

**CLOSING REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF
THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

***“Allegations of maladministration in the matter between Anonymous and the Free-
State Department of Rural Development and Land Reform”***

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**CLOSING REPORT ON AN INVESTIGATION INTO THE ALLEGED
MALADMINISTRATION, IRREGULAR PROCUREMENT PROCEDURES AND NEPOTISM
IN THE IMPLEMENTATION OF DROUGHT RELIEF INTERVENTIONS BY THE
FREESTATE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM**



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Executive Summary

- (i) This is my closing report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into the alleged maladministration, irregular procurement procedures and nepotism during the implementation of drought relief interventions by the Free State Office of the Department of Rural Development and Land Reform (the Department). The complaint was lodged with me on 20 August 2018.
- (iii) The Complaint was lodged anonymously. The Complainant alleged fraud, mismanagement and corruption of the drought relief funds by the Department.
- (iv) In the main, the complaint was that:
 - (1) Drought relief amounting to R11 million was approved by the Director General of the National Department of Rural Development and Land Reform (National Department) on 13 January 2016 for a feed mill to be constructed in the Virginia/Welkom area. The allocated funds were not used for this purpose;
 - (2) The Chief Director of the Department, Mr Sekawana, on 22 February 2017 requested an additional approximately R1 million after he appointed the Service Provider to construct the feed mill in the Wepener area. It was alleged that only one quotation was submitted for approval by the Chief Director of the Department;
 - (3) The Chief Director of the Department appointed the Service Provider and that the successful company was the Chief Director's "brother's" company. No transparent procurement processes were followed in the appointment of the Service Provider. Other service providers were excluded from the process.



- (v) The Department did not dispute that no tender process was followed. However, the Department contended that deviation from normal procurement processes were approved by the Director General of the National Department of Rural Development and Land Reform (National Department).
- (vi) On analysis of the complaint, the following issues were identified and investigated:
 - (a) Whether there was a deviation from the normal procurement processes in the construction of the feed mill, and if so, if it was irregular and amounted to maladministration and improper conduct; and
 - (b) Whether the Chief Director of the Department irregularly appointed his brother's company to construct the feed mill, and if so whether that amounted to nepotism and maladministration.
- (vii) The investigation process was conducted through meetings and interviews with relevant officials of the Department as well as the inspection of all relevant documents and an analysis and application of all relevant laws, policies and related prescripts.
- (viii) Key laws and policies taken into account to determine if there had been maladministration and improper conduct by the Department, were principally those imposing administrative standards that should have been complied with by the Department or its officials when implementing procurement processes.
- (ix) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:



(a) Whether there was a deviation from the normal procurement processes in the construction of the feed mill, and if so, if it was irregular and amounted to maladministration and improper conduct.

(aa) The allegation that the deviation from normal procurement processes in the construction of the feed mill was irregular, is not substantiated.

(bb) The deviation from normal procurement processes was approved by the Director General of the National Department as the Accounting Officer of the Department and in terms of the legislative prescripts applicable.

(cc) The additional amount required to erect the feed mill was approved by the Director General of the National Department as the Accounting Officer of the Department and in terms of legislative prescripts applicable.

(dd) Although the feed mill was not constructed yet, awaiting environmental impact assessment approval, it is on the Farm of the Department and therefore an asset.

(ee) I accordingly could not find any improper conduct, or maladministration on the part of the Department or its officials in relation to the complaint.

(b) Whether the Chief Director of the Department irregularly appointed his brother's company to construct the feed mill and if so whether it amounted to nepotism and maladministration.

(aa) The allegation that the Chief Director Mr Sekawana appointed his brother's company to construct the feed mill, is not substantiated by any evidence.

(bb) I accordingly could not find any improper conduct or nepotism on the part of the Chief Director of the Department, Mr Sekawana.



- (x) In the light of the above findings, I am not taking any remedial action as contemplated in section 182(1)(c) of the Constitution.

