procurement of, and contracting for the provision of e-recruitment services. E-Recruitment is a software application used by the Human Resources (“HR”) department of the Gauteng DoH to assist applicants to apply for jobs in the Gauteng DoH electronically in purported response to Covid-19 vacancies. The value of the contract awarded is R300 000.

##### **b) Summary of findings**

On 7 April 2020, the Gauteng DoH awarded a contract to a service provider for the provision of e-recruitment services. No evidence was found that a proper procurement process, as required, was followed. The SIU found that the service provider was appointed without any competitive bidding process being followed. No evidence could be found that more than one quotation was requested, received or evaluated by the Gauteng DoH. Furthermore, there is no evidence that the service provider was appointed in terms of a SCM Deviation granted in terms of Regulation 16A6.4 of the Treasury Regulations (i.e. where competitive bidding was allegedly impractical, and the Accounting Officer of the Gauteng DoH may approve a deviation), and the

Gauteng DoH also did not report any such SCM Deviation to the Gauteng Provincial Treasury or the AGSA. The SIU ascertained that services were in fact rendered in this matter but that no payments were made (thus far) to the service provider. The investigation into this matter is complete. The SIU is providing support to the Gauteng DoH in relation to the disciplinary referrals made and to the NPA in relation to the criminal referrals made. The SIU have asked the Gauteng DoH not to make any payment to service provider, based on the irregular award of the contract and to cancel the contract.

**c) Steps Taken**

- 1 referral was made against an official on 18 September 2020. The SIU met with the evidence leaders appointed in the matter. The matter is set down to be heard on 15 March 2021.
- No further disciplinary action could be taken against another official as he had resigned.
- A referral was made on 22 September 2020 against an official. The offence is financial misconduct in terms of Section 86(1) of the PFMA. A criminal Case was opened with reference Johannesburg CAS 484/12/2020. The matter is under investigation by the SAPS.

**15.1.1.2. Boot covers, examination gloves, backpacks, spray bottles, hard packs and hand soap**

**a) Nature of Allegation**

This matter forms part of the allegations referred to the SIU by the Gauteng OTP on 5 June 2020. This allegation relates to the procurement of, and contracting for the boot covers, examination gloves, backpacks, spray bottles, hard packs and hand soap by the Gauteng DoH. The value of the contract is R195 000.

**b) Summary of findings**

Interviews were conducted with various role players within the Gauteng DoH. Interviews were also conducted with the director(s)/owner(s) of the service provider and all the relevant records were obtained. Site visits were conducted and supplier records were obtained. The SIU found that the service provider received a purchase order to deliver the goods. However, the owner stated that he received the purchase order for the supply of the goods after the noted delivery date by Gauteng DoH but the company did not supply the goods and no payments were made to the service provider. The investigation is finalised and the matter is closed.



### **15.1.1.3. Radiography material**

#### **a) Nature of Allegation**

This allegation was referred to the SIU by the Gauteng OTP on 5 June 2020. It relates to the procurement of, and contracting for the supply of Radiography materials by the Gauteng DoH.

#### **b) Summary of findings**

The SIU interviewed the director of the service provider and he confirmed that during 2019, the service provider participated in a transversal contract, Bid Description: RT 21-2019: Supply and Delivery of Radiographic material to the State for the period 1 June 2019 to 31 May 2022, at NT. He stated that they hoped to be awarded a contract by the Gauteng DoH, contract, but they did not receive any phone calls from any person at the Gauteng DoH asking them to supply any PPE products or services during the National State of Disaster. The service provider is currently supplying PPE to other Municipalities in KZN, EC and NW. Interviews were conducted with various officials of the Gauteng DoH and no evidence could be found to substantiate the allegation that PPE related goods or services were procured from the service provider. Furthermore, no payments were made by the Gauteng DoH to the service provider. The matter is closed as Gauteng DoH did not trade with the service provider as was alleged.

### **15.1.1.4. Miscellaneous PPE related goods and services**

#### **a) Nature of Allegation**

This allegation was referred to the SIU by the Gauteng OTP on 5 June 2020. It relates to the procurement of, and contracting for the supply of goods and services to the Gauteng DoH by a named service provider. Based on the allegation received, it was not clear what type of goods and services were to be procured or the value of the contract.

#### **b) Summary of findings**

Interviews were conducted with the director/owner of the service provider and all relevant documentation was obtained (where available). Interviews were also conducted with various officials of the Gauteng DoH and no evidence could be found to substantiate the allegation that PPE related goods or services were procured from the service provider. Furthermore, no payments were made by the Gauteng DoH to the service provider. The matter is closed as Gauteng DoH did not trade with the service provider.

#### **15.1.1.5. Medical services for mentally disabled patients**

##### **a) Nature of Allegation**

This allegation was referred to the SIU by the OTP on 5 June 2020. It relates to the procurement of, and contracting for the supply of medical services for mentally disabled patients at the Solomon Stix Morewa Hospital in Johannesburg.

##### **b) Summary of findings**

All relevant documentation was obtained from the Gauteng DoH and the service provider, and interviews were conducted with the owner of the service provider. The SIU has determined that the procurement process followed by the Gauteng DoH in fact did comply with all relevant legislative requirements. The matter is closed as no irregularities were identified.

#### **15.1.1.6. Computer equipment**

##### **a) Nature of Allegation**

This allegation was referred to the SIU by the Gauteng OTP on 5 June 2020. It relates to the procurement of, and contracting for the supply of computer equipment by the Gauteng DoH. The value of the contract is R452 000.

##### **b) Summary of findings**

All relevant documentation was obtained from the Gauteng DoH and the supplier, and interviews were conducted with the director/owner of the supplier. The SIU has determined that the procurement process followed by the Gauteng DoH complied with all relevant legislative requirements. The matter is closed as no irregularities were identified.

#### **15.1.1.7. Warehousing services**

##### **a) Nature of Allegation**

This allegation was referred to the SIU by the Gauteng OTP on 5 June 2020. It relates to the procurement of, and contracting for the provision of warehousing services by the Gauteng DoH for a period of six months from 1 April 2020 to 30 September 2020 from a named service provider. The value of the contract awarded could not be ascertained from the allegation that was reported.

**b) Summary of findings**

All relevant documentation was obtained from the Gauteng DoH and the service provider, and interviews were conducted with the director/owner of the service provider. The SIU determined that a proper procurement process was not followed by the Gauteng DoH to replace the warehousing previously supplied by the previous service provider. The (new) service provider in question was officially approved and was awarded the contract by the Gauteng DoH, however the services of the new service provider were not used and no storage was supplied by it. The matter is closed because no services were rendered, no invoices were generated and no payments were made.

**15.1.1.8. Surgical gowns**

**a) Nature of Allegation**

This allegation was referred to the SIU by the Gauteng OTP on 5 June 2020. It relates to the procurement of, and contracting for the provision of surgical gowns by the Gauteng DoH. The supplier is on the approved list of NT's transversal contract, RT 32-2019, to supply surgical sundries. The value of the contract awarded is R173 789.

**b) Summary of findings**

All relevant documentation was obtained from the Gauteng DoH and the supplier and interviews were conducted with the director/owner of the supplier. The Gauteng DoH participated in contract RT 32-2019 for the supply surgical sundries. The price of the surgical gowns was the same as indicated on the transversal contract. The surgical gowns were accepted and delivered to the relevant facilities for use and no complaints were received. The matters is closed and the SIU found no irregularities in the procurement of the surgical gowns.

**15.1.2. Gauteng Department of Basic Education ("Gauteng DoE")**

**a) Nature of Allegation**

On the 1 September 2020, the SIU received an allegation that a certain named individual is alleged to be amongst individuals implicated in alleged irregular/unlawful procurement of PPE at the Gauteng DoE.

**b) Summary of findings**

Interviews were conducted to establish if the individual or his companies are linked to any of the contracts with the Gauteng DoH (acting as central procurement agent for the other State

institutions within the Gauteng Provincial Government) and/or the Gauteng DoE. The SIU could not establish any links between service providers for Gauteng DoE and the individual. The allegations were unfounded and the investigation is finalised.

### **15.1.3. City of Johannesburg Metropolitan Municipality (“CoJM”)**

#### **a) Nature of Allegation**

A whistle blower sent a letter to the SIU requesting an investigation into the procurement of PPE by CoJM. A certain named supplier or service provider was mentioned to have received contracts with the CoJM. The value of the contracts is estimated at R18 million.

#### **b) Summary of findings**

The SIU interviewed the officials in the SCM Department and they stated that no contracts for PPE were awarded to the service provider as per the allegation. The SIU checked the central supplier database and confirmed that no contracts were awarded by CoJM to the service provider. The only contracts that were awarded to the service provider were by the Gauteng DoH. The investigation is now finalised and the allegation is unfounded.

### **15.1.4. South West Gauteng TVET College**

#### **a) Nature of Allegation**

We received allegations from a whistle-blower in respect of the irregular appointment of service providers at the college.

#### **b) Summary of findings**

We conducted interviews at the college and it was established that no PPE services were procured by the college during the lockdown period. This matter is therefore closed.

## **15.2. NATIONAL DEPARTMENTS**

### **15.2.1. National Department of Public Works and Infrastructure (“NDPWI”)**

#### **15.2.1.1. Caledon River Properties T/A Magwa Construction and Profteam CC (“Magwa”) and (“Profteam”) (Beit Bridge Border Post matter)**

##### **a) Nature of Allegation**

This matter was referred to the SIU on 27 April 2020 and was investigated under a secondment agreement between the SIU and the NDPWI. The matter has been finalised and a secondment

report was issued to the Minister of NDPWI, Honourable Minister Patricia De Lille on 27 July 2020.

It was alleged that both the contractor and the principal agent were appointed without following any formal and transparent SCM process. This resulted in an inflation of the Bill of Quantities as there were no competitive process followed during their respective appointments. Magwa was awarded a contract for the actual construction of the fence in the amount of R37 176 843.50 whilst Profteam received a contract to the value of R3 259 071.48 for professional services. Both the contractor and the principal agent were responsible for erecting a border fence between South Africa and Zimbabwe of 40km.

