



Irregular Expenditure-Prior Years for Minister's Notification

October 2020

IRREGULAR EXPENDITURE: MINISTER'S NOTIFICATION

Item	Description	Amount	Action Required	Approved/ Not Approved
1.	<p>Irregular appointment of Werksmans Attorneys.</p> <p>The Board received a letter from the former Chief Operations Officer (COO) Ms Nhlapo in November 2016, querying what she perceived as the termination of her contract by the then CEO, Mr Ndlovu. As a result, the Board resolved to obtain legal advice and opinion from Werksmans Attorneys.</p> <p>The Board identified the law firm based on an understanding that the CEO could approve single sourcing for amounts under R500 000,00 in line with the DOA.</p> <p>However, the AG rejected this interpretation, insisting that a competitive process was not followed.</p> <p>As a result, a condonation process must be followed to treat the irregular expenditure relating to the appointment of Werksmans Attorneys.</p>	R401,849.00	<p>Evidence:</p> <ul style="list-style-type: none"> ➤ TCTA Minister Notification email dated 05 November 2021; ➤ Acknowledgement by Minister of Water and sanitation to TCTA Board dated 14 December 2021. ➤ Annexure A1 - Extract of the resolution of a Board meeting held on 24 November 2017. 	Not Approved
2.	<p>Irregular Re-appointment of the COO, Ms Nhlapo.</p> <p>Ms Nhlapo was later reinstated based on the legal opinion from Werksmans Attorneys. The reinstatement was based on the pre-existing terms and conditions.</p>	R679,297.55	<ul style="list-style-type: none"> ➤ Annexure A2, Round Robin approval dated 17 December 2017. 	Not Approved

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	<p>The amount reflected as irregular expenditure relates to salary payments to Ms Nhlapo before a reversal of the decision.</p>		<p>➤ Annexure A3 Confirmation of a Round Robin resolution dated 19 December 2017.</p>	
3.	<p>Irregular appointment of Bowman Gilfillan Attorneys (single sourcing).</p> <p>Following a media query, the Board appointed Bowman and Gilfillan to revisit the matter of the former COO (i.e., to provide a legal opinion and advise on the reinstatement of the employee). Based on the new advice provided to the Board, a letter cancelling the reinstatement agreement was dispatched to the employee on 20 April 2018.</p> <p>The Board identified the law firm based on an understanding that the CEO could approve single sourcing for amounts under R500 000,00 in line with the DOA. However, the AG rejected this interpretation, insisting that a competitive process was not followed.</p> <p>As a result, a condonation process must be followed to treat the irregular expenditure relating to the appointment of Bowman Gilfillan Attorneys.</p>	R319,108.50	<p>➤ Annexure A6 Extract of the minutes of a Board meeting held on 20 March 2018.</p> <p>➤ Annexure A7 Extract of the minutes of a Board meeting held on 09 April 2018.</p>	Not Approved

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4.	<p>The Board received a letter from the former Minister of Water and Sanitation to part-sponsor her Water Infrastructure Summit. The matter was considered by the Board, with a final resolution made to provide sponsorship in the amount of R3 000 000-00. This amount was transferred to the WRC as the co-ordinators of the summit. The AG found that this was not accordance in with legislation hence it was declared as irregular.</p> <p>As a result, a condonation process must be followed to treat the irregular expenditure relating to the sponsorship.</p>	R3 000,000.00	<p>Evidence:</p> <ul style="list-style-type: none"> ➤ TCTA Minister Notification email dated 05 November 2021; ➤ Acknowledgement by Minister of Water and sanitation to TCTA Board dated 14 December 2021. <p>Annexures:</p> <ul style="list-style-type: none"> ➤ <i>Annexure A4- Extract of the resolution of a Board meeting held on 28 October 2017.</i> 	Not Approved
5.	<p>Acid Mine Drainage Project - AMD Central Basin Contract: 008-032 – Tecroveer Thanda Manzi Jv and Lime Distributors.</p> <p>On 29 September 2017, EXCO approved an emergency strategy for TCTA to enter direct contracts with the sub-contractors of the main</p>	R4 085,617.12	<p>Evidence:</p> <ul style="list-style-type: none"> ➤ TCTA Minister Notification email dated 05 	Not Approved

