



SIU_{SA}

STRIKING AGAINST CORRUPTION

**PRESENTATION TO THE STANDING
COMMITTEE ON PUBLIC ACCOUNTS**

**THE DEPARTMENT OF PUBLIC WORKS AND
INFRASTRUCTURE**

**(Prestige Portfolio and Funding of
Parliamentary Villages)**

By Adv. Andy Mothibi

18 October 2023

**The State's preferred and trusted anti-corruption,
forensic investigation, and litigation agency**

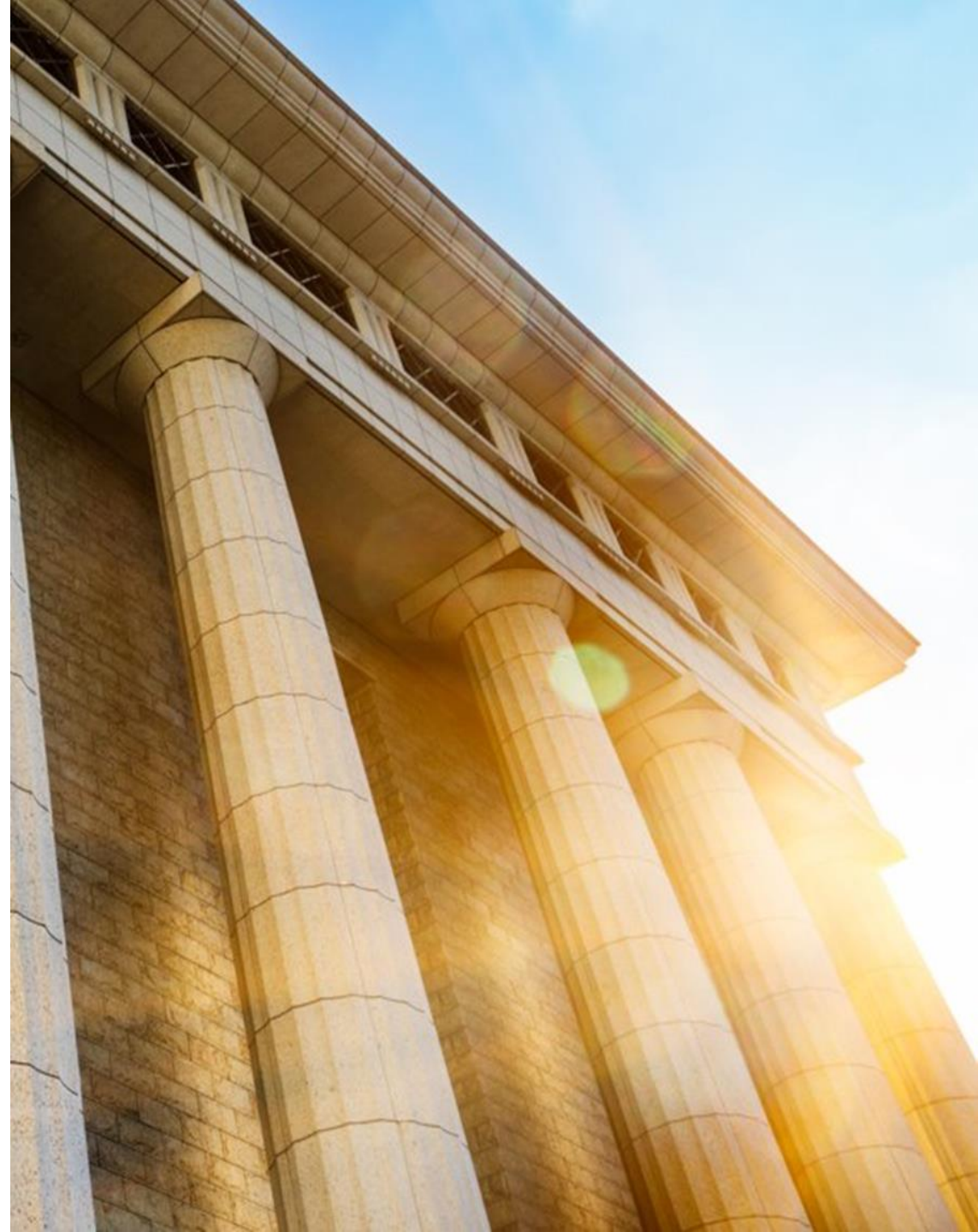
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Investigation into the renovation of State owned houses: Prestige Cape Town**
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ABOUT THE SIU

SIU FUNCTIONS & POWERS

The SIU was established in terms of Special Investigating Units & Special Tribunals Act 74 of 1996 by Proclamation No. R118 of 2001. The SIU is a public entity that conducts investigations conducted by a Proclamation from the President, once the investigation is complete the President receives a final report with findings.

Major Functions

- Investigate corruption, malpractice and maladministration
- Institute civil proceedings
- Referrals to relevant prosecuting authority
- Referrals for disciplinary action

SIU Powers

- Able to subpoena, search and seize evidence, and interrogate witnesses under oath (once a proclamation has been issued)
- Institute civil litigation to recover state funds lost or to prevent future losses

Out of SIU Mandate

- Arrest or prosecute offenders
- Implement disciplinary action
- Works closely with other relevant agencies where its powers fall short in order to ensure consequence management