During this time Proclamation R23 of 2020 was published at which point the SIU could assist the NDPWI in furthering the recommendations made by the secondment team.

#### **b) Summary of findings**

The investigation revealed a series of procurement and other irregularities perpetrated during the infrastructure delivery process, as well as possible acts of fraud perpetrated by identified officials of NDPWI, and the Border Fence Project service providers.

#### **c) Steps Taken**

##### **Disciplinary Charges**

Disciplinary charges were recommended against at least 14 senior NDPWI officials which included the advisor to the Minister of NDPWI in the secondment report that was issued to the Minister. An outside counsel has been appointed to handle this process. The disciplinary hearings have not commenced and the SIU will be monitoring these matters.

##### **Criminal Referrals**

The SIU referred evidence to the NPA on 23 September 2020 that points towards the commission of a criminal offence of fraud by individuals and entities involved in the construction of the fence. An NPA prosecutor has been appointed for this matter.

##### **Civil Litigation**

The SIU instituted civil proceedings in the Special Tribunal on 23 September 2020 and the value of the litigation is approximately R40 million. In the application the SIU pray that NDPWI be interdicted from making any further payments to the contractors, the contractors bank accounts be frozen or alternatively a bank guarantee of R21 819 878 (Magwa Construction) and R1 843 005 (Profteam CC) be provided, pending action proceedings in the ST. The parties agreed that an order be made that no payments be made to the NDPWI and that the service providers will refrain from making any claims for payment. The SIU has in terms of the court

order issued an application to set aside the contract, however the parties are challenging the jurisdiction of the ST. The matter was heard on 26 January 2021 and the judgement was reserved.

#### **15.2.2. SANDF**

##### **a) Nature of Allegation**

The SIU received several allegations from the SANDF which were reported to the SIU on three separate occasions. These allegation all related to alleged irregular SCM process and possible collusion. The value of contracts alleged to have been awarded was R1.3 billion.

##### **b) Summary of findings**

The allegations were investigated and it was found that there was no SCM process nor any award made to these companies. It appears that false orders were created by an external syndicate and invoices generated for payment. The finance division of the SANDF were vigilant enough not to make payment on these invoices and no loss was suffered by the state. These matters are now closed.

#### **15.3. EASTERN CAPE PROVINCE**

##### **15.3.1. Eastern Cape Department of Public Works and Infrastructure (“ECDPWI”)**

###### **15.3.1.1. Renovation of four buildings at the Dora Nginza Hospital**

##### **a) Nature of Allegation**

On 24 August 2020, the SIU through a whistle-blower received allegations of fraud and/or fronting. It is alleged that a named service provider was appointed to renovate four buildings at the Dora Nginza Hospital at a cost of R33 million. It is alleged that, at the time of the tender invitation, the service provider committed to a 30% sub contracting of an Exempt Micro Enterprise (‘EME’) and nominated 2 or more EME contractors. This requirement was a tender pre-condition and without such, the service provider’s bid submission would have been disqualified. The sub-contract agreements were allegedly not adhered to by the service provider. The ECDPWI was informed thereof and indicated that allegations of fronting would be investigated.

##### **b) Summary of findings**

The SIU established that the service provider tendered and was awarded the contract for an emergency refurbishments required at the Dora Nginza Hospital (Block E, F, G and J) for

Covid-19 beds. The tender submitted by the service provider included the details of proposed subcontractors. The tender further reflected that the subcontractors to be utilised would be appointed from the ward. The SIU did not obtain any evidence supporting the allegations of fronting by the service provider made by the whistle-blower. The SIU established that as per the standard practice the work would be allocated to the local SMME, within the specific Ward. The SIU further established that 34 SMMEs were allocated work by the service provider and were subsequently paid. The Deputy Director: ICDP further confirmed that 15% of the work was subcontracted to the ICDP. The SIU established that 30% of the contract value was subcontracted to Local SMMEs and payment was received by the SMMEs, therefore the service provider complied with the tender conditions. The matter is closed because no irregularities were found.

#### **15.3.1.2. PPE**

##### **c) Nature of Allegation**

On 31 August 2020, the SIU was made aware through an article appearing in the Daily Dispatch newspaper that a tender, for the supply of PPE, to the value of R992 105, was awarded to the company of a deceased man.

##### **d) Summary of findings**

The SIU established from the Companies and Intellectual Property Commission that the company named in the Daily Dispatch article was in the process of being de-registered and that its director had passed away. The SIU also established that the Daily Dispatch article had incorrectly referred to this company as having received the tender in question. When the SIU established from the ECDPWI which company had been awarded the tender in question, the SIU then contacted the Director of the named company. He confirmed that a contract to renovate a section of the Victoria Hospital was awarded to his company and that the construction work is not yet completed. The investigation team confirmed the authorization for BAS payments to the amount of R264 425.25 by the ECDPWI to the company. It was confirmed that the contract in question was not awarded to the deceased's company for the supply of PPE and was in fact awarded to the service provider for the infrastructure project at the hospital and therefore the matter is closed.

## **15.3.2. Eastern Cape Department of Health ('ECDoH')**

### **15.3.2.1. Fabkomp (Pty) Ltd ('Fabkomp') - Motorbike Mobile Clinic Project**

#### **a) Nature of Allegation**

On 23 June 2020 the SIU received an allegation wherein it is alleged that the ECDoH irregularly procured 100 motorbikes to be utilised as mobile ambulances/clinics making use of Covid-19 emergency procurement procedures. A tender with a contract value of R10.1 million for 100 motorbikes (R101 000 per motorbike) was awarded to Fabkomp.

#### **b) Summary of findings**

On the basis of analysis of documents and interviews conducted the following are the findings of the SIU investigation to date:

- The procurement process was initiated during December 2019. The procurement of the motorbikes was included in the ECDoH procurement plan for the 2020/2021 financial year.
- The ECDoH initiated a sole service provider procurement process, however, the Eastern Cape Provincial Treasury did not approve a sole service provider procurement process and the ECDoH then followed a five day open tender process. The only two companies that tendered for this contract was Fabkomp and Zencare Pty Ltd ('Zencare').
- The procurement process gained momentum during April 2020 and the process was dealt with as a Covid-19 emergency procurement.
- As a result of the non-compliance of the one bid submission, only Fabkomp qualified during the Stage 1 review. Fabkomp then scored 100% in terms of Functionality and BBBEE.
- Fabkomp indicated that they could only supply 10 "mobile clinics" within four weeks after the order is signed, and thereafter the first 85 units would be available in the next three months. They also indicated that the remaining 15 units would also be a challenge to supply if the order was not confirmed timeously. Because of these reasons, the process fails to satisfy the emergency criteria.
- The ECDoH confirmed during the end of August that it was still in the process of identifying officials who need to undergo training and obtain licences to operate these motorbikes.
- The procurement process was found to be irregular.



- The investigation is completed in this matter and findings documented. The investigation team is rendering the necessary support in terms of the achieved outcomes and referrals.

**c) Steps taken**

- Civil proceedings were instituted in the Special Tribunal (case EC/04/2020) on 18 September 2020. The application will be heard on 22 April 2021.
- An order was granted interdicting the ECDoH from proceeding with the contract and/or making any payments to the service provider.
- Misconduct was identified against two officials of the Department.
- Recommendations for executive and/or administrative and disciplinary action against these officials have been finalised and will be delivered to the Premier.
- A criminal case (CAS 08/09/2020) is under investigation by the Hawks and the SIU is collaborating with the Hawks.
- The NPA prosecutor assigned to the matter has requested that the SIU refer all evidence obtained in this matter.

**15.3.3. Nelson Mandela Bay Municipal Metro ('NMBMM')**

**15.3.3.1. Infrastructure projects**

**a) Nature of Allegation**

On 26 August 2020, the SIU, through a whistle-blower received an allegation about irregularities at the NMBMM. The allegations relate to the infrastructure projects which were implemented to assist the NMBMM in its curb of the spread of the pandemic during the Covid-19 Disaster period. It was alleged that the NMBMM received an approval from National Treasury for the reallocation of uncommitted funds allocated in the 2019/2020 financial year to support the alleviation of the declared disaster on Covid-19. It was further alleged that the former City Manager, forwarded the name of a company, to be utilised for various projects. The company is allegedly from Welkom, Free State Province and it was appointed for the construction of 2 000 toilets meant for the informal settlement which were never delivered. The whistle-blower further alleged that the prices for the construction of the toilets were inflated and that a company outside the Eastern Cape Province was appointed to provide chemical toilets to NMBMM informal Settlement Communities. The whistle blower also alleged that there was collusion between the service provider and the former Acting City Manager.

**b) Summary of findings**

The SIU investigation has found that the goods and services rendered by the service provider related to various projects which involved the construction of 2 000 erven of toilets, stand pipes and 2 000 aerators for informal settlements within the jurisdiction of the NMBMM. The total value of the 'fixed price' contract is R24 600 000 (exclusive of VAT). The investigation has established that the memorandum motivating for the appointment of the service provider resulted in the appointment of the latter on 17 April 2020. It has also been found that the service provider was appointed before the award letter which was only issued on 28 April 2020. The declaration of a Disaster Management period as a consequence of the outbreak of Covid-19 pandemic was used as a ground to circumvent proper procurement processes and a non-existent emergency situation was thus relied upon. From the date of appointment of the service provider, less than 200 erven of toilets, stand pipes and aerators for the informal settlements have been built. There was no fairness and competitiveness in the procurement processes. The investigation is completed in this matter. The investigation team is rendering the necessary support in terms of the achieved outcomes and referrals.

