

**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**

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*“Allegations of Procurement Irregularities and Corruption in the awarding of a tender for the Installation of Closed Circuit Television (CCTV) Cameras at Baviaanspoort Prison”*

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF PROCUREMENT  
IRREGULARITIES AND CORRUPTION IN THE AWARDING OF A TENDER FOR  
THE INSTALLATION OF CLOSED CIRCUIT TELEVISION (CCTV) CAMERAS AT  
BAVIAANSPOORT PRISON.**

*"Allegations of Procurement Irregularities And Corruption In The Awarding Of A Tender For The Installation Of Closed Circuit Television (Cctv) Cameras At Baviaanspoort Prison"*



*A report by the Public Protector August 2019*

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## **Executive Summary**

- (i) This is my 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 communicates my findings and appropriate remedial action taken in terms of section 182 (1) (c) of the Constitution following an investigation into allegations of Procurement Irregularities and Corruption in the awarding of a tender for the Installation of Closed Circuit Television (CCTV) Cameras at Baviaanspoort Prison.
- (iii) The complaint was lodged with my office by Mr. Phillip Mohloana (Complainant), the owner of Mohloana's Trading CC (Mohloana's Trading), on 03 May 2012.
- (iv) The Complainant alleged, *inter alia*, that:
  - (a) On 11 January 2012, the Baviaanspoort Supply Chain Management Unit (SCM Unit) invited the Complainant to submit quotations for the installation of CCTV cameras at the Prison;
  - (b) Seven (7) companies were called and invited to submit quotations. Out of these, the Complainant's company (Mohloana's Trading) was the only one that submitted quotations;
  - (c) The Complainant was subsequently informed that there was currently no budget and that when a budget was available he would be informed; and

- (d) When the Complainant enquired again he was then informed that the tender had already been awarded to another company.
- (v) On analysis of the complaint, I considered and investigated the following issues:
  - (a) Whether there were procurement irregularities in the awarding of a contract for the installation of CCTV cameras at Baviaanspoort Prison by Department of Correctional Services (DCS).
  - (b) Whether the Complainant was prejudiced by the conduct of the Department as envisaged in section 6 (4) (a) (v) of the Public Protector Act.
- (vi) A formal investigation was conducted through the exchange of correspondence with the Gauteng Regional Commissioner, analysis of relevant documentation, conducting of meetings, consideration and application of the relevant laws, regulatory framework and jurisprudence.
- (vii) Key laws and policies taken into account to determine whether there was maladministration, corruption or improper conduct by the Department, were the following:
  - (a) The relevant provisions of the Constitution and the National Treasury Regulations which regulates the supply chain management process to be followed by organs of state.

(b) Provisions of the Departments Supply Chain Management Policy which regulates the Supply Chain Management processes of the Department.

(viii) Having considered the evidence and information obtained during the investigation and the regulatory framework , I make the following findings:

(a) **Regarding Whether there were procurement irregularities in the awarding of a contract for the installation of CCTV cameras at Baviaanspoort Prison by DCS and if so, whether such appointment amounted to maladministration as contemplated by section 6(4)(a)(ii) of the Public Protector Act, 1994**

(aa) The allegation that there were procurement irregularities in the awarding of a contract for the installation of CCTV cameras at the Baviaanspoort Prison to Vision Guard is substantiated.

(bb) The Prison failed to act in a fair, equitable, transparent, cost effective and competitive manner as required by the Constitution, Treasury Regulations by failing to restart the tender process and appointing Freedom House Trading.

(cc) The Prison further failed to act in terms of their own SCM Policy by deliberately omitting to notify the Complainant of the change in the bid specifications which would impact the outcome of their decision to award the contract to Freedom House Trading, and by submitting invalid bids for consideration and approval by the Area Commissioner.

(dd) The conduct of the Prison's SCM Unit officials and Area Commissioner therefore amounts to improper conduct as envisaged in section 182 (1) of the

Constitution and maladministration as envisaged by section 6(4) of the Public Protector Act.

**(b) Regarding whether the Complainant was prejudiced by the conduct of the Department, as envisaged in section 6 (4) (a) (v) of the Public Protector Act:**

(aa) The allegation that the Complainant suffered prejudice as a result of the Department's conduct is substantiated.

(bb) The Department's failure to inform the Complainant of the amendment of the specifications and requirements of the tender was not fair and transparent as required by section 217 of the Constitution.

