

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



**PUBLIC PROTECTOR  
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR  
PROCUREMENT PROCESSES AND UNAUTHORISED DEVIATIONS AND  
EXPANSIONS, WITHIN THE STATE INFORMATION SECURITY AGENCY (SITA) BY  
DR SETUMO MOHAPI, THE FORMER CHIEF EXECUTIVE OFFICER**

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## **Executive Summary**

- (i) This is the Public Protector’s report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 Act, [Act No. 108 of 1996] (the Constitution) and published in terms of section 8(1) of the Public Protector Act, [Act No. 23 of 1994] (the Public Protector Act).
- (ii) The report communicates the Public Protector’s findings and appropriated remedial action taken in terms of Section 182(1) (c) of the Constitution, following an investigation into allegations of irregular procurement processes and unauthorised deviations and expansions, within the State Information Security Agency (SITA) by Dr Setumo Mohapi the former Chief Executive Officer.
- (iii) The complaint was lodged by an Anonymous complainant (the Complainant) on 31 August 2018.
- (iv) In the main, the Complainant made the following allegations against Dr Setumo Mohapi, the former CEO and the former SITA Board (SITA Board):

### **Allegations relating to the contract awarded to CIPAL**

- (a) That a company called CIPAL was appointed by means of a deviation from the normal procurement process without the required approval by the National Treasury(NT);
- (b) That the appointment of CIPAL is said to be suspicious due to the relationship of Dr Setumo Mohapi, the former CEO and Mr Thami Msimango, the Managing Director of CIPAL;
- (c) That Mr Thami Msimango is a friend of Dr Setumo Mohapi, the former CEO and that the former CEO failed to disclose this relationship and;

- (d) That expansion to the scope of work was approved by Dr Setumo Mohapi, the former CEO despite NT not supporting such expansions;

**Allegations relating to failure by SITA Board to take action against the former CEO**

- (e) That the former Board of SITA failed to hold Dr Setumo Mohapi, the former CEO, accountable for the irregular expansion of work that was not approved by the NT, relating to the following contracts:

<b>Project Description</b>	<b>Supplier</b>
Last mile access data links	Internet Solutions
Last mile access data links	eThekweni Municipality
Last mile access data links	Halmsa IT
Last mile access data links	Neotel
Last mile access data links	Telkom
Last mile access data links	Halmsa IT
Internet services	Liquid Telecommunications
Fully managed data centre services	Telkom
Support of SAPS STRLAB systems for 24 months	Labware
Support and maintenance of Audio Visual & Video conferencing systems	CHM Vuwani Computer Solutions
Support and maintenance of switches and supply of diesel	Infrasol
Upgrade existing SITA Next Generation Network	BBI
Implementation of the Enterprise and Supplier Development (ESD) strategy	Enterprise Room
Dynatrace Application Performance Monitoring technology	Mediro Belay Managed Services
Board Strategy Session	CEO of A2D24
Provision of financial modelling service	Meniko Records Management Services

(v) **ISSUES IDENTIFIED AND INVESTIGATED**

(a) **Based on the analysis of the complaints and the allegations contained therein, the following issues were identified to inform and focus the investigation**

(aa) Whether Dr Setumo Mohapi, the former CEO's relationship with Mr Thami Msimango, the Managing Director of CIPAL influenced the appointment of CIPAL through a deviation process without the approval of the National Treasury including the expansion of the scope of work to CIPAL despite the National Treasury not supporting such expansions, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

(bb) Whether the SITA Board failed to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expenditure incurred relating to the various contracts, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994

(vi) The investigation was conducted in terms of section 182(1)(a) of the Constitution and sections 6 and 7 of the Public Protector Act. The investigation process included the assessment of the complaint, electronic mail (e-mail) communication between the Public Protector's Office and the Complainant, correspondence with SITA, analysis of all relevant documents and information obtained and application of all relevant laws, policies and related prescripts.

(vii) A Notice in terms of section 7(9)(a) of the Public Protector Act, 1994 was issued on 5 January 2022 to Dr Setumo Mohapi, former CEO as well as Mr Luvuyo Keyise, the Executive Caretaker of SITA for a response.

- (viii) On 20 January 2022, following the issuing of the section 7(9)(a) Notice to the Executive Caretaker, a meeting was held between the Public Protector and SITA officials, Mr Vincent Mphaphuli: Head of Department: Legal Services and Freddie Mitchell: Executive: Internal Audit.
- (ix) Key laws and policies taken into account to determine if there had been maladministration or improper conduct by the SITA were principally those imposing administrative standards that should have been complied with by the SITA and/or any other persons that were involved in the procurement and contract management processes. They are the following:
- (a) **The Constitution, 1996** [Act. No. 108 of 1996], which is the supreme law of the Republic.
  - (b) **The Public Protector Act, 1994 [Act No. 23 of 1994]** which the key legislation giving effect to the provisions of section 182(1)(a) to (c) of the Constitution, 1996.
  - (c) **The Public Finance Management Act, 1999 [Act No. 1 of 1999]** (the PFMA, 1999), which is the key instrument regulating procurement in the public sector, the purpose of which is set out in the preamble to the Act.
  - (d) **National Treasury Instruction Note 3 of 2016/2017 on preventing and combating abuse in the supply chain management system**, that took effect from 01 May 2016 and is applicable to all public entities including SITA, deal with deviations and variations of contracts.
  - (e) **National Treasury Practice Note 8 of 2007/2008** which regulates the use of emergency processes to procure goods and services.
  - (f) **National Treasury Regulation 16A6.4** which regulates the procurement of goods and services by other means other than competitive bidding

- (g) **National Treasury Supply Chain Management Guide 2004**, dealing with the procurement in urgent and emergency cases.
- (h) **SITA Supply Chain Management Policy dated 01 April 2015 (2015 SCM Policy)**, regulating procurement in SITA
- (xiv) Having considered the evidence uncovered during the investigation against the relevant regulatory framework determining the standard that should have been complied with by the SITA and/or any other persons that were involved in the procurement and contract management processes, the Public Protector makes the following findings:
  - a. **Regarding whether Dr Setumo Mohapi, the former CEO's relationship with Mr Thami Msimango, the Managing Director of CIPAL influenced the appointment of CIPAL through a deviation process without the approval of NT and continued with the expansion of the scope of work to CIPAL despite National Treasury not supporting such expansions, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.**
    - (aa) The Public Protector could not establish any evidence to support the allegation of the existence of an improper relationship between Dr Setumo Mohapi, the former CEO and Mr Thami Msimango influencing the appointment of CIPAL.
    - (bb) The evidence indicates that Dr Setumo Mohapi, the former CEO was appointed in April 2015 while CIPAL was appointed through a deviation process during the course of 2008. CIPAL was therefore appointed as a service provider to SITA long before the former CEO was appointed to SITA.

- (cc) Neither could the Public Protector establish any evidence that an improper relationship between the former CEO and Mr Msimango influenced the expansion of the scope of work to CIPAL.
- (dd) However, the evidence indicates that the former CEO requested approval for NT for the deviations in 2018 , but NT did not support **the period** of extension requested by SITA and instead supported a **shorter extension periods**. The evidence indicates that the contract between SITA and CIPAL was in existence for a total period of fifteen (15) years since the initial appointment. The former CEO was aware that the contract with CIPAL would be coming to an end and only started a flawed procurement process as well as engaging NT on 02 May 2018, 28 days before the expiry of the contract. This shows a clear lack of proper planning and contract management by SITA in contravention of paragraph 4 of National Treasury SCM Guide of February 2004.
- (ee) The Public Protector was not provided with evidence that the former CEO prioritised the development of a new strategy, for the replacement of the current SLIMS, despite NT indicting to the former CEO in its letter dated 19 June 2018 that the initial contract was for a period of three(3) years and that the previous extensions were for a cumulative contract period of six years in the amount of R49 375 359.77 which is a variance of 169.71 % against the original contract value and further that the new contract is for a period of two (2) years from 1 July 2018 to 20 June 2020 in the amount of R18 747 487.20 which is a variance of 64.43% of the original contract value. The cumulative contract variance is 234.14 % and the cumulative contract amount will be R 95 155 571.77,
- (ff) Dr Setumo Mohapi, the former CEO therefore failed to properly manage the contract extensions during his tenure and to put measures in place for the replacement of the current SLIMS, that led to the contract of CIPAL being extended for such a long period of time. SITA further did not provide any evidence



to indicate that it put in place measures to prioritize the development of a new strategy for the replacement of the current SLIMS as indicated in the NT letter 30 May 2018.

