



PUBLIC PROTECTOR
SOUTH AFRICA

Accountability • Integrity • Responsiveness



POSTPONED DELIVERY

Report on an investigation into allegations of maladministration, corruption and related improper conduct relating to the leasing of the Eco Point Office Park and utilisation of labour brokers by the South African Post Office

Report No: 5 of 2015/16 - ISBN 978-1-920692-40-7



@PublicProtector



www.publicprotector.org



0800 11 20 40



INDEX

<i>Executive Summary</i>	3
1. INTRODUCTION	16
2. THE COMPLAINT	18
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	21
4. THE INVESTIGATION	22
5. THE STANDARD THAT SAPO SHOULD HAVE COMPLIED WITH	29
6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION	47
7. MEASURING THE CONDUCT AGAINST THE RULES	69
8. FINDINGS	73
9. REMEDIAL ACTION	79
10. MONITORING	81



Executive Summary

"The Public Finance Management Act is very clear against fruitless expenditure, and the move of the NPC to ECO Point clearly constitutes a fruitless expenditure, if one takes into account the exorbitant rentals...., that management of the South African Post Office is already paying before such a move is effected.

The South African Post Office is currently applying fierce cost curtailment measures across all its business units, to the extent of disregarding operational excellence and customer centricity, including but not limited to, implementing second day delivery, by delaying mail items meant for speedy delivery...."

Extract from Complaint lodged by the
Communications Workers Union (CWU)
16 March 2011

- (i) **"Postponed Delivery"** is my report as the Public Protector 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 23 of 1994 (the Public Protector Act).
- (ii) The report communicates my findings and the appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution following an investigation into complaints lodged by the Communication Workers Union (CWU) (the Complainant), a labour union recognized by the South African Post Office (SAPO), on 16 March 2011. The Complainant alleged maladministration by the South African Post Office in the leasing of the Eco Point Office Park in Centurion, Gauteng Province to accommodate its Head Office, the procurement of the services of a catering company, the procurement and utilization of labour brokers and possible corrupt relationships between some of its employees and certain external service providers.
- (iii) The period covered by the investigation is restricted to transactions and conduct that took place between 01 April 2002 and September 2012. The transactions and activities covered are confined to the leasing of the Eco Point building, Procurement of a catering company and outsourcing of Labour Brokers. The investigation period is from October 2011 to January 2016.
- (iv) The report tells a story of how at the height of economic challenges that had adversely affected service delivery, the then management and the Board of Directors of SAPO (The



Board) decided and went ahead to procure their current national office premises at the Eco Point Office Park in Centurion while outsourcing some of the core functions to labour brokers.

- (v) As the national postal service of the Republic of South Africa SAPO is a strategic organ of state with an expenditure budget of approximately R6.5 billion, a projected revenue of approximately R7 billion and a staff compliment of over 22 000 people operating more than 2,500 postal outlets and points of presence throughout the Republic of South Africa. In addition to the provision of national postal services, SAPO has three subsidiaries, namely Post Office Logistics, Expedited Mail Services and the Post Bank.
- (vi) In the last few years SAPO has been the subject of various media reports dealing with cash-flow and liquidity challenges, including inability to pay salaries at some stage. At the time of finalising the report SAPO had requested a cash injection from the National Treasury to be able to discharge some of its obligations.
- (vii) It is worth noting that the matters covered in the investigation occurred long before the current Board of Directors were appointed. SAPO is currently controlled by a Board of Directors (the Board) chaired by Dr S Lushaba, which was appointed in August 2015. The current Group Chief Executive Officer (GCEO), Mr M Barnes was appointed, shortly before the investigation was finalised in January 2016.
- (viii) In its complaint, the CWU alleged that:
 - (a) During its relocation from the National Postal Centre building (NPC) from the Pretoria Central Business District (CBD) to the Eco Point Office Park, the South African Post Office (SAPO) appointed "*Lilly white*" companies to render project management services despite lack of Black Economic Empowerment (BEE) accreditation, as envisaged by the SAPO BEE Policy and Strategy;



- (b) SAPO's relocation from the NPC constituted fruitless expenditure since SAPO ended up paying approximately R3.6million per month towards rental before its actual occupation of the building;
- (c) A project manager was appointed to procure a catering company called *FedEX (sic)* (supposed to have been *Fedics*), which constituted illegal outsourcing of SAPO's Supply Chain Management responsibilities and SAPO further failed to consult with them.
- (d) SAPO imposed restrictive financial measures that were implemented across its business units resulting in delivery standards being compromised, since a second day delivery was implemented thus delaying mail items destined for speedy delivery at exorbitant costs.
- (e) It is suspected that there is a deep rooted corrupt relationship between SAPO employees and employment agencies/labour brokers which has informed irregular appointment of the aforesaid agencies/brokers, who operated without clear contractual relationships with SAPO.
- (ix) By the time the investigation was finalized and this report issued, some of the implicated employees and SAPO Board Members had resigned and/or their employment with SAPO had been terminated and a new Board of Directors and Group Chief Executive Officer (GCEO) had been appointed.
- (x) It is worth noting that when the investigation commenced and the first investigation letter written to the SAPO GCEO in 2011, SAPO had not yet moved from the Pretoria CBD to the Eco Point Office Park in Centurion. Accordingly, SAPO still had an opportunity to reverse some or all its decisions on being alerted to irregularities. It is also worth noting that by its own admission, SAPO continued months later to make further payments in respect of the empty Eco Point Office Park despite the contract being silent on the date on which rent would become due and there being no benefit accruing to SAPO from the payment of rental towards an unoccupied building.





- (xi) The duty to take action to curtail or arrest any irregularity on being warned about its possibility is, according to the Constitutional Court in *Khumalo and Another versus MEC for Education: KwaZulu-Natal (CCT 10/13) [2013] ZACC 49*, imposed on all public functionaries by section 195(1) of the Constitution, requiring, among others, the promotion of efficient, economic and effective use of public resources.
- (xii) On analysis of the complaint the following five (5) issues were identified for consideration and to focus the investigation:
- (a) ***Did SAPO improperly procure the Eco Point Office Park to accommodate its Head Office?***
 - (b) ***Did SAPO incur fruitless and wasteful expenditure through upfront payment of rental in respect of the Eco Point Office Park amounting to more than R3.6m per month while the building stood empty prior to occupation?***
 - (c) ***Did SAPO improperly appoint a project manager to procure the services of a catering company by the name of Fedics and did the said procurement amount to illegal outsourcing of SAPO's Supply Chain Management responsibilities?***
 - (d) ***Did SAPO improperly implement severe service indifferent cost cutting measures that disregarded operational requirements and compromised service excellence across its business units?***
 - (e) ***Did SAPO improperly appoint Labour Brokers with whom some of its employees had a corrupt relationship?***
- (xiii) The investigation process included interviews, exchange of correspondence and meetings with former and current members of the Board and senior officials, including the erstwhile and current Chairpersons of the Board, the former and current GCEO's and the former Chief Financial Officers.
- (xiv) The investigation also covered the consideration of laws and other prescripts regulating the impugned conduct. Key provisions relied on in this regard was section 217 of the



Constitution regulating public procurement and other provisions regulating procurement, among them, the South African Post Office SOC LTD Act 22 of 2011, the Public Finance Management Act 1 of 1999 (PFMA), Treasury Regulations and the SAPO Procurement Policy adopted in 2009. In view of allegations of corruption involving possible financial interests of certain SAPO officials in the labour brokerages said to have been appointed irregularly, the provisions of the Prevention and Combatting of Corrupt activities Act 12 of 2004 (PCCAA), were also taken into account. The transversal principles of public administration articulated in section 195 of the Constitution also offered guidance. For consistency, I have also taken into account, touchstones or principles from previous Public Protector reports, key in this case having been "*Against the Rules*" (2010) dealing with similar alleged leasing irregularities and questionable relationships.

- (xv) All information and evidence gathered during interactions with SAPO management and the Complainant were taken into account in an effort to reconstruct what happened and if what happened was in line with the law and other prescripts. After finalising the investigation in January 2016, notices issued in terms of 7(9) of the Public Protector Act, alerting relevant parties of evidence implicating them and the possibility of adverse findings, and discretionary notices, were issued to relevant parties.
- (xvi) Responses received were analysed and appropriately integrated. I must indicate that it is heartening to record that the SAPO Board did not contest any of the intended findings and remedial action. Commendably, the Board candidly conceded that there had been systemic irregularities in financial and Supply Chain Management (SCM) at SAPO and further advised that a process was underway to restore good governance. The Board advised that the corrective measures included the implementation of the report of the Special Investigation Unit (SIU), which had just released its report.
- (xvii) In arriving at the findings, I have been guided by the standard approach adopted by the Public Protector South Africa as an institution, which simply involves asking: What happened? What should have happened? Is there a discrepancy between what happened and what should have happened? If there is a discrepancy, does the conduct amount to maladministration or improper conduct? If there was indeed improper conduct or maladministration, what would be the appropriate remedial action?



- (xviii) As customary, I approached the "what happened" enquiry as a factual question settled on the assessment of evidence and making a determination on a balance of probabilities. To arrive at a finding on what happened, the investigation, like all others, relied on oral and documentary submissions by the Complaint, SAPO management and independently obtained information and/or evidence.
- (xix) The issue of what should have happened was settled through ascertaining the standard that should have been complied with by SAPO in executing the transactions that are alleged to have been handled improperly. In determining the standard that SAPO should have complied with to avoid improper conduct or maladministration, I was guided as is customary, by the Constitution, relevant national legislation and related regulatory instruments as indicated in paragraph (xii) above.
- (xx) After examining and evaluating the evidence obtained and measuring the conduct disclosed by the evidence against the standard that should have been upheld by SAPO had it complied with the regulatory framework, I have arrived at the following findings:
- (a) **Regarding whether SAPO improperly procured the Eco Point Office Park to accommodate its the Head Office:**
1. The allegation that the procurement of the Eco Point Office Park to accommodate the Head Offices of SAPO was irregular is substantiated.
 2. SAPO's acquisition of a ten year lease costing approximately *R161m*, in 2010, to house its National Office at the Eco Point Office Park was tainted by procurement irregularities and corruption.
 3. At the outset of the process, SAPO failed to ensure proper demand management before the acquisition of the Eco Point Office Park as the *Business Case* on which the Board relied included misrepresentation of facts and falsified information regarding structural defects in the National Postal Centre (NPC) where SAPO was



- accommodated at the time and about the green status of the Eco Point Office Park, among others.
4. SAPO further conceded that in violation of the PFMA, the relocation to the Eco Point Office Park had not been captured in its Strategic Plan for the financial year 2009/2010.
 5. The SAPO Board further failed to ensure that the acquisition of the Eco Point Park building was preceded by a competitive bidding process, which conduct was in violation of the PFMA and its corporate Procurement Policy of 2009. The procurement of the lease for the Eco Point Park building was therefore not fair, equitable, transparent, competitive and cost effective as required by section 217 of the Constitution read with paragraph 3.1.1 of the SAPO Procurement Policy.
 6. The failure by SAPO to follow a proper bidding process could not be justified under permissible deviations in terms of articles 13.14 and 13.15 of the SAPO Policy and section 51(1) of the PFMA as there was no urgency and the Eco Point building was not the only building available to justify a single source deviation. The acquisition of the Eco Point Office Park was, accordingly unlawful.
 7. The Board commendably took action against its officials, Messrs Jekison and Wentzel when it was alerted to the fact that the *Business Case* they had prepared to justify the relocation and which prompted the Board to adopt a resolution on 26 November 2009, to move to the Eco Point Park, was riddled with misrepresentations of fact and falsified information. The Board's action was also taken in pursuit of a finding by a KPMG report it had commissioned that there had been a corrupt relationship between Centurion Vision Development (PTY) Ltd, the owners of the Eco Point Office Park and one of the SAPO officials who was at the centre of the transaction.
 8. However, on receiving the KPMG report, SAPO failed to act expeditiously to review the deal with Centurion Vision Development (PTY) Ltd in the light of the finding of corruption having the possibility of negating the legality of the transaction. This conduct was in violation of section 195 of the Constitution



9. The acts and omissions of the erstwhile SAPO Board regarding the acquisition of the Eco Point Park building accordingly constitute maladministration as envisaged in section 6(5)(a) of the Public Protector Act and improper conduct as envisaged in section 182(1)(c) of the Constitution.

(b) *Regarding whether SAPO incurred fruitless and wasteful expenditure through upfront payment of rental in respect of the Eco Point Office Park amounting to more than R3.6million per month while the building stood empty prior to occupation*

1. The allegation that SAPO incurred fruitless and wasteful expenditure in the form of irregular upfront rental towards the Eco Point Park building before occupation is substantiated.
2. However, the amount involved was not R3.6m per month as alleged but R2 372 050.00. Furthermore, the irregular payments that were the subject of the original complaint were later conceded as irregular and refunded.
3. Subsequently, SAPO made payments towards the rental for the Eco Point Office Park for a ten month period effective from May 2010 to March 2011 amounting to approximately R22m prior to occupying the building and contrary to the provisions of paragraph 2 of the lease agreement signed in February 2010 which provided that "*Should the occupation be after 1 May 2010 then the Commencement Date shall be such later date...*"
4. The conduct of the erstwhile SAPO GCEO in approving the said payments for an unoccupied building, was in violation of the provisions of section 83 of the PFMA which prohibits irregular expenditure and/or fruitless and wasteful expenditure.
5. The Acts and omissions of SAPO regarding the fruitless and wasteful expenditure arising from the 10 month rental towards an unoccupied building constitutes maladministration and improper or unlawful enrichment of the owners of the building,



Centurion Vision Development (Pty) Ltd to the tune of R22m. This constitutes improper conduct as envisaged in section 182 of the Constitution.