**c) Steps taken**

The SIU will be seeking the following civil relief through the ST:

- Interdict the NMBMM from proceeding with the procurement processes; and
- A declaratory order on the validity of the contract.
- Before commencing proceedings in the ST, Paletona instituted proceedings in the High Court. The SIU will join the proceedings in the High Court and seek a declaratory order on the validity of the contract.

**15.3.4. OR Tambo District Municipality ('ORTDM')**

**15.3.4.1. Covid-19 Door to Door Campaign**

**a) Nature of Allegation**

On 6 July 2020 the SIU received an allegation that ORTDM awarded a tender to conduct door to door Covid-19 awareness training without following the proper procurement processes. It is alleged further, that the service provider did not provide the services, however they submitted invoices and supporting documents for full payments. The service provider was to conduct door to door Covid-19 awareness training to various communities in the geographical area of the municipality, and the contract value is R4.8 million.

**b) Summary of findings**

During October 2018, a request for proposals for the appointment of service providers to conduct community education workshops within the ORTDM for a period of 12 months, was advertised. The service provider submitted a detailed proposal dated 31 October 2018. No documentation was made available to the SIU to assess the validity of the bid submission process and/or the subsequent evaluation/assessment of the various submissions (SCM Demand & Acquisition process). Despite the aforementioned, a letter of award was issued by the ORTDM to the service provider dated 31 January 2019, for a 12 month contract. On 24 February 2020, a request for an extension of the initial contract was submitted by the Director Legislative Services to the Municipal Manager. The request was to extend the original contract by six months. The content thereof would indicate that the original contract had come to an end. It should be noted that at the foot of the 2nd page of the document, *“Extension is approved for few months, till end June 2020. Appointment of a SP must be fast tracked.”* The initials and surname are not clear of the signatory. Despite the document date reflected as 24 February 2020, the annotation is dated 2 February 2020. The extension does not identify or make reference to an emergency or any such need, nor are specific details given in terms of the funding model. Various attendance registers were provided for the different wards within the Mhlonthlo Local Municipality, Port St Johns (**‘PSJLM’**), Nyandeni (**‘NLM’**) and King Sabata Dalindyebo (**‘KSDLM’**) Local Municipalities. The invoices submitted to ORTDM allege that a total of 6 400 people attended the community awareness program, however the list of attendees fail to indicate this as the true number of people that attended the workshops. A hand written Tax Invoice dated 21 May 2020 and numbered 6 was submitted by the service provider for workshops held in PSJLM and MLM for 4 000 people. The value of the invoice is R3 036 000 (Vat Incl.). This invoice was signed by the ORTDM Director Legislative Services confirming that the necessary services were rendered. The Municipal date stamp is 21 May 2020. A review of the Payment Request Form originated from the Speakers Office and was requested by an official in the same office. The request was signed and dated 22 May 2020 for a budget amount of R4 500 000. This was subsequently recommended by the Director of Legislative Services on 21 May 2020. The approval thereof appears to predate the request. A hand written Tax Invoice dated 26 May 2020 and numbered 7 was submitted by the service provider for workshops held in PSJLM, KSDLM, NLM and MLM for 2 400 people. The value of the invoice is R1 821 600 (Vat Incl.). This invoice was signed by an ORTDM official, confirming that the necessary services were rendered. The Municipal date stamp is 25 May 2020. The approval by the official also dated 25 May 2020 which was predated. The Municipal Manager in a memo to the Director Legislative Services raised his concerns of insufficient documentation to substantiate payment regarding the aforementioned invoices

submitted by the service provider. The procurement processes followed by the ORTDM was irregular. The investigation is completed in this matter. The investigation team is rendering the necessary support in terms of the achieved outcomes and referrals.

**c) Steps taken**

- Evidence has been referred to institute civil proceedings through the ST for a full review of the contract and to declare the contract unlawful, irregular and invalid.
- Proceedings were instituted in the ST to set aside the contract. The matter is not being opposed and the SIU will set the matter down for hearing in the Special Tribunal.
- Misconduct referrals against three officials are being prepared for submission.
- 3 criminal evidence referrals were made on 13 November 2020 against 2 officials and the Director of an entity. The offence is fraud and financial misconduct. A criminal case is already under investigation by the Hawks (CAS 64/07/2020). The Hawks arrested the Director of the service provider and 1 of the Senior Managers. The criminal case was remanded until 15 February 2021. An NPA Prosecutor was assigned to this matter.

**15.3.5. Amatole Water Board (“AWB”)**

**15.3.5.1. Water tanks**

**a) Nature of Allegation**

On 24 July 2020 the SIU received an allegation in relation to the irregular procurement, distribution and installation of water tanks to various communities in the Eastern Cape with specific reference to OR Tambo District Municipality and Mhlontlo Local Municipality. It is alleged that some of the service providers did not deliver the expected water tanks, others did not deliver where they were supposed to have delivered and others are alleged to have colluded with Counsellors and ward committee members to sell water tanks and installing water tanks to their relative premises. It is further alleged that, the procurement distribution and installation was unfair, unjust and irregular. In addition, the SIU received information on 2 November 2020 relating to the involvement of an official from Amatole Water, who is employed as a buyer, in the appointment of service providers belonging to her sister and her boyfriend.

**b) Summary of findings**

- On 27 March 2020, AWB was informed by the Department of Water and Sanitation ('DWS') to reallocate money for Covid-19 water tanks procurement. About 3 850 water tanks were procured by AWB for all the Municipalities in the Eastern Cape. About 36 Service Providers were appointed to purchase, deliver and install the tanks. Each 5 000L tank cost up to R12 000 and if not available then 2 x 2500L tanks were provided.
- A Request for Quotation (RFQ) and a deviation process were used for this procurement. No needs assessment was done as the tanks were delivered at the Municipality premises until they had a plan as to where they were going to be installed.
- AWB acted as the implementing agent for DWS. Any brand of tank was acceptable.
- AWB also provided water through water trucks as an extra expenditure, although they are aware that the provision of water is a competency of the Municipalities.
- On the 17 February 2020, DWS sent a budget confirmation letter and the letter of appointment to AWB as the implementing agent. The budget was R230 million for a period of three years. Due to the problems and irregularities identified, the Chairman of the Bid Adjudication Committee ('BAC') changed the closing date to 6 March 2020, and also made a ruling to the effect that the compulsory briefing was no longer deemed compulsory. Consequently, a notice was sent out to the tenderers on 28 February 2020 to resubmit their documents.
- On the closing date 262 bidders submitted their bids and the register was accordingly completed. One of the successful bidders did submit a bid on time and was entered/recorded in the register as bid no 109, but was later ruled by the Bid Evaluation Committee ('BEC') as non-responsive. An unsuccessful bidder also submitted its documents on the bid register as no 93, and was also ruled as non-responsive due to the missing document relating to the Local Content and Declaration. No bid document was handed in on behalf of another successful "bidder".
- On 18 March 2020, the BEC met with a list of 265 bidders with explanation of the extra 3 which was disqualified due to non-compliance.
- On 24 March 2020, the BAC approved a group titled as "*Group 1*" with 11 prequalified bidders. On 25 March 2020, the BAC approved a group titled as

"Group 2" with 11 prequalified bidders. On 26 March a third group was identified/approved, documentation was requested with no avail.

- On 26 March 2020, after 22 companies were identified and approved, and with a further list of over 80 companies that qualified to do the business with AWB, 2 officials however, approved and awarded the contracts to a non-responsive bidder and another company that had not submitted a bid. Both the mentioned companies had no experience in the line of business they had tendered for.
- It has become apparent that no documentation was available to inform the investigation that there was a need to appoint these two companies, as a valid competitive evaluation process has just been concluded which excluded both these companies and over 90 other companies who had qualified. The purchase order in respect of one of the companies was generated at 20:18 on 26 March 2020.
- A quotation was sent out on 26 March 2020, and a revised quotation was sent out after approval and acceptance of the quotation. One of the awards was later cancelled due to non-performance. List of the responsive Bidders and the list of approved Suppliers were compared and eight companies that were not on the list were appointed by AWB. Six were marked as non-responsive and the two companies that received the work did not appear anywhere in the Bidding process.
- During the investigation evidence relating to another company was obtained which evidence points to a buyer at AWB who has a direct relationship with the said company. The company was also appointed as a provider in the supply of rainwater tanks. Contracts to the amount of R2.5 million was given to the supplier and allegations are that the buyer was directly involved with the allocation of the work.

**c) Steps taken**

- Counsel was appointed and the drafting of the papers is underway. Civil proceedings will be instituted in the ST against 15 service providers.
- The SIU will shortly issue an application wherein it will seek the setting aside of the contract between AWB and the service providers.
- Evidence in support of disciplinary referrals against the officials involved is currently being prepared and will be submitted by 28 February 2021.

The investigation is completed in this matter and findings documented. The investigation team is rendering the necessary support in terms of the achieved outcomes and referrals.

## **15.4. FREE STATE PROVINCE**

### **15.4.1. Free State Provincial Treasury (“Free State PT”)**

#### **15.4.1.1. Masks**

##### **a) Nature of Allegation**

This allegation was referred to the SIU on 17 August 2020. The allegation is that a service provider was awarded three different contracts for masks amounting to R7 million. It was further alleged that the service provider received the contracts because of their close ties with a domestic prominent influential person (as defined in the FICA).

##### **b) Summary of findings**

Following the outbreak of the Covid-19 pandemic and the President of South Africa’s declaration of a National State of Disaster on 15 March 2020, the Provincial Executive Council (“**PEC**”) resolved to centralize the procurement of PPEs for all 12 Free State Provincial Departments, to the FSP PT.

Interested suppliers were invited through an advertisement that was placed on the website of the FSP PT to register on the Provincial Covid-19 database. The supplier in question is one of the suppliers who registered on the database as a supplier of PPEs. The supplier is registered with the CIPC and the CSD.