- (gg) In this regard the failure of Dr Setumo Mohapi, the former CEO, was in contravention with the requirements of section 217 of the Constitution, wherein SITA had to ensure that any contract for goods and services is in accordance with a system of procurement which is fair, equitable, transparent, competitive and cost effective.
- (hh) Therefore, the conduct of Dr Setumo Mohapi, the former CEO wherein he failed to properly manage the contract extensions during his tenure and put measures in place for the replacement of the current SLIMS constituted improper conduct as envisaged by section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged by section 6(4)(a)(i) of the Public Protector Act, 1994.
- b. **Regarding whether the SITA Board failed to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expenditure incurred relating to the various contracts, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994 :**
  - (aa) The allegation that the SITA Board failed to hold the Dr Setumo Mohapi, former CEO accountable for the irregular expansion of contract that was not approved by National Treasury, relating to the various contracts is substantiated.
  - (bb) Irregular expenditure is defined in section 1 of the PFMA, 1999 ***“as expenditure, other than unauthorised expenditure incurred in contravention of or that is not in accordance with a requirement of any applicable legislation”***.

- (cc) Dr Setumo Mohapi, the former CEO and the Board both had an accountability and oversight responsibilities to ensure compliance to the provisions of the PFMA, 1999; the National Treasury Regulations and the SCM Policy. Despite the Auditor General’s comments relating to amongst other expenditure management and contract management within SITA, effective steps were not taken by the former CEO and the Board to prevent such from recurring.
- (dd) Even though SITA became aware of the continuing irregular expenditure, both Dr Setumo Mohapi, the former CEO and the Board failed to take decisive action to prevent same from recurring in terms of the Board’s responsibility as envisaged in Section 51 (1) (a) (iii) and 51 (1) (b) (ii) of the PFMA. The Board failed to act in a manner that was consistent with its fiduciary responsibilities as contemplated by section 50(1)(b), 50(1)(d) and 50(2)(a). This is evident in that the irregular expenditure is still occurring to date, in some of the contracts such as the Access Data Link contract.
- (ee) The Board also failed to hold Dr Setumo Mohapi, the former CEO accountable for irregular expenditure incurred during his tenure in terms of its responsibility as required by section 51(1) (e) (iii) of the PFMA.
- (ff) In these circumstances, the failure by the SITA Board to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expansion of contract equated to improper conduct as envisaged by section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged by section 6(4)(a)(i) of the Public Protector Act, 1994.
- (xv) Having regard to the meeting held with SITA on 20 January 2022 and the further submissions made to the Public Protector on 2 February 2002, regarding the proposed remedial action, the remedial action contained in this report is deemed appropriate to address the remaining improprieties to assist in preventing future recurrence. The appropriate remedial action**

**that the Public Protector is making as contemplated in section 182(1)(c) of the Constitution, in this report is the following:**

**The Accounting Authority of SITA: -**

- (a) Take cognisance of the findings of maladministration and improper conduct as well as irregular expenditure by Dr Setumo Mohapi, the former CEO as envisaged in section 51(b) (ii) of the PFMA and ensure that such action is not repeated and appropriate corrective action is taken to prevent the recurrence of the improprieties identified and referred to in the report.
- (b) To ensure that SITA's SCM and Compliance unit, on a regular basis, monitors compliance to applicable laws, regulations, prescripts, policies and procedures and strengthens the adequacy and effectiveness of control measures as envisaged by section 51 (1) (a) (i) (iii), 51 (1) (b)(ii), 51 (1) (e) of the PFMA, and that deviations from inviting competitive bids, as contemplated by National Treasury Regulation 16A6.4, are used strictly to procure goods and services of critical importance and only when it is impractical to invite competitive bids,
- (c) To consider, in terms of paragraph 1.12.1 of Annexure C: Code of Ethics of the 2017 SCM Policy, consider SITA's duty to report any irregular expenditure, (including any identified in this report), to the Auditor General and National Treasury, where same has not occurred yet.

**The Auditor General of South Africa: -**

- (a) To take note of the findings relating to the improper conduct and/or maladministration by SITA reported herein.
- (b) Within its own discretion consider the findings and intended remedial action in this report and consider taking any action deemed appropriate under the circumstances in terms of any applicable legislation.

**The Minister of Communications and Digital Technologies: -**

- (a) To take cognisance of the findings of maladministration and improper conduct by SITA;
- (b) Include in her oversight role over SITA, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of the powers conferred under section 182(2)(c) of the Constitution, 1996.

**The Speaker of the National Assembly: -**

- (a) To ensure that the report is tabled before the Communications Portfolio Committee for deliberation regarding :
  - (aa) Investigations conducted into allegations of financial misconduct committed by members of the Accounting Authority in terms of Treasury Regulation 33.1.3;
  - (bb) Instances of irregular and fruitless and wasteful expenditure that have been investigated to determine if disciplinary steps needs to be taken against liable officials; and
  - (cc) Whether disciplinary steps have been taken against any officials who made or permitted irregular expenditure based on outcome of investigation in terms of PFMA section 51(1)(e)(iii)

## **The Directorate of Priority Crime Investigation**

- (a) Consider this report and establish if any acts of impropriety identified herein amount to acts of a criminal conduct in terms of the Prevention and Combating of Corrupt Activities Act, 2004 and if so, pursue criminal investigations against the perpetrators.

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR PROCUREMENT PROCESSES AND UNAUTHORISED DEVIATIONS AND EXPANSIONS, WITHIN THE STATE INFORMATION SECURITY AGENCY (SITA) BY DR SETUMO MOHAPI THE FORMER CHIEF EXECUTIVE OFFICER**

**1. INTRODUCTION**

- 1.1 This is the Public Protector’s report, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report is submitted in terms of section 8(3) of the Public Protector Act to the following persons, to inform them of the outcome of my investigation:
- 1.2.1 Mr Luvuyo Keyise , The Executive Caretaker, SITA;
- 1.2.2 Dr Setumo Mohapi , the Former Chief Executive Officer, SITA; and
- 1.2.3 A copy of the report is also provided to the Complainant.

**2. THE COMPLAINT**

- 2.1 The complaint was lodged with the office on 31 August 2018 by an Anonymous complainant (the Complainant).
- 2.2 In essence the Complainant made the following allegations against Dr Setumo Mohapi, the former CEO and the former SITA Board ( SITA Board):

**Allegations relating to the contract awarded to CIPAL**

- 2.2.1 That a company called CIPAL was appointed by means of a deviation from the normal procurement process without the required approval by the National Treasury (NT);
- 2.2.2 That the appointment of CIPAL is said to be suspicious due to the relationship of Dr Setumo Mohapi, the former CEO and Mr Thami Msimango, the Managing Director of CIPAL;
- 2.2.3 That Mr Thami Msimango is a friend of Dr Setumo Mohapi, the former CEO, and that the former CEO failed to disclose this relationship and;
- 2.2.4 That expansion to the scope of work was approved by Dr Setumo Mohapi, the former CEO despite NT not supporting such expansions;

**Allegations relating to failure by SITA Board to take action against the former CEO**

- 2.2.5 That the former Board of SITA failed to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expansion of work that was not approved by the NT, relating to the following contracts:

<b>Project Description</b>	<b>Supplier</b>
Last mile access data links	Internet Solutions
Last mile access data links	eThekwini Municipality
Last mile access data links	Halmsa IT
Last mile access data links	Neotel
Last mile access data links	Telkom
Last mile access data links	Halmsa IT
Internet services	Liquid Telecommunications

Fully managed data centre services	Telkom
Support of SAPS STRLAB systems for 24 months	Labware
Support and maintenance of Audio Visual & Video conferencing systems	CHM Vuwani Computer Solutions
Support and maintenance of switches and supply of diesel	Infrasol
Upgrade existing SITA Next Generation Network	BBI
Implementation of the Enterprise and Supplier Development (ESD) strategy	Enterprise Room
Dynatrace Application Performance Monitoring technology	Mediro Belay Managed Services
Board Strategy Session	CEO of A2D24
Provision of financial modelling service	Meniko Records Management Services

### 3. ISSUES IDENTIFIED AND INVESTIGATED

#### 3.1 Based on the analysis of the complaints and the allegations contained therein, the following issues were identified to inform and focus the investigation