(c) Regarding whether SAPO improperly appointed a project manager to procure the services of a catering company by the name of *Fedics* and whether the said procurement constitutes illegal outsourcing of SAPO's Supply Chain Management responsibilities:

1. The allegation that SAPO improperly appointed a company to project manage the procurement of a catering company, *Fedics* to operate the canteen at the Eco Point building is not substantiated. However, the allegation that this amounted to outsourcing of Supply Chain Management operations of SAPO is substantiated.
2. Indeed, SAPO through consultants called *Infraburo* who were responsible for the project management of the move to Eco Point building appointed *Intenda* to procure the catering services of *Fedics* through an On-Line Limited Bidding process (LBD). This was approved by EXCO following a decision taken as part of the overall business restructuring of the SAPO to outsource all the non-core activities. It was therefore not an isolated case of outsourcing of services as approximately fifty-six (56) other contracts were procured using this method. The SAPO SCM Department was not involved in the procurement of *Intenda*.
3. Due to insufficiency of documents regarding the process followed to appoint the project managers to manage specified procurement processes, I am unable to adjudicate the compliance of such processes with SCM prescripts, including fairness, transparency, competitiveness and competence.
4. Furthermore, whereas the procurement of the services is questionable in view of doubled costs and heightened risk of non-compliance, the practice cannot be conclusively said to have violated Paragraph 3.1.1 of the SAPO Procurement Policy which makes provision for the appointment of service providers, including consultants,

910



in accordance with a system that is fair, equitable, transparent, competitive and cost effective in line with the provisions of section 217 of the Constitution.

5. However, I am encouraged by the Board's commitment to abandon the outsourcing of SCM functions or use of middle-men.
6. Despite my immense discomfort regarding the outsourcing of procurement services, I am unable to find that the outsourcing of procurement to external project managers constitutes maladministration as envisaged in section 6(5)(a) of the Public Protector Act and improper conduct as envisaged in section 182 of the Constitution.

(d) *Regarding the allegation that SAPO improperly implemented severe service indifferent cost cutting measures that disregarded operational requirements and compromised service excellence across its business units:*

1. The evidence regarding the allegation that the SAPO implemented extreme cost curtailment measures which unduly compromised service delivery standards is inconclusive.
2. By its own admission, SAPO did implement severe cost cutting measures and service excellence was compromised. However, although subsequent problems did include late delivery of items that in terms of internal and public promised standards should have been delivered earlier, it is difficult to specifically attribute the deficiencies to the cost-cutting measures.
3. However, it is a source of concern that SAPO moved to more lavish offices at much higher rental at a time when it was experiencing service related financial constraints. The concern is exacerbated by the discovery that the *Business Case* for relocating from NPC to Eco Point building was doctored and the relationship between a key SAPO official behind the move and Centurion Vision Development (Pty) Ltd, the owners of the Eco Point Building, poisoned.



4. Of equal concern is that there seems to have been inadequate meaningful consultation of employees on the cost-cutting measures and use of labour brokers, among other important factors. I am encouraged, however, by the new GCEO's commitment to work in partnership with employees as change is managed towards a better functioning national postal services agency.

5. I am accordingly unable to make a finding of maladministration or improper conduct.

(e) Regarding whether SAPO improperly appointed Employment Agencies/Labour Brokers with whom some of its employees had a corrupt relationship:

1. The allegation that SAPO improperly appointed labour brokers who operated without written contracts is substantiated. However, the suspicion of corrupt relationships between certain SAPO officials and the labour brokers has not been substantiated

2. SAPO irregularly appointed and utilized labour brokers from April 2002 to September 2012 with some of them having expired contracts and others with no written contracts in addition to them having been appointed without following proper procurement processes as envisaged in its Procurement Policy and related laws .

3. The total amount involved in the procurement of labour brokers is estimated at about R 2 735 942 243.22.

4. As these relationships were not properly regulated and the billing difficult if not impossible to control to prevent irregular scope creep, overbilling, overcharging and false billing, it cannot be said that the run-away expenditure involved did not contribute to SAPOs current liquidity and cash-flow problems.

5. SAPO's failure to follow proper procurement procedures was in violation of paragraph 3.1.1 of its Procurement Policy and section 51(1) of the PFMA read with section 217 of the Constitution.



6. SAPO further failed to implement the recommendations of the KPMG report advising that disciplinary measures be taken against Messrs Serare and Nogxina who could not ensure that contracts were put into place between SAPO and labour brokers, in violation of section 51 (1)(e) of the PFMA.
7. SAPO's appointment of the labour brokers without following proper procedures constitutes maladministration as envisaged in section 6(5)(a) of the Public Protector Act and improper conduct as envisaged in section 182 of the Constitution. The failure to implement the KPMG report fully also constitutes maladministration and dereliction of duties.

(xxi) The appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution is to require:

(a) The SAPO Board of Directors is to take effective and appropriate steps to:

1. Recover the amount of R22m that SAPO paid to Centurion Vision Development, in respect of upfront rental payment for the period May 2010 to March 2011, when it had not taken occupation of the Eco Point building;
2. End use of an external service providers to procure another service provider as a project Manager, where the corporate SCM is competent to deliver;
3. To ensure that the recommendations contained in the KPMG and SIU reports are fully implemented without any delay; and
4. Ensure that evidence pointing to the contravention of the Prevention and Combatting of Corrupt activities Act is submitted to the South African Police Services immediately.

(b) The Group Chief Executive Officer is to take effective and appropriate steps to:



1. Review corporate SCM processes and procedures and ensure that systems are put in place to facilitate proper controls and compliance with SCM prescripts by officials handling procurement matters at all times;
2. Review the SAPO document management system and update it to ensure that documents relating to SCM processes, including contracts are filed appropriately and are available when required; and
3. Ensure that in future employees are properly consulted on planned adjustments to operations impacting on them and service delivery.



REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, CORRUPTION AND RELATED IMPROPER CONDUCT RELATING TO THE LEASING OF THE ECO POINT OFFICE PARK AND UTILIZATION OF LABOUR BROKERS BY THE SOUTH AFRICAN POST OFFICE

1. INTRODUCTION

- 1.1 *"Postponed Delivery"* is my report as the Public Protector issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) read with the Public Protector Act 23 of 1994 (the Public Protector Act) following an investigation into complaints alleging procurement irregularities including corruption in the lease by the South African Post Office SOC Limited (SAPO) of the Eco Point Office Park to accommodate its Head Office referred to as the National Postal Centre(NPC), and maladministration, including corruption, relating to the procurement and utilization of labour brokers.
- 1.2 As the national postal service of the Republic of South Africa, SAPO is a strategic organ of state with an expenditure budget of approximately R6.5bn, a projected revenue of approximately, R7bn and a staff compliment of well over 22 000 people operating more than 2,500 postal outlets and points of presence throughout the Republic of South Africa. In addition to provision of the national postal services, SAPO has three subsidiaries, namely Post Office Logistics, Expedited Mail Services and the Post Bank.
- 1.3 In the last few years SAPO has been the subject of various media reports dealing with cash-flow and liquidity challenges, including inability to pay salaries at some stage. The Complainant and media reports partially attribute the financial woes of SAPO to the alleged mismanagement of the procurement of services such as labour brokers and its new national office at the Eco Point Park building in Centurion.
- 1.4 It is important to note that the matters covered in the investigation occurred long before the current Board of Directors were appointed. SAPO is currently controlled by a Board of Directors (the Board) chaired by Dr S Lushaba, which was appointed in August



2015. The current Group Chief Executive Officer (GCEO), Mr M Barnes was appointed, shortly before the investigation was finalised in January 2016. It is also important to note that current GCEO and Board have conceded that procurement and other corporate governance and management matters were not handled appropriately and have reported that work is in progress to redress the damage.
- 1.5 When the complaint was lodged in March 2011, the Board was under the Chairpersonship of Ms V F Mahlali and the other directors were Mr N Bebeza, Mr SEO Dietrich, Ms ME Lethlape, Mr SMA Malebo, Adv, V Mhlongo, Mr TC Ngcobo, Adv. LP Nobanda, Ms PE Pokane, Ms K (Moloto) Sicwebu, Mr MS Patel, Ms MM Lefoka (GCEO), Mr NJD Buick (CFO), Mr JP Wentzel (Coo), Mr S Adams (Acting MD Postbank) and Ms BS Bulunga (Company Secretary).
- 1.6 The Board is accountable to the Minister responsible for Telecommunications and Postal Services, currently the Hon. Mr Siyabonga Cwele, MP. It currently operates under a 25 year license granted by the Independent Communication Authority of South Africa (ICASA); and in terms of this it must provide a universal service to all the citizens of the country.
- 1.7 The report is submitted in terms of Section 8(1) of the Public Protector Act 23 of 1999 to the following persons:
- 1.7.1 The Minister of Telecommunications and Postal Services the Hon. Mr Siyabonga Cwele, MP;
- 1.7.2 The Chairperson of the SAPO Board, Dr S Lushaba;
- 1.7.3 The Group Chief Executive Officer of SAPO, Mr M Barnes;
- 1.7.4 A copy of the report is presented for noting to:
- 1.7.4.1 The Complainants; and
- 1.7.4.2 The Speaker of the National Assembly.



2. THE COMPLAINT

- 2.1 The complaint was lodged by the Communication Workers Union (CWU) led by its first Deputy President, Mr Clyde Mervin, and the Provincial Secretary, Mr Macvicar Dyasopu, on 16 March 2011, requesting an investigation into allegations that;
- 2.1.1 During its relocation from the National Postal Centre building (NPC) situated in the Pretoria Central Business District (CBD) to the Eco Point Office Park, SAPO appointed "Lilly white" companies to render project management services despite lack of Black Economic Empowerment (BEE) accreditation, as envisaged by the SAPO BEE Policy and Strategy;
- 2.1.2 SAPO's relocation from the NPC constituted fruitless expenditure since SAPO ended up paying approximately R3.6m per month towards rental prior to taking occupation of the building;
- 2.1.3 A project manager was appointed to procure a catering company called *FedEX (sic)* (supposed to have been *Fedics*), which in the complainants' view constituted illegal outsourcing of SAPO's Supply Chain Management responsibilities and SAPO further failed to consult with them.
- 2.1.4 SAPO imposed restrictive financial measures that were implemented across its business units resulting in delivery standards being compromised, since a second day delivery was implemented thus delaying mail items destined for speedy delivery at exorbitant costs.
- 2.1.5 There is a suspicion of deep rooted corruption between SAPO employees and employment agencies/labour brokers as well as irregularity in the appointment of the aforesaid agencies/brokers, which operated without clear contractual relationships with SAPO.



2.2 In its complaint, the CWU stated that:

"Communication Workers Union (CWU) hereby requests the office of the public protector to investigate the intended move of the South African Post Office's head offices referred to as the National Postal Centre (NPC) from Pretoria to Eco- Point in Centurion.

Management of the South African Post Office are implementing this move though, in our view, there are still grey areas regarding procurement of the project manager, lilly white companies that are not compliant with the BEE policy of the company and the SA Government's Legislative dictates.

We have now learnt that they have utilized the services of the Project Manager to procure a catering company by the name Fedex, which in our view, constitute an illegal outsourcing of Supply Chain Management of Sapos and further failed to consult with the relevant trade union, as a Collective Bargaining Agent of postal Employees i.e CWU.

The Public Finance Management Act is very clear against fruitless expenditure, and the move of the NPC to ECO Point clearly constitute a fruitless expenditure, if one takes into account the exorbitant rental of over R 3, 6000 000 per month, that management of the South African Post Office is already paying before such a move is effected.

The South African Post Office is currently applying fierce cost curtailment measures across all its business units, to the extent of disregarding operational excellence and customer centricity, including but not limited to implementing second day delivery, by delaying mail items meant for speedy delivery at exorbitant cost i.e. fast mail and registered items. This second day delivery procedure is unilaterally implemented, in violation of delivery standards as set out by the postal regulator, coupled with the clear



floor policy and fraudulent behaviour, where customers' costly items for swift and speedy delivery are delayed as a result.

Lastly, we also suspect deep rooted corruption on the contracts, if there are any, around the utilization of Employment Agencies/Labour Brokers, as some have been used by Postal Management for more than 10 years, probably without the procurement policies of South African Post Office Limited pertaining to the tender adjudication, and whether these contracts are entered into at a central point or are regionally inclined as some in other regions, never supplied labour, but received personnel who were S32's from the Post Office and redeployed them as now Labour Broker employees. Over and above the existence of contracts, we request that this probe also focus on ownership of these businesses, as we suspect that some managers have shares in these businesses, tax certificates and their BEE status."

- 2.3 The investigation commenced soon after CWU was advised, on 6 April 2011, that the matter would be investigated as requested. The erstwhile SAPO GCEO and Board of Directors (the Board) were advised of the complaint shortly thereafter and requested to comment on the allegations and provide specified documents.
- 2.4 It is worth noting that when the Public Protector investigation commenced, the SAPO national administration had not yet moved to the Eco Point Park Building. It is accordingly possible that had the process been halted and the transaction scrutinised, before further commitments were made, the situation could have been salvaged. It is also worth noting that by its own admission, SAPO continued months later to make further payments in respect of the empty Eco Point Office Park despite the contract being silent on the date on which rent would become due and there being no benefit accruing to SAPO from the payment of rental towards an unoccupied building.
- 2.5 Equally more concerning is that the acquisition of new posh offices on the basis of a *Business Case* that was later found to have falsified facts and information happened at the time when SAPO was implementing drastic cost curtailment measures that were impacting on service delivery and employees.