SIU CRITICAL SKILLS AND EXPERTISE



**Forensic Data
Analytics**

**Forensic
Accounting**

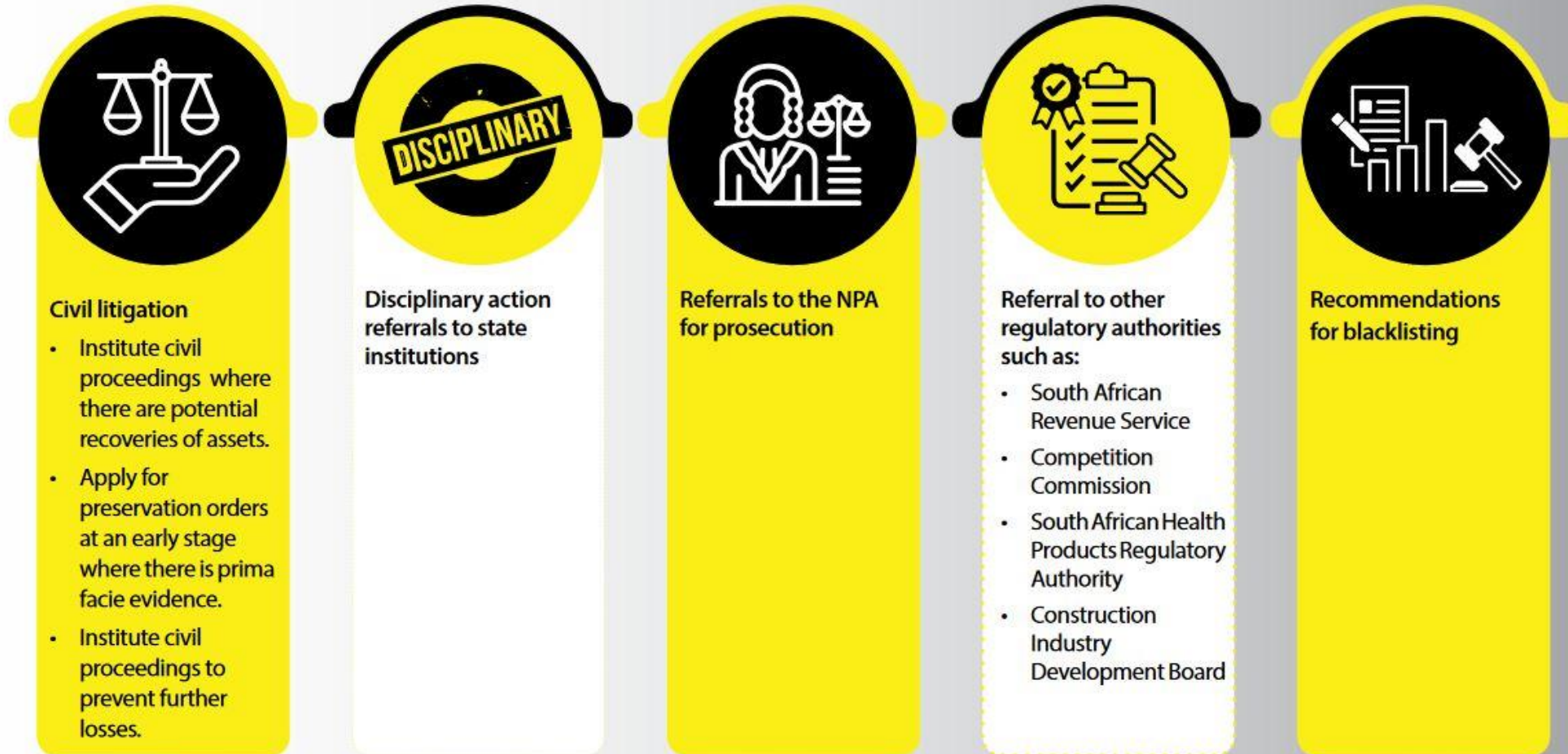
**Forensic
Investigation**

Civil litigation

Forensic Legal

**Cyber
Forensics**

SIU OUTCOMES & CONSEQUENCE MANAGEMENT



THE SIU'S LEGISLATIVE MANDATE

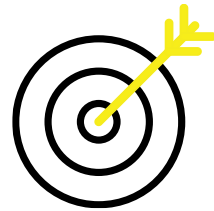
Empowering Legislation

Special Investigating Units and Special Tribunals Act, 1996 (Act no. 74 of 1996) ("SIU act").



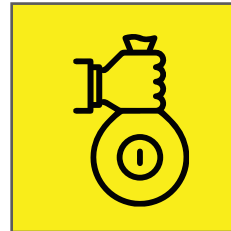
Vision

The State's preferred and trusted anti-corruption, forensic investigation and litigation agency.



Mission

We provide forensic investigation and civil litigation services to Combat corruption, serious malpractices and maladministration to protect the interest of the State and the public.



Major Functions

- Investigate corruption, malpractice and maladministration
- Institute civil proceedings



SIU Powers

- Able to subpoena, search and seize evidence, and interrogate witnesses under oath (once a proclamation has been issued)
- Institute civil litigation to recover state funds lost or to prevent future losses



Out of SIU Mandate

- Arrest or prosecute offenders
- Implement disciplinary actions
- Works closely with other relevant agencies where its powers fall short



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ISSUED PROCLAMATION

THE DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE



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STATE INSTITUTION	PROCLAMATION NO.
Investigation into the renovation of State owned houses: Prestige Cape Town	R.54 of 2014 R.44 of 2015
DPWI Prestige Cape Town: Official and Residential Accommodation, Residences of Sessional Officials Refurbishment, Marks Building External Renovations and 90 Plein Street – 6 th floor refurbishments.	R.83 of 2022
Prestige Projects: Furniture, Houses, Walmer Estate and Union building	Proclamation R.54 of 2014 and Proclamation R.44 of 2015
The State Funerals	Proclamation R.20 of 2018



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ONGOING INVESTIGATIONS



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THE STATE FUNERALS PROCLAMATION R.20 OF 2018