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	<p>O&M contracts (IWS and CMC PG MAVUNDLA JV). The sub-contractors, Proxa (Central Basin) and Tecroveer Thanda Manzi (Eastern Basin) were appointed, on sole source basis, to provide security services and the personnel listed.</p> <p>EXCO favoured an option to invoke the emergency procurement, in line with the DOA, which enabled the CEO to authorize up to R 50 million on any solution geared at mitigating emergency situations, in accordance with National Treasury Instruction Note 3 of 2016/2017 clause 8. The nature of the situation for the two plants was classified as emergency as there was not enough time to procure such services, on open tender before the 30 September 2017 (Expiry date of contracts) and non-procurement thereof before that date would result in damage to the environment as well as to the plant. All the procurement was undertaken based on single sourcing.</p> <p>However, in the processes for operating the plant it proved to be impractical for TCTA to procure routine maintenance and consumables due to varied nature of items required as well as suppliers. TCTA also entered direct contracts with suppliers of consumables and spares required for the O&M on both plants. Lime Distributors was appointed for the supply of lime.</p> <p>Accordingly, TCTA requested National Treasury approval for the appointment of these suppliers. National Treasury did not grant approval on any of these suppliers hence irregular expenditure was incurred.</p>		<p>November 2021;</p> <ul style="list-style-type: none"> ➤ Acknowledgement by Minister of Water and sanitation to TCTA Board dated 14 December 2021. <p>Annexures:</p> <ul style="list-style-type: none"> ➤ Refer to annexure A5 Special Exco Meeting minutes and resolution of a meeting held on 28 March 2018. 	

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	<p>This was detailed in the previous financial years, subsequently the new operators for the O&M were appointed for the Central Basin but there was a delay on the appointment of the Eastern basin operator due to the legal challenge by one of the tenderers leading to further extension of Tecroveer contract by one month till the end of April'18. That was resolved and the operator was appointed at the beginning of May 18. The payment of the subcontractors for the Eastern basin for the month of April 18 was regarded as irregular.</p>			
6.	<p>Irregular appointment of FASKENS Attorneys through single sourcing: The National Treasury rejected a request for deviation to urgently defend the legal challenge by the COO, Ms Nhlapo, following the reversal of the decision to reinstate her.</p> <p>The COO fixed-term contract of employment expired through effluxion of time on 30 August 2016. Following a Board decision, the contract was reinstated with effect from 1 September 2016, and this resulted in a conclusion of a Reinstatement of Employment and Settlement Agreement between TCTA and the Employee in January 2018. This Agreement reinstated the Employee to her previous position on the pre-existing terms. The new fixed-term contract the parties concluded took effect from 1 September 2016 and was to end on 30 August 2019.</p> <p>The Board realised that the Agreement was unlawfully entered into and thus invalid, as it was a result of misrepresentation and duress,</p>	R1 668,221.00	<p>Evidence:</p> <ul style="list-style-type: none"> ➤ TCTA Minister Notification email dated 05 November 2021; ➤ Acknowledgement by Minister of Water and sanitation to TCTA Board dated 14 December 2021. 	Not Approved

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	<p>and as such, there was no legal basis for allowing it to continue. A letter cancelling the Agreement was dispatched to the Employee on 20 April 2018. TCTA then received several letters from the Employee's legal representatives demanding reinstatement and threatening legal action, and one such letter is dated 23 April 2018.</p> <p>TCTA was served with court documents, Notice of Motion, on 8 May 2018, for an order in the following terms, among others:</p> <ul style="list-style-type: none"> • Permitting the matter to be heard as one of urgency, and dispensing with the ordinary requirements under the rules of court for notice and service; • Declaring that the contract, entitled "Reinstatement of Employment and Settlement Agreement," concluded between the Employee and TCTA on 24 January 2018, is legally valid, binding, and enforceable and that the organisation's action of repudiating it during March/April 2018 is unlawful; • Reviewing and setting aside as unlawful the decision the Board took on behalf of TCTA on 26 March 2018, purporting to repudiate the Settlement Agreement or to regard it as invalid and unenforceable; • Ordering TCTA to honour and implement the terms and conditions of the Settlement Agreement; and • Directing TCTA to pay the Employee's costs of the application. 			