The supplier responded to 3 invitations to submit quotations for PPEs, issued by the FSP PT. The first one was in respect of SCMQ7/2020, issued on 20 May 2020, the second in respect of SCMQ8/2020, issued on 22 May 2020 and the third in respect of SCMQ 9/2020, issued on 26 May 2020. In all three these instances, the FSP PT deviated from an open procurement process, with the approval of the HoD, due to the emergency. It was found that these deviations were properly motivated and authorised and that the relevant Treasury Instructions, applicable at the time, were complied with.

Following proper evaluation and adjudication processes by the Emergency Procurement Task Team (“**EPTT**”), the Bid Quotation Committee (“**BQC**”) and approval by the HoD of the FSP PT, the following orders were issued to the supplier:

No	SCMQ process	PPEs	Value
1	SCMQ7/2020	Shoe covers	R1 234 480
2	SCMQ8/2020	Latex gloves	R1 200 000
3	SCMQ9/2020	Cloth masks	R5 100 000

Part of the allegation is that the service provider received contracts because of his links to domestic prominent influential persons. This aspect of the allegation was investigated and no evidence was found in support of the allegation that the contracts were awarded to the service provider because of their ties to a prominent influential person. No evidence pointing to any irregularities with regards to the awarding of the contracts were found.

#### **15.4.1.2. PPE**

##### **a) Nature of Allegation**

This allegation was referred to the SIU on 5 August 2020. It was alleged that this supplier received a contract from the Free State PT to supply PPE to the value of R2.9 million. The son of a domestic prominent influential person is the sole director of the supplier. It was also further alleged that the contract was awarded because of the director's close relationship with another domestic prominent influential person in the province, who according to the complainant, centralized the province's procurement of Covid-19 related goods and services to the Free State PT.

##### **b) Summary of findings**

Following the declaration of a National State of Disaster, the Provincial Executive Council (“PEC”) resolved to centralize the procurement of PPE for all 12 Free State Provincial Departments, to the Free State PT.

Interested suppliers were invited through an advertisement that was placed on the website of the Free State PT to register on the Provincial Covid-19 database. The supplier in question was one of the suppliers who registered on the database as a supplier of PPE.

The supplier responded to 2 invitations to submit quotations for PPE, issued by the Free State PT. The first one was in respect of SCMQ1/2020, issued on 3 April 2020 and the second one in respect of SCMQ8/2020, issued on 22 May 2020. In both these instances, the Free State PT deviated from an open procurement process, with the approval of the Head of the Department (“HOD”), due to the emergency. It was found that these deviations were properly motivated and authorised and that the relevant Treasury Instructions, applicable at the time, were complied with. Following proper evaluation and adjudication processes by the



Emergency Procurement Task Team (“EPTT”), the Bid Quotation Committee (“BQC”) and approval by the HOD of the Free State PT, the following orders were issued to the supplier:

No	SCMQ process	PPE	Value
1	SCMQ1/2020	Surgical masks	R1 092 500
2	SCMQ8/2020	Soap	R1 200 000

Part of the allegation is that the service provider received contracts because of his links to domestic prominent influential persons.

This aspect of the allegation has been investigated and no evidence was found to support that the service provider received contracts because of his relationship or connection with domestic prominent influential persons.

The investigation revealed that the decision to centralise the procurement of PPE for provincial departments, was taken by the PEC, and no evidence was found to support the allegation that a domestic prominent influential person made this decision. The SIU also found no other evidence pointing to any other irregularities with regards to the awarding of the contracts were found.

#### **15.4.1.3. Sanitiser**

##### **a) Nature of Allegation**

This allegation was referred to the SIU on 5 August 2020. The son of a domestic prominent influential person is the sole director of the supplier. It was alleged that the contract, to supply sanitizer to the value of R427 221, was awarded to the supplier because of the director's close relationship with a domestic prominent influential person, who according to the complainant, centralized the province's procurement of Covid-19 related goods and services to the Free State PT.

##### **b) Summary of findings**

Following the declaration of a National State of Disaster, the PEC resolved to centralize the procurement of PPE for all 12 Free State Provincial Departments, to the Free State PT.

Interested suppliers were invited through an advertisement that was placed on the website of the Free State PT to register on the Provincial Covid-19 database. The supplier was one of the suppliers who registered on the database as a supplier of PPE.

The supplier responded to 1 invitation to submit a quotation for PPE, issued by the Free State PT. This was in respect of SCMQ2/2020, issued on 23 April 2020, when invites were issued

to 60 service providers, registered on the database. The Free State PT deviated from an open procurement process, with the approval of the HOD, due to the emergency. It was found that the deviation was properly motivated and authorised and that the relevant Treasury Instructions, applicable at the time, were complied with.

Following proper evaluation and adjudication processes by the EPTT, the BQC and approval by the HOD of the Free State PT, the following order was issued to the supplier:

No	SCMQ process	PPE	Value
1	SCMQ2/2020	Sanitizer	R427 221

Part of the allegation is that the service provider received contracts because of his links to domestic prominent influential persons. This aspect of the allegation has been investigated and no evidence was found in support of the allegation that the service provider received contracts because of his relationship or connection with domestic prominent influential persons.

The investigation revealed that the decision to centralise the procurement of PPE for provincial departments, was taken by the PEC. No evidence was found to support the allegation that the named domestic prominent influential person took the decision. The SIU found no further evidence pointing to any other irregularities with regards to the awarding of the contract.

#### **15.4.1.4. PPE**

##### **a) Nature of Allegation**

This allegation was referred to the SIU on 17 August 2020. The allegation was that this service provider received a PPE contract to the value of R3 393 808.16 while they were not registered on the central supplier database.

##### **b) Summary of findings**

Following the declaration of a National State of Disaster, the PEC resolved to centralize the procurement of PPE for all 12 Free State Provincial Departments, to the Free State PT.

Interested suppliers were invited through an advertisement that was placed on the website of the Free State PT to register on the Provincial Covid-19 database. The supplier in question is one of the suppliers who registered on the database as a supplier of PPE.

The supplier responded to 2 invitations to submit quotations for PPE, issued by the Free State PT. The first one was in respect of SCM2/2020, issued on 23 April 2020 and the second one in respect of SCM5/2020, issued on 12 May 2020. In both these instances, the Free State

PT deviated from an open procurement process, with the approval of the HOD, due to the emergency. It was found that these deviations were properly motivated and authorised and that the relevant Treasury Instructions, applicable at the time, were complied with.

Following proper evaluation and adjudication processes by the EPTT, the BQC and approval by the HOD of the Free State PT, 32 bidders were recommended in respect of SCMQ2/2020 and 27 bidders were recommended in respect of SCMQ5/2020. The following orders were issued to the supplier:

No	SCMQ process	PPE	Value
1	SCMQ2/2020	Sanitizer	R1 393 687
2	SCMQ5/2020	Various PPE	R2 000 120

The investigation revealed that the supplier is registered on the CSD. No evidence pointing to any irregularities with regards to the awarding of the contracts were found.

#### **15.4.1.5. PPE**

##### **a) Nature of Allegation**

This allegation was referred to the SIU on 17 August 2020. The allegation is that this supplier, which belongs to a domestic prominent influential person, was awarded a contract for PPE to the value of R900 000.

##### **b) Summary of findings**

Following the declaration of a National State of Disaster, the PEC resolved to centralize the procurement of PPE for all 12 Free State Provincial Departments, to the Free State PT.

Interested suppliers were invited through an advertisement that was placed on the website of the Free State PT to register on the Provincial Covid-19 database. The supplier in question is one of the suppliers who registered on the database as a supplier of PPE.

The supplier responded to 1 invitation to submit a quotation for PPE, issued by the Free State PT. This was in respect of SCMQ5/2020, issued on 12 May 2020. The Free State PT deviated from an open procurement process, with the approval of the HOD, due to the emergency. It was found that this deviation was properly motivated and authorised and that the relevant Treasury Instructions, applicable at the time, were complied with.

Following proper evaluation and adjudication processes by the EPTT, the BQC and approval by the HOD of the Free State PT, 27 bidders were recommended. The following order was issued to the supplier:

No	SCMQ process	PPE	Value
1	SCMQ5/2020	Surgical masks	R9 02 700

Part of the allegation suggests that the supplier received contracts because of its links to domestic prominent influential persons. This aspect of the allegation has been investigated and no evidence was found to support this. The SIU found no other evidence pointing to any irregularities with regards to the awarding of the contract.

#### 15.4.1.6. PPE

##### a) Nature of Allegation

This allegation was referred to the SIU on 17 August 2020. The allegation is that this service provider, which is a local carwash and ChesaNyama, received a contract for PPE worth R4.3 million. It is further alleged that the company is not registered with the CIPC and the awarding of a PPE contract to a car wash was questioned.

##### b) Summary of findings

Following the declaration of a National State of Disaster, the PEC resolved to centralize the procurement of PPE for all 12 Free State Provincial Departments, to the Free State PT.

Interested suppliers were invited through an advertisement that was placed on the website of the Free State PT to register on the Provincial Covid-19 database. The supplier in question is one of the suppliers who registered on the database as a supplier of PPE.

The supplier responded to 1 invitation to submit a quotations for PPE, issued by the Free State PT. This was in respect of SCMQ5/2020, issued on 12 May 2020. The Free State PT deviated from an open procurement process, with the approval of the HOD, due to the emergency. It was found that the deviation was properly motivated and authorised and that the relevant Treasury Instructions, applicable at the time, were complied with.

Following proper evaluation and adjudication processes by the EPTT, the BQC and approval by the HOD of the Free State PT, 27 bidders were recommended. The following order was issued to the supplier:

No	SCMQ process	PPE	Value
1	SCMQ5/2020	Various PPE	R4 374 300

The investigation revealed that the supplier is registered on the CSD. The supplier is also, according to the CSD, registered with the Companies and Intellectual Properties Commission.

Furthermore, the invitation to register as a supplier of PPE, was open for everyone and nothing prevented them from registering on the database of suppliers. No evidence pointing to any irregularities with regards to the awarding of the contract was found.