- 3.1.1 Whether Dr Setumo Mohapi, the former CEO's relationship with Mr Thami Msimango, the Managing Director of CIPAL influenced the appointment of CIPAL through a deviation process without the approval of the National Treasury including the expansion of the scope of work to CIPAL despite the National Treasury not supporting such expansions, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.
- 3.1.2 Whether the SITA Board failed to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expenditure incurred relating to the various



contracts, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994

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

4.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

4.2 Section 182(1) of the Constitution provides:

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

*(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*

*(b) to report on that conduct; and*

*(c) to take appropriate remedial action.”*

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

4.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

4.5 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others*

the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.<sup>1</sup> The Constitutional Court further held that: *“When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”*<sup>2</sup>

- 4.6 SITA is an organ of state and its conduct amounts to conduct in state affairs as a result, the matter falls within the ambit of the Public Protector’s mandate.
- 4.7 The Public Protector’s power and jurisdiction to investigate this matter and take appropriate remedial action was not disputed by any of the parties.
- 4.8 Section 6(9) of the Public Protector Act grants the Public Protector discretionary powers to accept complaints which are lodged more than two (2) years after the occurrence of the incident.
- 4.9 In terms of section 6(9) of the Public Protector Act, the Public Protector is barred from entertaining complaints reported after two years of the date of an incident unless special circumstances exist. However, the mere fact that the incident occurred more than two (2) years before being reported to the office does not, in itself, bar the Public Protector from investigating the matter. Instead, it is mainly the interests of justice that dictate whether the Public Protector should investigate the matter or not. It is axiomatic that the Public Protector is to identify special circumstances using a discretion should the Public Protector decide to entertain such a complaint.

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

<sup>2</sup> *Supra* at para [73].

- 4.10 Some of the special circumstances that the Public Protector took into account to exercise her discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether she would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident(s) and whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation.
- 4.11 In the case between *South African Bureau of Standards v The Public Protector*<sup>3</sup>, the North Gauteng High Court held that, *as with most claims and complaints, there is for good reason, time-frames within which such must be instituted or laid. In this instance, the Public Protector Act has set a time-limit of 2 years. Entertaining a complaint which is older than 2 years certainly calls for exceptional circumstances. The underlying reason for time-frames is the trite maxim; justice delayed is justice denied. Underpinning this principle is the prejudice parties suffered when time has lapsed. To mention, but a few; no finality of a matter, evidence lost, memories failing and legislation and policies evolving.*
- 4.12 Similarly in the case between *Gordhan v Public Protector and Others*<sup>4</sup> the North Gauteng High Court held that, *in view of the provisions of section 6(9) and the fact that the complaints emanate from a decade ago, one would expect the Public Protector to set out why she had jurisdiction to entertain this complaint.*
- 4.13 In this specific case, the Public Protector considered that the appointment of the service providers by SITA in not only flouting the public procurement tenets as enshrined in section 217 and 195 of the Constitution as well as the PFMA,

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<sup>3</sup> [2019] ZAGPPHC 101

<sup>4</sup> [2019] JOL 45246 (GP)

but also seems to be creating a monopolistic business environment, as some of these contracts are to date still continuing to create irregular expenditure.

4.14 Therefore, the investigation required that I explore some of the initial and subsequent contracts awarded to these service providers, in order to determine how the initial contracts were established and if the extension of the subsequent contracts were irregular. I accordingly decided to exercise my discretion in favour of this complaint. Conscious to all these reasons, I conclude that it is in the interests of justice to investigate and determine the merits or demerits thereof.

## **5. THE INVESTIGATION**

### **5.1 Methodology**

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

5.1.2 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.

### **5.2 Approach to the investigation**

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

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

- In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?
- 5.2.2 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.
- 5.2.3 In this particular case, the factual enquiry principally focused on whether the conduct of SITA, in particular Dr Setumo Mohapi, the former CEO and the former Board, constituted maladministration, improper conduct and irregular expenditure.
- 5.2.4 The enquiry regarding what should have happened, focuses on the prescripts regulating the standard that should have been met by SITA and/or its employees to prevent maladministration and/or improper conduct.
- 5.2.5 The enquiry regarding remedial action seeks to explore options for redressing the consequences of maladministration and/or improper conduct.
- 5.2.6 A section 7(9) notice dated 5 January 2021 was issued to SITA and Dr Setumo Mohapi, the former CEO for them to respond to the findings and intended remedial action regarding the investigation.
- 5.2.6.1 On 20 January 2022 a meeting was held between SITA officials and the Investigation Team to discuss the Section 7(9) notice. Subsequently on 2 February 2022, SITA submitted its response to the section 7(9) notice in writing. The responses from SITA have been considered in this report.

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

5.3.1.1 Whether Dr Setumo Mohapi, the former CEO's relationship with Mr Thami Msimango, the Managing Director of CIPAL influenced the appointment of CIPAL through a deviation process without the approval of the National Treasury including the expansion of the scope of work to CIPAL despite National Treasury not supporting such expansions, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994; and

5.3.1.2 Whether the SITA Board failed to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expenditure incurred relating to the various contracts, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

**5.4 The Key Sources of information**

**5.4.1 Documents**

5.4.1.1 SITA's Annual Report for the year 2016;

5.4.1.2 Copy of approval technical specifications published 29 January 2016;

5.4.1.3 Approved technical specifications, Business Case and BSC resolution for this project;

5.4.1.4 Business Case compiled in April 2016 to request approval of payment of irregular expenditure towards CHM Vuwani for maintenance services provided by SAPS Micro Focus;

5.4.1.5 SITA's Annual Report for the year 2017;

5.4.1.6 Copy of business case to request approval on 7 April 2017;

- 5.4.1.7 Copy of business case to enter into, compiled, approved and submitted on 9 June 2017;
- 5.4.1.8 Copy of SCM pre-approval notification not granted received on 29 August 2017;
- 5.4.1.9 SITA's Annual Report for the year 2018;
- 5.4.1.10 Business Case was compiled on 22 January 2018 for the Board Strategy Session held on 29 January 2018.
- 5.4.1.11 Copy of letter submitted to Mr Mogogodi Dioka requesting deviation to appoint single source service provider dated 26 January 2018;
- 5.4.1.12 Copy of NT's response toward deviation dated 30 January 2018;
- 5.4.1.13 Copy of approved contact extension dated 9 March 2018;
- 5.4.1.14 Business Case requesting approval for the extension of the contract between SITA and CIPAL for the Barcode Library Information Management System, branded by SITA as SLIMS, approved by the former CEO, Mr Setumo Mohapi dated 27 March 2018.
- 5.4.1.15 Copy of response from National Treasury to SITA dated 28 March 2018;
- 5.4.1.16 Copy of Report of the Auditor-General to Parliament as at March 2018 obtained from SITA;
- 5.4.1.17 Letter dated 2 May 2018 submitted by SITA's Head Strategic Sourcing requesting a deviation for the expansion of the contract;
- 5.4.1.18 Copy of NT's appeal of the six (6) months extension dated 10 May 2018;
- 5.4.1.19 Copy of NT's response to the appeal dated 28 May 2018;
- 5.4.1.20 Copy of communication from NT with former CEO dated 30 May 2018;
- 5.4.1.21 Copy of letter by SITA to NT dated 15 June 2018 appealing its decision;
- 5.4.1.22 Copy of response from NT to SITA dated 19 June 2018;
- 5.4.1.23 SITA's Annual Report for the year 2019;
- 5.4.1.24 Copy of submission made by SITA to NT dated 24 July 2019;
- 5.4.1.25 Copy of letter from NT to SITA dated 5 August 2019;
- 5.4.1.26 Copy of confirmation received by SITA from NT date 28 June 2019;

- 5.4.1.27 Copy of Report of the Auditor-General to Parliament as at March 2019, obtained from SITA;
- 5.4.1.28 Companies and Intellectual Property Commission (CIPC) search on the CIPC e-services website CIPAL Telecommunication, was registered as a company in August 2010;
- 5.4.1.29 Investigation report by SITA’s Internal Audit (IA);
- 5.4.1.30 Loss Control Committee (LCC) submission indicating that DE-STRLab is a forensic science service information management system;
- 5.4.1.31 SITA’s Internal Audit Committee Report – SITA entered into a MSA with BBI for provision of core transmission services and
- 5.4.1.32 Provision of Financial Modelling service by Meniko Records Management according to the Loss Control Committee (LCC) report.