STATUS OF THE INVESTIGATION: Proc 20 of 2018



PROCUREMENT OF A SERVICE PROVIDER TO PROVIDE SERVICE DURING THE STATE FUNERALS

1. Allegations	The Department requested the SIU to investigate possible fruitless and wasteful expenditure, relating to services provided during the state events (funerals).
Findings	<p>That a service provider was appointed by the department to manage three state events:</p> <ul style="list-style-type: none">• Ms. W Mandela;• Mr. Z Skweyiya and• Mr. B Modise <p>Fundings relating to excessive pricing were made by the service provider.</p>
Outcomes	<p>Civil recovery:</p> <ul style="list-style-type: none">• On 18 April 2023, Croatia Events / Giant Creative and Events was ordered by the Special Tribunal to repay back to the department an overpayment amount of R10 743 427.34 and Interest of the same amount calculated at 7% from the 01 January 2019.• The department is in the process of implementing the court order.

STATUS OF THE INVESTIGATION: Proc 20 of 2018



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Procurement of a service provider to provide service during the state funerals

2. Allegations

The Department requested the SIU to investigate possible fruitless and wasteful expenditure relating to the following state events (Prof Kgositsile and Minister Edna Molewa).

Potential Findings

Although the investigation is not yet finalized, the following have been identified:

- The procurement process followed to establish a panel of service provider was in possible contravention of section 217 of the constitution and section 38 of the PFMA respectively.
- The public liability insurance certificate submitted was for a cancelled insurance. The insurance was taken on 01 December 2016 and automatically cancelled on the same date due to nonpayment. The invitation to bid was on 31 March 2017.
- Possible excessive pricing and double invoicing of about R 8 000. 000.
- Allowing the unqualified officials (Interns) to perform the procurement process.
- Payment above the tendered amount.

Outcomes

The Investigation is Ongoing

OBSERVATIONS: STATE FUNERAL



- There is no market analysis and consideration of section 217 of the constitution, prior the procurement of state funeral service providers.
- Procurement functions were executed by Junior officials, who were not always sure about the proper procurement process to be followed.
- The Department did not have documented procurement process that need to be followed in respect of state events.
- The relationship between the service provider and the Department was not properly regulated by a signed SLA.
- The service provider awarded the tender, Crotia Events changed Directors about three times.



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PROCLAMATION R83 OF 2022

Official and Residential Accommodation, Residences of Sessional Officials Refurbishment, Marks Building External Renovations and 90 Plein Street – 6th floor refurbishments

PROCLAMATION R.83 OF 2022: MANDATE



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The Special Investigating Unit has been mandated in terms of Proclamation R.83 of 2022, published in Government Gazette 47199 dated 5 August 2022, to conduct an investigation as set out in section 2(2) of the Special Investigating Units and Special Tribunals Act, Act No. 74 of 1996, in respect of the affairs of the Department of Public Works and Infrastructure.

In terms of the schedule to the proclamation the SIU is mandated to investigate:

1. The procurement of goods, works and services by or on behalf of the Department in a manner that was —

(a) not fair, competitive, transparent, equitable or cost effective;

(b) contrary to applicable –

(i) legislation;

(ii) manuals, guidelines, practices notes or instructions issued by the National Treasury; or

(iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Department,

PROCLAMATION R.83 OF 2022: MANDATE



Mandate (continued):

and any related unauthorised, irregular or fruitless and wasteful expenditure, incurred by the Department in relation to specified projects (see Focus Areas).

2. Any non-performance, poor performance, defective performance or late performance by contractors, suppliers or service providers of goods, works or services delivered, performed or rendered in respect of the projects listed above and any losses or damages suffered by the Department or the State as a result thereof.
3. Any irregular, improper or unlawful conduct by-
 - (a) employees or officials of the Department; or
 - (b) any other person or entity,

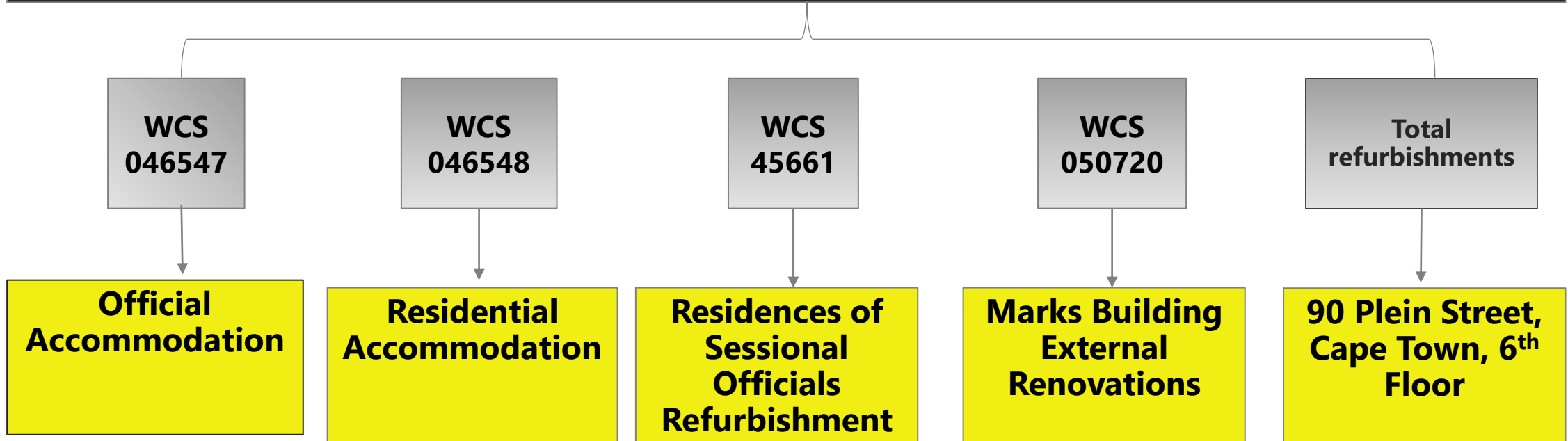
In relation to the allegations set out in paragraph 1 of this Schedule.