**CLOSING REPORT ON AN INVESTIGATION INTO THE ALLEGED
MALADMINISTRATION, IRREGULAR PROCUREMENT PROCEDURES AND NEPOTISM
IN THE IMPLEMENTATION OF DROUGHT RELIEF INTERVENTIONS BY THE
FREESTATE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM**

1. INTRODUCTION

- 1.1. This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation:
 - 1.2.1. The Director General of the Department of Rural Development and Land Reform, Mr M Shabane; and
 - 1.2.2. The Acting Chief Director, Free-State Department of Rural Development and Land Reform, Ms KB Matshediso.
- 1.3. A copy of the report cannot be submitted to the Complainant as it was lodged anonymously and the Complainant's name and details are unknown to me.
- 1.4. The report relates to an investigation into the alleged maladministration, irregular procurement procedures and nepotism during the implementation of drought relief interventions by the Free State Office of the Department of Rural Development and Land Reform (Department).

2. THE COMPLAINT

- 2.1 An anonymous Complainant approached my Free State Provincial office on 20 August 2018. The Complainant's name and details are unknown to me.
- 2.2 The Complainant alleged fraud, mismanagement and corruption of the drought relief funds by the Department.
- 2.3 The Complainant alleged that drought relief amounting to R11 million was approved by the Director General (DG) of the Department of Rural Development and Land Reform (National Department) on 13 January 2016 for a feed mill to be constructed in the Virginia/Welkom area.
- 2.4 The funds were allegedly not used for this purpose. The Complainant alleged that the Chief Director of the Department, Mr Sekawana, on 22 February 2017 requested an additional approximately R1 million after he appointed Vuna Afrika Agriculture (Service Provider) to construct the feed mill in the Wepener area. He alleged that only one quotation was submitted for approval by the Chief Director of the Department.
- 2.5 The Chief Director of the Department allegedly appointed the Service Provider and the company was his "brother's" company. No transparent procurement processes were followed in the appointment of the Service Provider. Other service providers were excluded from the process.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional

democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides:

"The Public Protector has the power as regulated by national legislation-

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action."*

3.3 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.¹ The Constitutional Court further held that: *"When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."*²

3.4 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

3.5 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

² *Supra* at para [73].

conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.6 The Department is an organ of state within the meaning of section 239 of the Constitution and its conduct amounts to conduct in state affairs, and as a result, the matter falls within the ambit of the Public Protector's mandate.

3.7 The Public Protector's power and jurisdiction to investigate this matter and take appropriate remedial action was not disputed by the National Department.

4. THE INVESTIGATION

4.1. Methodology

4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2. The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2. Approach to the investigation

4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

- What happened?
- What should have happened?
- Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

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- In the event of maladministration what would it take to remedy the wrong or to prevent future maladministration or improper conduct?
- 4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the Department acted improperly in the management of the drought relief intervention and specifically in respect of the construction of the feed mill in the Wepener area.
- 4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department or organ of state to prevent maladministration and improper conduct.
- 4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration and improper conduct.
- 4.3. **On analysis of the complaint, the following were issues considered and investigated:**
- 4.3.1 Whether there was a deviation from the normal procurement processes in the construction of the feed mill, and if so, if it was irregular and amounted to maladministration and improper conduct; and
- 4.3.2 Whether the Chief Director of the Department irregularly appointed his brother's company to construct the feed mill, and if so whether that amounted to nepotism and maladministration.

4.4 The Key Sources of information

4.4.1 Documents

- 4.4.1.1 2018 August 1: Letter from an anonymous Complainant;
- 4.4.1.2 2015 December 04: Submission for drought relief for various provinces *inter alia* Free State Province from the Deputy Director General of the National department addressed to the DG of the National Department and approved by the DG on 4 December 2015;
- 4.4.1.3 2015 December 11: Circular 183 of 2015. Operationalisation of approved deviation from normal supply chain management processes for drought relief intervention.
- 4.4.1.4 2015 December 22: Deviation request by the Chief Director of the Department addressed to the DG of the National Department for drought relief. Urgent drought relief intervention. Request for the establishment of lucerne processing plant, purchase of drought rations for livestock, assessment and provision of boreholes, stocking of feedlot, establishment of lucerne;
- 4.4.1.5 2016 January 13: Approval by the DG of the National Department of deviation for drought relief for establishment of lucerne processing plant, purchase of drought rations for livestock, assessment and provision of boreholes, stocking of feedlot, establishment of lucerne;
- 4.4.1.6 2016 February 12: Attendance register of service providers at meeting about drought relief at Bloemspa, Bloemfontein. 30 Service Providers and 14 Officials from Departments tasked with Rural Development and Land Reform attended;