- 2.6 It is accordingly my considered view that SAPO's failure to take the complaint seriously and review the impugned transaction when it had the opportunity to do so, fell below the standard it was required to uphold in terms of section 195(1) Constitution particularly with regard to the duty to promote efficient, economic and effective use of public resources. According to the Constitutional Court in *Khumalo v MEC for Education; KwaZulu Natal*, such a duty includes taking measures to address an irregularity if the attention of a public functionary is drawn to the occurrence or possibility of such an irregularity. In the circumstances, it is difficult to discount the lingering view held by the Complainant that SAPO's ongoing financial woes can, in part, be attributed to this episode.
- 2.7 A similar concern arises with regard to the Labour Brokers as their engagement without contracts or a clearly regulated relationship continued long after a Board decision to terminate the practice of using labour brokers.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional institution established in terms of section 181(1) (a) of the Constitution to support and 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 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 Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.
- 3.4 The Public Protector's powers are regulated and amplified by the Public Protector Act, which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act also confers power to resolve the disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism and to subpoena persons and information from any person in the Republic for the purpose of an investigation.
- 3.5 SAPO is a major public entity listed in Schedule 2 of the PFMA and the complaints lodged against it relate to maladministration and improper conduct. The complaint therefore falls under the mandate of the Public Protector to investigate.
- 3.6 The jurisdiction of the Public Protector was not disputed by any of the parties. However, I must indicate that it was difficult to get information from SAPO given the change of leadership, with this being one of the factors behind the delay in finalising this investigation which commenced in 2011.

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 the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act recognises the Public Protector's authority to investigate and report her/his findings regarding any complaint lodged.



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:

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 maladministration or improper conduct?

4.2.1.4 In the event of maladministration or improper conduct, what it would take to remedy or to right the wrong occasioned by the said 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 SAPO functionaries acted in the manner alleged by the Complainant. The sources of evidence principally included institutional documents such as memoranda, minutes and copies of correspondence. *Viva Voce* evidence was received from pertinent witnesses, SAPO management, and former Board members during meetings and interviews. Evidence was evaluated and a determination made on what happened based on a balance of probabilities.

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 or complied with by SAPO to prevent maladministration or improper conduct and prejudice. In this case, key reliance was placed on the SAPO Procurement Policy, in addition to national laws, policies and guidelines.

4.2.4. The key provision taken into account is Paragraph 13.14 of the SAPO Procurement Policy which prescribes a meticulous SCM process commencing with demand



management and ending with regular assessment of SCM performance. Worth noting in this regard is that all procurement of goods and services above R500 000 must be subjected to an open competitive tender process with deviation only permitted in emergency cases and where there is a single source that can provide goods and services. In the light of allegations regarding employees of SAPO possibly having financial interest in the labour broking companies procured by it, the provisions of the Prevention and Combatting of Corrupt Activities Act 12 of 2004, became relevant.

- 4.2.5. The enquiry regarding remedial or corrective action seeks to explore options for redressing the consequences of maladministration or improper conduct. In the case in point which involved alleged conduct failure at various levels of SAPO, remedial action seeks to right or correct identified wrongs while addressing any systemic administrative deficiencies that may be enabling or exacerbating identified maladministration or improper conduct. Where employees have long left and the remedial requirements do not involve payment of funds the remedial action focusses on plugging the enabling holes to prevent a recurrence.
- 4.2.6. The substantive scope of the investigation focused on compliance with the law and prescripts regarding the relocation of the SAPO Head Office from the NPC to the Eco Point Office Park, procurement of a project manager to procure a staff Canteen in the new building, the procurement, utilization and payment of labour brokers and allegation of corrupt relationships some of the SAPO employees and certain labour brokers. The timeline scope was confined to conduct relating to these matters that occurred between November 2009 and December 2014.
- 4.3. **On analysis of the complaint and allegations, the following five (5) issues were considered and investigated:**
- 4.3.1 Did SAPO improperly procure the Eco Point building to accommodate its Head Office?
- 4.3.2 Did SAPO incur fruitless and wasteful expenditure through upfront payment of rental in respect of the Eco Point building amounting to more than R3.6million per month while the building stood empty prior to occupation?



-
- 4.3.3 Did SAPO improperly appoint a project manager to procure the services of a catering company by the name of *Fedics* and did the said procurement amount to illegal outsourcing of SAPO's Supply Chain Management responsibilities?
- 4.3.4 Did SAPO improperly implement severe service indifferent cost cutting measures that disregarded operational requirements and compromised service excellence across its business units?
- 4.3.5 Did SAPO improperly appoint Labour Brokers with whom some of its employees had a corrupt relationship?
- 4.4. **Key sources of information**
- 4.4.1. **Documents**
- 5.4.1.1 Responses containing tender processes and other documentation that was submitted by the former Board Chairperson: Ms V Mahlathi;
- 5.4.1.2 Written responses from the former Group Chief Executive Officer dated 15 August 2011 and 26 August 2011;
- 5.4.1.3 Letter from the former Board Chairperson dated 19 December 2011;
- 5.4.1.4 Letter from Mr. SEO Dietrich, a Non-Executive Director of the SAPO Board , dated 14 March 2012 ;
- 5.4.1.5 Letter from the former Board Chairperson of the SAPO Board : Mr. G Mothema dated 16 August 2012;
- 5.4.1.6 A KPMG report titled "*Forensic Service for South African Post Office Limited: Outcome of procedures performed by KPMG*" ,dated 17 June 2012;

A handwritten mark or signature is located in the bottom right corner of the page, consisting of a stylized, cursive-like scribble.



-
- 5.4.1.7 A KPMG report titled "*Forensic investigation into the appointment and utilisation of labour brokers at the South African Post Office Limited*", dated 24 June 2011;
- 5.4.1.8 A document titled "*Environmental Assessment for the new Building*" that was prepared by Mr. Kgabo Mokgohloa: Senior Manager Sustainability dated September 2009; and
- 5.4.1.9 Documents and files obtained from the SIU
- 4.5. **Meetings and interviews conducted**
- 4.5.1. Meeting with the former Board Chairperson, Ms Vuyokazi Mahlathi, on 12 September 2011;
- 4.5.2. Meeting with the former Group Chief Executive Officer of SAPO, Ms Motshoanetsi Lefoka, on 12 September 2011;
- 4.5.3. Meeting with the former Acting Chairperson of the SAPO Board, Mr. George Mothema, on 24 August 2012;
- 4.5.4. Meeting with Ms. Susan Myburg, SAPO Executive: Human Resources; and
- 4.5.5. Meeting between the Public Protector Adv Thuli Madonsela and with Dr S Lushaba and some of the other SAPO Board of Directors including the new GCEO Mr Barnes, on 18 January 2016.
- 4.6. **Correspondence sent and received**
- 4.6.1. A letter of complaint dated 16 March 2011;
- 4.6.2. Telephonic and written correspondence with the Complainants;



-
- 4.6.3. Letter addressed to the former Chief Executive Officer : Ms MM Lefoka date 10 August 2011, 16 August 2011 and 29 August 2011;
 - 4.6.4. Letter addressed to the former Board Chairperson of SAPO: Ms VF Mahlathi dated 25 October 2011 and 23 February 2012;
 - 4.6.5. Letter addressed to the former Board Chairperson of SAPO: Mr. George Motema dated 26 July 2012, 21 August 2012, 27 August 2013 and 06 September 2012;
 - 4.6.6. E-mail correspondence addressed to Mr. Thulani Ngcobo dated 13 August 2012;
 - 4.6.7. E-mail correspondence to the Group Board Secretary of SAPO Ms Bessie Bulunga;
 - 4.6.8. E-mail correspondence from the Acting Chief Executive Officer of SAPO: Mr. Claude Phillips;
 - 4.6.9. E-mail correspondence from Mr. K Mothobi: Acting Executive in the office of the GCEO dated 27 May 2014;
 - 4.6.10. E-mail correspondence from Mr. Izak Visagie dated 02 June 2014;
 - 4.6.11. E-mail correspondence from Ms. Susan Myburg, Executive: Human Resources dated 02 June 2014;
 - 4.6.12. E-mail correspondence from Mr. Mbuso Magagula dated 02 June 2014;
 - 4.6.13. E-mail correspondence to Ms Mzozoyana, the Chief Financial Officer dated 03 June 2014; and
 - 4.6.14. E-mail correspondence to Mr. Manfred Braune of the Green Building Council of South Africa, dated 06 June 2014.



4.7. Legislation and other prescripts

Acts

- 4.7.1. The Constitution of the Republic of South Africa, 1996;
- 4.7.2. The Public Protector Act 23 of 1994;
- 4.7.3. The Public Finance Management Act 1 of 1999;
- 4.7.4. The Preferential Procurement Policy Framework Act 5 of 2000;
- 4.7.5. The Treasury Regulations, guidelines and prescripts issued in terms of the PFMA, 1999; and
- 4.7.6. The South African Post Office SOC Ltd Act 22 of 2011;

Internal policies

- 4.7.7. The Procurement Policy of the SAPO adopted in 2009;
- 4.7.8. The White Paper on Postal Policy of May 1998

Other Considerations

- 4.7.9. The Proclamation issued by the President of the Republic of South Africa granting the Special Investigation Unit (SIU) the authority to investigate similar allegations and other alleged procurement, financial and governance irregularities at the SAPO issued on 6 February 2014; and
- 4.7.10. Principles from previous Public Protector Reports and reports of similar bodies referred to as *Public Protector Touchstones*. Key reports considered were "*Against the Rules*" issued on 22 February 2011 dealing with the leasing of a building for new SAPS headquarters and "*Inappropriate Moves*" dealing with the Electoral Commission's leasing of new premises for its headquarters and issued on 26 August 2013.



5. THE STANDARD THAT SAPO SHOULD HAVE COMPLIED WITH

Procurement irregularities

5.1. General Principles

5.1.1. The conduct at SAPO relating to the procurement of goods and services is principally regulated by its own cooperate SCM policy. The policy communicates upfront that it seeks give effect to applicable constitutional, legal, governmental policy and National Treasury SCM Guidelines relating to unauthorised procurement of goods and services.

5.2. The Constitution

5.2.1. The Constitution enjoins SAPO and all other organs of state to ensure that contracts for goods and services are entered into in accordance with a system that is fair, equitable, transparent, competitive and cost effective. Section 217 of the Constitution provides:

"(1) 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 and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective."

5.2.2. When procuring contracts with service providers, SAPO as an organ of state is required to follow a procedure that is fair, reasonable, competitive and cost effective.

5.2.3. Section 195 also enjoins SAPO to ensure efficiency and effectiveness in its administration as a public entity. It specifically provides that public administration must be governed by democratic values and principles enshrined in the Constitution, including the following principles:

- (a) a high standard of professional ethic must be promoted and maintained ;
- (b) efficient, economic and effective use of resources must be promoted;



- (c) ...
- (d) service must be provided impartially, fairly, equitable and without bias;
- (e) ...
- (f) Public administration must be accountable.

5.2.4. When conducting its business, SAPO is expected to promote and maintain high standard of professionalism ethics and its administration is also expected to be efficient, economic and is must to promote the effective use of its resources.

5.3. **Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 (PPPFA)**

5.3.1 The PPPFA, the key legislation directly giving effect to section 217 of the Constitution, principally provides guidance on striking a balance between the weighting of the functionality of goods and services provision, incorporating pricing and ability to deliver, and considerations of equitable access to state contracts for historically disadvantaged business owners or suppliers.

5.3.2 The PPPFA provides the framework for implementation of preferential procurement policy. Section (2) states that:

"(1) An organ of state must determine its preferential procurement policy and implement it within the following framework:

(a) A preference point system must be followed;

(b) (i) for contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 90 points for price;

(ii) for contracts with a Rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as



contemplated in paragraph (d) provided that the lowest acceptable tender scores 80 points for price;

- (c) any other acceptable tenders which are higher in price must score fewer points, on a pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with a prescribed formula;*
- (d) the specific goals may include:
 - (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;*
 - (ii) implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;**
- (e) any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender;*
- (f) the contract must be awarded to the tenderer who scores the highest points unless objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another tenderer; and*
- (g) any contract awarded on account of false information furnished by the tenderer in order to secure preference in terms of this Act, may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have.*

(2) Any goals contemplated in subsection (1) (e) must be measurable, quantifiable and monitored for compliance."



- 5.3.3 The PPPFA is essentially given life through the Broad Based Black Economic Empowerment Act 53 of 2003 and National Treasury SCM Guidelines.
- 5.4. **Broad-Based Black Economic Empowerment Act 53 of 2003 (BBBEEA)**
- 5.4.1 The BBBEEA, essentially seeks to redress the legacy of exclusion of black people (as defined in the Act and further defined in the BEE Codes) in the South African economy before the advent of democracy (Before April 27 1994), by imposing preferential treatment for business composition and other equity considerations.
- 5.4.2 Key provisions of the BBBEEA that the impugned SAPO procurement activities had to comply with, include the requirement of a balance between equity and cost effectiveness. The BBBEEA is principally implemented through Codes of Good Practice that provide more elaborate guidelines on appropriate weights to be accorded to enterprise functionality and its BEE profile using points to be allocated during the bid adjudicating and evaluation processes. Treasury Regulations integrate the provisions of the BEE Codes with financial management prescripts arising from the Public Finance Management Act (PFMA)
- 5.5. **Treasury Guide on Supply Chain Management for Accounting Officers**
- 5.5.1. In February 2004, the National Treasury, issued a document entitled "*Supply Chain Management: A Guide for Accounting Officer/Authorities*" (SCM Guide) the purpose of which was to give guidance to accounting officers in fulfilling their roles within the SCM framework.
- 5.5.2. Paragraph 3 of the SCM Guide sets out guidelines with regard to demand management reads as follows:



"Demand management"

3.1 Introduction

...