PROCLAMATION R.83 OF 2022: FOCUS AREAS

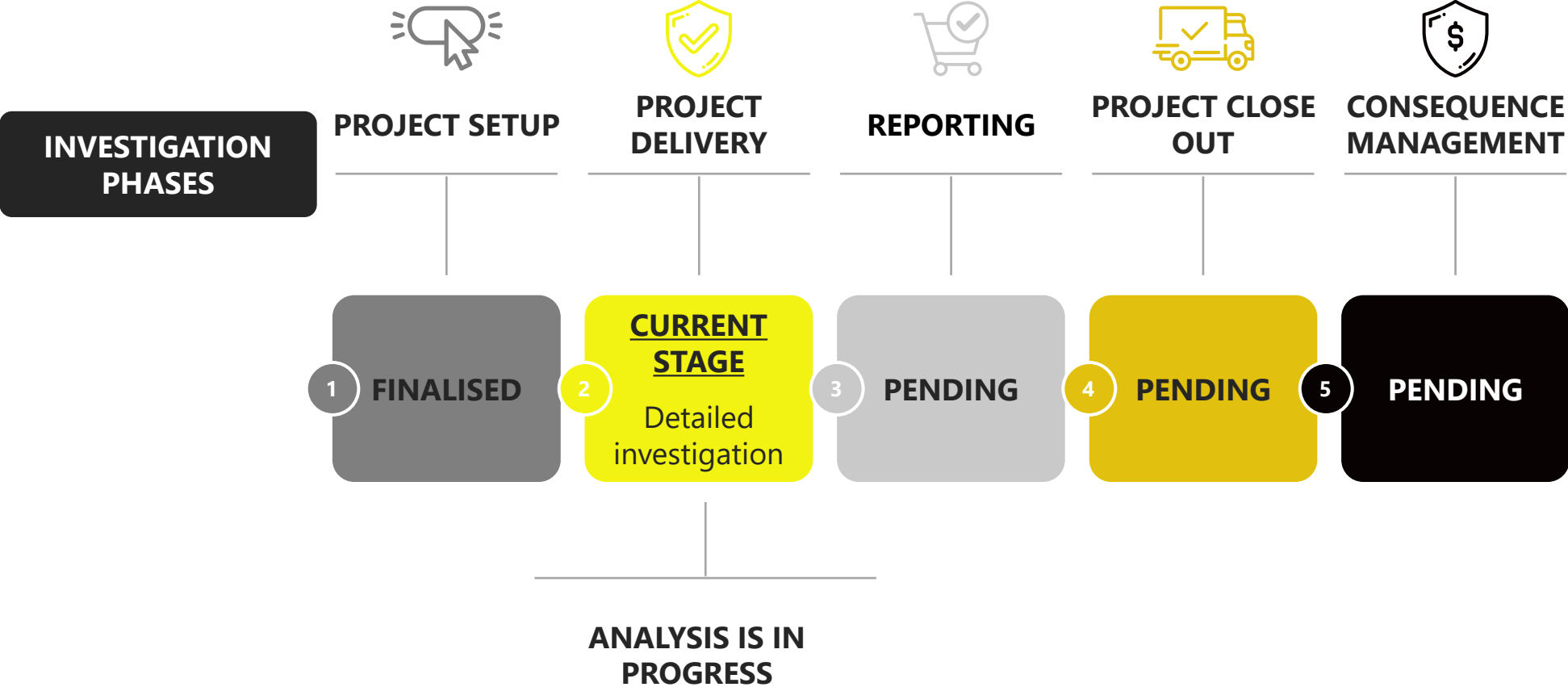


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5 - FOCUS AREAS



PROCLAMATION R.83 OF 2022: STATUS OF INVESTIGATION



PROCLAMATION R.83 OF 2022: OBSERVATIONS



The following observations were made during analysis conducted:

- Engagements with NDPWI is required to address aspects around the roles of all consultants involved and the appointment of the quantity surveyor.
- No clear indication iro the approval of minutes for monthly technical and progress meetings.
- The Quantity Surveyor raised concerns iro increased of contract cost for periods 2016 to 2017.
- Excessive additional funding and extension of time was approved on various projects, which caused delays in completing projects within the prescribed timeframes.
- Red flags were identified in respect of the additional scope of the project and authorizations of internal procurement processes.



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FINALISED INVESTIGATIONS



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PROCLAMATION R.54 OF 2014 & R.44 OF 2015
Investigation into the renovation of State owned
houses: Prestige Cape Town

PROCLAMATION R.54 OF 2014 & R.44 OF 2015: BACKGROUND



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The investigation into the Prestige Portfolio was initiated as a result of a letter, dated 5 March 2013, which the former DPW Minister, Minister Nxesi forwarded to the SIU to request an ***“Investigation into Renovation of State Owned Houses: Prestige Cape Town”***.

- The assessment was conducted by the then DPW Director: Quantity Surveying Services. The aim of this assessment was to establish if there were any further projects, apart from those identified by the Minister, which would warrant an investigation.
- This assessment took the form of an audit of the WCS database to establish which projects exceeded their budgets and to peruse the bill of quantities (BoQ's) in order to establish the reasons, therefore.
- This assessment identified seven further matters in respect of which the budgets on the Prestige projects, in the Western Cape, had been exceeded.