**(vii) The appropriate remedial action taken by the Public Protector in terms of section 182(1)(c) of the Constitution is the following:**

**(a) The Gauteng Regional Commissioner to take urgent steps to ensure that:**

(aa) Procurement process for goods and service by the department is in compliance with the provision of section 38 and the PFMA and section 16A.3, 16A.5 and 16A.6 of the treasury regulation and the department supply chain police to ensure that;

(bb) The Department has an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective;

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*A report by the Public Protector August 2019*

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- (cc) All employees of the department dealing with supply chain management are properly qualified and trained to perform their functions; and
- (dd) Disciplinary action for misconduct against employees violating the provision of the PFMA, treasury regulation and department's supply chain management policy is taken without delay.

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**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 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(1) and 8(3) of the Public Protector Act to the following people to note the outcome of my investigation:-
  - 1.2.1 The National Commissioner of Correctional Services, Mr Arthur Fraser;
  - 1.3.3 The Gauteng Regional Commissioner of Correctional Services, Mr the current commissioner Ms Grace Molatedi; and
  - 1.3.4 A copy of the report is also provided to Mr Phillip Mohloana, who lodged the complaint, to inform him of the outcome of my investigation.

**2. THE COMPLAINT**

- 2.1 The complaint was lodged with my office by Mr. Phillip Mohloana (Complainant), the owner of Mohloana's Trading CC (Mohloana's Trading), on 03 May 2012.



## **2.2 The Complainant alleged, inter alia, that:**

- 2.2.1 On 11 January 2012, the Baviaanspoort Prison Supply Chain Management Unit (SCM Unit) invited the Complainant to submit quotations for the installation of CCTV cameras at the Prison;
- 2.2.2 Seven (7) companies were called and invited to submit quotations. Out of these, the Complainant's company (Mohloana's Trading) was the only one that submitted quotations;
- 2.2.3 The Complainant was subsequently informed by the SCM Unit that there was currently no budget and that when a budget was available he would be informed; and
- 2.2.4 When the Complainant enquired again a few months later, he was then informed that the tender had already been awarded to another company.

## **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

- 3.1. The Public Protector is an independent institution established under section 181(1) 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 that:

*"The Public Protector has 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* [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618, the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect [at para 76]. 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"*.

3.4 In the above-mentioned matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others*, Chief Justice Mogoeng stated the following, when confirming the powers the Public Protector:-

- 3.4.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);
- 3.4.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. (para 67);

- 3.4.3 Taking appropriate remedial action is much more significant than making a mere endeavor to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);
- 3.4.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow. (para 69);
- 3.4.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to. (para 70);
- 3.4.6 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made. (para 71);
- 3.4.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence; (para 71(a));

- 3.4.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));
- 3.4.9 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (para 71(e));
- 3.5 Section 182(2) provides that the Public Protector has additional powers and functions prescribed by legislation.
- 3.6 The Public Protector is further empowered by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.
- 3.7 Department of Correctional Services is an organ of state and it performs public function. As a result the complaint falls within the ambit of the Public Protector.

## **4. THE INVESTIGATION**

### **4.1. Methodology**

- 4.1.1. The investigation was conducted in terms of section 182 of the Constitution and section 6 and 7 of the Public Protector Act.
- 4.1.2. The Public Protector Act confers on Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3. The conclusion of the investigation was delayed due to the lack of resources of the Public Protector South Africa.

## **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 determine:-

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or maladministration?

4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to place the complainant as close as possible to where they would have been but for the maladministration?

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 of Correctional Service acted irregularly in procuring CCTV cameras at Baviaanspoort Prison.

4.2.3 The enquiry regarding what should have happened, focused on the law or rules that regulate the standard that should have been met by the Department of Correctional Service to prevent improper conduct, maladministration and / or prejudice.

**4.2.4** The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration. Where the allegations pointed out apparent cases of irregular or fruitless and wasteful expenditure by the organs of state, whether such unconscionable misuse of state funds cannot lead to the recovery thereof from those responsible for the improper conduct or maladministration to ensure future compliance with the regulatory framework setting the applicable standards for good administration.

**4.3 On analysis of the complaint, the following issues were considered and investigated:**

**4.3.1** Whether there were procurement irregularities in the awarding of a contract for the installation of CCTV cameras at Baviaanspoort Prison by Department of Correctional Services (DCS).

**4.3.2** Whether the Complainant was prejudiced by the conduct of the Department as envisaged in section 6 (4) (a) (v) of the Public Protector Act.