4.3.1 Demand management is the first phase of SCM. The objective is to ensure that the resources required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price and place and that the quantity and quality will satisfy those need. As part of this element of SCM, a total needs assessment should be undertaken. This analysis should be included as part of the strategic planning process of the institution and hence will incorporate the future needs.

4.3.2 It is vital for managers to understand and utilize sound techniques to assist them in their planning, implementation and control activities. As part of the strategic plan of the institution, resources required for the fulfilment of its obligations should be clearly analysed.

4.3.3 This includes a detailed analysis of the goods, works and services required, such as how much can be accomplished , how quickly and with what materials, equipment etc".

5.5.3. This document is applicable to all accounting officers and contains the following principles:

- Sound techniques should be utilized in conducting the needs analysis.
- The needs should be linked to the budget.

5.5.4. Paragraph 1.3.2.2 of the SCM Guide states that Demand Management is the beginning of the supply chain where:

- a needs assessment is done to ensure that goods or services are acquired in order to deliver the agreed service;
- specifications are precisely determined;





- requirements are linked to the budget; and
- the supplying industry has been analysed.

5.6. Treasury Regulations

5.6.1. The Treasury regulations integrate all of the constitutional and legislative requirements for procurement and financial management and set out clear guidelines to facilitate legal compliance.

5.6.2. Key compliance requirements relevant to the conduct questioned in the SAPO complaints arise from Treasury Regulations 2005 issued in terms of the PFMA.

5.6.3. Paragraph 16A3.2 of the National Treasury Regulations of March 2005 states that:

"A supply chain management system... must-

- a) be fair, equitable, transparent, competitive and cost effective;*
- b) Be consistent with the Preferential Procurement Policy Framework Act, 2000;*
- c) Be consistent with the Broad Based Black Economic Empowerment Act, 2003; and*
- d) Provide for at least the following:-*

- i. Demand management;*
- ii. Acquisition management;*
- iii. Logistics management;*
- iv. Disposal management;*
- v. Risk management; and*
- vi. Regular assessment of supply chain performance." (Emphasis added)*



5.6.4. Paragraph 16A6.1 of the National Treasury Regulations of March 2005 states that:

"Procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury"

5.6.5. Paragraph 16A6.3 of the National Treasury Regulations of March 2005 states that:

"The accounting officer or accounting authority must ensure that-

a) *Bid documentation and the general conditions of a contract are in accordance with-*

i. *The instructions of National Treasury; or*

ii. *...*

b) *...*

c) *Bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine..."*

5.6.6. Paragraph 16A6.4 of the Treasury Regulations of March 2005 state that:

"If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required good 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."

5.6.7. According to paragraph 15.10.1.1 of the Treasury Regulation of March 2005, the accounting officer is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management.

5.6.8. Paragraph 15.10.1.2 (c) of the Treasury Regulations of March 2005 provides that for purposes of the regulation, cash management includes avoiding prepayments for



goods or services (i.e. payments in advance of the receipt of the goods or services), unless required by the contractual arrangements with the supplier.

- 5.6.9. Paragraph 33.1.1 of the Treasury Regulations of March 2005 provides that if an employee is alleged to have committed financial misconduct, the accounting authority of the public entity must ensure that an investigation is conducted into the matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with the relevant prescripts.
- 5.6.10. Paragraph 33.1.2 provides that the accounting authority must ensure that the investigation is instituted within thirty (30) days from the date of discovery of the alleged financial misconduct.
- 5.6.11. Paragraph 33.1.3 of the Treasury Regulations provides that if an accounting authority or any of its members is alleged to have committed financial misconduct, the relevant executive authority must initiate an investigation into the matter and if the allegations are confirmed, must ensure that appropriate disciplinary proceedings are initiated immediately.
- 5.6.12. The National Treasury Practice Note Number SCM 3 of 2003 issued in terms of section 76 of the PFMA provides that consultants should be appointed by means of a competitive bidding process, whenever possible. Paragraph 1.3 of the Practice Note defines Consultants as including procurement agents.
- 5.6.13. In terms of paragraph 1.6 of the Practice Note, the relationship between accounting /authorities and consultant should be one of purchase/provider and not employer/employee and therefore the work undertaken by a consultant should be regulated by a contract.



Budget

- 5.6.14. Paragraph 5.1 of the National Treasury Regulations of March 2005 makes it mandatory for the Accounting Officer of an institution to prepare a strategic plan for the forthcoming Medium Term Expenditure Framework (MTEF) cycle.
- 5.6.15. Paragraph 5.2.2 of the National Treasury Regulations of March 2005 requires that the strategic plan include the following:

"5.2.2 The strategic plan must –

- (a) Cover a period of three years and be consistent with the institution's published medium term expenditure estimates;*
- (b) Include specific Constitutional and other legislative, functional and policy mandates that indicate the output deliverables for which the institution is responsible;*
- (c) include policy developments and legislative changes that influence programme spending plans over the three-year period;*
- (d) include the measurable objectives, expected outcomes, programme outputs, indicators (measures) and targets of the institution's programmes;*
- (e) include details of proposed acquisitions of fixed or movable capital assets, planned capital investments and rehabilitation and maintenance of physical assets;*
- (f) include details of proposed acquisitions of financial assets or capital transfers and plans for the management of financial assets and liabilities;*
- (g) include multi-year projections of income and projected receipts from the sale of assets;*



- (h) *include details of the Service Delivery Improvement Programme;*
- (i) *include details of proposed information technology acquisition or expansion in reference to an information technology plan; and*
- (j) *for departments, include the requirements of Chapter 1, Part III B of the Public Service Regulations, 2001."*

Cash Management

- 5.6.16. Paragraph 15.10 of the Treasury Regulations deals with Banking and Cash Management. Sub-regulation 15.10.1.1 states that *"The accounting officer is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management"*.
- 5.6.17. Sub-regulations 15.10.1.2 (c) further states that for purposes of this regulation, sound cash management includes *"avoiding prepayments for goods or services (i.e. payments in advance of the receipt of the goods or services), unless required by the contractual arrangements with the supplier"*.

Unauthorised, irregular and fruitless and wasteful expenditure

- 5.6.18. Paragraph 9.1.1 of the National Treasury Regulations of March 2005 states that:

"An Accounting Authority/Officer of an institution must exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent process of financial and risk management."





5.7. SAPO's Procurement Policy and the Acquisition Process

- 5.7.1. The conduct at SAPO relating to the procurement of goods and services is principally regulated by its own Procurement Policy which was adopted in 2009. This policy seeks to give effect to Section 217 of the Constitution which requires a competitive, cost effective and fair bidding process.
- 5.7.2. It requires SAPO to commit to applying legislative and regulatory environment pertaining to Supply Chain Management. It cites prescripts such as the Constitution, the Public Finance Management Act, Treasury Regulations issued in terms of the PFMA, The Preferential Procurement Policy Framework Act and its Regulations, The Broad Based Black Economic Empowerment Act, the National Small Enterprise Act, the State Information Technology Act, The prevention and Combating of Corrupt Activities Act and other laws impacting on supply chain.
- 5.7.3. Paragraph 3.1.1 of the SAPO Procurement Policy enjoins SAPO to apply section 217 of the Constitution by contracting for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
- 5.7.4. Paragraph 8 of the SAPO Procurement Policy regulates the issue of ethics in procurement. According to paragraph 8.1.2 of the Policy, SAPO had to ensure that any supplier or potential supplier that misrepresents the facts in order to gain some advantage using SAPO's BEE program be penalized by deregistration from the supplier data base and other provisions of applicable legislation.
- 5.7.5. Paragraph 13.14.1 of the Policy regulates the threshold of the process above R500 000.00 and requires a competitive open bidding process to be utilized for such procurement. It requires an approved business case to be submitted for Capex as budgeted, as well as for Opex not budgeted for, before the commencement of the procurement process.
- 5.7.6. Paragraph 13.15.2 empowers SAPO to apply the two stages of bidding process in instances of turnkey contracts or works of special nature, when it is impractical to





prepare technical specifications in advance. The paragraph authorizes SAPO to apply the process of pre-qualified bidders. Pre- qualifications should be based entirely upon the capacity and resources of prospective bidders to perform the particular contract.

5.7.7. The threshold for the procurement process is regulated by paragraph 13.15.1 of the SAPO Procurement Policy which makes provision for competitive open bidding. It further requires an approved business plan for budgeting, before the commencement of the procurement process.

5.7.8. Limited bidding is regulated by paragraph 13.16 which provides it shall only be used in the following circumstances:

"13.16.1 In cases of urgency where unforeseen early delivery and urgent business continuity is of critical importance and the standard procurement process is impossible or impractical;

13.16.2 In cases of emergency which are defined as serious, unexpected and potentially dangerous circumstances requiring immediate rectification such as a threat or interruption at SAPO's ability to execute its mandate or an immediate threat to the environment or human safety'

13.16.3 Multiple choices bidding where there is proven limited competition in the market and there is good reason to restrict it to only those few bidders such as standardization or on a certain brand product;

13.16.4 Single source bidding where, after a thorough analysis, there is a good and justification reason to restrict the process to only one bidder such as where you enter a maintenance contract with only one bidder who supplied the product otherwise product loses its guarantee;

13.16.5 Sole source bidding where no competition exists and is proven that only one bidder exists;"



5.7.9. In addition to the above, paragraph 13.16.2 provides that bad planning shall not be acceptable as justification for the use of limited bidding. Such exceptions with the justification therefore, below the bidding threshold shall be approved by the GE/Head of the business unit, and managing directors of subsidiaries. Exceptions within the bidding threshold shall be approved by the accounting officer. In all instances the GE: and Chairperson of PC must support the requests.

5.7.10. The alienation of land and fixed property is listed paragraph 4.5.8 of the SAPO Policy as one of the exclusions where the bidding process cannot be utilized.

5.8. The Public Finance Management Act, 1999

5.8.1. The key instrument regulating procurement is the PFMA the purpose of which is set out in the preamble of the Act, which reads as follows:

"To regulate financial management in the national government and provincial government; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed effectively and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith"

5.8.2. In terms of section 76 (4) of the PFMA, the National Treasury may make regulations issue instructions applicable to all institutions to which the PFMA applies concerning, inter alia, the determination of a framework for an appropriated procurement and provisioning system which is in keeping with the dictates of Section 217 (1) of the Constitution (supply chain management {SCM} framework).

5.9. The responsibilities and financial misconduct of accounting officers and accounting authorities of public entities, in terms of the PFMA



- 5.9.1. Section 49 of the PFMA provides that every public entity must have an authority which must be accountable for the purposes of the Act. In the case of SAPO, the Accounting Authority is the Board as contemplated by section 49(2).
- 5.9.2. An Accounting Authority of a public entity is required, in terms of Section 50 of the PFMA, to exercise a duty of utmost care to ensure reasonable protection of the assets and records of the public entity as well as act with fidelity, honesty, integrity and in the best interest of the public entity in managing the financial affairs of the public entity.
- 5.9.3. The issue of budget is regulated by section 51 of the PFMA which states that :

"51(1) An accounting authority for a public entity –

(a) Must ensure that the public entity has and maintains-

(i) effective, efficient and transparent systems of financial and risk management and internal control;

...

(iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective;

(iv) a system for properly evaluating all major capital projects prior to a final decision on the project;

(b) Must take effective and appropriate steps to-

...

(ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public policy; and

(iii) manage available working capital efficiently and economically;



(c) Is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity".

5.9.4. Section 52 of the PFMA makes provision for an accounting authority to submit to the account officer a projection of revenue, expenditure and borrowings for the financial year and a corporate plan covering the affairs of that public entity or business enterprise for that following three financial years.

5.9.5. As the Accounting Authority, the SAPO Board, in terms of the provisions of section 56 of the PFMA has the powers to delegate any of the powers entrusted to it to an official of that public entity. However such delegation does not divest the Board of the responsibility concerning the exercise of the delegated power or the assigned duty.

5.9.6. Section 57 of the PFMA provides for responsibilities of other officials. It states that an official in a public entity who has been delegated in writing by the accounting authority of any power :

- "a) Is responsible for the effective, economical and transparent use of financial responsibility and other resources within that officials area of responsibility;*
- b) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregulars expenditure and fruitless and wasteful expenditure and any under collection of revenue;*
- c) must comply with the provisions of the PFMA to the extent applicable to that official, including any delegations of instructions in terms of section 56 ; and*
- d) is responsible for the management, including the safeguarding, of the assists and management of the liabilities within that official's area of responsibility"*



- 5.9.7. The National Treasury may in terms of section 76(4) of the PFMA issue instructions to all Institutions to which the Act applies concerning any matter regulated by the Act. In this regard, the National Treasury issued Practice Note Number SCM 3 of 2003 which regulates the appointment of consultants.
- 5.9.8. Labour Brokers according to this Practice Note, fall within the definition of consultants. Paragraph 1.6 of this Practice Note provides that the work undertaken by consultants has to be regulated by a contract.
- 5.9.9. Section 83 of the PFMA regulates the issue of financial misconduct of accounting authorities and officials of public entities. It states that failure by the accounting authority to comply with the provisions of sections 50, 51,52,53,54 or 55, or the permission of an irregular expenditure or a fruitless and wasteful expenditure amounts to a financial misconduct.
- 5.9.10. If the accounting authority is a Board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.
- 5.9.11. In as far as misconduct by an official of a public entity whose power or duty is assigned in terms of section 56 is concerned, such official commits misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.
- 5.9.12. Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.
- 5.9.13. The applicable legal regime for disciplinary proceedings is regulated by section 84. It states that a change of financial misconduct against an accounting officer or official referred to in section 81 and 83 , or an accounting authority or a member of an accounting authority , must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority.