PROCLAMATION R.54 OF 2014 & R.44 OF 2015: MANDATE



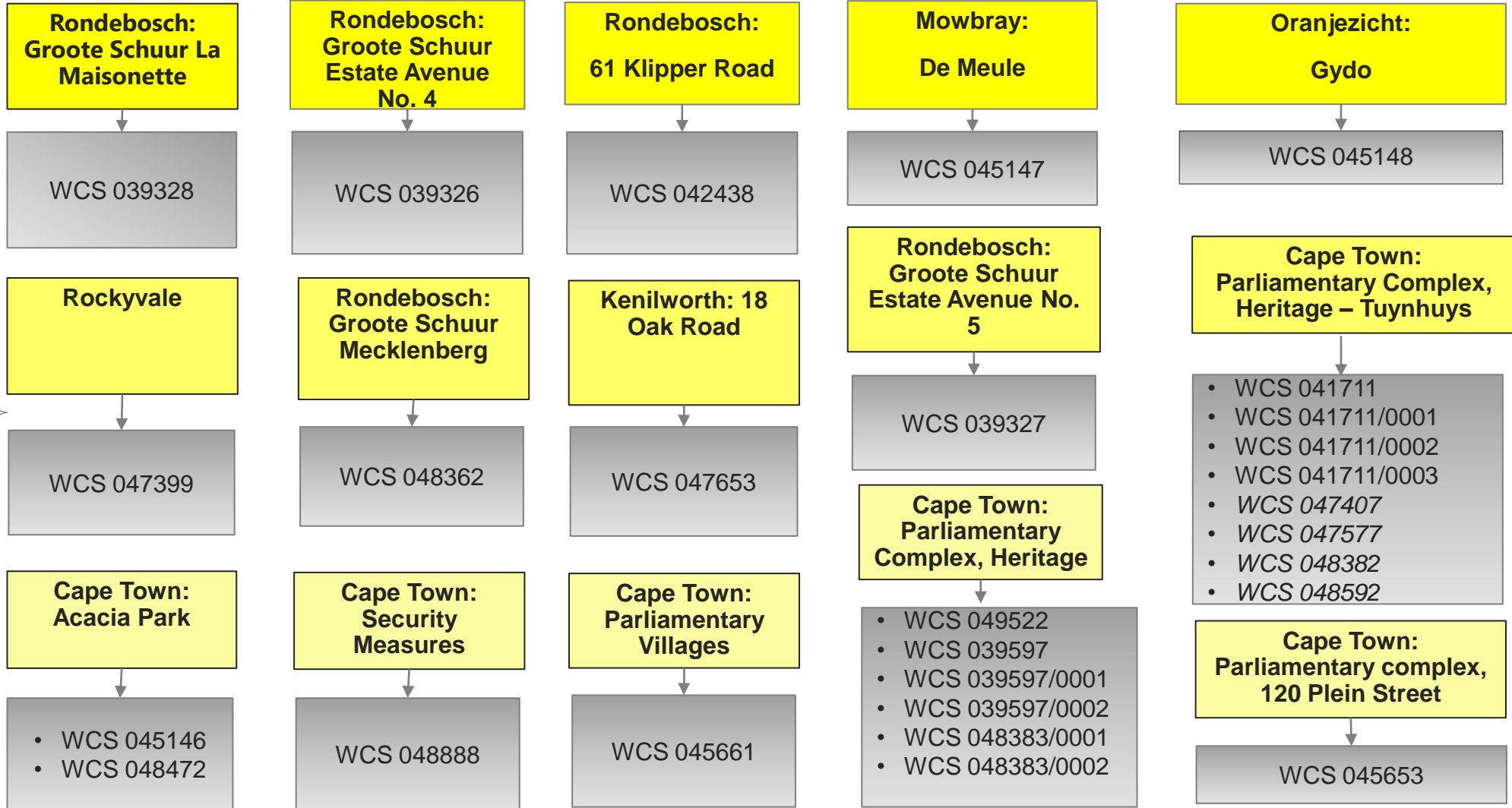
- The Special Investigating Unit has been mandated in terms of Proclamation R.54 of 2014, published in Government Gazette 37884 dated 1 August 2014, as amended by Proclamation R.44 of 2015, published in Government Gazette 39488 dated 10 December 2015 to conduct an investigation as set out in section 2(2) of the Special Investigating Units and Special Tribunals Act, Act No. 74 of 1996, in respect of the affairs of the National Department of Public Works.
- The investigation in respect of Proclamation R.54 of 2014 and R.44 of 2015 was a comprehensive investigation and a total of 17 WCS projects were listed in the initial Proclamation, No. R54 of 2014 (of which two were erroneously listed twice). Subsequent to the SIU's investigation an additional 13 WCS projects (linked to three of the initial 17 WCS projects) were listed in the amendment to the Proclamation, Proclamation R.44 of 2015.
- The investigations in respect of all these matters have been finalised and on 5 February 2021, the SIU forwarded the Presidential Report to the Office of the Presidency.