**4.4 The Key Sources of information**

**4.4.1 Documents**

**4.4.1.1** Memorandum to the Area commissioner to obtain financial approval to invite price quotation for the supply and deliver of the security equipment dated, 05 January 2012;

4.4.1.2 Internal memorandum from area commissioner: Baviaanspoort to Regional Commissioner: Gauteng requesting approval for installation of CCTV camera at medium correctional centre, dated 26 January 2012;

4.4.1.3 Memorandum to the area commissioner requesting approval for procurement of goods, work and service for the installation of security equipment, dated 14 march 2012;

4.4.1.4 Bid Document from Vision Guard;

4.4.1.5 Bid document from Mohloana's Trading;

4.4.1.6 Bid documents from KJS trading and projects;

4.4.1.7 Baviaanspoort Supply Chain Management Policy; and

4.4.1.8 Copy of Delegated powers of the department of correctional services procurement and provisioning of goods, work and services

#### **4.4.2 Correspondence**

4.4.2.1 Letter sent to the Department of Correctional Services dated 27 September 2018;

4.4.2.2 Letter sent to the Gauteng Regional Commissioner of the Department of Correctional Services dated 22 October 2014.

#### **4.4.3 Interviews conducted**

**Interviews conducted on 06 December 2013 with the following**

- 4.4.3.1 Mr Ryno Phillips;
- 4.4.3.2 Mr R Maharaj;
- 4.4.3.3 Mrs PM Phanyane;
- 4.4.3.4 Mr VJ Mkhonza;
- 4.4.3.5 Mr JJ Masango; and
- 4.4.3.6 Mr MV Ntapo

**4.4.4 Notice issued in terms of section 7(9) of the Public Protector Act**

- 4.4.4.1 On 12 April 2019, a notice in terms of section 7(9) of public protector Act was issued, affording the National Commissioner an opportunity to respond to the evidence obtained during the investigation that implicates it. However the National Commissioner failed to respond.

**4.4.5 Legislation and other prescripts**

- 4.4.5.1 *The Constitution of the Republic of South Africa, 1996*
- 4.4.5.2 *National Treasury Regulations, 2005;*
- 4.4.5.3 *National Treasury SCM Guide of February 2004; and*
- 4.4.5.4 *Supply Chain Management Policy, Baviaanspoort prison.*



**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 Regarding whether there were procurement irregularities in the awarding of a contract for the installation of CCTV cameras at Baviaanspoort Prison by DCS and if so, whether such appointment amounted to maladministration as contemplated by section 6(4)(a)(ii) of the Public Protector Act, 1994: -**

*Common cause issues*

- 5.1.1 It is common cause that on 11 January 2012, the Baviaanspoort Prison had embarked on an exercise to procure CCTV cameras for installation at the Prison and that their SCM Unit invited companies to submit their quotations for the installation of the cameras.
- 5.1.2 It is further common cause that Baviaanspoort Prison invited a number of service providers to submit quotations for the bid to install CCTV cameras at the prison.

*Issues in dispute*

- 5.1.3 The Complainant alleged that Baviaanspoort Prison failed to follow correct procurement procedures in the appointment of a service provider to install CCTV cameras at the Prison.
- 5.1.4 The Complainant stated that after submitting his bid documents on 11 January 2012, he was informed that he was the only company that had responded to the call for quotations. He was later informed that the Prison

did not have a budget and would be informed when a new budget was approved. However, upon later enquiry, he was informed that the tender had been awarded to another company.

5.1.5 The issue for my determination is whether there were procurement irregularities in the awarding of a contract for the installation of CCTV cameras at Baviaanspoort Prison.

5.1.6 A memorandum (Memo) dated 05 January 2012 indicated that financial approval to invite price quotations for the supply and delivery of security equipment at Baviaanspoort Prison was requested from the Area Commissioner, Mr R Phillips (Mr Phillips). Mr SJ Mahlangu, the Area Co-Ordinator: Finance (Mr Mahlangu) recommended that funds be made available as the need was critical. The Area Commissioner approved the request indicating that the procurement section should handle the matter as it was urgent.

5.1.7 Documents submitted indicate that Baviaanspoort Prison invited four companies from the Prison's supplier database. These were listed as:

- (a) Line upon Line Trading;
- (b) KJS Trading;
- (c) Mohloana's Trading; and
- (d) Ramokone Labarwedi.