It was however found that the supplier is not registered as a VAT Vendor, according to the CSD. Upon receiving the abovementioned contract, the income received by the supplier exceeded the R1 million VAT registration threshold, and there was an obligation on the supplier to register as a VAT vendor. Evidence has been referred to the South African Revenue Services (“SARS”) for violation of Sec 23(1) and (2), read with Sec 58(c) and Sec 61(1) of the Value-Added Tax Act No. 89 of 1991, as amended (“VAT Act”) in terms of the provisions of section 5(7) of the SIU Act for further investigation.

**15.4.1.7. PPE**

**a) Nature of Allegation**

This allegation was referred to the SIU on 17 August 2020. The allegation is that the directors of the supplier, were convicted of fraud, and that despite this, the supplier received a PPE contract worth R4.8 million.

**b) Summary of findings**

Following the declaration of a National State of Disaster, the PEC resolved to centralize the procurement of PPE for all 12 Free State Provincial Departments, to the Free State PT.

Interested suppliers were invited through an advertisement that was placed on the website of the Free State PT to register on the Provincial Covid-19 database. The supplier is one of the suppliers who registered on the database as a supplier of PPE.

The supplier responded to 1 invitation to submit a quotations for PPE, issued by the Free State PT. This was in respect of SCMQ5/2020, issued on 12 May 2020. The Free State PT deviated from an open procurement process, with the approval of the HOD, due to the emergency. It was found that the deviation was properly motivated and authorised and that the relevant Treasury Instructions, applicable at the time, were complied with.

Following proper evaluation and adjudication processes by the EPTT, the BQC and approval by the HOD of the Free State PT, 27 bidders were recommended. The following order was issued to the supplier:

No	SCMQ process	PPE	Value
1	SCMQ5/2020	Various PPE	R7 875 651

The investigation revealed that co-directors of the supplier, were convicted of criminal offences. However, this was more than five years prior to the supplier getting the contract. The bid documents require disclosure of conviction in the last five years when a bid is submitted. The co-directors did not have to disclose their criminal offence because they were convicted seven years ago. No evidence pointing to any irregularities with regards to the awarding of the contract was found.

It was however found that the supplier is not registered as a VAT Vendor, according to the CSD. Upon receiving the abovementioned contract, the income received by the supplier exceeded the R1 million VAT registration threshold, and there was an obligation on the supplier to register as a VAT vendor. Evidence has been referred to SARS for violation of Sec 23(1) and (2), read with Sec 58(c) and Sec 61(1) of the VAT Act in terms of the provisions of section 5(7) of the SIU Act for further investigation.

## **15.5. KWAZULU-NATAL PROVINCE**

### **15.5.1. KwaZulu-Natal Department of Education (“KZN DoE”)**

#### **15.5.1.1. Procurement of Water Tanks**

##### **a) Nature of Allegation**

The allegations received were that a tender was awarded for the supply, delivery and installation of 41 000 water tanks at a cost of R28 000.00 per tank due to the declaration of the National State of Disaster by the KZN DoE. It was further alleged that the cost of R28 000 was deemed to be excessive, as a 5 000L water tank retails between R4 500 to R5 000 therefore suggesting that the KZN DoE was prejudiced due this procurement.

##### **b) Summary of findings**

On 15 April 2020, the Water and Sanitation Emergency Procurement Covid-19 Disaster Response Direction was issued. The purpose of these directions is to give command control to the National Disaster Water Command Centre to take appropriate measures to prevent the spread of Covid-19. All emergency procurement for the provision of water through the manufacture, supply, delivery and procurement of water tanks, water tankers, sanitation and related goods and services was centralized under the auspices of the National Disaster Water Command Centre. Rand Water, as the coordinator of the National Disaster Water Command Centre, was responsible for implementing and administering the Implementation Protocol. Rand Water is responsible for the procurement at a national level, for all municipal areas within the Republic of South Africa. As a result of a tri-party agreement between the Department of Basic Education, Water and Sanitation and Rand Water all procurement of water tanks in

relation to the Covid-19 State of Disaster was carried out by Rand Water. In KZN, Rand water supplied approximately 1200 schools with water tanks. KZN DoE also procured water tanks for schools, however this procurement was carried out by implementing agents appointed by the Department and the procurement of these water tanks falls within the Department's Infrastructure and Development plan to ensure that all schools in the Province have adequate water and sanitation. In essence the KZN DoE did not procure the water tanks as alleged and this matter is now closed.

#### **15.5.1.2. PPE**

##### **a) Nature of Allegation**

Several allegations in the media relating to irregular procurement by the KZN DoE were noted and prompted this investigation. Notwithstanding comments in the media of an investigation having been conducted into these irregularities, the SIU established that no investigation was conducted by any agency. The SIU initiated an investigation into the following:

- Whether procurement prescripts were followed;
- Whether there was any collusion between officials and the service providers;
- Whether there was any fraud committed by any party;
- Whether the Department received value for money;
- Whether there was overpricing of PPE; and
- Whether PPE procured were Covid-19 essentials as set out by the Treasury.

The investigation into the procurement of PPE by the KZN DoE involves 58 suppliers in 80 contracts with a cumulative value of R512 869 387.

42 service providers are currently under investigation. The contracts in question amount to R183 362 489.

##### **b) Summary of findings**

Our analysis has revealed the following:

- Cover quoting between service providers who were awarded the contract and other bidders.
- Service providers did not declare on their bid documents that they had conducted work with other state institutions in the last 12 months which was a requirement when completing the bid documents.

- Non-essential items were purchased by the Department under Covid-19 emergency provisions.
- Fraud, forgery and uttering committed by service providers in the submission of the bid documents.
- Non-compliance with section 23 of the Value-Added Tax Act No. 89 of 1991 as amended ("**VAT Act**") in which service providers who were not already registered for VAT; were obliged to apply to SARS to be registered as VAT vendors within 21 days of receiving contracts exceeding R1 million.
- Service Providers invoiced for VAT while they were not registered as VAT vendors.
- Under delivery of items by service providers.

**c) Steps taken**

- A referral was submitted to the NPA on 15 October 2020, against a service provider for a contract valued at R440 000 against the entity, director and manager relating to fraud. The SIU has since met with the NPA and DPCI for a briefing on this matter. Collaboration as part of the SIU's support to prosecutions, is ongoing.
- A referral was submitted to the NPA on 20 October 2020, against a service provider for a contract valued at R1 784 649 against the entity, director and manager relating to fraud. The SIU has since met with the NPA and DPCI for a briefing on this matter. Collaboration as part of the SIU's support to prosecutions, is ongoing.
- A referral was submitted to the NPA on 27 October 2020, against a service provider for a contract value of R494 680 against the entity, director and manager relating to fraud. The SIU has since met with the NPA and DPCI for a briefing on this matter. Collaboration as part of the SIU's support to prosecutions, is ongoing.
- Disciplinary referrals in terms of the Public Service Code of Conduct were submitted to the DoE on 5 October 2020, for misconduct against 6 officials in respect of 10 service providers on 14 contracts at a total contract value of R3 856 056. The SIU has made contact with the Department and although they are at various stages of actioning the recommendations, none of the matters have been finalised to date.
- Referrals were submitted to SARS on 08 October 2020, with regard to non-compliance with section 23 of the VAT Act in which service providers who were not already registered for VAT, were obliged to apply to SARS to be registered as VAT



vendors within 21 days of receiving contracts exceeding R1 million. The referrals were against 10 service providers on 11 contracts.

- Collaboration as part of the SIU's support to SARS investigations, is ongoing.

## **15.5.2. KwaZulu-Natal Department of Social Development (“KZN DSD”)**

### **15.5.2.1. Procurement of Blankets**

#### **a) Nature of Allegation**

At a media briefing, hosted by the Honourable Premier Sihle Zikalala he announced that the KZN PEC had commissioned the Provincial Treasury to conduct a forensic investigation into allegations relating to the procurement of blankets by the KZN DSD. The investigation was prompted by various allegations that were also being reported in the public space, alleging that the procurement contracts were inflated and irregular.

The SIU reviewed the investigation conducted by the PT and established that 48 000 blankets were procured from four service providers at a total cumulative price of R22 437 000.

The report further recommended disciplinary action against several officials as well as the institution of a criminal case. The SIU's analysis revealed that the report did not extend to establishing whether any recoveries were possible and fell short of establishing the quantum of the loss. The SIU's focus moved to establishing the following:

- Were procurement prescripts followed;
- Whether there was any collusion between officials and the service providers;
- Whether there was any fraud committed by any party;
- Whether the DSD received value for money; and
- Whether there was overpricing with regard to the price paid for the blankets.

#### **b) Summary of findings**

The SIU obtained and perused the KZN Treasury reports including supporting documentation for the supply of blankets. Based on the analysis of the documents the SIU sought and obtained the following:

- ITC reports on all service providers
- CIPC documentation reflecting the details of all the service providers
- FIC reports on any suspicious transactions

- Company and Director profiling
- eNatis

The SIU has interviewed key role players and obtained industry pricing on the blankets through interviews with suppliers and manufacturers.

The SIU's investigation has concluded and confirmed the following:

- The SIU has confirmed the finding of the Treasury report that the blankets delivered did not meet the specifications as set out in the order from DSD.
- The blankets delivered were not in accordance with the specifications.
- The DSD's use of the emergency provisions was found to be incorrect and misguided as the DSD was already in possession of blankets purchased last year.
- When the SIU visited the warehouses, the blankets were still being stored and had not been distributed which further negates any argument there was an emergency.
- It was also established that the price differentiation for the blankets was beyond market related prices.