#### 5.4.2 **Meetings conducted**

- 5.4.2.1 Meeting between SITA official Mr Dave Boucher and investigation team on 11 March 2021, SITA submitted additional information on 25 March 2021; and
- 5.4.2.2 Meeting held with SITA officials Mr Vincent Mphaphuli and Mr Freddie Mitchell and investigation team to discuss Section 7(9) notice on 20 January 2022

#### 5.4.3 **Correspondence sent and received**

- 5.4.3.1 Letter to Mr Zukile Nomvete (Mr Nomvete) former Chairperson of SITA Board dated 16 October 2018 requesting information on allegations;
- 5.4.3.2 Response to allegations and evidence provided by Mr Nomvete on 5 November 2018;
- 5.4.3.3 Additional information submitted by SITA on 25 March 2021; and

#### 5.4.4 **Legislation and other prescripts**



- 5.4.4.1 The Constitution of the Republic of South Africa, 1996;
- 5.4.4.2 The Public Finance Management Act, 1999;
- 5.4.4.3 National Treasury Regulations;
- 5.4.4.4 SCM Instruction No 3 of 2016-2017 Prevention and combating abuse in SCM;  
and
- 5.4.4.5 SITA Supply Chain Management Policy date 1 April 2015 (2105 SCM Policy).

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

- 5.4.5.1 Notice in terms of section 7(9) (a) of the Public Protector Act, dated 5 January 2022, issued to Mr Luvuyo Keyise; and
- 5.4.5.2 Notice in terms of section 7(9) (a) of the Public Protector Act, dated 5 January 2022 issued to the former CEO Dr Setumo Mohapi.
- 5.4.5.3 Response received from SITA on the Notice issued in terms of section 7(9) (a) of the Public Protector Act, dated 2 February 2022.

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

- 6.1 **Regarding whether Dr Setumo Mohapi, the former CEO's relationship with Mr Thami Msimango, the Managing Director of CIPAL influenced the appointment of CIPAL through a deviation process without the approval of the National Treasury including the expansion of the scope of work to CIPAL despite National Treasury not supporting such expansions, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.**

### **Common cause issues**

- 6.1.1 It is common cause that SITA did appoint a company called CIPAL for the provision of the Brocade Information Management System, branded by SITA as SITA Library Information Management System (SLIMS).
- 6.1.2 The issue for the Public Protector's determination is whether Dr Setumo Mohapi, the former CEO influenced the appointment of CIPAL through a deviation process without the approval of NT including the expansion of the scope of work to CIPAL despite the NT not supporting such expansions.

### **Issues in dispute**

- 6.1.3 The Complainant alleged that Dr Setumo Mohapi, the former CEO improperly appointed a CIPAL through a deviation process without the approval of NT.
- 6.1.4 The Complainant further argued that Dr Setumo Mohapi, the former CEO's relationship Mr Thami Msimango, the Managing Director of CIPAL improperly influenced appointment of CIPAL and expansion of the scope of work to CIPAL despite the NT not supporting such expansions.
- 6.1.5 The Complainant contended that deviations and expansion of work were suspicious due to the relationship between Dr Setumo Mohapi, the former CEO and Mr Thami Msimango, the Managing Director of CIPAL.
- 6.1.6 On 16 October 2018 the Public Protector requested Mr Zukille Nomvete (Mr Nomvete), the former Chairperson of SITA Board to respond to the allegations and provide documentation and information on these allegations.
- 6.1.7 On 5 November 2018 Mr Nomvete, responded to the allegations and provided documentary evidence which detailed the process that SITA followed in extending the contracts it had with appointing CIPAL.

- 6.1.8 It must be noted that SITA did not submit documents detailing how CIPAL was initially appointed by SITA in 2008. Public Protector’s investigation focused on the appointment of CIPAL at the time the former CEO was employed by SITA, from April 2015 to April 2019.
- 6.1.9 Limited information relating to the past appointments of CIPAL was sourced from the evidence submitted by SITA. The Business Case requesting approval for the extension of the contract between SITA and CIPAL for the Barcode Library Information Management System, branded by SITA as SLIMS, was approved by the former CEO, Mr Setumo Mohapi on 27 March 2018.
- 6.1.10 The Business cases indicated in paragraphs 1 and 2 the following background regarding the CIPAL contracts :
- (a) SITA entered into an initial agreement with CIPAL, from 2008 to 2012;
  - (b) Since 2008 there was two contract extensions :
    - i. 1st extension was from 2012 – 2015 (3yrs)
    - ii. 2nd extension was from July 2015 to June 2018 (3yrs)
  - (c) The business case was for the 3<sup>rd</sup> extension from July 2018 to July 2020
- 6.1.11 The Business Case recommended the approval of the extension of the contract with CIPAL for a period of twenty four (24) months.
- 6.1.12 A letter dated 2 May 2018 was submitted by the SITA’s Head Strategic Sourcing, to the NT requesting a deviation for the expansion of the contract between SITA and CIPAL for RFQ 067-TS-DV-2015 for the Brocade Information Management System, branded by SITA as SLIMS.
- 6.1.13 The aforesaid letter stated *inter alia*, that the SITA entered into the initial contract with CIPAL from 2008 to 2012, and that the ownership of the licenses remains the property of CIPAL.

- 6.1.14 Further that since 2008, there were two contract extensions with CIPAL, namely from 2012 to 2015 and from July 2015 to June 2018.
- 6.1.15 On 30 May 2018 NT communicated with Dr Setumo Mohapi, the former CEO indicating that the reasons provided to extend the contract with CIPAL for an additional twenty four (24) months was due to poor planning and not justified. NT indicated that SITA had ample time to develop and finalise the new strategy for the replacements of the current SLIMS and it supported the extension for only twelve (12) months, and stated that SITA must put in place measures for the replacement of the current SLIMS.
- 6.1.16 On 15 June 2018, SITA again wrote to NT to appeal its decision relating to the correspondence dated 30 May 2018 authorising CIPAL contract extension for only 12 months instead of the 24 months sought.
- 6.1.17 On 19 June 2018, NT responded to SITA indicating to SITA that the initial contract was for a period of three(3) years and that the previous extensions were for a cumulative contract period of six years in the amount of R49 375 359.77 which is a variance of 169.71 % against the original contract value. The current contract was to lapse on 30 June 2018.
- 6.1.18 NT stated that the new contract is for a period of two (2) years from 1 July 2018 to 20 June 2020 in the amount of R18 747 487.20 which is a variance of 64.43% of the original contract value. The cumulative contract variance is 234.14 % and the cumulative contract amount will be R 95 155 571.77.
- 6.1.19 NT stated that the reason provided by SITA for the extension of contract for a 24 month extension period as being cost efficient for the institution based on the quotation by the service provider and the impracticability to migrate millions of records and its associated change management process in 12 months, **was not justifiable and that SITA must prioritise the development of a new**

**strategy. NT further stated that SITA has an obligation to ensure that any contract for goods and services is in accordance with a system of procurement which is fair, equitable, transparent, competitive and cost effective (Own emphasis added).**

- 6.1.20 Following further engagements between SITA and the investigation team, SITA submitted additional information on 25 March 2021, indicating further that in a letter from NT dated 5 August 2019, SITA made a submission to NT on 24 July 2019 requesting deviation for the **appointment of CIPAL as a single source supplier (Own emphasis added).**
- 6.1.21 The reason provided for the deviation was that even though SITA received confirmation from NT on 28 June 2019 that the contract extension was approved for 18 months, the SITA adjudication process for the contract extension still had to be followed in order for the contract to be extended as the contract was expiring on 30 June 2019, it was impossible to obtain the required approvals and extend the contract by the termination date 30 June 2019.
- 6.1.22 NT accepted the reasons for deviation as justifiable and supported the deviation for 18 months, noting that measures should be put in place to finalise the implementation of the new system within the stipulated extension period.
- 6.1.23 According to independent evidence obtained by the investigation team on the Companies and Intellectual Property Commission (CIPC) search on the CIPC e-services website CIPAL Telecommunication, was registered as a company in August 2010.