- 4.4.1.7 2016 March 16: Director Free State Office Recapitalisation and Development requests approval from Chief Director Free State Office Department requests approval for deviation for supply of feed to regions in the Free State Province;
- 4.4.1.8 Undated: Quotation 001/11 from Vuna Afrika Agriculture to Chief Director of the Department. Inter alia for Construction of 15 x 15 x 12 Shed and 5 ton per hour animal feed plant with Pellet machine and complete boiler. total cost R12 032 174. 46;
- 4.4.1.9 2016 November 16: Director Free State Office Recapitalisation and Development requests the Chief Director of the Department to approve deviation for appointment of Vuna Afrika Agriculture to build feed mill and shed for amount of R12 032 174.46 and approved on same day;
- 4.4.1.10 2016 November 22: Appointment letter to Vuna Afrika Agriculture for the construction of a feed mill and shed for amount of R12 032 174.46 signed by the Director Free State Office Department;
- 4.4.1.11 2016 November 29: Vuna Afrika Agriculture acceptance of appointment to construct a feed mill and shed;
- 4.4.1.12 2016 December 5: Service Level Agreement signed by Vuna Afrika Agriculture on 30 November 2016, Director Free State Office Department signed on 30 November 2016 and acceptance signed by Vuna Afrika Agriculture on 30 November 2016 and Director Free State: Recapitalisation signed on 5 December 2016;
- 4.4.1.13 2017 January 20: Director Free State Office Department issues Purchase order Number PO004431 to Vuna Afrika Agriculture for amount of R12 032 174. 46;

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- 4.4.1.14 2017 January 23: Vuna Afrika Agriculture Invoice Number 001/01 for the construction on a 5 ton per hour Animal Feed Plant on Farm Wilgedraai/ Smokkeldraai with a 30 x 60 x 9 storage facility. Goods and services provided certified by Director Free State: Recapitalisation on 26 January 2017. Amount R12 032 174.46;
- 4.4.1.15 2017 February 16: Payment made by Finance on request of Directorate: PLAS Trading Account. Finance pays R11 million;
- 4.4.1.16 15 to 17 February 2017: Emails informs that the invoice of the Service Provider exceeds the amount approved by DG namely R11 million. Project Manager: Free State requests Chief Director of the Department to make a submission to Acting DG for the additional amount;
- 4.4.1.17 13 February 2018: Payment of R1 032 174.46 to Vuna Afrika Agriculture; and
- 4.4.1.18 2017 February 22: Chief Director of the Department addresses the DG of the National Department. Application for approval of additional funds to the approved budget to establish feed mill for drought relief intervention for the Free State Province, and approved by the Acting DG of the National Department on 2017-04-24.

4.4.2 Interviews conducted

- 4.4.2.1 2019 February 25: Meeting Free State Office of Department;
- 4.4.2.2 2019 May 29: Meeting and Inspection in loco with Department and Directors of Service Provider at Farm Wilgedraai, Wepener area; and
- 4.4.2.3 2019 October 22: Meeting with Director Finance Free State Office of Department.



4.4.3 Correspondence sent and received

- 4.4.3.1 2018 September 17: Letter addressed to Director General of the National Department;
- 4.4.3.2 2019 February 28: Director General acknowledge receipt;
- 4.4.3.3 2019 March 12: Response from the Director General with documents attached;
- 4.4.3.4 2019 May 21: Letter addressed to Director General of the National Department;
- 4.4.3.5 2019 June 24: Response from the Director General with documents attached;
- 4.4.3.6 2019 June 20: Email from Free State Office of Department with documents attached;
- 4.4.3.7 2019 June 13: Letter to Mr Sekawana;
- 4.4.3.8 2019 June 15: Response from Mr Sekawana.

4.4.4 Inspections *in loco* conducted

- 4.4.4.1 2019 May 29: Visit Wilgedraai Farm in Wepener area.