5.9.14. According to section 86 an accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with the provisions of section 50, 51 or 55.

5.10. **The South African Post Office SOC Ltd Act 22 of 2011**

5.10.1. In terms of section 4 (1) the Post Office must take reasonable measures within its available resources, to achieve the progressive realisation of the following duties:

"1.1.1 Ensure the universal and affordable realisation provision of postal services;

...

1.1.2. be innovative in the provision of postal services;

...

1.1.3. act in the best interest of postal users and other clients"

5.11. **Service Delivery Standards**

5.11.1. The issue pertaining to service delivery standards are referred to in the White Paper on Postal Policy of 14 May 1998 which provides that SAPO must adhere to minimum service standards against which its performance will be monitored.

5.11.2. According to the White Paper on Postal Policy, the quality of service will be monitored, using appropriate measures in order to ensure universal services at a level that the customers recognized as satisfactory as well as the monitoring of the frequency reliability and the extent of non-delivery. It also makes provisions for the measurements of standards according to customer care and reliability.



5.12. Corruption

5.12.1. The allegations regarding suspected financial interests of some of the SAPO employees in the companies awarded contracts as labour brokers were assessed against the provisions of the Prevention and Combatting of Corrupt Activities Act, 12 of 2004 (PCCAA).

5.12.2. Key provisions taken into account in this regard are the provisions of Part 1 to 4 of the PCCAA. Worth noting is section 3 of the PCCAA which provides that;

"3. Any person who directly or indirectly-

(a) accepts or agrees or offers to accept any gratification from any accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner—

(i) that amounts to the—

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to—

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption."



5.12.3. Section 12 of the Act provides that:

- "(1) Any person who, directly or indirectly-*
- (a) Accepts or agrees or offers to accept any gratification from any person whether for the benefit of himself or herself or for the benefit of that other person or of another person; or*
 - (b) Gives or agrees or offers to give to any person any gratification whether for the benefit of that other person or for the benefit of another person*
 - (a) In order to improperly influence in any way-*
 - (aa) The promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or*
 - (bb) The fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or*
 - (ii) as a reward for acting as contemplated in paragraph (a) is guilty of an offence."*

6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

6.1 Regarding whether SAPO improperly procured the Eco Point building to accommodate its Head Office

6.1.1. The SAPO "Business Case"

6.1.1.1. It is common cause that in November 2009, SAPO prepared a Business Case which was presented to its Executive Committee (EXCO) which recommended to the Board on 13 November 2009 which subsequently approved same on 26 November 2009.

6.1.1.2. According to the Business, a needs analysis had concluded that the National Postal Centre (NPC) was unable to meet corporate needs such as ablution facilities, parking space and electrical compliance. In as far as lack of ablution is concerned Business Case cited, amongst other things, that the NPC had been initially configured to



- accommodate 802 personnel while its staff compliment had, over the years, increased by 22% which was above the designed capacity of the building. According to the "Business Case" the challenges identified needed urgent attention.
- 6.1.1.3. According to the *Business Case* various options to address the building challenges were considered, including acquiring a new building, expansion of the NPC and an operation lease. It further found that the NPC could not be expanded any further due to soil conditions and an unstable building foundation with soil that could not support any further expansion.
- 6.1.1.4. A further motivation was that the Environmental Assessment conducted established that the Eco Point Office Park was one of the greenest buildings in South Africa and that this had been confirmed by the Green Building Council of South Africa. The *Business Case* also preferred the Eco Point Office Park since it had been issued with a full electrical compliance in contrast with the NPC which had not been issued with same.
- 6.1.1.5. However, the investigation found that some of these motivations were actually fabrications and misrepresentations made so as to convince the Board to approve the move.
- 6.1.1.6. For an example, Ms Ans Kitchener, the SAPO's Facilities Manager, stated during the investigation that she could not recall an Environmental Assessment being conducted nor did she recall any soil tests being conducted at the NPC building to establish the suitability of its soil condition and building foundations. This was corroborated by the fact that no document was produced by SAPO as an Environmental Impact Report. None was produced for the soil tests either.
- 6.1.1.7. Her evidence was further corroborated by Mr Mokgohloa who advised that he is the one who conducted a "walk through environmental audit" of the Eco Point building and that no full environmental assessment was conducted. Following his audit, he



- concluded that the building had potential for a sustainable building and made recommendations for further improvements so as to make it even more sustainable.
- 6.1.1.8. He concluded by stating that what has been stated in the business case is not the true reflection of his walk in environmental audit as it has been over exaggerated thus misrepresenting the actual work that was done.
- 6.1.1.9. Further misrepresentations that were identified included that;
- 6.1.1.9.1 Relocation costs for SAPO in respect of the move from NPC to Eco Point building would be approximately R14 180 556.00 whereas in actual fact the relocation costs amounted to approximately R110 500 000;
- 6.1.1.9.2 SAPO would be paying market related rental costs for the building whereas in actual fact, SAPO would over the full lease period pay approximately, R47 557 854.00 more than market related rental costs for the lease of the building;
- 6.1.1.9.3 Network and telephone infrastructure is already in place at the Eco Point building whereas in actual fact there was no such infrastructure and SAPO would have to contract a service provider to install the infrastructure at a cost to SAPO and not Centurion Vision Development, the landlord and owners of the building;
- 6.1.1.9.4 SAPO would be liable to pay rent towards a usable office space of approximately 18 360m² whereas in actual fact, SAPO would be paying for less office space of approximately, 14 919m²; and
- 6.1.1.9.5 That the parking bays at the building were 718 whereas in actual fact the available parking bays for use by SAPO were only 700.
- 6.1.1.10. Mr. Mokgohloa's submission was further corroborated by Mr Manfred Braune of the Green Building Council of South Africa who confirmed, during a telephonic conversation and later with an e- mail communication dated 06 June 2014, that: " **To date the GBCSA has not been certified as a green building the development in**



question in Centurion, developed by M&T Developments in Which Hazel Street on Erf 3060, neither has it been registered with the GBCSA as a project targeting a Green Star SA certification /rating" .

Issues not in dispute

- 6.1.1.11. It is also common cause that through the consideration and approval of the *Business Case* by the SAPO Board, implemented the relocation of its Head Office from the NPC building in the Pretoria CBD to the Eco Point Office Park, in Centurion.
- 6.1.1.12. SAPO also conceded that the lease of the Eco Point Office Park was not procured through a tender as required for procurement transactions above R500 000.00.
- 6.1.1.13. Despite SAPO's submissions that it had complied with the requisite governance processes, including procurement procedures during its procurement of the Eco Point Office Park for the accommodation of its head office, I could find no evidence that proves that the lease of the building was advertised, evaluated upon and adjudicated prior to the award of the contract to Centurion Vision Development (Pty) Limited.
- 6.1.1.14. According to SAPO, three alternative leasable premises in the areas of Menlyn Park, West End in Centurion and Hazeldean in Silverlakes, Pretoria were evaluated and found to be unsuitable for SAPO's needs. How these buildings were identified remains a mystery as that is a process which should have been subsequent to the advertisement of the procurement of the lease and potential bidders submitted their bids
- 6.1.1.15. On perusal of documents obtained from SAPO, I have noted that although Board members participated in the evaluation of the four buildings no evidence was submitted to support its contention that it had followed normal procurement procedures during the identification of the buildings for evaluation. No further particulars relating to the identification of the alleged evaluated buildings could be found. Furthermore, no such information could be sourced from the *Business Case*, which purportedly contained relevant information pertaining to the relocation.



- 6.1.1.16. It is worth noting that the KPMG report commissioned by the SAPO Board also concluded that the defined procurement process for transaction above R500 000.00 was not followed.
- 6.1.2. **Approval of the Business Case and the relocation of SAPO Head Office from the NPC to Eco Point Office Park**
- 6.1.2.1. SAPO's EXCO resolved, on 04 November 2009, to support and submit the defective Business Case for relocating to the NPC building for approval. The support was subject to the provisions of plans on what could be done with the vacated buildings, steps and progress made in respect of other buildings nationally, outlining of environmental issues and inclusion of future expansions.
- 6.1.3. **The Minutes of the Board Meeting held on 26 November 2009 in connection with the approval of the *Business Case***
- 6.1.3.1. On 26 November 2009, the SAPO Board under the Chairpersonship of Ms V Mahlati convened a Board meeting. The purpose of the meeting was to consider the Business Case for the relocation of the SAPO Head Office from the NPC building to Eco Point Office Park in Centurion.
- 6.1.3.2. It is recorded in the minutes that the Board RESOLVED that the relocation of the National Postal Centre (NPC) SAPO Head Office from its current premises on 497 Schubart Street, Pretoria to Eco Point Building, in Centurion be and is hereby approved by the Board of Directors of SAPO for operational expenditure of R109 million over a period of five years.
- 6.1.3.3. It was RESOLVED further that:



- "(a) the SAPO executive management be and is hereby authorized to conclude a ten (10) year operational lease at Eco Point, Centurion subject to SAPO having the option to acquire the building at a future date at a pre- agreed price.*
- (b) The SAPO Group to exit from existing leases held at CFG DOCEX and e-Postal and to co-locate these operations at Eco Point.*
- (c) The current NPC building to be leased to suitable tenants as a B-Grade building."*

6.1.3.4. From the minutes of the meeting, it was noted that the Board approved the relocation prior to having viewed the proposed building as they were still to conduct a site inspection of the Eco Point Office Park with a view to meeting the owners of the building.

6.1.4. The Lease agreement entered into between SAPO and Centurion Vision Development (Pty) LTD in connection with the lease of the Eco Point Office Park

6.1.4.1. On 25 February 2010, a lease agreement between SAPO and Centurion Vision Development Proprietary Limited was concluded in respect of the letting and hiring of the Eco Point Office Park. The commencement date of the lease is recorded as 1 May 2010 or the date of occupation thus expiring on 30 April 2020. The period of the lease agreement was thus ten (10) years.

6.1.4.2. According to the lease agreement, the monthly rental for the building were R2 372 050.00 which was broken down as follows;

Rental:	R1 890 210.00
Operating Cost Contribution:	R270 030.000
Parking:	R211 810.00
Plus VAT @ 14%	

6.1.4.3. Paragraph 2.1 read with item 3 of Schedule 1 to the agreement provides that, "Should the occupation be after 1 May 2010 then the Commencement Date shall be such

A handwritten signature in black ink, appearing to be "T. M.", located in the bottom right corner of the page.



***later date** and all other periods shall be calculated taking into account the amended Commencement Date".*

- 6.1.4.4. The parties agreed to an annual rental escalation of 9% per annum effective from 1 May 2011. Further thereto, SAPO in its capacity as the tenant were to make installations to the building amounting to R17 600 000.00.
- 6.1.5. **Internal disciplinary hearings conducted against members of SAPO Executive Committee**
- 6.1.5.1. Amongst documents provided to the investigation team were disciplinary hearing reports in relation to charges and findings against Mesdames M Lefoka, the former Group Chief Executive Committee and M Lancaster, the former Group Executive Strategy. According to the disciplinary records that were provided by SAPO to my office, Ms Lefoka was charged for signing Heads of Agreements without obtaining prior requisite authority that her conduct resulted in SAPO incurring fruitless and wasteful expenditure as well as her contravention of the Public Finance Management Act. The second charge relates to her failure to discharge her responsibilities as the accounting officer which resulted in fruitless and wasteful expenditure being incurred by SAPO.
- 6.1.5.2. The third charge refers to SAPO's failure to take occupation of the leased premises on 01 May 2010, as provided for in the lease agreement, the signing in her personal capacity of an addendum lease.
- 6.1.5.3. The payment made by SAPO to Centurion Vision Development of an amount of R18 928 959 while not being in occupation of the premises, that she knew or reasonably have known as the accounting officer that Mr Wentzel's representation to the Board regarding the conditions in respect of the lease agreement were untrue or misleading and that under her stewardship SAPO incurred irregular expenditure in the amount of R161 million which amount was reflected in the 2010/2011 annual report.
- 6.1.5.4. Disciplinary records that were provided by SAPO to my office show that the disciplinary action against Ms Lefoka was not concluded, since the parties opted to conclude a settlement agreement.



- 6.1.5.5. According to a Settlement Agreement that was entered into between Dr V Mahlathi and Ms M Lefoka, on 24 January 2014, it was agreed that SAPO would pay Ms Mafoka a settlement amount of six months remuneration as well as an amount of R 135, 815.70 for services rendered between April 2011 to 31 December 2011 as well as payment of all leave days which had accrued until the termination date.
- 6.1.5.6. In as far as Ms Lancaster is concerned, she was charged for her irregular appointment of Market Works and the misrepresentation that EXCO appointed INFRABURO to project manage the SAPO move to Eco Point building. Records show that Ms Lancaster was found not guilty of the four charges of misconduct brought against her and she subsequently resigned her employment services from SAPO.
- 6.1.6. **The KPMG Report**
- 6.1.6.1. On 26 October 2011 and when allegations of corruption involving SAPO officials and the Centurion Vision Development (SAPO Landlord) came to the Board's attention, a forensic investigation was commissioned to be conducted by KPMG with a mandate to commence with the investigation from 6 December 2011. The terms of reference for KPMG were *inter alia*:
- 6.1.6.1.1. to consult with Mr Raju Bhika, a third party who indicated to SAPO that he had relevant information in this regard;
- 6.1.6.1.2. to review the CD with documentation provided to SAPO by Bhika;
- 6.1.6.1.3. to image the laptops of a former employee of SAPO , identified during the briefing between SAPO and KPMG;
- 6.1.6.1.4. to perform key word searches on the imaged content of two laptops. The key word will be determined by the information provided by Bhika as well as content of the CD and KPMG's knowledge of the matter under investigation; and

(TW)



6.1.6.1.5. to conduct high level review of the bank statement made available to KPMG during its meeting with SAPO or which may be obtained during the course of the investigation would be performed to establish whether any payment that might relate to the alleged irregularities were made to or from the relevant bank accounts.