SITA's Response to the section 7(9) Notice:

- 6.1.24 In its response, SITA submitted the following in respect of the Section 7(9) notice :

- 6.1.24.1 That it noted with concern that the previous Board and Dr Setumo Mohapi, the former CEO have been found not to have taken a decisive action to prevent irregular expenditure. SITA contended that the same Board sanctioned several investigations into these irregularities and the reports were shared with the office of the Public Protector;
- 6.1.24.2 That beyond what has been recommended by the investigations, the Board cannot on its own accord change the findings and recommendations of these reports;
- 6.1.24.3 That the Board shall always act in a manner that is transparent and presume that every employee, including the CEO, to be innocent until they are charged and found guilty. The Board cannot recommend action against any employee, including the CEO, unless an investigation has been conducted and finalized;
- 6.1.24.4 That the question arises as to how the Board can act against Dr Setumo Mohapi, the former CEO when there are no recommendations to this effect, from the investigations that were conducted;
- 6.1.24.5 That SITA followed all the stipulated processes to report and deal with irregular expenditure and in accordance with the Updated Guideline on Irregular Expenditure: Office of The Accountant-General April 2015;
- 6.1.24.6 That the fact that certain employees/individuals are not happy about the outcome of the investigations does not mean that the reports need to change to suit a certain narrative;
- 6.1.24.7 That majority of the cases under investigation were disclosed and investigated by SITA. Most of these matters were presented to SCOPA, AGSA and NT. In addition, SITA also recorded those irregular expenditure in its annual financial statement. Further investigations by the Public Protector on the matters that

have been dealt with in accordance with the legislative prescripts and reported to the relevant authorities renders the current process enigmatic.

6.1.25 The submission above from SITA is noted and is deliberated under issue 2 in this report.

6.1.26 SITA submitted the following in respect of the CIPAL issue :

6.1.26.1 That SITA obtained a National Treasury approval for a single source procurement process. The single source process is applicable in this instance since SITA had already invested in the licences and the deployment of other licence would have come with extra costs to SITA.

6.1.26.2 That Public Protector continued to make a findings against SITA even though all evidence shows that National Treasury approved the variation which is more than 15% or R15 million threshold. SITA submitted that the Public Protector also expects that the contract should be in line with section 217 of the Constitution and 16A3.2 (a) of the Treasury Regulations. The Public Protector should understand that the reason for deviations from normal procurement process are applicable when an organ of the State cannot follow competitive process.

6.1.26.3 That it is not clear from the Public Protector report as to when can one follow a deviation process and still comply with fairness, equitable, transparency, competitiveness and cost effectiveness.

6.1.26.4 That it is SITA's submission that this matter does not constitute irregular expenditure as all formal processes and approvals were obtained from the relevant authority. Until such time that the approval from relevant authority are set aside by the courts, the approvals remain binding and enforceable.

- 6.1.27 The response from SITA is noted however the Public Protector is not persuaded by the submissions made by SITA. The Public Protector has noted that indeed SITA did obtain the relevant approvals from National Treasury and this is not in dispute. The concern however is that even though SITA knew that the variation of the contract far exceeded the 15 % threshold, SITA still sought to justify the extension of the contracts by seeking approvals from the National Treasury for the extension of the contract.
- 6.1.28 Again it should be noted that these extensions were not sought timeously indicating the lack of proper planning, which actually led to the need to the extensions. The investigation highlighted the lack of oversight and acquisition management by SITA regarding the continuous extension of the CIPAL contract.
- 6.1.29 It is further noted from SITA's response to the section 7(9) notice that the reason for SITA to utilise the deviation process because of a single source as SITA had already invested in the licenses and the deployment of other license would have come with extra costs to SITA. However the Public Protector is not convinced by this argument as the evidence indicates that the submission to National Treasury indicated that the reason for the deviation process was that SITA adjudication process could not be followed due to time constraints.
- 6.1.30 Furthermore SITA has not convinced the Public Protector that CIPAL met the requirements for a single source supplier in line with par 23.15 of SITA's SCM policy.



## **Application of relevant legal prescripts**

### **The Constitution**

- 6.1.31 Section 217 of the Constitution is the basis upon which all procurement practices within the public sector are developed. The Constitution demands that when an organ of state contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

### **The Public Finance Management Act, 1999 (PFMA)**

- 6.1.32 The PFMA is the main legal instrument that regulates financial management and procurement in the public service. Its objectives are to regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments.
- 6.1.33 Irregular expenditure is defined *“as expenditure, other than unauthorised expenditure incurred in contravention of or that is not in accordance with a requirement of any applicable legislation”*.
- 6.1.34 Section 51(1)(a) of the PFMA dealing with the general responsibilities of accounting authorities states that
- “(1) An accounting authority for a public entity—*
- (a) must ensure that that public entity has and maintains—*
- (i) effective, efficient and transparent systems of financial and risk management and internal control;*

- (ii) *a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and*
- (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”*

6.1.35 Section 57 of the PFMA entrusts other officials of the entity with responsibilities and provides that an official of a public entity:

- (a) *“must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;*
- (b) *is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official’s area of responsibility;*
- (c) *must take effective and appropriate steps to prevent, within that official’s area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;*
- (d) *must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and*
- (e) *is responsible for the management, including the safe-guarding, of the assets and the management of the liabilities within that official’s area of responsibility.”*

#### National Treasury Regulations

6.1.36 In terms of section 76(4) (c) of the PFMA, National Treasury may make regulations or issue instructions applicable to all institutions to which the PFMA applies, concerning, *inter alia*, the determination of a framework for an

appropriate procurement and provisioning system (supply chain management framework) which is in keeping with the dictates of Section 217(1) of the Constitution.

6.1.37 Expenditure management of *inter alia*, public entities is regulated by Part 4 of the Treasury Regulations.

6.1.38 Regulation 8.1 of Part 4 provides that the accounting officer (authority) of an institution must ensure that internal procedures and internal control measures are in place for payment approval and processing. These internal controls should provide reasonable assurance that all expenditure is necessary, appropriate, paid promptly and is adequately recorded and reported.

6.1.39 In terms of Regulation 8.2, an official of an institution may not spend or commit public money except with the approval of the accounting officer or as properly delegated or authorised officer.

6.1.40 Regulation 16A3.2 (a) provides that a supply chain management system referred to in paragraph 16A.3.1 of the Regulations must be fair, equitable, transparent, competitive and cost effective;

6.1.41 Regulation 16A3.2 (d) provides that:

*“16A 3.2 A supply chain management system referred to in paragraph 16A.3.1 must –*

*(a) be fair, equitable, transparent, competitive and cost effective;*

*(b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);*

(c) *be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 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”.*

6.1.42 National Treasury Regulation 16A6.4 regulates the procurement of goods and services by other means other than competitive bidding. As such National Treasury Practice Note 8 of 2007/2008 regulates the use of emergency processes to procure goods and services. It highlights that “*urgent procurement*” process will only apply where early delivery is of critical importance and the utilisation of the standard procurement process is either impossible, or impractical. An “*emergency procurement*” process will only apply in serious, unexpected and potentially life threatening circumstances which require immediate rectification.

6.1.43 Paragraph 9 of National Treasury instruction SCM Instruction Note 3 of 2016/2017 dealing with expansions or variation of orders states that “*The Accounting Officer/Accounting Authority must ensure that contracts are not varied by more than 20% or R20 million (including VAT) for construction regulation goods, works and services and 15% r R15 million (including VAT) for all other goods and or services of the original contract value.*

6.1.44 Further that any deviation in excess of the prescribed thresholds will only be allowed in exceptional cases subject to prior written approval from the relevant treasury.