4.4.5 Websites consulted/ electronic sources

- 4.4.5.1 2019 May 16: <https://eservices.cipc.co.za>

4.4.6 Legislation and other prescripts

- 4.4.6.1 The Constitution of the Republic of South Africa, 1996;
- 4.4.6.2 Public Finance Management Act, Nr 1 of 1999;
- 4.4.6.3 Treasury Regulations: Public Finance Management Act, 2005;
- 4.4.6.4 National Treasury Practice Note No 8 of 2007/08;
- 4.4.6.5 National Treasury Practice Note No 11 of 2008/2009;



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- 4.4.6.6 National Treasury, Supply Chain Management: A Guide for Accounting Officers/Authorities, February 2004;
 - 4.4.6.7 Department of Rural Development and Land Reform; Circular 183 of 2015, Operationalisation of approved deviation from normal supply chain management processes for drought relief intervention; and
 - 4.4.6.8 Department of Rural Development and Land Reform, Supply Chain Management Policy, 16 March 2015.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Whether there was a deviation from the normal procurement processes in the construction of the feed mill, and if so, if it was irregular and amounted to maladministration and improper conduct

Common cause issues

- 5.1.1 It is common cause that on 4 December 2015, the Director General of the National Department, Mr MP Shabane, approved the procurement deviation for drought relief in various provinces, *inter alia* the Free State Province, for the creation of fire breaks, water provision and to establish auction sites. The request for drought relief was made by the Deputy Director General of the Department. The Director General of the National Department also issued circular 183 of 2015 which document contained instructions for the implementation of the approved procurement deviation for drought relief.
- 5.1.2 It is also common cause that on 22 December 2015 the Chief Director of the Free State Department, Mr P Sekawana, requested approval for a deviation from normal procurement processes in terms of the drought relief intervention *inter alia* for a

feed mill expansion and lucerne processing plant amounting to R11 million for the future mitigation of disaster occurrences. The deviation was approved on 22 December 2015.

- 5.1.3 The submission requested the expansion of the feed mill in the Welkom/Virginia area. It was submitted that R5 million was needed to expand the feed mill, subject to a detailed business plan and evaluation of the expansion required. It was further submitted that the construction of a lucerne processing plant would cost R6 million.
- 5.1.4 It is further common cause that on 22 November 2016 the Chief Director of the Department appointed the Service Provider to construct a feed mill and shed in the Wepener area.

Issues in dispute

- 5.1.5 The Complainant alleged that drought relief amounting to R11 million was approved by the DG of the National Department on 13 January 2016 for a feed mill to be constructed in the Virginia/Welkom area. It was alleged that the funds were not used for this purpose.
- 5.1.6 The Complainant alleged that the Chief Director of the Department, Mr Sekawana, on 22 February 2017, requested an additional approximately R1 million after he appointed the Service Provider to construct the feed mill in the Wepener area. He alleged that only one quotation was submitted for approval by the Chief Director of the Department.
- 5.1.7 The Director General of the National Department submitted in a letter dated 12 March 2019 that the Free State Province was identified as a disaster area during 2015, due to a prolonged drought. The Department operates with two budgets

namely the Agricultural Land Holding Account (AHLA) and the voted funds. The AHLA funds are used to acquire land.

- 5.1.8 A portion of the AHLA funds are used annually for development of property through the Recapitalisation and Development Program (RECAP). During 2015 the Department resolved to use the RECAP budget for drought relief.
- 5.1.9 The Acting DG of the National Department on 13 January 2016 approved a deviation from normal procurement processes for the construction of inter alia a feed mill to the amount of R11 million for the future mitigation of disaster occurrences.
- 5.1.10 The Director General of the National Department submitted in a letter dated 12 March 2019 that after receipt of the approved deviation the Department invited service providers on their data base for procurement, to a meeting with the Department. The meeting was held on 12 February 2016. The Attendance register of service providers at the meeting about drought relief at Bloemspa, Bloemfontein indicates that thirty (30) Service Providers and fourteen (14) Officials from the Provincial Departments tasked with Rural Development and Land Reform attended. At the meeting service providers were invited to submit quotations for the different services approved in the deviation signed by the Director General of the Department.
- 5.1.11 The Chief Director of the Department submitted in a letter dated 20 June 2019 that a total amount of R70, 16 million was approved for drought intervention in the Free State and that the Department was to operate within this scope. The feed mill was considered, including the proposal for the expansion of the feed mill in the Virginia/Welkom area, but as a result of poor performance by the feed mill in the Virginia/Welkom area, the option was not considered viable. The Department submitted emails to and from the feed mill operator, during 2014, in the