6.1.6.1.6. Following the investigation, KPMG found *inter alia* that certain key role-players in the procurement of the lease of the Eco Point Office Park were involved in some form of improper conduct as well as misrepresentations and the matter was referred to the SAPS for further investigation with a view to consider the appropriateness of prosecuting the officials alleged to have been involved. This aspect of the misrepresentation and fraud was also covered by the investigation of the SIU.

6.1.6.2. I have been advised that the SIU recommended that the Asset Forfeiture Unit of the National Prosecuting Authority should become involved in the matter and that civil proceedings be instituted to challenge the validity of the lease contract

6.1.7. The response of the SAPO Board to notices issued in terms of section 7(9) of the Public Protector Act, 1994

6.1.7.1. On 23 December 2015, I addressed a notice to the current Chairperson of the Board, Dr S Lushaba in terms of the provisions of section 7(9) of the Public Protector Act thus requesting him to respond to my possible findings against SAPO subsequent to the investigation of the complaints lodged by the CWU.

6.1.7.2. Section 7(9) of the Public Protector Act, 1994 provides that;

"If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances".



- 6.1.7.3. On behalf of SAPO Board, Dr Lushaba responded to the notice on 11 January 2016 and advised me that in the Strategic Plans for the financial years, 2010/2011 to 2012/2013, the relocation of SAPO Head Office to Eco Point Office Park is not captured. He further stated that documents in relation to the procurement processes for the building could not be found as the whole process for the lease of this building did not go out on tender. He thus furnished me with a correspondence from the SAPO Supply Chain Management Department which confirmed that *"... the Eco Point Building did not go out on tender and the lease agreement did not go through the supply chain management process."*
- 6.1.7.4. SAPO SCM Department also confirmed the submissions by Dr Lushaba that no documentation records with regard to the procurement of the building could be found from the document management department.
- 6.1.7.5. Following the submission, Dr Lushaba requested to meet with me in order to get some clarity on what is expected from the SAPO in as far as the section 7(9) notices were concerned. The meeting was convened on 18 January 2016 and the deliberations with SAPO were cordial as it was in essence agreed that no formal procurement process was followed in the lease of the Eco Point Office Park. He thus requested to submit further information which was done on 26 January 2016.
- 6.1.7.6. In his further submission, Dr Lushaba informed me that SAPO Board accepted the notice issued in terms of section 7(9) of the Public Protector Act and confirmed that the Board do not have any aspect of the notice that they would like to contest or challenge instead they committed to implement the remedial action of the Public Protector as referred to in this report.
- 6.1.7.7. In this regard, Dr Lushaba confirmed that following the investigation referred to in this report, a diagnosis of SAPO administrative processes revealed that there were systemic deficiencies with regard to Contract Management which exposes the institution to a number of risks occasioned by lack of business cases to support and ensure value for money to the SAPO.



- 6.1.7.8. In so far as the Supply Chain Management processes and procedures, it was found that there has been an excessive use of Limited Bidding Documents (LBD's) to source suppliers as well as a prevalence of utilization of middle-men to source services from Original Equipment Manufacturers and State Owned Entities resulting in SAPO paying inflated prices.
- 6.1.7.9. He thus advised that in addressing the said systemic deficiencies, the Board initiated the following remedial actions:
- 6.1.7.9.1. To tighten the management of contracts with a view to ensuring that accountability and performance management of contracts becomes efficient. In this regard, Evergreen Contracts will be eliminated and service levels and performance criteria would be clarified and enforced in contracts;
- 6.1.7.9.2. To tighten the control and use of limited bidding processes by SAPO Supply Chain Management Department to ensure that the LBS's are used only where necessary.
- 6.1.7.9.3. The contracts of middle-men are terminated and SAPO entered into contracts with the original suppliers and/or manufacturers where possible resulting in substantial savings for SAPO.
- 6.2. **Regarding alleged upfront payment of rental in respect of the Eco Point building amounting to more than R3.6 million per month whilst the building stood empty and prior to SAPO occupying it**
- 6.2.1. Issues not in dispute
- 6.2.1.1. It is common cause that SAPO entered into a lease agreement with Centurion Vision Development, on 19 and 25 February 2010 respectively and that the lease commencement date was 1 May 2010 or the date of occupation by SAPO.
- 6.2.1.2. What I had to determine was the actual date of occupation of the building by SAPO as well as whether they were liable to pay upfront rental prior to occupation of the building.



- 6.2.1.3. SAPO conceded that payments were made towards rental before occupation of the building in March 2011 and that the amount paid before the complaint was discovered and recovered but later another amount of R22 million representing a period of ten months prior to the actual occupation was irregularly paid.
- 6.2.1.4. Mr Mthobi of SAPO advised that, "The amount paid to the landlord before occupation is R8 112 411, which is the equivalent of three months rental (May, June and July). The South African Post Office (SAPO) took occupation on 01 August 2010. The spreadsheet which depicts invoices and payment made is attached marked 1 which is a compilation from the SAP record".
- 6.2.1.5. In support of the above statement, SAPO provided an invoice referenced in SAPO's response above:

1



South African Post Office

Annexure A

Vendor Analysis: Centurion Vision Development

Vendor number: 401400

Description	EFT Date	Document Number	Document Date	Invoice Amount	EFT Amount	Profit Center
Rental Expense		215755286	2010/05/01	-2 154 839.40		21805
Parking Rent		215755286	2010/05/01	-241 463.40		21805
Operating Costs		215755286	2010/05/01	-307 834.20		21805
Payment	EFT20100503	2100259533	2010/05/03		2 704 137.00	21805
Rental Expense		216248083	2010/06/01	-2 154 839.40		21805
Parking Rent		216248083	2010/06/01	-241 463.40		21805
Operating Costs		216248083	2010/06/01	-307 834.20		21805
Payment	EFT20100601	2100267306	2010/06/01		2 704 137.00	21805
Rental Expense		216780867	2010/07/01	-2 154 839.40		21805
Parking Rent		216780867	2010/07/01	-241 463.40		21805
Operating Costs		216780867	2010/07/01	-307 834.20		21805
Payment	EFT20100701	2100275694	2010/07/01		2 704 137.00	21805
Total Invoices and Payments				-8 112 411.00	8 408 274.00	



- 6.2.1.6. According to the invoice, the rental payments made in respect of the aforesaid invoice amounted to R 8 112 411.00 which covered the period May to July 2010. SAPO took occupation of the Eco Point building in March 2011.
- 6.2.1.7. SAPO further stated that during its EXCO meeting held on 21 June 2010, to consider an update on the relocation of the SAPO Head Office that was presented by Ms M Lancaster, it was noted that payments made in respect of operational leases for Eco Point were conducted outside the contract and were irregular. As a result, EXCO resolved that all future payments would be put on hold pending the receipt of an occupational certificate.
- 6.2.1.8. The contents of a letter dated 04 August 2010 from the former Group Chief Executive Officer addressed to M & T Development reflects an agreement which seeks to rectify the irregular payment. In terms of the aforesaid letter it was agreed that SAPO would recoup the irregular payment by means of withholding future rental payments for a period of three months. Extract from the memorandum are as follows:

"...

In this regard, we confirm that SAPO's Mr Wentzel and Centurion's Ms Tsai (both duly authorized officials of the respective companies) have now agreed that:

1. *SAPO will commence paying the agreed rental to Centurion as from 1 August 2010.*
2. *The payment made thus far by SAPO to Centurion shall be regarded as full amount due of any payments which may have been due by SAPO to Centurion for the months of August, September and October 2010.*
3. *SAPO shall pay rental of the amount of R2 102 020 (Two million one hundred and two thousand and twenty rands) per month from 1 November 2010 to the date of occupation by the SAPO which monthly rental shall be in full and final settlement of all payment obligation contained in the lease agreement for the months between November 2010 until date of actual occupation by SAPO.*



4. *For the avoidance of doubt, SAPO shall be obliged to pay any other amounts to Centurion contemplated in the lease agreement other than the amount of R2 102 020 per month for the period."*

- 6.2.1.9. One of the documents, submitted shows that Ms Lefoka confirmed the arrangement referred to above and further expounded stating that although clause 23 of the lease agreement was applicable to the letter, she confirmed that it stood as a written variation of the lease agreement unless stated otherwise. In conclusion, she requested the addressee to sign the letter and return a copy to her which will be in compliance with formalities set out in the lease agreement.
- 6.2.1.10. In a response letter dated 20 August 2010 and addressed to Ms M Lefoka, Ms Tsai confirmed the content of the letter discussed in paragraph 6.3.4 above adding that SAPO would pay rental of R 2, 704, 137.00 from 01 November 2010 to the date of occupation. She further explained that in addition to the rental charge that is discussed in paragraph 6.2.7 above, SAPO would still be liable to Centurion Vision Development for any maintenance charges or other charges arising out of the lease agreement and any addendums from 01 November 2010.
- 6.2.1.11. According to minutes of a meeting held on 09 September 2010, which was attended by Mesdames Mahlathi, M Lefoka as well as Messer's Mr. SEO Dietrich and JP Wentzel, Mr Wentzel submitted that he had not been aware of the rental payments but only discovered about it upon his return from an overseas trip which he had undertaken during the month of June 2010.
- 6.2.1.12. The justification offered by Mr Wentzel during the aforesaid meeting, regarding the irregular payment, was that the lease agreement was silent with regard to the date of the occupation and the date on which the rent was due and payable and that a requisition had been loaded on the system from 01 May 2010 since it required that a commencement date be indicative. He acceded to the fact that rental payments May was erroneously paid and that SAPO was liable for the payment of rent from July 2010, since the certificate of occupation was issued in June 2010.



- 6.2.1.13. I must indicate that I find it difficult to accept Mr Wentzel's version since the heads of argument, as discussed in paragraph 6.2.1.1 above, records the occupation date being 01 April 2010.
- 6.2.1.14. SAPO took relevant corrective measures and reached an agreement with the landlord to offset the rental paid against future payable rent. An addendum to the lease agreement, dated 14 September 2010, records the changes made in terms of the upfront payment that was erroneously paid to the landlord. In this regard it reads as follows:
- 2.1 *It is recorded that the Parties are in agreement that the Tenant has thus far paid the sum of R8 112 114.00 (eight million one hundred and twelve thousand one hundred and fourteen rand) VAT included to Centurion.*
- 2.2 *The Landlord herewith accepts the aforesaid payment in full settlement of all obligations that might be owing to it by the Tenant for the period terminating on 31 October 2010.*
- 2.3 *As from 1 November 2010, the Tenant shall continue to pay all amounts due to the Landlord in accordance with the lease Agreement".*
- 6.2.1.15. SAP records that were provided by SAPO show that no rent payment were paid during the month of August , September and October 2010 thus confirming the arrangement discussed above. However SAP records that were provided by SAPO show that a total amount of R570 210, 06 was paid to Centurion Vision Development for the period covering August 2010 to December 2010.
- 6.2.1.16. Records submitted by Ms Khumo Mzozoyana, the current CFO, dated 09 June 2014 show that that SAPO paid a total of R22 098 949 to Centurion Vision Development for the period May 2010 to March 2011.
- 6.2.1.17. SAPO instituted a disciplinary hearing against Ms M Lefoka, the former Group Chief Executive Officer of SAPO, for her part in the irregular payment of the rental to the

61



landlord. According to the charge sheet Ms Lefoka was charged for, *inter alia*, that: "Your Employer paid Centurion Vision, R 18 928 959 (eighteen million nine hundred and twenty eight thousand five hundred and fifty nine rand) Vat INCLUDED while not being in occupation of the premises".

- 6.2.1.18. In conclusion, it is inevitable that SAPO paid an amount of R22 million towards rental of the building for a period of ten months prior to taking occupation of the building. Following my engagements with the SIU during the investigation, I have been advised that the irregular payment of R22 million would be included in the civil litigation relating to the lease agreement referred to above.
- 6.3. **Regarding the appointment of a project manager to procure the services of a catering company and the possibility of this constituting illegal outsourcing of SAPO's Supply Chain Management responsibilities**
- 6.3.1. SAPO submitted that it took a decision in 1999 that the provision of catering and running of the canteen should form part of the overall business restructuring of the Post Office with a view to outsourcing all non-core business activities. These activities were thus evaluated individually and procured through a formal business case which would be submitted for approval by EXCO and/or the Board as the case may be.
- 6.3.2. The allegation that SAPO improperly appointed a company to project manage the procurement of a catering company, *Fedics* to operate the canteen at the Eco Point building is not substantiated. However, the allegation that this amounted to outsourcing of Supply Chain Management operations of SAPO is substantiated.
- 6.3.3. Indeed, SAPO through consultants called *Infraburo* who were responsible for the project management of the move to Eco Point building appointed *Intenda* to procure the catering services of *Fedics* through an On-Line Limited Bidding process (LBD). This was approved by EXCO following a decision taken as part of the overall business

CTW



restructuring of the SAPO to outsource all the non-core activities. It was therefore not an isolated case of outsourcing of services as approximately fifty-six (56) other contracts were procured using this method. The SAPO SCM Department was not involved in the procurement of *Intenda*.