6.1.45 National Treasury Supply Chain Management Guide of February 2004, Paragraph 4.7.5 states as following in respect of urgent and emergency cases

*“4.7.5.1 In urgent and emergency cases, an institution may dispense with the invitation of bids and may obtain the required goods, works or services by means of quotations by preferably making use of the database of prospective suppliers, or otherwise in any manner to the best interest of the State.*

*4.7.5.2 Urgent cases are cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. (However, a lack of proper planning should not be constituted as an urgent case.)”( Own emphasis added)*

SCM Instruction No 3 of 2016-2017 Prevention and combating abuse in SCM

6.1.46 Paragraph 8 of SCM Instruction No 3 of 2016-2017 Prevention and combating abuse in SCM states the following in respect of deviations from normal bidding processes

**“ 8. DEVIATION FROM NORMAL BIDDING PROCESS**

8.1 *The Accounting Officer/Accounting Authority must only deviate from inviting competitive bids in cases of emergency and sole supplier status.*

8.2 *An emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is sufficient time to invite competitive bids.*

8.3 *Sole source procurement may occur when there is evidence that only one supplier possesses the unique and singularly available capacity to meet the requirements of the institution.*

8.4 *The Accounting Officer/Accounting Authority must invite as many suppliers as possible and select the preferred supplier using the competitive bid committee system.*

8.5 *Any other deviation will be allowed in exceptional cases subject to the prior written approval from the relevant treasury.”*

**SITA Supply Chain Management Policy dated 01 April 2015 (2015 SCM Policy).**

6.1.47 Paragraph 3 of the 2015 SCM Policy provides that: -

*“General Policy Provisions*

*3.3 The CEO is accountable for compliance to this policy by SITA, while the Board maintains oversight over the implementation thereof. The CPO, supported by the SCM division, is the custodian of this policy and is accountable for the implementation thereof, together with all SITA officials.”*

6.1.48 Paragraph 23.1 of the 2015 SCM Policy provides that: -

*“System of acquisition Management*

*23.1.1 Goods and services shall only be procured in accordance with authorised quotation or bidding processes within threshold values determined by National Treasury. Expenditure on goods and services may only be incurred in terms of an approved budget and within the limits of the amounts appropriated for the different votes in approved budget,”*

6.1.49 Paragraph 23.4.5 of the 2015 SCM Policy provides that: -

*“Competitive Bids (Transaction value above R 500 000)*

*23.4.5.1 As a rule, SITA shall invite competitive bids for all procurement requirements above R500 000.00 except where reasonable and justifiable circumstances dictate a deviation from competitive bidding process.*

*23.4.5.3 Should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, SITA may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the delegated authorities. SITA is required to report within ten (10) working days to the relevant treasury and the Auditor-General all cases where goods and services above the value of R1 million (VAT inclusive) were procured in terms of Treasury Regulation 16A6.4. The report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the prescribed competitive bidding process.”*

6.1.50 Paragraph 23.14 of the 2015 SCM Policy provides that: -

*“Sole Source Procurement*

*23.14.1 Sole source procurement takes place when there is only one supplier for the required services or products (e.g. OEM or Sole distributor or Agent). If a vendor is a sole supplier or agent of a product, the responsible Procurement Manager must furnish substantiation on how that matter was ascertained as well as a letter of confirmation from the manufacturer that the tenderer is the sole supplier or agent. The letter of confirmation or substantiation must be included as part of the adjudication/award submission report to the adjudication and award structure.”*

6.1.51 Paragraph 23.15 of the 2015 SCM Policy provides that: -

*“Single Source Procurement*

*23.15.3 SITA may use single source procurement, only in the following exceptional circumstances:*

*23.15.3.1 Where SITA applied the competitive bidding process, but the bids received were all non-responsive, thus the time required to go out on the same process has elapsed.*

*23.15.3.2 Where SITA can buy under exceptionally advantageous conditions that only arise in the very short term.*

*23.15.3.3 In the event that a change of provider would compel SITA to obtain spare parts or additional equipment or services that are not compatible or interchangeable with existing equipment or services that were obtained from an original provider.*

*23.15.3.4 For tasks that represent a natural continuation of previous work done where appointing another supplier is impractical.*

*23.15.3.5 The goods, services or works to be bought have to be designed by the provider.*

*23.15.3.6 When goods, services or works can only be supplied or rendered by a particular provider and no reasonable alternative or substitute exists.*

*23.15.3.7 There are legislative, technological or safety reasons to restrict purchases to providers who have proven their capacity.”*



*23.15.4 Request for single source procurement must be pre-approved by the CPO before the targeted supplier is engaged through a written motivation submission substantiating reasons for considering single source instead of an open bid process. The CPO may reject the request and recommend for an open bid process.”*

### **Conclusion**

- 6.1.52 The tenure of Dr Setumo Mohapi, the former CEO at SITA was from April 2015 to April 2019. The initial appointment of CIPAL took place in 2008, long before the Dr Setumo Mohapi, former CEO was appointed as the Accounting Officer of SITA. The first extension of the contract in 2012 for a period of three years, also occurred before the former CEO’s appointment.
- 6.1.53 The following extensions of the contract relating to CIPAL took place during the tenure of the former CEO:
- Extension from July 2015 to June 2018; and  
Extension from July 2018 to July 2019.
- 6.1.54 Evidence was not provided by SITA indicating the process followed and the reasons given to extend the CIPAL contract from July 2015 to June 2018. The Public Protector has however noted from the letter dated 19 June 2018 from NT that the extension of the contract was not in line with paragraph 9 of National Treasury instruction SCM Instruction Note 3 of 2016/2017 requiring that the expansion of contract not to exceed the lesser of 15% or 15 million of the original contract price.
- 6.1.55 The extension of the CIPAL contract in 2018 was also not in line with section 217 of the Constitution and Paragraph 16A3.2 (a) and (d) of the Treasury

Regulations in that SITA had failed ensure that the process followed to extend the contracts CIPAL as fair, equitable, transparent, competitive and cost effective and that proper demand management, acquisition management, risk management and regular assessment of supply chain performance was adequate.

- 6.1.56 SITA further failed to ensure that the contract extension was cost effective as required by the Constitution and PFMA section 51(1)(a)(i) and 57(b).
- 6.1.57 From the evidence before the Public Protector, it is clear that SITA was aware that the contract with CIPAL would be coming to an end and only started a flawed procurement process as well as engaging NT on 02 May 2018, 28 days before the expiry of the contract. This shows a clear lack of proper planning and contract management by SITA in contravention of paragraph 4 of National Treasury SCM Guide of February 2004.
- 6.1.58 Despite National Treasury’s disapproving statements on the shortcomings of SITA, SITA again in 2019, 6 (six) days before the expiry of the contract, SITA requested approval from NT to appoint CIPAL as a single source provider for a further eighteen (18) months.
- 6.1.59 The reasons provided by SITA to NT for the approval of CIPAL as a single source supplier was based on the fact that SITA would not be able to obtain the approval from the Adjudication Committee by the expiration of the extended contract.
- 6.1.60 Even though SITA obtained approval from NT for the appointment of CIPAL as a single source supplier, the poor planning and poor contract management by SITA remained evident.
- 6.1.61 No evidence was provided by SITA to indicate that a thorough analysis and testing of the market was conducted, as stipulated in Paragraph 23.15 of the

2015 SCM Policy SITA's SCM policy. It is also unclear whether the information was submitted to NT for it to apply its discretion in approving the single source service provider.

6.1.62 It is however evident that market-related prices were not being tested and secured which resulted in financial losses, and is evident from the high variation prices since the start of the start initial contract. This was not in accordance with the 15% variation as required by NT instruction note 3 of 2016/2017.

6.1.63 SITA submitted during the interview with the investigation team on 11 March 2021 that the former CEO did know Mr Thami Msimango. The Public Protector is of the view that even though Dr Setumo Mohapi, the former CEO and Mr Thami Msimango may have known each other, CIPAL had already a contract with SITA prior to the former CEO's appointment at SITA. There is no evidence indicating that their acquaintance to each other was the reason SITA decided to further extend the contracts.

6.2 **Regarding whether the SITA Board failed to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expenditure incurred relating to the various contracts, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.**

Common cause

6.2.1 It is common cause that the following service providers did supply goods and services to SITA under different contracts and during different contract periods:

6.2.1.1 Contracts relating to the Access Data Links were awarded to the following service providers:

- (a) Ethekwini;
- (b) Halimisa;
- (c) Neotel;
- (d) Telkom;
- (e) Ubuntu;
- (f) Wispa;
- (g) Liquid Telecoms; and
- (h) Internet Solutions.

- 6.2.1.2 Support of SAPS STRLAB systems for 24 hours was provided by Labware Solutions;
  - 6.2.1.3 Support and Maintenance of Audio Visual and Video Conferencing systems was provided by CHM Vuwani Computer Solutions;
  - 6.2.1.4 Support and maintenance of switches and supply of diesel was provided by Infrsol;
  - 6.2.1.5 Upgrading of SITA Next Generation Network (NGN) was provided by BBI;
  - 6.2.1.6 Provision of Financial Modelling service was provided by Meniko Records Management Services;
  - 6.2.1.7 Implementation of the Enterprise and Supplier Development Strategy (ESD) was provided by Enterprise Room;
  - 6.2.1.8 Dynatrace Application Performance Monitoring Technology was provided by Mediro Belay Managed Services; and
  - 6.2.1.9 Broad Session Strategy was provided by CEO of A2D24
- 6.2.2 The issue for the Public Protector’s determination is whether Dr Setumo Mohapi, the former CEO was responsible for the irregular expenditure incurred, relating to the various contracts, and if so, whether the SITA Board failed to hold Dr Setumo Mohapi, the former CEO accountable.