PROCLAMATION R.54 OF 2014 & R.44 OF 2015: FOCUS AREAS



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15 - FOCUS AREAS



PROCLAMATION R.54 OF 2014 & R.44 OF 2015: OBSERVATIONS



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The following observations were made:

- Treasury Regulation 16A6.3 (c) requires the bid advertisement period to be at least 21 days *"except in urgent cases when the bids may be advertised for a shorter period as the accounting officer or accounting authority may determine."* On 23 September 2008 the former Director General of the DPW issued SCM Circular no. 2 of 2008/2009 with effective date from 1 August 2008. In terms of this circular *"all tenders for engineering and construction projects which are below an estimated value of 40 million rands, depending on their complexity, may be advertised for a minimum period of two (2) weeks"*.
- The circular referred to above does not comply with the requirement that the accounting officer could only allow a shortened bid period in urgent cases. Only the complexity of the matter must be considered in terms of this circular. The urgency of the matter is not stated as justification for a deviation. The Director General's discretion in respect of a shortened bidding process is limited to matters where an urgency exists, and he cannot delegate powers not attributed to him. As such, this circular has no justifiable legal basis and the instruction given in terms of it is invalid. This circular was never recalled, but paragraph 8.2.2.2 of the DPW Supply Chain Policy approved by the Director General on 18 December 2013 refers to the minimum advertisement period as 21 days. To avoid any future misunderstanding SCM Circular no. 2 of 2008/2009 should be recalled.

PROCLAMATION R.54 OF 2014 & R.44 OF 2015: OBSERVATIONS



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The following observations were made (continued):

- In the SIU's experience, fraud and/or corruption is usually detected months or even years after the fact. Whereas our investigations showed that records were initially kept properly in many instances, it appears that it was often lost or destroyed later.
- It is therefore necessary to issue directives in respect of the proper maintenance and storage of records.
- Our investigations indicated that Project Managers regularly instructed Principal Agents to appoint consultants and then allow them to make use of their services and claim the costs attached as disbursements from the DPW. This *modus operandi* constitutes an abdication of financial and other control in that the DPW is not in a position to know whether value for money was received. In any event, such *modus operandi* constitutes an unlawful circumvention of procurement prescripts, which is destined to result in irregular expenditure. Furthermore, it creates an opportunity for fraud and/or corruption.

PROCLAMATION R.54 OF 2014 & R.44 OF 2015 : RECOMMENDATIONS



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It was recommended that the Regional Manager of the DPW should ensure:

- That all prescripts applicable to procurement processes are strictly adhered to. It speaks for itself that compliance to the prescripts is crucial in the quest to prevent irregular expenditure. The extent to which circumvention of proper procurement processes has been allowed in the past has resulted in a culture of non-compliance. Legislative prescripts applicable to deviations from competitive procurement processes have simply been ignored. The directives currently in place in respect of the above should be strictly enforced – by means of disciplinary action or other punitive measures where appropriate;
- That the submission of valid Tax Clearance Certificates (TCCs) applicable to the relevant entities are insisted on and that the validity of such TCCs are verified prior to the appointment of the service provider;
- That urgent training is provided to all staff members involved in procurement, in order to provide absolute clarity as to what the correct prescripts, processes and procedures comprise. The training should provide details of all relevant legislative prescripts, policy documents, circulars and National Treasury practice notes and circulars applicable to procurement;

PROCLAMATION R.54 OF 2014 & R.44 OF 2015 : RECOMMENDATIONS



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It was recommended that the Regional Manager of the DPW should ensure (continued):

- That a system should be put in place in terms of which the members acknowledge receipt of the circulars and confirm that they understand the contents of the circulars. All such circulars should be stored at a centralised point where members can access it. The circulars should also be brought to the attention of new members to the DPW, who should acknowledge receipt of it and confirm that they understand the contents of it;
- Compliance with the provisions of section 38(1) (g) of the PFMA and immediately report the irregular expenditure that has been identified to the relevant Treasury;
- That the appointment of consultants is delayed up to the stage when the budget have been determined and the scope of works have been clearly defined;
- That in all matters where contractors/consultants have defaulted and potential claims in respect of contractual non-performance exist, timeous action (i.e., within the three-year period stipulated in the Prescription Act, No. 68 of 1969) is taken to institute appropriate civil action against the defaulting contractors/consultants. This will ensure that claims do not prescribe and that damages suffered could be recovered;

PROCLAMATION R.54 OF 2014 & R.44 OF 2015 : RECOMMENDATIONS



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It was recommended that the Regional Manager of the DPW should ensure (continued):

- That the provisions of section 38(1)(a)(i) of the PFMA are complied with. A proper record system in respect of project-related minutes and documents should, if not already implemented, be implemented and complied with. Any documents removed from the record system, even during an audit process, should be properly documented. Improper record keeping facilitates fraud in that it contributes to the inability to prove and detect the actual fraud and the parties involved; and
- That the provisions of National Treasury Instruction Note 32 dated 31 May 2011 related to the approval of VO's, are strictly complied with.

The record keeping referred to comprises, among other aspects, the following:

- The proper recording of all procurement-related and project-related meetings, which include informal meetings between government officials and service providers;
- All correspondence, including but not limited to letters and e-mails;

PROCLAMATION R.54 OF 2014 & R.44 OF 2015 : RECOMMENDATIONS



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The record keeping referred to comprises, among other aspects, the following (continued):

- All documentation in support of the Final Account should be kept as part of the project files, including all records of interactions, which the departmental QS had with the contractor, the professional QS, the architect, the engineer and the Project Manager in respect of expenditure allowed and/or disallowed. Experience indicated that even in instances where supporting documents allegedly existed at the time when the Final Account was approved, these documents were thereafter either lost or destroyed;
- All recordings of the meetings referred to above must be kept at a central storage point;
- There should be a proper storage facility for all project related files and a prescript to the effect that all documents be kept intact and not be removed from project files. Should documents be removed a system should be put in place to record such removal and the return of files;
- All documents related to the requests for VO's and the approval of such orders must be kept and maintained;
- A specific time period of a minimum of five years should be prescribed for the safe keeping of the abovementioned records; and Situations and scenarios not provided for in existing DPW directives should be identified and addressed by means of an additional directive.