Virginia/Welkom area clearly proving the difficulties experienced at the feed mill by the operator to deliver on the requirements of the Provincial Department

5.1.12 The Service Provider was the only company, from those who attended the meeting at Bloemspa, who submitted an undated quotation for the construction of the feed mill plant. The Service Provider further submitted that the feed mill be erected on the farm Wilgedraai, in the Wepener area, which farm is owned by the Department. The Chief Director of the Department approved the submission on 16 November 2016. The quotation was for more than the original amount of R11 million approved by the DG of the National Department. The Department was of the view, In an application to the Director General of the Department to approve the additional funds for the feed mill, dated 22 February 2017, that it was the total amount of R70, 16 million that should not be exceeded.

5.1.13 On 22 November 2016 the Chief Director of the Department appointed the Service Provider and stated *"Your proposal for the construction of a feed mill and storage shed on your farm in the Free State in terms of the approved disaster relief as (sic) been accepted provisionally."*

5.1.14 On 5 December 2016 the Department and Service Provider signed a Service Level Agreement (SLA). The SLA inter alia provides the following:

"Paragraph 3: Purpose of the SLA is to formalise the arrangement to construct a feed mill processing plant which is fully operational and which also has an appropriate storage shed.

Paragraph 5: Provide services to contract a feed mill processing plant which is fully operational and which also has an appropriate storage shed.

Paragraph 15: Total cost R12 032 174.46 and shall be payable to the contractor on completion of the project which will be done in one phase."

- 5.1.15 On 20 January 2017 a purchase order was issued to the Service Provider in the amount of R12 032 174.46. On 23 January 2017, the Service Provider submitted an invoice for the total amount for the construction of a 5 ton per hour Animal Feed Plant on Farm Wilgedraai/ Smokkeldraai with a 30 x 60 x 9 meter storage facility. The goods and services, feed mill and constructed shed provided, were certified by Director Free State: Recapitalisation and Development Program on 26 January 2017.
- 5.1.16 On 16 February 2017 the Service Provider was paid the amount of R11 million by the National Department. The Department upon advice sought further condonation from the Acting DG of the National Department for payment of the additional amount. The Acting DG of the National Department approved the additional payment on 24 April 2017. Payment was made on 13 February 2018, in the amount of R 1 032 174.46.
- 5.1.17 On 29 May 2019 my Free State Office visited the farm Wilgedraai and conducted an inspection *in loco*. The investigators found the pelletizing machine on site but not erected or operational. The shed was constructed and although the feed mill was not erected the Department indicated that they are awaiting an Environmental approval before erecting same.
- 5.1.18 During the visit on 29 May 2019 the Department submitted that the Service Provider was contracted to build a 5 ton capacity feed mill but the service provider at its own discretion purchased a 10 ton capacity feed mill. This posed problems as an Environmental Impact Assessment was necessary before the feed mill could be erected and operated. This resulted in a lengthy process and environmental approval was funded by the Service Provider.

- 5.1.19 The Department further submitted during the visit on 29 May 2019 that the feed mill will be constructed on the Department's farm and are working with all stakeholders to remedy the situation. The Department during the visit on 29 May 2019 submitted that the feed mill is an asset and will mitigate the result of drought in the Free-State Province in the future, as submitted on the deviation request to the National Department.

Application of the relevant law

- 5.1.20 Section 38(1)(a)(iii) of the Public Finance Management Act (PFMA) describes the general responsibilities of an accounting officer. It states that: *"(1) The accounting officer for a department, trading entity or constitutional institution— (a) must ensure that that department, trading entity or constitutional institution has and maintains—*
...
(iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;..."
- 5.1.22 Regulation 16A6.4 of Treasury Regulations for inter alia Departments prescribes that if in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

Conclusion

- 5.1.23. The deviation from the normal procurement processes were followed in terms of the PFMA and the Regulations.
- 5.1.24. The Department submitted proof that they consulted with service providers on their procurement data base and requested quotations from them for the

different services to be provided in terms of the deviation approved by the DG of the National Department.