Issues in dispute

- 6.2.3 The Complainant alleged that the SITA Board failed to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expenditure incurred relating to the various contracts mentioned above.
- 6.2.4 In response to the allegations the SITA Board responded on 5 November 2018 to the Public Protector as follows :
- 6.2.4.1 That SITA’s processes to deal with irregular expenditure and deviations to supply chain regulations are managed internally through a Loss Control Committee (LCC) and scrutinised annually by the Auditor General(AG) and reported on at both the Parliamentary Portfolio Committee and SCOPA;
- 6.2.4.2 That the SITA Board deals with irregular expenditure through the Loss Control report submitted to the Audit and Risk Committee of the Board, on a quarterly basis, and denied the allegation that the Board failed to hold Dr Setumo Mohapi, the CEO accountable; and
- 6.2.4.3 That all cases of irregular expenditure are investigated by the Loss Control Committee and necessary disciplinary action instituted, prior to the expenditure being condoned by the SITA Board.
- 6.2.5 In addition to the response, SITA submitted documentation on the each of the contracts, including the Access Data Links contracts, the response of which is submitted below.

**Access Data Links by following service providers:**

- (a) Ethekwini;
- (b) Halimisa;

- (c) Neotel;
- (d) Telkom;
- (e) Ubuntu;
- (f) Wispa;
- (g) Liquid Telecoms; and
- (h) Internet Solutions.

6.2.6 SITA submitted that valid contracts were in place for each of the suppliers for the period 1 October 2017 to 31 March 2018.

6.2.7 SITA further submitted that the above contracts were found to be irregular due to the weak contract management process in its Networking Division that resulted in the continued use of data line and access link services after the expiry of the contract on 31 March 2018.

6.2.8 SITA submitted that the process of regularising the situation is underway and that the initial contracts pre-dates the appointment of Dr Setumo Mohapi, the former CEO.

6.2.9 According to the investigation report by SITA's Internal Audit (IA), concerns were raised by Management around the continuous irregular expenditure being made to various service providers for the provision of access links, while no service contracts were in place and/or service contracts had expired. The information from the IA investigation report indicated the following :

6.2.9.1 That during 2007 SITA undertook a process through RFB 599 to establish a panel of service providers to provide access transmission connectivity and value adds on the Government Common Core Network (NGN) to SITA on an "*as and when required*" basis for a period of five (5) years, from 16 November 2007 to 15 November 2012;

6.2.9.2 That according to the resolution of the Recommendation Committee (RC) dated 9 October 2007, the following service providers were accredited to provide access transmission connectivity and value adds in terms of RFB 599:

1. Haimsa IT CC;
2. Dimension Data (Pty) Ltd;
3. Neotel (Pty) Ltd;
4. Regro (Pty) Ltd;
5. Air Communications (Pty) Ltd;
6. Verison (Pty) Ltd
7. Telkom SA (SOC) Ltd;
8. SourceComm (Pty) Ltd;
9. Limitech (Pty) Ltd;
10. Computech (Pty) Ltd; and
11. MTN (Pty) Ltd.

6.2.9.3 That according to Ms Oosthuizen, the Consultant for Infrastructure Provisioning, after the expiry of RFB 599, Converged Communications was verbally informed by Mr Johnson Dyodo, the Divisional Head, Demand Management, that RFB 599 is being extended on a month to month basis until the replacement tender was in place;

6.2.9.4 That the same service providers under RFB 599 were therefore re-appointed to continue with the process of access connectivity services to SITAs customers until March 2014;

6.2.9.5 That after the expiry of RFB 599 in March 2014 and following a tender process RFB 1072/2013 was established and came into effect on 1 April 2014 for a period of five (5) years until 31 March 2019;

6.2.9.6 That despite the establishment of RFB 1072/2013, the following service providers who were accredited on RFB 599 continued to provide access links based on purchase orders that were created in terms of RFB 599: (*where the irregular expenditure has been identified*);

1. Haimsa IT CC;
2. eThekweni Municipality;
3. Ubuntu Technology (Pty) Ltd;
4. Wispa (Pty) Ltd;
5. Liquid Telecommunications (Pty) Ltd;
6. Vodacom (Pty) Ltd
7. Telkom SA (SOC) Ltd; and
8. Internet Solutions (Pty) Ltd.

6.2.9.7 That it should be noted that since the establishment of RFB 599 and when RFB 1072/2013 came into effect, the practice was that contracts were not established with the various service providers that provided access links to SITA;

6.2.9.8 That the approach which was taken by Supply Chain Management (SCM) during this period was that awards below the amount of R500K (VAT inclusive), did not necessitate the conclusion of contracts, hence standard purchase orders were processed and issued to the particular service providers for access data line installations, which also included the monthly rental of these data lines for the awarded period (i.e. either 1 year or 3 years);

6.2.9.9 That similar to the approach taken during the period in which RFB 599 was in place, in the initial stages of RFB 1072/2013, service providers were paid on delivery of their respective invoices. The process followed was that on receipt of the particular invoice, Lines of Business (LoB), Converged Communications,



compiled a business case which was approved by the Head of Department and was submitted to SCM with the invoice to be processed;

6.2.9.10 That after SCM processed and approved the purchase orders, these invoices were signed and approved by LOB and processed for payment by SITA Finance who finally processed the payment;

6.2.9.11 That this procedure was followed with all service providers who were providing access links to SITA since the establishment of RFB 599 and when RFB 1072/2013 came into effect until February 2017, when Mr Ernie Matolo, Senior Manager, Payables indicated that the payments processed constitute irregular expenditure;

6.2.9.12 That according to Ms Christel Oosthuizen, the basis on which it was claimed by Finance was that the payments to the service providers were irregular, as the contract validity period of RFB 599, on which the various service providers were appointed, expired even though the original purchase orders still made provision for payments on the remaining lines for the monthly rental;

6.2.9.13 That in addition, the approved amounts were also exceeded in some instances, due to SITA clients requesting access line upgrades which resulted in higher costs than what was initially awarded to the service provider;

6.2.9.14 That subsequent meetings to regularise the payments to service providers were held between LoB, SCM and Finance to work out a way forward to regularise the payments to service providers as the services could not be terminated;

6.2.9.15 That on 9 March 2017, during a meeting with respective representatives, it was resolved that a request must be made to conclude MSAs with each of the panel members under RFB 1072/2013, S for which payments had been identified as being irregular expenditure, and to obtain approval for payment of the irregular

- expenditure for each of the service providers currently rendering access links to SITA, until the MSAs were in place and that it was estimated that the MSAs with the service providers would be in place by the end of July 2017;
- 6.2.9.16 That on 7 April 2017, Ms Rudzani Rasikhinya, former Chief Financial Officer, returned the business case to request approval of the irregular expenditure on the basis that irregular expenditure cannot be approved in advance;
- 6.2.9.17 That the business case to enter into an MSA with the service providers who were providing the access links to SITA for a period of one (1) year was compiled, approved and submitted to SCM on 9 June 2017;
- 6.2.9.18 That an Executive Procurement Committee (EPC) submission was compiled by Ms Mogogodi Dioka, Head of Department, Basic Sourcing and the submission was tabled at the EPC on 1 August 2017, and that after much deliberation it was returned to SCM for the purpose of obtaining additional/more information. The submission was re-tabled at the EPC on 7 August 2017;
- 6.2.9.19 That according to Ms Christel Oosthuizen, Ms Dioka indicated that approval from National Treasury needs to be obtained as the process to establish MSAs with the various service providers is a deviation from the competitive sourcing process;
- 6.2.9.20 That on 29 August 2017, SCM received notification that the pre-approval was not granted by National Treasury;
- 6.2.9.21 That despite the deviation not being approved by National Treasury, the EPC approved the establishment of MSAs with the various suppliers for a period of six (6) months, on 21 September 2017, as follows:

Name of Service Provider	Amount (R)
Haimsa IT CC	224,217,79
eThekweni Municipality	898,438.08
Ubuntu Technology (Pty) Ltd	1,189,583.05
Wispa (Pty) Ltd	6,398,136.00
Liquid Telecommunications (Pty) Ltd	11,887060.39
Vodacom (Pty) Ltd	2,393,120.62
Telkom SA (SOC) Ltd	10,194,779.23
Internet Solutions (Pty) Ltd	1,759,056.48
<b>Total</b>	<b>34,944,391.61</b>