5.1.8 Only two of the companies invited submitted quotations, namely Mohloana Trading and KJS Trading. It is noted that the second company, KJS Trading, submitted their quotation late, as the closing date of the said tender was 11 January 2012 at 11h00.

- 5.1.9 A memo dated 26 January 2012 was submitted by Mr T Malinga, the Area Commissioner (Mr Malinga) to Mr TMI Mokoena, the Regional Commissioner Gauteng (Mr Mokoena), requesting approval for the installation of CCTV cameras due to a variety of security breaches during the past 18 months. The memo also requested approval for the procurement to be done on an urgent basis and further indicated that 3 companies had already been approached to provide quotations. The memo was approved by Mr Mokoena and resources were to be made available for the installation of CCTV cameras.
- 5.1.10 After the submissions and closing date of bids, evidence indicates that the SCM Unit decided to cancel the tender advancing reasons that there was currently no budget and that the Prison required a company that had speciality and experience in security and that was vetted to install the CCTV cameras.
- 5.1.11 Further thereto, the Prison officials mentioned in a meeting with the investigation team held on 10 June 2014, that Mohloana's Trading's tender submission was invalid as Mr Mohloana had made his submissions without coming for a site inspection and further that Mohloana's Trading was not vetted to install CCTV cameras.
- 5.1.12 The SCM Unit on 16 March 2012, invited Vision Guard and Freedom House Security to submit a quotation for the installation of cameras, both companies submitted their quotations on 19 March 2012.
- 5.1.13 On 14 March 2012 a memo was submitted by Mr GJB Schoeman, the Acting Area Co-Ordinator Finance (Mr Schoeman), to Mr Malinga outlining that three quotes namely, Vision Guard (R298 744.42); Mohloana's Trading (R279 085.83) and KJS Trading (R433 381.72) had been received and the

recommendation by the SCM Unit was that Vision Guard should be appointed as they were the only suppliers who were vetted, Vision Guard would also give full maintenance for 24 months and would give training for the use of the equipment. The memo was approved by Mr Malinga.

- 5.1.14 Evidence further submitted by the Prison indicates that the Prison issued a bid invitation to Vision Guard on 12 March 2012 and was date stamped by the Prison on 19 March 2012. The document date stamped 19 March 2012, further indicates that Freedom House Security had quoted an amount of R298 774, 42. It is unclear when the Prison issued Freedom House Security with a bid invitation.
- 5.1.15 The Prison also submitted a copy of faxed letter dated 20 March 2012 to Freedom House Security stating that Freedom House Security had been appointed to supply and deliver security equipment for the amount of R298 774.42.
- 5.1.16 The evidence received indicates that Freedom House Security was not on the list of registered service providers from DCS's Supplier Database and how it was procured.

*Application of relevant legal framework*

- 5.1.17 The issue regarding whether there were procurement irregularities in the awarding of a contract for the installation of CCTV cameras at Baviaanspoort Prison is regulated by the Constitution of the Republic of South Africa (the Constitution), National Treasury Regulations, National Treasury SCM Guide for Accounting Officers of February 2004 (National Treasury SCM Guide) and the Baviaanspoort Prison Supply Chain Management Policy (Prison SCM Policy).

- 5.1.18 Section 217(1) of the Constitution requires that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.
- 5.1.19 The abovementioned principle is further emphasised in Treasury Regulation 16A3.2 (a), which provides that a supply chain management system must be fair, equitable, transparent, competitive and cost effective.
- 5.1.20 Furthermore, Treasury Regulation 16A6.4 makes provision for deviation from the above requirement, in 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 the deviation from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.
- 5.1.21 According to the Prison's policy, Formal Price Quotations (FPQ), in the category R30 000-00 to R500 000-00 per case, must be sourced. This includes:
- 5.1.21.1 Functional approval must be obtained by the end-user from the relevant Head: Correctional Centre/Area Commissioner/relevant Director at Regional or National Office and then referred to the PU for the invitation of price quotations. NB: Price quotations may only be invited from suppliers listed in the database.
- 5.1.21.1 It is preferable to cancel a price quotation and invite fresh price quotations if conditions or specifications or any other information has been changed

before closing time, or if mistakes are discovered in the documents before closing time.

5.1.21.3 Where only one price quotation is received and accepted, and taking the circumstances into account, all reasonable steps must be taken to ensure that a fair price is obtained.