PROCLAMATION R.54 OF 2014 & R.44 OF 2015 : RECOMMENDATIONS



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Recommendations (continued):

- Several WCS numbers should not be dealt with as one package. In certain matters payment towards several WCS numbers could not be separated per contract. It results in the DPW losing control over budgets allocated per project. Steps should be taken to ensure that payments are only made towards a specific WCS number and is reflected as such.
- That FM contracts not be used to include construction and refurbishment work. That formal Joint Building Construction Committee (JBCC) building agreements providing specifically for construction work and addressing the associated risks applicable to construction work must be concluded.
- That all mark-up fees be included in FM contracts. Such mark-up fees should not be paid until it has been incorporated into the FM contract.

PROCLAMATION R.54 OF 2014 & R.44 OF 2015: SUMMARY OF OUTCOMES



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ENE OUTCOME	NUMBER / VALUE	STATUS
Number of investigations finalised	15	Investigations finalised (15 matters consisting of 30 WCS references)
Disciplinary Referrals	6 referrals i.r.o. 8 officials	<ul style="list-style-type: none"> 2 officials resigned/retired 4 Disciplinary referrals were finalised with sanctions imposed on officials. 1 referral pending – feedback from the DPW pending
Criminal	1	On 10 July 2023 Mr Ridwaan Rajah was sentenced to 6 years imprisonment in terms of Sec 276(1)(B) wholly suspended for 5 years in respect of theft and 12 months' imprisonment wholly suspended for 5 years in terms of Section 276(1)(B) in respect of perjury. Ridwaan Rajah's company, Good Hope Plasterers CC was fined R200 000 wholly suspended for 5 years in respect of theft. Judgment on the application for leave to appeal was postponed until 14 September 2023 where after leave to appeal was granted.
Civil litigation – Office of the State Attorney	2 (R5 707 131.94)	Rule 28 Notice was served re amended particulars of claim via the Office of the State Attorney. The third defendant (Good Hope Construction) was liquidated. The defendants were approached to ascertain whether a settlement agreement can be reached. The process is ongoing.
Report to Presidency	1	Final report submitted to the Presidency on 05 February 2021

PROCLAMATION R.54 OF 2014 & R.44 OF 2015: SUMMARY OF OUTCOMES



OTHER FINDINGS	NUMBER / VALUE
Irregular expenditure	R1 074 263 144.91
Fruitless and wasteful expenditure	R2 587 261.87
Potential fruitless and wasteful expenditure	R5 707 131.94



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**PRESTIGE PROJECTS: FURNITURE, HOUSES, WALMER
ESTATE AND UNION BUILDING
PROCLAMATION R.54 of 2014 and R.44 of 2015**

PRESTIGE: BACKGROUND

- After the inauguration of the Honourable President, Jacob Gedleyihlekisa Zuma on 9 May 2009, the Cabinet was expanded and seven additional Ministers and Deputy Ministers were appointed on 11 May 2009. This necessitated that additional accommodation be made available by (“DPW”).
- The appointed Ministers were expected to assume office immediately and therefore accommodation was required on an urgent basis. The DPW then identified state-owned property to be renovated for the said accommodation requirements. Seven houses were identified and renovated.

PRESTIGE: BACKGROUND

The following allegations concerned the following:

- The alleged irregular procurement, inflation of Bills of Quantities ("**BoQ**") and non-delivery by contractors for the repairs and renovation of seven Ministerial Houses, which falls within the scope of the Prestige portfolio of the Pretoria Regional Office of the DPW.
- Abuse of emergency/urgent procurement delegations and processes
- Non-compliance with prescribed ("**SCM**") policies and procedures
- Inflation of prices by suppliers registered on the ("**DPW**") supplier database
- Instances of possible "cover quoting" by certain suppliers.