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	<p>TCTA instructed Fasken Attorneys to represent and advise it on the matter, on an urgent basis.</p> <p>TCTA was successful in defending the matter.</p>			
7.	<p>Appointment of VUMA Reputation Management on a single source basis to manage an urgent media matter. The Board decided to appoint the service provider to address reputation issues following the various negative newspaper articles, centred around the reinstatement of the COO.</p> <p>The appointment did not follow the required procurement process (i.e., this was a single source appointment based on the interpretation that the acting CEO could appoint a service provider for up to R500 000,00).</p> <p>The Board and former acting CEO were responsible for the appointment. There was no competitive process followed.</p>	R189,810.00	<p>Evidence:</p> <ul style="list-style-type: none"> ➤ TCTA Minister Notification email dated 05 November 2021; ➤ Acknowledgement by Minister of Water and sanitation to TCTA Board dated 14 December 2021. 	Not Approved
8.	<p>The Audit Committee appointed Ernst and Young (EY) to investigate the printer tender award. The firm further had to investigate the appointment of three executive managers. A letter requesting a deviation to extend the scope was sent to National Treasury.</p>	R749,721.00	<p>Evidence:</p> <ul style="list-style-type: none"> ➤ TCTA Minister Notification email dated 05 	Not Approved

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	<p>A letter was received from National Treasury on 12 June 2017. It notified TCTA that National Treasury did not support the deviation from normal procurement procedures in the appointment of EY as requested in the correspondence from the Chair of the Audit Committee dated 24 May 2017.</p> <p>The National Treasury found the reason provided not justifiable because the service had been rendered without complying with paragraph 8.5 of the National Treasury Instruction 3 of 2016/17 and the cost of the initial quote, including VAT, exceeded R500 000,00.</p> <p>The appointment was made by the Audit Committee in conjunction with Internal Audit.</p>		<p>November 2021;</p> <ul style="list-style-type: none"> ➤ Acknowledgement by Minister of Water and sanitation to TCTA Board dated 14 December 2021. ➤ Annexure A9 Memo from ARC Chair dated 24 April 2017 on the appointment of ENS to provide advice on EY's report. 	
	<p>Appointment of Edward Nathan Sonnenberg (ENS) through single sourcing to provide labour law advisory services to TCTA for:</p> <ol style="list-style-type: none"> 1) investigation and institution of disciplinary action; and 2) forensic investigation into the extension of Operations and Maintenance contracts with CMC-PG Mavundla. 	<p><u>R10 426 126</u></p>		<p>Not Approved</p>

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	<p>Internal Audit investigated and again by ENS. The TCTA Legal Department provided the Board with a legal opinion regarding the enforceability of the Letter of Confirmation of Conclusion of Negotiations ("Letter of Award") issued by the Supply Chain Management (SCM) Manager.</p> <p>The Board requested external legal opinions, which were sourced from Fluxmans and Senior Counsel, regarding the validity and enforceability of the Letter of Award to IWS, dated 28 July 2016. The service provider (IWS) was contracted to undertake the operations, maintenance, and management services in respect of the Central Basin Water Treatment Plant for 36 months, starting from 1 August 2016. The contract amount was about R243,4 million plus VAT and provisional sums thereon. The legal opinions from TCTA's Legal Department and external service providers were of the same view and indicated:</p> <ul style="list-style-type: none"> • that the SCM Manager acted ultra vires and without the necessary authority; • that the SCM Manager should be suspended pending the outcome of an investigation; • that disciplinary action should be taken against the SCM Manager. <p>The Board instructed management to appoint a reputable law firm to</p>			

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	<p>undertake the investigation and disciplinary action required. ENS Attorneys were appointed in March 2017 through a deviation from the normal bidding process. The appointment resulted in the irregular expenditure of R2 570 802.00 for legal services for the disciplinary hearing.</p> <p>The amount of R7 628 778.68 was incurred from a further instruction from the Audit & Risk Committee to conduct a forensic investigation into the extension of the Operations and Maintenance contracts with CMC-PG Mavundla in respect of interim Operations and Maintenance Services in the Eastern Basin.</p> <p>The Audit Committee extended the scope of work. Management made the Initial appointment for an amount not exceeding R500 000,00. Documents supplied showed that TCTA had suffered no losses because of this deviation.</p> <p>Further, the Head: Legal confirmed that the required services were duly provided. TCTA's SCM Manager was liable in law and was dismissed.</p>			
Total		R 21 519 750.17		