5.1.22 In terms paragraph 4.10 of the National Treasury SCM Guide, late bids should not be considered. Furthermore paragraph 4.11 of the National Treasury SCM Guide states that bids may be rejected where there is lack of competition or the bids are not suitably responsive. However, lack of competition should not be determined solely on the basis of the number of bidders. If all bids are rejected, the institution should review the causes justifying the rejection and consider making revisions to the specific conditions of contract, design and specification, scope of contract, or combination of these, before inviting new bids.

5.1.23 If the rejection was due to most or all the bids being non responsive, new bids may be invited from the initially pre-qualified firms, or with the agreement of the accounting officer, from only those that submitted bids in the first instance.

5.1.24 In terms of paragraph 8.4.1 the National Treasury SCM Guide, the bid documents should specify clearly and precisely, amongst other things, the minimum performance requirements and the warranty and maintenance requirements as well as other terms and conditions. The bid documents should also specify any factors, which will be taken into account in evaluating bids and such factors would be quantified or otherwise evaluated. Each prospective bidder should be provided with the same information.

- 5.1.25 Any additional information, clarification, correction of error or modification of bidding documents should be sent to each recipient of the original bidding documents.
- 5.1.26 In his judgment delivered on 29 November 2013, in the case of **Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)** Justice Froneman held that: *"It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner."*
- 5.1.27 The Court further held in that case that: *"...deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences."*
- 5.1.28 No evidence was provided to prove that a proper deviation process was followed in the appointment of Freedom House Security.

### Conclusion

- 5.1.29 The evidence submitted to me indicates that, after numerous security breaches, the Prison decided to call for written price quotations from security companies listed in their supplier database.



- 5.1.30 The only price quotation that was received and was accepted, was from Mohloana Trading as the KJS Trading quotation had been disqualified due to submitting their quotation late.
- 5.1.31 It is therefore apparent that due to Mohloana's Trading not being compliant and KJS Trading submitting late, the Prison found themselves in a predicament of having non-responsive bids.
- 5.1.32 Due to the above-mentioned reasons the SCM Unit resolved that a company that was vetted and had a security background was required. As a result the Prison decided to call other companies to submit price quotations for the supply of CCTV cameras. The two (2) companies (Freedom House and Vision Guard) were not in the initial list of suppliers called along with Mohloana's Trading and KJS Trading.
- 5.1.33 The Prison's decision to conduct the process in this manner is baffling as the SCM Unit should have opted to start the process afresh and recall the same pre-qualifying service providers to submit new quotations. The SCM Unit should have also informed the said service providers of the new specification required. This would have ensured that the process was fair and transparent.
- 5.1.34 The Prison's failure to re-invite Mohloana's Trading and KJS Trading and inform them of the new specifications is bewildering. The Prison was aware that the said quotations were non-compliant with the new specifications but in the memo recommending the appointment of Vision Guard, Mohloana's Trading and KJS Trading's quotations were included. It can only be concluded that the Prison had ulterior motives which was ultimately to appoint Vision Guard.



- 5.1.35 Further thereto, the Prison's contention that the quotation submitted by Mohloana's Trading was invalid as he had not conducted a site inspection is suspicious and not supported by the evidence. The bid documents for all four companies made no mention of the companies having to attend a site inspection or have vetting clearance. Furthermore, the Prison had issued a list of the items and quantity needed by the Prison.
- 5.1.36 I have noted further that the Prison eventually awarded the tender to Freedom House Trading and not Vision Guard as approved in the memo dated 14 March 2012. It is not clear how and why the Prison came to that final decision and such conduct is a clear violation of section 217 (1) of the Constitution as the Prison failed to be fair and transparent.
- 5.1.37 The SCM Unit failed to notify the Complainant of the change in requirements that had an impact in the decision to award the tender and this was irregular on their part. The SCM Unit therefore violated section 217(1) of the Constitution and Treasury Regulation 16A3.2 (a) in that their conduct and decisions were not fair, equitable and transparent.
- 5.1.38 The DCS violated the Constitution of the Republic of South Africa, the National Treasury Regulations, National Treasury SCM Guide for Accounting Officers and the Baviaanspoort Prison Supply Chain Management Policy.
- 5.1.39 The DCS failed to act in a manner that was fair and transparent when calling for quotations for the installation of CCTV cameras.
- 5.2 Whether the Complainant was prejudiced by the conduct of the Department, as envisaged in section 6 (4) (a) (v) of the Public Protector Act:**