**c) Steps Taken**

- A referral was submitted to SARS for confirmation of VAT registration status and compliance in terms of specific sections of the VAT Act on 7 October 2020.
- A recommendation was made to KZN DSD to stop any further payments (R2 040 000) to 1 service provider and they have confirmed that no further payments will be made pending the conclusion of the litigation process that the SIU will institute.
- Four separate applications in respect of each of the four service providers contracted to supply blankets to KZN DSD, have been issued in the ST seeking the setting aside of the contracts and a claim for losses and damages suffered.
- Evidence of criminality is being pursued by the DPCI under Pietermaritzburg CAS 228/07/2020, which was the original charge laid by the Department and is being supplemented by the evidence that the SIU has established.
- The investigation has been completed and has moved into the support phase where the SIU will support the litigation and the criminal investigation being conducted by the DPCI.

### **15.5.2.2. PPE**

#### **a) Nature of Allegation**

Provincial Treasury was also commissioned to conduct a forensic investigation into allegations relating to the procurement of PPE by DSD. The investigation was prompted by various allegations being reported in the public space, alleging that the procurement contracts were inflated and irregular.

The Treasury investigation concluded that PPE were procured from 16 service providers in 18 contracts at a total cumulative value of R21 242 955.95. The report further recommended disciplinary action against several officials as well as the registration of a criminal case.

The SIU's analysis revealed that the report did not extend to establishing whether any recoveries were possible and fell short of establishing the quantum of the loss. Further enquiries conducted revealed that there have been no civil recoveries nor attempts at such. The SIU's focus has now moved to the following:

- Establishing whether the procurement prescripts were followed
- Whether there was any collusion between officials and the service providers
- Whether there was any fraud committed by any party
- Whether the Department received value for money
- Whether there was overpricing of PPE

The financial analysis in respect of the overpricing has been completed and the investigation finalised in respect of 16 service providers.

#### **b) Summary of findings**

The SIU has found that in of all of the service providers listed above, they charged a rate for the supply of the PPE in excess of the regulated pricing lists as issued by Treasury. The prices charged were found to be excessive and without justifiable reasons therefore. The SIU will now seek to recover these payments through proceedings in the ST and has just received authority to brief counsel on the matters.

#### **c) Steps Taken**

The KZN DSD has already opened a criminal case on receipt of the Treasury forensic report vide Pietermaritzburg CAS 227/07/2020 for criminal investigation into the procurement of PPE. The SIU will provide support to this investigation as and when required.

A referral was submitted to SARS to investigate the VAT registration status and compliance by seven service providers in terms of specific sections of the VAT Act on 8 October 2020. The

SIU has consulted with and briefed SARS, and provided copies of the relevant documentation. The SIU is collaborating with the SARS investigation which is underway

A criminal referral has been made to the NPA against a senior official for a contravention of Section 86 of the PFMA. The referral was made on 9 October 2020 in respect of four of the service providers at a cumulative contract value of R4 717 925.

Counsel has since been briefed on the matter relating to 16 service providers in respect of 18 contracts. An application will be issued wherein the SIU will seek the cancellation of the contracts and claim losses and damages suffered by the DSD.

## **15.6. LIMPOPO PROVINCE**

### **15.6.1. Limpopo Department of Health (“LIMDoH”)**

#### **15.6.1.1. Liquid hand sanitizers and manual dispensers**

##### **a) Nature of Allegation**

The SIU received an allegation on 19 August 2020 from the Premier of Limpopo regarding irregular procurement and payments for PPE. The allegations relates to the supply, delivery, installation, maintenance and repair of liquid hand sanitizers and manual dispensers. The value of the contract is R16 080 000.

##### **b) Summary of findings**

The SIU interviewed the service provider who confirmed that they did supply the sanitizers and dispensers to LIMDoH. The delivery of the sanitizers and dispensers was confirmed with the transport companies and the pharmaceutical depot. The SCM process followed in respect of the appointment of the service provider was analysed and no irregularities were identified. A request was sent to SAHPRA to verify if the service provider was licensed to supply medical devices (PPE) in terms of section 22C(6) of the Medicines and Related Substances Act 101 of 1965 (as amended). SAHPRA confirmed that the service provider is licenced to supply medical devices. The matter is now closed.

## **15.6.2. Sekhukhune District Municipality (“SDM”)**

### **15.6.2.1. Disaster management project emergency interventions (boreholes and water supply)**

#### **a) Nature of Allegation**

The SIU received an allegation on 9 July 2020 from a whistle blower regarding an irregular award of a contract by SDM to eight service providers, who were not on the panel of contractors. The entities were appointed by SDM on 23 June 2020 to perform Covid-19 Disaster Management Project Emergency Interventions. The total contract amount was R26 345 880. The SDM secured an Interim Order on 21 July 2020 from the Limpopo Division of the High Court, setting aside the eight appointment letters.

#### **b) Summary of findings**

Four officials were found to have contravened Schedule 2 of the Municipal System Act, No. 32 of 2000 (“MSA”), Sections 2(a) and (b); and Paragraph 66.2(d) of the SDM SCM Policy 2019-2020. They failed to perform the functions of the office in good faith, diligently, honestly and in a transparent manner, in that they facilitated the approval of the memorandum to request the Acting Municipal Manager to appoint contractors from the Municipal term contract database to perform COVID-19 disaster management project emergency intervention in contravention of SCM prescripts.

An official committed an act which points to the commission of a criminal offence of fraud in that on or about 18 June 2020 he unlawfully and intentionally made a misrepresentation to the Municipality by drafting a memorandum requesting the Acting Municipal Manager to appoint eight entities, with practically an impossible and/or unnecessary scope of work for Brooklyn, Kgatlopong, Sefhaku, Legolaneng and Tshikanosi villages. He induced the Municipality to approve the memorandum and appoint the eight entities to render services when in fact, he knew that the scope of work indicated in the memorandum was impractical and misleading.

An official contravened Section 171(1)(c) of the MFMA by deliberately or negligently permitting another official of the municipality to make, irregular expenditure in that he approved the memorandum requesting him to appoint the eight contractors/service providers, despite this being in contravention of SCM prescripts.

An official committed an act which points to the commission of a criminal offence in terms of section 173(1)(a)(iii) of the MFMA by failing to take all reasonable steps to prevent irregular expenditure whilst he was the Acting Municipal Manager.

**c) Steps Taken**

- Recommendations for disciplinary actions against 5 officials were made to SDM against the four officials for misconduct on 30 September 2020. 4 of the officials are on suspension pending finalisation of the disciplinary process. 1 official resigned before being served with a letter of suspension. The disciplinary process is delayed due to Covid-19 infections within the Municipality.
- A criminal referral was made to the NPA on 30 September 2020, which points towards the commission of a criminal offence of fraud by an official. The NPA has assigned a prosecutor and a criminal case was opened with CAS 33/07/2020.
- A criminal referral was also made to the NPA against an official for financial misconduct on 30 September 2020. The NPA has assigned a prosecutor and a criminal case was opened with CAS 33/07/2020.

**15.7. MPUMALANGA PROVINCE**

**15.7.1. Mpumalanga Provincial Treasury (“MPU PT”)**

**15.7.1.1. 3 layer cloth masks**

**a) Nature of Allegation**

The allegations emanate from a media report dated 19 August 2020 where discrepancies were identified relating to the expenditure and pricing on Covid-19 PPE. The PPE was sold for more than the prescribed amount as per the NT Instructions. The value of the contract was R15 400 for the supply of three layer cloth masks.

**b) Summary of findings**

No irregularities could be found during the SIU investigation into the procurement process, the value for money exercise or the financial investigation and there were no contraventions in respect of the NT Regulations or the PFMA. The matter is now closed.

**15.7.1.2. Hand sanitiser**

**a) Nature of Allegation**

The allegations emanate from a media report dated 19 August 2020 where discrepancies were identified relating to the expenditure and pricing on Covid-19 PPE. The PPE was sold for more than the prescribed amount as per the NT Instructions. The value of the contract was R168 800 for the supply and delivery of hand sanitizer.

**b) Summary of findings**

No irregularities could be found during the SIU investigation into the procurement process, the value for money exercise or the financial investigation and there were no contraventions in respect of the NT Regulations or the PFMA. The matter is now closed.

**15.7.1.3. Digital thermometers**

**a) Nature of Allegation**

Allegations were made in a media report dated 19 August 2020, that there were discrepancies relating to the expenditure and pricing of infrared non-contact digital thermometers which were procured. It was further alleged that these items were sold for more than the prescribed amount as per the NT Instructions and that the procurement process was not followed. The value of the contract was R75 816.

**b) Summary of Findings**

The owner of the supplier was interviewed. He provided all correspondence. He also provided all payment record to his suppliers as well as payment records. The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.

**15.7.1.4. Sifikile Printers**

**a) 500ml empty spray bottles**

Allegations were made in a media report dated 19 August 2020, that there were discrepancies relating to the expenditure and pricing of the delivery of 500ml empty spray bottles. It was further alleged that these items were sold for more than the prescribed amount as per the NT Instructions and that the procurement process was not followed. The value of the contract was R15 697.

**b) Summary of Findings**

The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.

#### **15.7.1.5. Surface sanitiser**

##### **a) Nature of Allegation**

Allegations were made in a media report dated 19 August 2020, that there were discrepancies relating to the expenditure and pricing of the delivery of surface sanitizer. It was further alleged that these items were sold for more than the prescribed amount as per the NT Instructions and that the procurement process was not followed. The value of the contract was R183 600.

##### **b) Summary of Findings**

The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.

#### **15.7.1.6. Antiseptic wipes**

##### **a) Nature of Allegation**

Allegations were made in a media report dated 19 August 2020, that there were discrepancies relating to the expenditure and pricing of the delivery of antiseptic wipes. It was further alleged that these items were sold for more than the prescribed amount as per the NT Instructions and that the procurement process was not followed. The value of the contract was R49 500.

##### **b) Summary of Findings**

The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.

#### **15.7.1.7. OH&S commodities**

##### **a) Nature of Allegation**

Allegations were made in a media report dated 19 August 2020, that there were discrepancies relating to the expenditure and pricing of the delivery of Occupational Health and Safety Commodities. It was further alleged that these items were sold for more than the prescribed amount as per the NT Instructions and that the procurement process was not followed. The value of the contract was R47 000.