- 5.2.25. The Department explained and submitted evidence as to the reason why the erection of the feed mill was moved from the original area envisaged, to the Wepener area.

5.2 Whether the Chief Director of the Department irregularly appointed his brother's company to construct the feed mill and if so whether it amounts to nepotism and maladministration

Common cause issues

- 5.2.1 It is common cause that on 22 November 2016 the Chief Director of the Department appointed the Service Provider to construct a feed mill and shed in the Wepener area.
- 5.2.2 The Service Provider was registered as a co-operative on 6 August 2010 with CIPC registration nr 2010/005728/24. The Co-operative was registered as Vuna Afrika Agriculture and the Directors are SL Stok, TBD Belebesi, TA Stok and VM Stok.

Issues in dispute

- 5.2.3 The Complainant alleged that the Chief Director of the Department appointed the Service Provider and further alleged that the company is owned by the brother of the Chief Director of the Department. No transparent procurement processes were followed in the appointment of the Service Provider. Other service providers were excluded from the process.



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- 5.2.4 On 29 May 2019 my Free State Office visited the farm Wilgedraai and met with three directors of the Service Provider. The Service Provider were represented by directors Mr V Stok, Mr T Kole and Mr S Stok. They all denied any relationship or other improper connection to the Chief Director of the Department.
- 5.2.5 On 13 June 2019 the Chief Director of the Department, Mr Sekawana was requested to respond to the allegations that he awarded the contract to his brother's company.
- 5.2.6 Mr Sekawana responded on 15 June 2019 that he is not familiar with the owners of the Service Provider. He submitted that they occupied a state farm before he was employed at the Department. He submitted that none of the members in the cooperative are related to him directly as siblings or indirectly as his cousin brothers.
- 5.2.7 Mr Sekawana submitted that the drought relief program was approved and service providers were handled directly by the officials of the concerned branches alongside officials of supply chain management. He submitted that he was personally not involved in the process but only received submissions from these branches for his approval as delegated.

Application of the relevant law

- 5.2.8 In terms of section 195(1) of the Constitution, public administration (every sphere of government, organ of state and public enterprises³) must be governed by the democratic values and principles enshrined in the Constitution. These principles

³ See section 195 (2)

provide, *inter alia*, that a high standard of professional ethics must be promoted and maintained.

Conclusion

- 5.2.9 The evidence submitted by the Service Provider and the Chief Director Mr Sekawana indicated that no relationship, family or otherwise exist between them.
- 5.2.10 The evidence could however not be put to the Complainant as his name and other details are unknown to me.

6. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

- 6.1 **Regarding whether the deviation from the normal procurement processes in the construction of the feed mill was irregular and amounts to maladministration and improper conduct**
- 6.1.1 The allegation that the deviation from normal procurement processes in the construction of the feed mill was irregular, is not substantiated.
- 6.1.2 The deviation from normal procurement processes was approved by the Director General of the National Department as the Accounting Officer of the Department and in terms of legislative prescripts applicable.

6.1.3 The additional amount required to erect the feed mill was approved by the Director General of the National Department as the Accounting Officer of the Department and in terms of legislative prescripts applicable.

6.1.4 Although the feed mill was not constructed yet, awaiting environmental impact assessment approval, it is on the Farm of the Department and therefore an asset.

6.1.5 I accordingly could not find any improper conduct, or maladministration on the part of the Department in relation to the complaint.

6.2 Regarding whether the Chief Director of the Department irregularly appointed his brother's company to construct the feed mill and if so whether it amounts to nepotism and maladministration

6.2.1 The allegation that the Chief Director Mr Sekawana appointed his brother's company to construct the feed mill is not substantiated by any evidence.

6.2.2 I accordingly could not find any improper conduct or nepotism on the part of Mr Sekawana.

7. REMEDIAL ACTION

7.1 In the light of the above findings I am not taking any remedial action as contemplated in section 182(1)(c) of the Constitution.

8. MONITORING

8.1 In the absence of any remedial action taken, there will be no monitoring.



**ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA**

DATE: 30/03/2020

Assisted by: Adv. E Cilliers, Free State Provincial Office