- 5.2.1 The issue for my determination is whether the Complainant was prejudiced by the conduct of the Department.
- 5.2.2 Evidence before me indicates that the Department cancelled the tender for the installation of CCTV cameras at Baviaanspoort Prison, advancing reasons that there was currently no budget and that the Prison required a company that had speciality and experience in security and that was vetted to install the CCTV cameras.
- 5.2.3 Further thereto, the Prison officials mentioned in a meeting with the investigation team held on 10 June 2014 that Mohloana's Trading's tender submission was invalid as Mr Mohloana had made his submission without coming for a site inspection and further that Mohloana's Trading was not vetted to install CCTV cameras.
- 5.2.4 The Department stated that, based on the abovementioned, 2 service providers were called and invited to bid for the tender. The memorandum dated 14 March 2012 indicated that quotations evaluated by the SCM Unit were from Mohloana's Trading, Vision Guard and Freedom House.

*Application of relevant legal prescripts*

- 5.2.5 In terms of section 6 (4) (a) (v) of the Public Protector Act, the Public Protector has the power to investigate any act or omission by a person in the employ of government at any level which results in unlawful or improper prejudice to any other person.

### Conclusion

- 5.2.6 it is common cause that the Department had the right to cancel the tender and restart the process in line with their desired requirements.
- 5.2.7 The Department failed to inform the Complainant that they had amended their specifications and requirements resulting in Mohloana's Trading not being given a fair opportunity to amend his documents as was required, and accordingly compete with other bidders.
- 5.2.8 In light of the conduct of the Department alluded to above, the Complainant did suffer some prejudice as envisaged by section 6 (4) (a) (v) of the Public Protector Act.

## **6 FINDINGS**

Having considered the evidence uncovered, the regulatory framework determining the standard the Prison should have complied with and the impact on public administration, the Public Protector makes the following findings:

- 6.1 Regarding whether there were procurement irregularities in the awarding of a contract for the installation of CCTV cameras at Baviaanspoort Prison by DCS and if so, whether such appointment amounted to maladministration as contemplated by section 6(4)(a)(ii) of the Public Protector Act, 1994**

- (aa) The allegation that there were procurement irregularities in the awarding of a contract for the installation of CCTV cameras at the Baviaanspoort Prison to Vision Guard is substantiated.
- (bb) The Prison failed to act in a fair, equitable, transparent, cost effective and competitive manner as required by the Constitution, Treasury Regulations by failing to restart the tender process and appointing Freedom House Trading.
- (cc) The Prison further failed to act in terms of their own SCM Policy by deliberately omitting to notify the Complainant of the change in the bid specifications which would impact the outcome of their decision to award the contract to Freedom House Trading, and by submitting invalid bids for consideration and approval by the Area Commissioner.
- (dd) The conduct of the Prison's SCM Unit officials and Area Commissioner therefore amounts to improper conduct as envisaged in section 182 (1) of the Constitution and maladministration as envisaged by section 6(4) of the Public Protector Act.
- (c) **Regarding whether the Complainant was prejudiced by the conduct of the Department, as envisaged in section 6 (4) (a) (v) of the Public Protector Act:**
  - (aa) The allegation that the Complainant suffered prejudice as a result of the Department's conduct is substantiated.
  - (bb) The Department's failure to inform the Complainant of the amendment of the specifications and requirements of the tender was not fair and transparent as required by section 217 of the Constitution.

## **7 REMEDIAL ACTION**

The appropriate remedial action taken as contemplated in section 182(1) (c) of the Constitution, with a view of remedying the impropriety referred to in this report is the following:

### **7.1 The Gauteng Regional Commissioner to take urgent steps to ensure that:**

- 7.1.1 Procurement process for goods and service by the department is in compliance with the provision of section 38 and the PFMA and section 16A.3, 16A.5 and 16A.6 of the treasury regulation and the department's supply chain policy to ensure that
- 7.1.2 The department has an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.
- 7.1.3 All employees of the department dealing with supply chain management are properly qualified and trained to perform their functions; and
- 7.1.4 Disciplinary action for misconduct against employees violating the provision of the PFMA, treasury regulation and department's supply chain management policy is taken without delay.

## **8 Monitoring**

The head of the Department to submit an action plan within thirty (30) working days of the date of this report, indicating how the remedial action referred to in the paragraph 7 above is being implemented.



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**ADV. BUSISIWE MKHWEBANE**

**PUBLIC PROTECTOR OF SOUTH AFRICA**

**Date:** 16/09/2019