##### **b) Summary of Findings**

The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.



## **15.7.2. Office of the Premier (“OTP”)**

### **15.7.2.1. Paper towels and hand soap**

#### **a) Nature of Allegation**

The SIU conducted a desktop analysis to identify any discrepancies relating to the expenditure of goods. The MPU PT Covid-19 Procurement Disclosure Report was used as the source document. The investigations conducted are to determine if PPE was sold for more than the prescribed amount, and/or whether or not the proper procurement process was followed as per NT Instructions. The value of the contracts was R16 974 and paper towels and hand soap were procured.

#### **b) Summary of findings**

The SIU investigation found no irregularities and the matter is closed.

### **15.7.2.2. Sanitiser**

#### **a) Nature of Allegation**

The SIU conducted a desktop analysis to identify any discrepancies relating to the expenditure of goods. The MPU PT Covid-19 Procurement Disclosure Report was used as the source document. The investigations conducted are to determine if PPE was sold for more than the prescribed amount, and/or whether or not the proper procurement process was followed as per NT Instructions. The value of the contracts was R78 110 and sanitizer was procured.

#### **b) Summary of findings**

Outcome of investigation yield no irregularities and the matter is closed.

### **15.7.2.3. PPE**

#### **a) Nature of Allegation**

The SIU conducted a desktop analysis to identify any discrepancies relating to the expenditure of goods. The Mpumalanga PT Covid-19 Procurement Disclosure Report was used as the source document. The investigations conducted were to determine if PPE was sold for more than the prescribed amount, and/or whether or not the proper procurement process was followed as per NT Instructions. The value of the contract was R15 000. Quotations were requested and received from two suppliers who both quoted R15 000 (each).

Both suppliers were awarded the contract, however according to their appointment letters the value of each contract awarded would be apportioned at R7 500 each.

**b) Summary of Findings**

The SIU found that the procurement process were followed. The fact that one order was split did not constitute an irregularity as prescribed in the SCM regulations.

**15.7.2.4. Disinfecting material**

**a) Nature of Allegation**

An allegation was received that the procurement process was not followed during the purchase of disinfecting materials. The value of the contract was R324. Quotations were requested and received.

**b) Summary of Findings**

The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.

**15.7.2.5. Deep cleaning and disinfection of offices**

**a) Nature of Allegation**

An allegation was received that the procurement process was not followed during the deep cleaning and disinfections of the offices. The value of the contract was R1 600. Quotations were requested and received.

**b) Summary of Findings**

The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.

**15.7.2.6. Floor and board decals**

**a) Nature of Allegation**

An allegation was received that the procurement process was not followed during the purchasing of floor and board decals. The value of the contract was R222. Quotations were requested and received.

**b) Summary of Findings**

The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.

**15.7.2.7. Infrared thermometer**

**a) Nature of Allegation**

An allegation was received that the procurement process was not followed during the purchasing of one infrared thermometer. The value of the contract was R849. Quotations were requested and received.

**b) Summary of Findings**

The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.

**15.7.3. Mpumalanga Parks and Tourism Agency (“MPTA”)**

**15.7.3.1. Thermometers**

**a) Nature of Allegation**

The allegations emanate from a media report dated 19 August 2020 where discrepancies were identified relating to the expenditure and pricing on Covid-19 PPE. The PPE was sold for more than the prescribed amount as per the NT Instructions. The value of the contract was R3 011 for the supply and delivery of thermometers.

**b) Summary of findings**

No irregularities could be found during the SIU investigation into the procurement process, the value for money exercise or the financial investigation and there were no contraventions in respect of the NT Regulations or the PFMA. The matter is now closed.

**15.7.3.2. Cloth masks**

**a) Nature of Allegation**

Allegations were made in a media report dated 19 August 2020, that there were discrepancies relating to the expenditure and pricing of cloth masks which were procured. It was further alleged that the masks were sold for more than the prescribed amount as per the NT Instructions and that the procurement process was not followed. The value of the contract was

R8 174. The unit price of the mask was R28 per mask, but the prescribed price was R25 per mask. The documents obtained indicates that seven companies were invited to submit quotations but only two responded. The supplier quoted R40 per mask but the MPTA officials allegedly negotiated the price down to R28 per mask. The acting CFO signed a deviation authorising the purchase of R28 per mask.

**b) Summary of Findings**

The SIU found that although the MPTA appears to have failed to comply with the NT instruction note in respect of prescribed prices, the instruction note does allow for variances in the price of PPE. The CFO was therefore within his rights to approve the deviation. The matter is now closed.

**15.7.3.3. Sanitizer, disposable gloves, yellow gloves, plastic aprons and black and blue waste plastic**

**a) Nature of Allegation**

Allegations were made in a media report dated 19 August 2020, that there were discrepancies relating to the expenditure and pricing of sanitizer, disposable gloves, yellow gloves, plastic aprons and black and blue waste plastic which were procured from three suppliers. It was further alleged that these items were sold for more than the prescribed amount as per the NT Instructions and that the procurement process was not followed. The value of the contracts were R29 818, R2 628 and R14 094.

**b) Summary of findings**

The SIU has found that MPTA complied with the NT instruction notes' prescribed prices and that there were no irregularities in respect of the procurement processes that were followed. The matters are now closed.

**15.7.3.4. Cloth masks**

**a) Nature of Allegations**

Allegations made in a media report dated 19 August 2020 that there were discrepancies relating to the expenditure and pricing of cloth masks which were procured. The value of the contract was R4 255.

## **b) Summary of Findings**

The SIU found that the proper procurement process was followed and the prices of the goods were not inflated.

## **15.8. NORTHERN CAPE PROVINCE**

### **15.8.1. South African Police Service ("SAPS")**

#### **15.8.1.1. Surgical masks**

##### **a) Nature of Allegation**

This allegation was received on 30 August 2020. It is alleged that a supplier, who is allegedly linked to a domestic prominent influential person, was awarded a R13 million tender to supply SAPS with 1 million masks.

##### **b) Summary of findings**

During March 2020, SAPS procured surgical masks for its members. SAPS deviation from normal SCM procurement procedures with the approval of the National Commissioner. Potential suppliers were identified from the Central Supplier Database ("CSD"). SAPS also visited potential suppliers to confirm stock before requesting quotations from a large number of suppliers. The supplier was one of these suppliers and submitted a price quotation on 29 March 2020 to supply 500 000 surgical masks to the amount of R6 500 000. Order number AG-883257 was issued on the same date to the supplier by SAPS. However, the supplier failed to deliver, which resulted in a Letter of Demand issued by SAPS on 16 April 2020. By 20 April 2020, the supplier still failed to deliver and SAPS cancelled the contract. As a result, no masks were delivered and no payments were made. No evidence, pointing to any irregularities with regards to the procurement of the contract was found. The matter is now closed.

## **15.9. NORTH WEST PROVINCE**

### **15.9.1. JB Marks Local Municipality ("JBM")**

#### **15.9.1.1. Disaster hunger relief**

##### **a) Nature of Allegation**

The allegation was received on 14 August 2020. A business chamber responsible for Disaster Hunger relief requested JB Marks provide them with a donation to enable them to buy food for the needy. It is alleged that an amount of R1.2 million was paid over without conducting a due diligence.

**b) Summary of findings**

From the documents received from the whistle-blower, the investigation has revealed that the Municipality paid the business chamber R1.2 million without any due diligence. There is no expenditure breakdown in the documents or proof of receipt for the relief funds that were paid to the business chamber. The investigation further revealed that an official played a role in the awarding of the donation without following any proper procurement processes.

**c) Steps Taken**

The SIU made a referral for Executive Action against an office bearer for misconduct in respect of the awarding of a donation without following proper Municipal processes on 12 November 2020. The newly appointed MEC of COGHSTA is following up on this matter.

**15.9.1.2. PPE**

**a) Nature of the allegation**

The allegation was received on 14 August 2020. It is alleged that the supplier in question overcharged the Municipality when it provided Covid-19 related PPE. It is also alleged that other companies were overlooked when awarding the tender to the supplier. The supplier supplied the Municipality with the following items:

No	Type of PPE	Amount
1	990 litres of sanitisers	R742 000
2	450 2 ply Face Masks and 4 880 3 ply Face Masks	R133 250
3	1 000 Dust Masks	R72 000
4	20 x 25L Disinfection chemicals	R65 000

**b) Summary of findings**

The SIU investigation found that the company charged R25 per masks which was an inflated price and was way above the price of R15 set by NT. The SIU also found no supporting information in the documents obtained which did prove that the company was registered on the CSD before the tender was awarded.

**c) Steps taken**

The State Attorney has been instructed and counsel briefed to initiate proceedings for setting aside of the contract.

### **15.9.1.3. Temperature guns, body covers and face masks**

#### **a) Nature of the allegation**

The allegation was received on 14 August 2020. The supplier in question was procured to supply JBM with temperature guns, body covers and face masks. The whistle-blower alleges that the supplier was appointed without following any procurement process.

#### **b) Summary of findings**

The SIU investigation found that the Municipality paid the supplier R1 816 500 for the supply of PPE and that the supplier had inflated its prices. They supplied one mask for an amount of R22.50 instead of R10.22 each as per the NT price guide.

It also supplied 1 000 full body coveralls at R180 per coverall instead of R149 as per the NT price guide. According to the CSD generated report, the company was not tax compliant at the time JBM awarded the tender to it.

#### **c) Steps taken**

The State Attorney has been instructed and counsel briefed to initiate proceedings for setting aside of the contract.

### **15.9.1.4. 3 ply face masks**

#### **a) Nature of the allegation**

The allegation was received on 14 August 2020. It is alleged that the supplier in question overcharged JBM when it provided JBM with 20 000 3 ply face masks at a cost of R451 200.