- 6.3.4. Due to insufficiency of documents regarding the process followed to appoint the project managers to manage specified procurement processes, I am unable to adjudicate the compliance of such processes with SCM prescripts, including fairness, transparency, competitiveness and competence.
- 6.3.5. Furthermore, whereas the procurement of the services is questionable in view of doubled costs and heightened risk of non-compliance, the practice cannot be conclusively said to have violated Paragraph 3.1.1 of the SAPO Procurement Policy which makes provision for the appointment of service providers, including consultants, in accordance with a system that is fair, equitable, transparent, competitive and cost effective in line with the provisions of section 217 of the Constitution.
- 6.3.6. However, I am encouraged by the Board's commitment to abandon the outsourcing of SCM functions or use of middle-men.
- 6.4. Regarding cost cutting measures that allegedly compromised service excellence**
- 6.4.1. Issues not in dispute**
- 6.4.1.1. It is common cause that SAPO implemented cost curtailing measures in its core business from 2009 to 2011 and that service standards declined thereafter
- 6.4.1.2. The key issue for my factual determination was whether or not it was the cost curtailing measures which resulted in the diminished service standards and if there was recklessness in implementing such measures.
- 6.4.2. Evidence on issues in dispute**



- 6.4.2.1. Ms Lancaster, the former Group Executive Strategy, refuted that its delivery standards were compromised when it implemented cost curtailment measures. She submitted that the failure to achieve the Service Delivery Standards Target was as a result of two features the first being internal factors such as carry overs at mail centres, post offices, national and local transport; and delivery depots due to sudden unplanned high volumes or other internal factors, miss-routing due to staff negligent, miss-sorts by machine and outdated postcode system.
- 6.4.2.2. Ms Lancaster expounded stating that the second factor relates to issues such as national industrial action since mail could not move from certain areas, delays emanating from "stop –go" which affects arrival times at mail centres, community grievance preventing mail from being delivered as well as adverse weather conditions.
- 6.4.2.3. In its justification of the of cost management in the mail business unit, SAPO explicated that this was a result of tough financial challenges that the business unit had experienced during 2009 to 2011. The economic climate and the electronic alternative to sending of mail were also cited as reasons for the decline in mail volume, which in turn affected the revenue. SAPO recorded that, as at September 2011 the letter volumes accounted for 79% of mail business revenue and this impacted on the revenue contributor and also had a serious influence on SAPO's revenue.
- 6.4.2.4. SAPO submitted that it had developed a national operational plan to provide guidance on the services standards for mail between mail centres. Accordingly, the delivery of mail to areas having low volumes of mail dictates the frequency of delivery to thrice, twice and sometimes once a week.
- 6.4.2.5. Records and graphs of letter volumes that were obtained from SAPO during the investigation demonstrate a 3, 7% decline in mail volumes during 2008 to 2011 which had a negative impact in SAPO's revenue.
- 6.4.2.6. SAPO submitted that the management of cost was aimed at addressing and responding to the decline in mail volumes and was not intended to affect customer levels. It was also indicated that *"there are, however, areas where the frequency of mail*



delivery were changed and reviewed due to low mail volumes and economic scales. We have been very careful that such changes should not be at the detriment of the services to customers and in line with 'Delivery Policy' (White Paper on Postal Policy attached)"

- 6.5. The nagging question that remained though is whether or not the industrial action, including passive industrial action, was not due to poor consultation and bad blood between employees and management. It was also unclear whether due regard was paid to ensuring that delivery timelines for urgent items that regulations require to be delivered on the same day were factored into the austerity measures.
- 6.6. **Regarding the alleged irregular appointment of and a suspected corrupt relationship between SAPO staff members and some of the labour brokers**
- 6.6.1. Issues not in dispute
- 6.6.1.1. SAPO management conceded that the labour brokers were appointed irregularly as the prescribed procurement processes were not followed. It further conceded that some had expired contracts and operating on month to month verbal contracts while others had no contracts at all. It also conceded that the payment controls were inadequate resulting in scope creep and overpayments
- 6.6.1.2. Ms S Myburg, the Human Resource Manager, reported that the use of labour brokers by SAPO was terminated in 2012. This was partially corroborated by a SAPO submission dated 25 August 2011 where Ms M Dias, the Human Resource Officer, reported that SAPO engaged the service of labour brokers from 2000 to 2011. She reported that although a formal RFP process was adhered to during the original appointment of labour brokers in 2000, records to support this were no longer available.
- 6.6.1.3. One of the documents submitted by Ms M Dias shows that SAPO commissioned KPMG to investigate the appointment and utilisation of Labour Brokers. The KPMG investigation found, among others, that:



- (a) There is no signed contract in place between Solly Tshiki and SAPO. Due process was not followed in the appointment of Solly Tshiki.
- (b) There is no signed contract in place between Workforce and SAPO for the initial and current appointment.
- (c) Cozens were not part of the list of pre- approved labour brokers and there is no contract in existence between Cozens and SAPO. Due process was not followed in the appointment of Cozens.
- (d) Delegation of authority in terms of expenditure was not followed in that large amounts were paid to labour brokers without obtaining the relevant approval as reflected below.
 - Quest – R 138 289 245.49.
 - Cozen- R 2 973 107.49
 - Solly Tshiki R10 498 940
 - Workforce- R23 123 247.27

6.6.1.4. The KPMG report further also established that SAPO's failure to have contracts in place and the violation of the delegation of authority resulted in payments of large amounts of money to labour brokers. In this regard the KPMG report noted that Quest was paid R 138 289 245.49, Cozens was paid 2 973 107.49, Solly Tshiki was paid R 10 498 940 and Workforce was paid R23 123 247.27.

6.6.1.5. However, in response to the section 7(9) notice, the Chairperson of the current Board, Dr S Lushaba in a correspondence of 11 January 2016 confirmed that SAPO did utilize labour brokers to supply Mail delivery business unit with temporary and contractual staff to address operational needs at the time. Payments were thus made for services rendered until September 2010 when a decision was taken to stop the utilization of labour brokers.



6.6.1.6. However, the data obtained from the SAPO SAP system indicate that the payments made to labour brokers from 2001 to 2014 are as tabled below; It should be noted that although SAPO stopped utilizing the services of labour brokers during September 2012, belated payments were made up to 4 September 2014.

OLD and NEW SAP combined

Vendor/Labour Broker	Total no. of transactions	Total paid	Invoice Start date	Invoice End date
Australis Personnel	316	538,573.97	30/09/2001	30/09/2002
Autenmas Placements	60,324	66,593,850.73	21/01/2003	17/08/2007
Busisiwe Personnel	9,273	12,586,088.01	22/11/2001	04/12/2005
Capacity Outsourcing	3,846	47,416,325.37	08/12/2002	07/02/2014
Insimbi Placements & Associates	152	668,621.97	01/10/2002	20/12/2004
Interim Consulting	298	1,069,381.51	20/02/2002	02/12/2013
ITP SA Human Resources Holdings (Pty) Ltd	5,190	64,872,048.45	12/06/2002	16/11/2011
Kelly Girl Services	25,615	186,162,517.45	06/01/2002	16/01/2013
Kelly Industrial	2539	17,338,265.11	17/03/2002	03/12/2013
Khulisa Connection	9,911	164,319,203.00	28/02/2002	01/02/2013
Marula Staffing	16,184	450,904,957.67	22/01/2005	01/07/2013
Midway Two Contractors	449	31,877,478.73	01/03/2007	03/12/2012
NT Ngidi Consulting (Pty) Ltd	4756	211,707,823.64	21/01/2002	04/11/2013
Quest Personnel	40,577	541,971,040.40	06/01/2002	04/09/2014
Solly Tshiki	87	48,814,065.60	11/03/2005	16/01/2013
T & T Appointments	167	75,183,466.25	29/06/2007	02/12/2013
TAS Appointments & Management Servi	3412	381,284,867.26	09/03/2006	01/07/2013
The Placement Team	665	3,316,629.29	11/08/2002	16/03/2012
Transman	27,066	85,193,442.85	22/10/2000	03/02/2006
Ubambo Resources	14,170	70,013,980.68	04/01/2002	01/10/2012
Cozens	Unknown	8,951,163.42	08/11/2009	31/10/2012
Phumelela Business Consulting CC	Unknown	14,934,770.27	2002	2012
Vulavulani Technologies CC	304	32,094,523.74	11/02/2007	01/11/2013



Workforce Management	78,495	218,129,157.85	03/01/2002	01/09/2010
	303,796	2,735,942,243.22		

6.6.1.7. In connection with allegations of possible inappropriate relationships between the labour brokers and SAPO staff members, I could not find any evidence to suggest that there were any such relationships.

6.6.1.8. This was also confirmed by the KPMG report which could not detect any directorship links between SAPO employees and labour brokers. I was also advised by the SIU that due to the lapse of time and the non-availability of records/data it was also not able to identify the specific role-players and to investigate possible collusion between such role-players and the labour brokers.

7. MEASURING THE CONDUCT AGAINST THE RULES

7.1. Regarding allegations of maladministration and improper conduct in the procurement process for the lease of the Eco Point building to accommodate the Head Offices of SAPO

7.1.1. Having established that the procurement of the Eco Point Office Park by SAPO did not follow a competitive procurement process, I had to determine if this was in violation of any prescripts. I found that indeed the failure to follow an inclusive fair open, transparent and open bidding process was done in contravention of SAPO's corporate Procurement Policy, section 51 of the PFMA, the Treasury Guide for accounting Officers, Treasury regulations, the PPPFA and section 195 of the Constitution.

7.1.2. Paragraph 3.1.1 of SAPO's Procurement Policy specifically requires that in the contracting of goods or services should be conducted in accordance with a system that is fair, equitable, transparent, competitive and cost effective.

7.1.3. The provisions of paragraph 3.1.1 of SAPO's procurement policy is similar to paragraph 16A 3.2 of the National Treasury Regulations of March 2005 which also



- require a supply chain management system to be fair, equitable, transparent, complete and cost effective.
- 7.1.4. SAPO's relocation of its head office without having been captured in its strategic plan for 2010/11 was in violation of paragraph 5.2.2 of the National Treasury Regulations of March 2005, which requires a strategic plan to cover a period of three years and be consistent with the institution's published medium term expenditure estimates.
- 7.2. **Regarding the allegation that SAPO incurred fruitless and wasteful expenditure through upfront payment of rental in respect of the Eco Point Office Park amounting to more than R3.6m per month before occupation**
- 7.2.1. Having decided that indeed an amount in excess of R22m was paid by SAPO as rental towards the Eco Point Office Park before occupation, I had to determine if such conduct was unlawful or in violation of any procurement and/or financial prescript.
- 7.2.2. In view of the fact that paragraph 9.1.1 of the National Treasury Regulations requires an accounting Authority/ Officer of an institution to exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure and must for this purpose implement effective, efficient and transparent process of financial and risk management, the payment of the R22m without value for SAPO, can justifiably be regarded as fruitless and wasteful expenditure. The expenditure also constitutes irregular expenditure in that it was implemented contrary to the provisions of the lease agreement in addition to the fact that the procedure followed in processing the payment did not comply with internal prescripts.
- 7.2.3. Noting that the payment was made under the authority of the accounting officer, the provisions of section 57 of the Public Finance Management Act are thus applicable. This section provides that an official of a public entity must take effective and appropriate steps to prevent, within the official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure.



- 7.2.4. According to Section 57 (d) of the Public Finance Management Act, such official should be responsible for the management, including safeguarding, of the assets and management of the liabilities within that official's area of responsibility.
- 7.2.5. In terms of section 83 of the Public Finance Management Act, the permission of an irregular expenditure or a fruitless and wasteful expenditure amount to a financial misconduct which is a ground for dismissal. Incidentally, this was not an issue for the investigation at the time of its conclusion as the GCEO and CFO had left.
- 7.3. **Regarding the alleged improper appointment of a project manager to procure services of a catering company and the possibility of this constituting illegal outsourcing of SCM functions**
- 7.3.1. Having concluded that SAPO appointed *Infraburo* as consultants who in turn appointed *Intenda* to procure the catering services of *Fedics* through a limited bidding process, I had to adjudicate upon the lawfulness or compliance of these arrangements.
- 7.3.2. I have great discomfort with this triple procurement process where a service provider is appointed to procure another service provider that will procure a further service provider to render services for SAPO. My discomfort is also related to the double costs and heightened risk of non-compliance.
- 7.3.3. However, the arrangement cannot be conclusively said to have violated paragraph 3.1.1 of the SAPO Procurement Policy which makes provision for the appointment of service providers, including consultants, in accordance with a system that is fair, equitable, transparent, competitive and cost effective in line with the provisions of section 217 of the Constitution.
- 7.3.4. I am encouraged by the Board's commitment to abandon the outsourcing of SCM functions or use of middle-men.