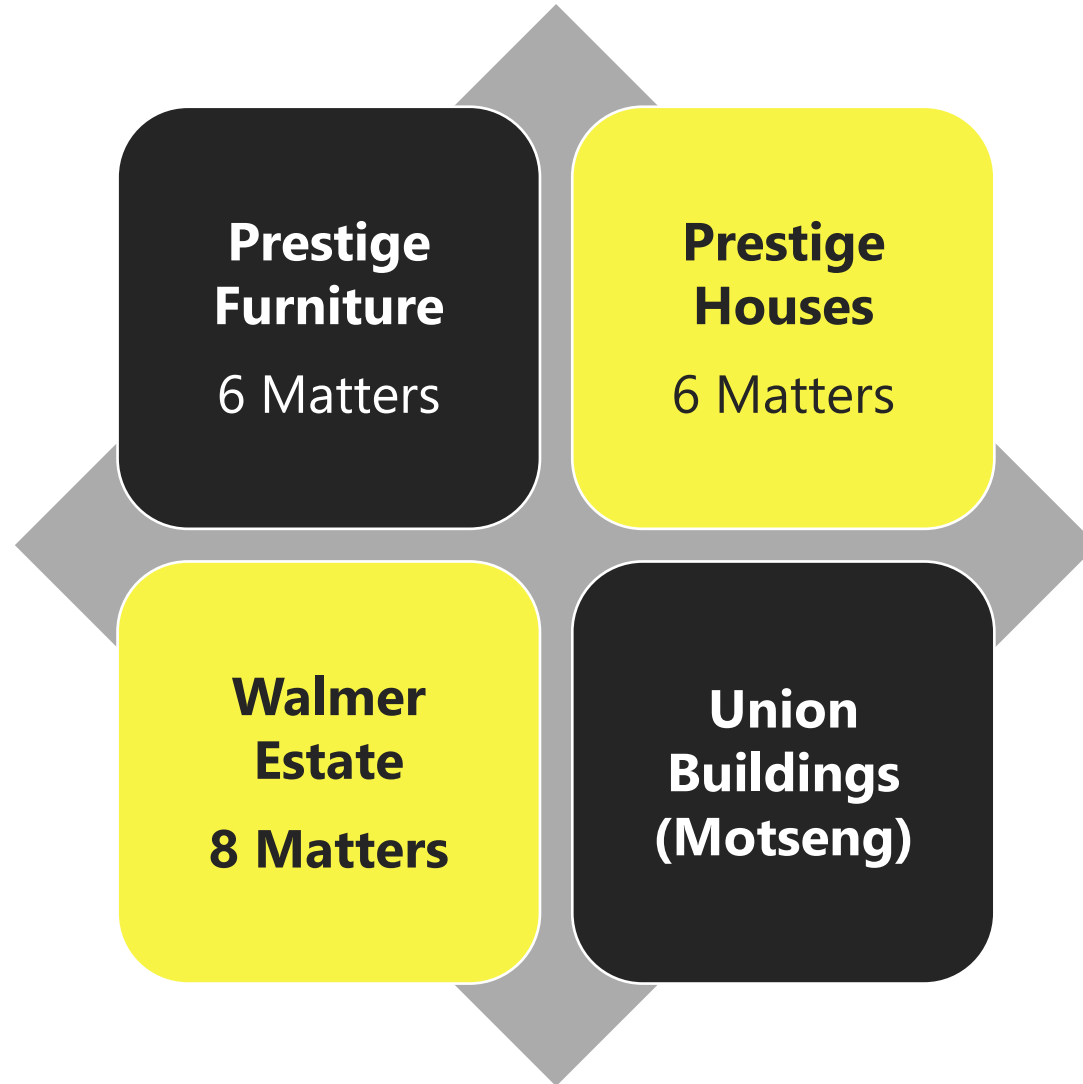
PRESTIGE: BACKGROUND

UNION BUILDINGS

Allegations were received concerning irregularities in respect of the procurement process followed during the appointment of Motseng for the Prestige Portfolio: Union Buildings and Brynterion Estates (Prestige Portfolio) contract . It was alleged that:

- There had been no budget approval prior to the commencement of the tender for the Union Buildings and Brynterion Estates contract, which was awarded to Motseng.
- Motseng had inflated the invoice costs of goods and services delivered to the Prestige Portfolio.
- Invoices were being inflated based on batch payments authorised by finance.
- Motseng had added a 12% profit margin (for which no contractual evidence exists) onto the invoices submitted to (“**DPW**”).

Prestige: Matters Investigated



DISCIPLINARY REFERRALS

Prestige Furniture

- Action recommended against Ms K Tlou, former Director: Prestige
- Ms Tlou resigned before any action could be taken

Prestige Houses

- Ms N Ntwana found guilty and dismissed on 5 May 2014
- Mr R Kidwell resigned before any action could be taken
- Ms S O'Neill received a written warning
- Mr L Ledwaba, PG Mooketsi and F Motsei received verbal warnings

Union Buildings

- Referral was issued to DPW against the Project Manager, Mr A Tsatsi
- No action was taken by DPW to date

Outcomes Cont...

CIVIL AND CRIMINAL REFERRALS



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Civil Referrals

- Union Buildings – DPW instituted civil action against Motseng

Criminal Referrals

- Prestige Houses – Pretoria Central CAS 350/03/2012 against contractor, matter part heard
- Prestige Houses – Pretoria Central CAS 354/03/2012 against QS, matter withdrawn by Senior Public Prosecutor

PRESTIGE: OBSERVATIONS

In general, the SIU, during the course of the various investigations found several shortcomings in the Department's systems and/or processes and in the manner that it was implemented in practise. Although many of these issues are already provided for in current legislation and policies, it is clear that the prescripts have not been followed.

The following are examples:

- There is no proper record keeping by Project Managers or SCM;
- There was general circumvention of proper procurement processes;
- The Project Managers instructed Principal Agents to appoint various other consultants, and to claim their cost as a disbursement to the department;
- Principal Agents conducted procurement on behalf of the DPW without proper approval;
- The DPW Quantity Surveyors did not properly keep record of interactions with contractors and other role players during the scrutiny of the final accounts;
- Consultants were merely re-appointed on new projects without following a proper procurement process;

PRESTIGE: OBSERVATIONS

- Consultants were merely re-appointed on new projects without following a proper procurement process;
- Project costs escalated subsequent to the appointment of the professional consultants due to the fact that proper needs assessments were not conducted; and
- Projects were identified and were then motivated to be conducted on an urgent basis, but an urgency did not in fact exist, and the true reason for the execution of the project was to ensure that the annual budget was spent, which led to the incurrence of irregular expenditure.

STEPS TO BE TAKEN TO ADDRESS THE OBSERVATIONS

- SIU to submit systemic recommendations to address the observations and to improve the administration and related practices.
- Department required to develop an improvement plan to address the findings and to mitigate the recurrence of the incidents of maladministration and malpractices
- SIU to refer the actions to Department of Monitoring and Evaluation at Presidency for inclusion in the Monitoring and Evaluation plan.
- Conducted awareness Campaign with the Department on 3rd April 2019 which was aimed at addressing the Supply chain management issues, Ethics and Integrity on the workplace, document management, Risk management and Financial Management obligations in terms of PMFA and assisting the Department in Developing Systemic Improvement plan.



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Thank you

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