#### **b) Summary of findings**

The supplier quoted R21.50 per 3 ply face masks which exceeds the prescribed NT Instruction No 05 of 2020/21: Emergency Procurement response to the National State of Disaster. JBM did not submit the motivation to deviate from the NT circular to procure the 3 ply face masks and the supplier overcharged JBM to the value of R451 200.

#### **c) Steps taken**

The State Attorney has been instructed and counsel briefed to initiate proceedings for setting aside of the contract.

## **15.9.2. Ramotshere Moilwa Local Municipality ("RMLM")**

### **a) Nature of the allegation**

The allegation was received on 22 September 2020. It is alleged that two ANC councilors were suspended following allegations that they were asking for food parcel contributions from businesses, including foreign-owned companies for personal gain.

### **b) Summary of findings**

This matter has been closed because the whistle-blower failed to substantiate the allegation made by not providing any information in support of the allegation to the SIU. As such, the SIU was not in a position to conclude a proper assessment of the matter against the jurisdictional requirements of section 2(2) of the Act as read with the terms of reference for Proclamation R.23 of 2020.

## **15.9.3. Ratlou Local Municipality ("RLM")**

### **15.9.3.1. Face shields**

#### **a) Nature of Allegation**

The allegation was received on 17 August 2020. The whistle-blower alleged that the prices of the PPE that were procured, were inflated. The supplier supplied 32 face shields at a price of R296.00 per shield with the total price of R9 472. The price was supposed to be R108.00 per shield as per the NT price list.

#### **b) Summary of findings**

It was alleged that the supplier overcharged RLM by R6 016, but the SIU obtained information which confirmed that the supplier in fact did not overcharge RLM.

### **15.9.3.2. PPE**

#### **a) Nature of Allegation**

The allegation was received on the 17 August 2020. The whistle-blower alleged that the supplier was appointed without RLM following the proper procurement process.

#### **b) Summary of findings**

The investigation revealed that the supplier was appointed without following a proper procurement process and also that it was not tax compliant according to a CSD report generated, at the time it was awarded the tender.



**c) Steps Taken**

- Recommendations for disciplinary actions against 2 officials were made to the Municipality on 6 October 2020. A meeting was held on 28 January 2021 with the newly appointed Administrator and she promised to fast track the process.
- A criminal referral was made to the NPA on 9 October 2020, which points towards the commission of a criminal offence because of contraventions of section 173 (financial misconduct) of the MFMA by an official. The matter was referred back to SIU to finalise a few queries that were raised by the NPA. The SIU has agreed to finalise the queries and send the documents back by 3 February 2021.

**15.9.3.3. N95 masks**

**a) Nature of Allegation**

The allegation was received on the 17 August 2020. The whistle-blower alleged that the prices of the PPE that were procured, were inflated.

**b) Summary of findings**

The supplier supplied the Municipality with N95 masks at a price value of R1 000 per box. The supplier supplied 30 boxes and was paid R30 000. According to the NT price list, each box was supposed to be sold at R387 per box, which resulted in an overpayment of R18 390.

**c) Steps Taken**

- Recommendations for disciplinary actions against 2 officials were made to the Municipality on 6 October 2020. A meeting was held on 28 January 2021 with the newly appointed Administrator and she promised to fast track the process.
- A criminal referral was made to the NPA on 9 October 2020, which points towards the commission of a criminal offence because of contraventions of section 173 (financial misconduct) of the MFMA by an official. The matter was referred back to SIU to finalise a few queries that were raised by the NPA. The SIU has agreed to finalise the queries and send the documents back by 3 February 2021.
- The SIU is in the process of recovering the overpayment from the service provider by way of an AoD.

#### **15.9.4. North West Department of Health (“North West DoH”)**

##### **15.9.4.1. PPE**

###### **a) Nature of Allegation**

The allegation was received on the 18 August 2020. The whistle-blower alleges that the Director of SCM was suspended immediately when the Covid-19 budget was allocated to the North West DoH. It was alleged that one quotation was received for the procurement of PPE to the value of R8 million. We also received an allegation from the owner of the supplier that his company was paid R3.4 million, but his company did not tender for the supply of PPE at the North West DoH.

###### **b) Summary of findings**

The SIU found that the supplier was not paid R3.4 million and that an error had been made by the person who was preparing a report for the North West OTP and therefore the matter is closed.

##### **15.9.4.2. PPE**

###### **a) Nature of Allegation**

The allegation was received on the 18 August 2020. The whistle-blower alleged that a supplier was paid R5.1 million not R850 000 as per the report to the North West OTP.

###### **b) Summary of findings**

The findings revealed proper procurement process were followed and that the supplier was indeed paid R5.1 million that was lawfully due, owing and payable. The NW PT confirmed that it was erroneously stated in the report to the NW OTP that the supplier was owed R850 000. As the list was prepared by the NW Provincial Treasury, the SIU reported the error to them and the error does not have any effect as according to the invoices, the supplier was paid the correct invoiced amount of R 5.1 million. This matter has been closed as the supplier was procured through a proper procurement process and was correctly paid.

## **15.10. WESTERN CAPE PROVINCE**

### **15.10.1. Western Cape Department of Education (“WCP DoE”)**

#### **15.10.1.1. Hand sanitisers and cloth masks**

##### **a) Nature of Allegation**

The complainant in this matter informed the SIU of his concern regarding the allocation of tenders to a named supplier. The complainant based his concern on the recently published WCP Disclosure Report (“**Disclosure Report**”) released by the WCP Provincial Treasury. This report details all the personal protective equipment bought and paid for by the WCP government, in response to the Covid-19 pandemic. In terms of the Disclosure Report, the supplier was active in respect of several transactions (72 transactions) regarding the supply of PPE to the WCP DoE. The report further highlights that the WCP DoE paid an amount of R112 103 171 to suppliers for PPE. The payments made in favour of the supplier in question, in terms of the Disclosure Report, amounts to R111 826 721. However, upon further analysis, it was determined that for the period 20 April 2020 to 30 June 2020, an amount of R128 577 429.68 was expended in respect of hand sanitisers and cloth masks. The investigation consists of two aspects, the first being the procurement of hand sanitisers, amounting to R73 724 348.08, and the second with regard the procurement of cloth masks, amounting to R54 853 081.60.

##### **b) Summary of findings**

The investigation in respect of hand sanitisers and related items, amounting to R73 724 348.08, is finalised. In this regard no adverse findings were made. The matter is closed as no irregularities were identified.

### **15.10.2. Department of Environmental Affairs and Development and Planning (“DEADP”)**

#### **15.10.2.1. 3 Thermometers**

##### **a) Nature of Allegation**

The 2020 Procurement Disclosure Report released by the WCPT reflect that 3 thermometers at a cost of R2 970 per unit totalling R8 910 were procured from a supplier.

##### **b) Summary of findings**

The SIU assessment of the file showed that the DEADP followed the correct procurement processes and awarded the contract to the highest scoring bidder. DEADP duly tested the

market and obtained more than one quotation in order to achieve competition. The matter is closed as no irregularities were found.

### **15.10.3. Office of the Premier (“OTP”)**

#### **15.10.3.1. Thermometers**

##### **a) Nature of Allegation**

The 2020 Procurement Disclosure Report released by the WCPT reflect that 160 thermometers at a cost of R1 350 per unit totalling R216 000 were procured from a supplier.

##### **b) Summary of findings**

The SIU assessment of the file showed that the OTP followed the correct procurement processes and awarded the tender to the highest scoring bidder with the lowest price at the time. The OTP tested the market sufficiently. The matter is closed as no irregularities were found.

### **15.10.4. Western Cape Department of Health (“WCDoH”)**

#### **15.10.4.1. Neurological microscope**

##### **a) Nature of Allegation**

Alleged SCM irregularities with regard to the procurement of a neurosurgical microscope from a supplier by means of a Limited Bid Tender Process, by the Tygerberg Academic Hospital (“TAH”) amounting to R9 994 926. This matter was referred to the SIU on 6 August 2020.

##### **b) Progress to date**

The investigation is finalised.

##### **c) Summary of findings**

The assessment of the file showed that:

- There is no evidence to find that the purchase was not cost-effective, fair and/or equitable; and
- In view of the latter finding, there are no reasonable grounds to pursue either disciplinary action or civil action (which is in any event pending between the parties).

**d) Steps taken**

The SIU made systemic recommendations to the hospital on 22 October 2020 to inform them of systemic weaknesses, which exposes them to risk, as they have seen with the action instituted against them.

**16. CONCLUSION**

While the investigations are still underway and we continue to submit reports to the President, we continue to execute on the outcomes and follow up on the referrals to ensure that there is consequence management. We are focusing on ensuring that there is accountability at all levels of the administration including executive authority accountability.

Our collaboration and cooperation with other agencies in the Fusion Centre has proved valuable.

The NPA has provided prosecutors to guide criminal investigations and will prioritize consideration to the matters referred.

The ST has proved to be of critical importance speed up the civil litigation instituted by the SIU. We will take all steps necessary to ensure that losses suffered due to irregularities, corruption and maladministration are recovered and returned to the state.

The SIU will present to the Portfolio Committee on Justice and Correctional Services, Select Committee on Public Accounts and other Parliamentary Committees for monitoring purposes.

Allegations may be reported to 0800 037 774 or [siu@whistleblowing.co.za](mailto:siu@whistleblowing.co.za).

Summary of outcomes achieved between 23 July 2020 and 25 November 2020		
Outcome achieved	Number	Value
Rand value of potential cash and/or assets to be recovered		R160 647 890
Rand value of actual cash and/or assets recovered		R1 220 543
Number of referrals made for disciplinary action against officials	25	
Number of referrals made for executive and/or administrative action	2	

Summary of outcomes achieved between 23 July 2020 and 25 November 2020

Outcome achieved	Number	Value
The number of referrals made to the Relevant Prosecuting Authority	38	
Rand value of matters in respect of which evidence was referred for the institution or defence / opposition of civil proceedings		R259 624 735



Adv. JL Mothibi

Head of the Special Investigating Unit

Date: 04 FEBRUARY 2021