- 7.3.5. Despite my immense discomfort regarding the outsourcing of procurement services, I am unable to find that the outsourcing of procurement to external project managers is unlawful.
- 7.4. **Regarding the allegation that SAPO improperly implemented severe and service indifferent cost cutting measures thus disregarding operational requirements across its business units undermining service excellence:**
- 7.4.1. Having concluded that SAPO applied restrictive measures to its mail business unit, and that although service was compromised it could not be attributed to recklessness or maladministration, the matter to be determined was the legality of the conduct.
- 7.4.2. I am unable to decide conclusively that service standards were unduly violated as information relating to the administrative procedure for altering operations and evidence of the actual performance was not provided.
- 7.4.3. It is worth noting though that in view of the fact that section 195 of the Constitution enjoins the SAPO Board and management to ensure that the entity's administration must be governed by democratic values and principles enshrined in the Constitution, including the principles of a high standard of professional ethics which must be promoted and maintained; and the promotion of efficient, economic and effective use of resources, it was imperative for the SAPO Board and management to heed employee concerns about the impact of the cost curtailing measures.
- 7.4.4. I have also indicated earlier that it is a source of great discomfort that the move to more lavish offices in Centurion was made at the time where the operational budget was under severe strain and the Board and CEO were aware of such.
- 7.5. **Regarding allegations of improper appointment of labour brokers to procure casual workers amid a suspected corrupt relationship between some of the labour brokers and certain SAPO officials**



- 7.5.1. Having concluded that the labour brokers were appointed without proper demand management and proper procurement procedures, with most having no or expired contracts, I had to make a determination regarding whether or not this was in violation of any law or prescript.
- 7.5.2. In this regard, it is clear that the conduct of the SAPO officials, including its GCEO, was in contravention of the SAPO Procurement Policy, particularly paragraph 3 thereof read with section 51 of the PFMA, the PPPFA, Treasury Regulations and Guides as well as section 217 of the Constitution. The conduct can also not be said to be consistent with section 195 of the Constitution.
- 7.5.3. Specifically, the appointment and conducting of business by the labour brokers without the necessary contracts was in contravention of Practice note Number SCM 3 of 2003 which provides for the appointment of consultants by means of a competitive bidding process, whenever possible. Consultants are defined in terms of paragraph 1.3 of the Practice Notes as being inclusive of procurement agents.
- 7.5.4. Had the applicable prescripts been followed to the letter, the relationship between the labour brokers and SAPO would have been one of purchase/ provider and not employer/employee and therefore should have been regulated by a formal contract as provided for in terms of paragraph 1.6 of the Practice note Number SCM 3 of 2003.
- 7.5.5. The conduct can also be said to have infringed the demand management provisions of the PFMA and the risk management provisions of the same law and related prescripts, including SAPO's own corporate Procurement Policy.

8. FINDINGS

After examining and evaluating the evidence obtained and measuring the conduct disclosed by the evidence against the standard that should have been upheld by SAPO had it complied with the regulatory framework, I have arrived at the following findings:

72
10/2



- 8.1 Regarding whether SAPO improperly procured the Eco Point Office Park to accommodate its the Head Office:**
- 8.1.1** The allegation that the procurement of the Eco Point Office Park to accommodate the Head Offices of SAPO was irregular is substantiated.
- 8.1.2** SAPO's acquisition of a ten year lease costing approximately *R161m*, in 2010, to house its National Office at the Eco Point Office Park was tainted by procurement irregularities and corruption.
- 8.1.3** At the outset of the process, SAPO failed to ensure proper demand management before the acquisition of the Eco Point Office Park as the *Business Case* on which the Board relied included misrepresentation of facts and falsified information regarding structural defects in the National Postal Centre (NPC) where SAPO was accommodated at the time and about the green status of the Eco Point Office Park, among others.
- 8.1.4** SAPO further conceded that in violation of the PFMA, the relocation to the Eco Point Office Park had not been captured in its Strategic Plan for the financial year 2009/2010.
- 8.1.5** The SAPO Board further failed to ensure that the acquisition of the Eco Point Park building was preceded by a competitive bidding process, which conduct was in violation of the PFMA and its corporate Procurement Policy of 2009. The procurement of the lease for the Eco Point Park building was therefore not fair, equitable, transparent, competitive and cost effective as required by section 217 of the Constitution read with paragraph 3.1.1 of the SAPO Procurement Policy.
- 8.1.6** The failure by SAPO to follow a proper bidding process could not be justified under permissible deviations in terms of articles 13.14 and 13.15 of the SAPO Policy and section 51(1) of the PFMA as there was no urgency and the Eco Point building was not the only building available to justify a single source deviation. The acquisition of the Eco Point Office Park was, accordingly unlawful.



- 8.1.7 The Board commendably took action against its officials, Messrs Jekison and Wentzel when it was alerted to the fact that the *Business Case* they had prepared to justify the relocation and which prompted the Board to adopt a resolution on 26 November 2009, to move to the Eco Point Park, was riddled with misrepresentations of fact and falsified information. The Board's action was also taken in pursuit of a finding by a KPMG report it had commissioned that there had been a corrupt relationship between Centurion Vision Development (PTY) Ltd, the owners of the Eco Point Office Park and one of the SAPO officials who was at the centre of the transaction.
- 8.1.8 However, on receiving the KPMG report, SAPO failed to act expeditiously to review the deal with Centurion Vision Development (PTY) Ltd in the light of the finding of corruption having the possibility of negating the legality of the transaction. This conduct was in violation of section 195 of the Constitution
- 8.1.9 The acts and omissions of the erstwhile SAPO Board regarding the acquisition of the Eco Point Park building accordingly constitute maladministration as envisaged in section 6(5)(a) of the Public Protector Act and improper conduct as envisaged in section 182(1)(c) of the Constitution.
- 8.2 Regarding whether SAPO incurred fruitless and wasteful expenditure through upfront payment of rental in respect of the Eco Point Office Park amounting to more than R3.6million per month while the building stood empty prior to occupation**
- 8.2.1 The allegation that SAPO incurred fruitless and wasteful expenditure in the form of irregular upfront rental towards the Eco Point Park building before occupation is substantiated.
- 8.2.2 However, the amount involved was not R3.6m per month as alleged but R2 372 050.00. Furthermore, the irregular payments that were the subject of the original complaint were later conceded as irregular and refunded.



- 8.2.3 Subsequently, SAPO made payments towards the rental for the Eco Point Office Park for a ten month period effective from May 2010 to March 2011 amounting to approximately R22m prior to occupying the building and contrary to the provisions of paragraph 2 of the lease agreement signed in February 2010 which provided that "Should the occupation be after 1 May 2010 then the Commencement Date shall be such later date..."
- 8.2.4 The conduct of the erstwhile SAPO GCEO in approving the said payments for an unoccupied building was in violation of the provisions of section 83 of the PFMA which prohibits irregular expenditure and/or fruitless and wasteful expenditure.
- 8.2.5 The Acts and omissions of SAPO regarding the fruitless and wasteful expenditure arising from the 10 month rental towards an unoccupied building constitutes maladministration and improper or unlawful enrichment of the owners of the building, Centurion Vision Development (Pty) Ltd to the tune of R22m. This constitutes improper conduct as envisaged in section 182 of the Constitution.
- 8.3 Regarding whether SAPO improperly appointed a project manager to procure the services of a catering company by the name of *Fedics* and whether the said procurement constitutes illegal outsourcing of SAPO's Supply Chain Management responsibilities:**
- 8.3.1 The allegation that SAPO improperly appointed a company to project manage the procurement of a catering company, *Fedics* to operate the canteen at the Eco Point building is not substantiated. However, the allegation that this amounted to outsourcing of Supply Chain Management operations of SAPO is substantiated.
- 8.3.2 Indeed, SAPO through consultants called *Infraburo* who were responsible for the project management of the move to Eco Point building appointed *Intenda* to procure the catering services of *Fedics* through an On-Line Limited Bidding process (LBD). This was approved by EXCO following a decision taken as part of the overall business restructuring of the SAPO to outsource all the non-core activities. It was therefore not an isolated case of outsourcing of services as approximately fifty-six (56) other



contracts were procured using this method. The SAPO SCM Department was not involved in the procurement of *Intenda*.

- 8.3.3 Due to insufficiency of documents regarding the process followed to appoint the project managers to manage specified procurement processes, I am unable to adjudicate the compliance of such processes with SCM prescripts, including fairness, transparency, competitiveness and competence.
- 8.3.4 Furthermore, whereas the procurement of the services is questionable in view of doubled costs and heightened risk of non-compliance, the practice cannot be conclusively said to have violated Paragraph 3.1.1 of the SAPO Procurement Policy which makes provision for the appointment of service providers, including consultants, in accordance with a system that is fair, equitable, transparent, competitive and cost effective in line with the provisions of section 217 of the Constitution.
- 8.3.5 However, I am encouraged by the Board's commitment to abandon the outsourcing of SCM functions or use of middle-men.
- 8.3.6 Despite my immense discomfort regarding the outsourcing of procurement services, I am unable to find that the outsourcing of procurement to external project managers constitutes maladministration as envisaged in section 6(5)(a) of the Public Protector Act and improper conduct as envisaged in section 182 of the Constitution.
- 8.4 Regarding the allegation that SAPO improperly implemented severe service indifferent cost cutting measures that disregarded operational requirements and compromised service excellence across its business units:**
- 8.4.1 The evidence regarding the allegation that the SAPO implemented extreme cost curtailing measures which unduly compromised service delivery standards is inconclusive.
- 8.4.2 By its own admission, SAPO did implement severe cost cutting measures and service excellence was compromised. However, although subsequent problems did include



late delivery of items that in terms of internal and public promised standards should have been delivered earlier, it is difficult to specifically attribute the deficiencies to the cost-cutting measures.

- 8.4.3 However, it is a source of concern that SAPO moved to more lavish offices at much higher rental at a time when it was experiencing service related financial constraints. The concern is exacerbated by the discovery that the *Business Case* for relocating from NPC to Eco Point building was doctored and the relationship between a key SAPO official behind the move and Centurion Vision Development (Pty) Ltd, the owners of the Eco Point Building, poisoned.
- 8.4.4 Of equal concern is that there seems to have been inadequate meaningful consultation of employees on the cost-cutting measures and use of labour brokers, among other important factors. I am encouraged, however, by the new GCEO's commitment to work in partnership with employees as change is managed towards a better functioning national postal services agency.
- 8.4.5 I am accordingly unable to make a finding of maladministration or improper conduct.
- 8.5 Regarding whether SAPO improperly appointed Employment Agencies/Labour Brokers with whom some of its employees had a corrupt relationship:**
- 8.5.1 The allegation that SAPO improperly appointed labour brokers who operated without written contracts is substantiated. However, the suspicion of corrupt relationships between certain SAPO officials and the labour brokers has not been substantiated
- 8.5.2 SAPO irregularly appointed and utilized labour brokers from April 2002 to September 2012 with some of them having expired contracts and others with no written contracts in addition to them having been appointed without following proper procurement processes as envisaged in its Procurement Policy and related laws .
- 8.5.3 The total amount involved in the procurement of labour brokers is estimated at about R 2 735 942 243.22.



- 8.5.4 As these relationships were not properly regulated and the billing difficult if not impossible to control to prevent irregular scope creep, overbilling, overcharging and false billing, it cannot be said that the run-away expenditure involved did not contribute to SAPOs current liquidity and cash-flow problems.
- 8.5.5 SAPO's failure to follow proper procurement procedures was in violation of paragraph 3.1.1 of its Procurement Policy and section 51(1) of the PFMA read with section 217 of the Constitution.
- 8.5.6 SAPO further failed to implement the recommendations of the KPMG report advising that disciplinary measures be taken against Messrs Serare and Nogxina who could not ensure that contracts were put into place between SAPO and labour brokers, in violation of section 51 (1)(e) of the PFMA.
- 8.5.7 SAPO's appointment of the labour brokers without following proper procedures constitutes maladministration as envisaged in section 6(5)(a) of the Public Protector Act and improper conduct as envisaged in section 182 of the Constitution. The failure to implement the KPMG report fully also constitutes maladministration and dereliction of duties.



9. REMEDIAL ACTION

The appropriate remedial action I am taking in terms of the provisions of section 182(1)(c) of the Constitution is to require:

9.1 The SAPO Board of Directors is to take effective and appropriate steps to:

- 9.1.1 Recover the amount of R22m that SAPO paid to Centurion Vision Development, in respect of upfront rental payment for the period May 2010 to March 2011, when it had not taken occupation of the Eco Point building;
- 9.1.2 End use of an external service providers to procure another service provider as a project Manager, where the corporate SCM is competent to deliver;
- 9.1.3 To ensure that the recommendations contained in the KPMG and SIU reports are fully implemented without any delay; and
- 9.1.4 Ensure that evidence pointing to the contravention of the Prevention and Combatting of Corrupt activities Act is submitted to the South African Police Services immediately.

9.2 The Group Chief Executive Officer is to take effective and appropriate steps to:

- 9.2.1 Review corporate SCM processes and procedures and ensure that systems are put in place to facilitate proper controls and compliance with SCM prescripts by officials handling procurement matters at all times;
- 9.2.2 Review the SAPO document management system and update it to ensure that documents relating to SCM processes, including contracts are filed appropriately and are available when required; and
- 9.2.3 Ensure that in future employees are properly consulted on planned adjustments to operations impacting on them and service delivery.

A handwritten signature is located in the bottom right corner of the page. The signature is enclosed within a circular scribble. Below the signature, the number "79" is written.



10. MONITORING

- 10.1. The Company Secretary of the Board to submit an implementation plan indicating how the remedial action referred to in paragraph 9.1 above will be implemented, within 30 days from the date of issue of the report.
- 10.2. The GCEO to submit an implementation plan indicating how the remedial action referred to in paragraph 9.2 above will be implemented, within 30 days from the date of issue of the report.
- 10.3. The Board as the Accounting Authority of SAPO to submit a final compliance report in respect of the remedial action taken in paragraph 9 above, within 6 months of the issuing of this report.



ADV THULI N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 23 FEBRUARY 2016.

Assisted by the Good Governance and Integrity Branch