- 6.2.9.22 That based on the approval from the EPC, MSAs were entered into with the respective service providers commencing on 1 October 2017 until 31 March 2018;
- 6.2.9.23 That the objective of the six (6) month approval was to regularise the payments to the various service providers and to provide time to place the access links that had already been provided to SITA by the service providers, out on tender (RFQ 1840-1072-2017) and appoint service providers to provide the required access links.
- 6.2.9.24 That the process of concluding contracts with services providers under RFQ 1840-1072-2017 has been delayed and that as a result this is costing SITA substantially more for the access lines as rates are still being paid to the current service providers as determined in the expired MSAs.
- 6.2.9.25 This was illustrated in the following tables in the IA report that indicated the calculations of the irregular expenditure since the expiry on 31 March 2017 of the MSAs are as follows :

Supplier name	Irregular expenditure for the year 2018/2019 (VAT incl) (R)	Irregular expenditure for the year 2019/2020 (VAT incl) (R)	Total Irregular expenditure (VAT incl) (R)
Haimsa IT CC	364,788	193,066	557,894
Wispa (Pty) Ltd	7,241,700	3,462,000	10,703,700
Internet Solutions (Pty) Ltd	2,810,296	1,497,270	4,307,566
Vodacom (Pty) Ltd	3,669,687	1,876,311	5,545,998
Ubuntu Technology (Pty) Ltd	2,897,188	2,940,581	5,837,770
Liquid Telecommunications (Pty) Ltd	19,056,177	9,656,415	28,712,592
Telkom SA (SOC) Ltd	14,726 320	7,456,368	22,182,688
eThekwini Municipality	1,323,822	661,901	1,985,731
Totals	52,089,980	27,743,921	79,833,901

6.2.9.26 Based on the calculations by the IA, since the expiry of the MSAs on 31 March 2018, SITA has potentially paid on average R4, 933, 656.88 per month more for the access lines than the bid prices offered in RFQ 1840-1072-2017 and therefore paid to date a total amount of R83, 872,166.96 more for the access links as a result of the delays (seventeen (17) months) in concluding RFQ 1840-1072-2017.

6.2.9.27 The IA report made the following conclusions:

***RFQ 1840-1072-2017 has taken an unacceptable amount of time to be finalised***

(a) That RFQ 1840-1072-2017 had taken a considerable amount of time to be finalised;

(b) That the initial business case that triggered the publishing of RFQ 1840-1072-2017 was approved on 19 January 2018, and that the BPC made the

award on 21 June 2018. However, to date, the contracts with the respective service providers have not been finalised;

(c) That whilst it was appreciated that the access link allocations and pricing may be a complicated task, it is not a plausible excuse that the contracting should take more than seventeen (17) months to complete;

(d) That in this respect, it was noted that Ms Ravele, Head of Department: Strategic Sourcing (Acting), took disciplinary action against Mr Chauke for causing delays in the finalisation of RFQ 1840-1072-2017. However, it was considered not plausible that Mr Chauke is the only cause for delay and that appropriate management intervention was required when the delays occurred;

***Delays in finalising RFQ 1840-1072-2017 caused irregular expenditure amounting to R79, 833,901 (VAT incl.) was incurred***

(e) That the irregular expenditure, since the MSAs with the current service providers expired on 31 March 2018, escalated to R79, 833,901.00 (VAT incl.)

***Delays in implementing RFQ 1840-1072-2017 resulted in possible fruitless and wasteful expenditure***

(f) That IA was of the opinion that the delay in concluding the contracts with the service providers in terms of RFQ 1840-1072-2017 is costing SITA substantially more for the same access links for which SITA is still currently paying to the current service providers as determined in the expired MSAs.

(g) That the potential saving associated with the above is estimated to be R4, 933,656.88 per month or approximately R83, 872,166.96 (for approximately seventeen (17) months) in concluding RFQ 1840-1072-2017.

6.2.9.28 The following recommendations were made based on the findings and conclusions of the IA investigation :

***Contracts with the approved service providers in respect of RFQ 1840-1072-2017 must urgently be concluded and implemented***

- (aa) That the Executive, Supply Chain Management must, as a matter of urgency, ensure that the contracts with the various services providers for the access links are concluded and implemented as it is costing SITA significantly more to pay the line rentals to the current service providers;
- (bb) That the Executive, Supply Chain Management must review the process followed to appoint the service providers for access links (RFQ 1840-1072-2017) to determine whether the delays caused in contracting with the approved bidders are acceptable as explained by Ms Ravele;
- (cc) That in this respect, whilst it was noted that disciplinary action was taken against Mr Chauke for causing a delay in the finalisation of RFQ 1840-1072-2017, it was the IA's opinion that earlier intervention from management should have taken place;
- (dd) That although, multiple business units within SITA (LoB, Legal Services and SCM) dealt with the procurement process of RFQ 1840-1072-2017, it is the IA's opinion that the bulk of the delay occurred within the SCM environment and in particular the contracting with the various service providers;

- (ee) That the Executive, Supply Chain Management, in consultation with the Head of Department, Converged Communications, should also investigate whether the procurement process in respect of RFQ 1840-1072-2019 is the most effective and efficient process as this particular RFQ dealt only with two hundred and one (201) access links while SITA is administrating approximately six thousand (6000) access links, for which similar procurement requests will be made when the contracts with the current service providers expire;
- (ff) That in this respect, it is important to note that the nature of the access lines are fluid as SITA clients may, at any time, request to cancel, upgrade or add access links when their business requirement change while such changes cannot be taking months to approve as it may result in penalties for SITA;

***Irregular expenditure must be appropriately reported***

- (gg) That the Chief Financial Officer must take the required steps to ensure that the irregular expenditure of approximately R79,833,901.00 (VAT Incl.), as identified in this report, is submitted to the relevant authority for condonation and that this be dealt with in terms of the National Treasury requirements;
- (hh) That in this respect, SITA's Finance Division should ensure that the irregular expenditure is correctly calculated and that all irregular expenditure is taken into account for reporting purposes;

***Legal opinion should be obtained to determine whether the potential savings constitutes fruitless and wasteful expenditure***

(ii) That the loss of potential savings totalling approximately R83,872,166.96 up to December 2019, as identified in this report, should be subject to a legal opinion to determine whether this loss constitutes fruitless and wasteful expenditure and if so, that this be dealt with in terms of National Treasury requirements.

6.2.10 During the meeting held with SITA and the investigation team on 11 March 2021, SITA indicated that the irregular expenditure in respect of the Access Data Links is ongoing.

6.2.11 SITA provided the following information relating to the continued irregular expenditure :



Date of Detection	Supplier name	Continuing and reported in Q3 ended 31-Dec-20 (R)	Continuing in the month ended 31-Jan-2021 (R)	Continuing in the month ended 29-Feb-2021 (R)	Total incurred in 2020-2021 (R)	Total Irregular expenditure Amount(R)	Description of irregular expenditure
Apr-18	Haimsa IT (IE00151)	60 864	20 288	20 288	294 546	1 049 546	<p>Contracts with suppliers expired on 31-Mar-18. Irregular expenditure has been incurred due to the continued use of access links services without valid contracts in place.</p> <p>Root cause Volume due to management of data lines on a per site level. 5 220 data lines as at December 2019. Contracting phase to replace the links took a very long time due to price discrepancies that had to be addressed through re-engaging the adjudication process as well as negotiations of contractual terms and service levels.</p>
	Wispa (IE00150)	1 210 500	372 500	372 500	4 754 500	18 569 700	
	Internet Solutions (IE00149)	728 754	235 289	235 289	2 631 283	8 436 120	
	Vodacom (IE00152)	1 962 465	311 860	311 860	4 348 821	11 694 628	
	Ubuntu Technologies (IE00153)	2 585 798	879 633	879 633	9 431 761	20 430 926	
	Liquid Telecommunications (IE00154)	3 768 238	1 552 923	1 552 923	14 382 384	52 797 595	

	Telkom (IE00156)	3 925 290	1 308 430	1 308 430	14 392 729	44 228 891	
	eThekwini Municipality (IE00159)	330 955	110 318	110 318	1 213 501	3 861 142	
<b>Mar-19</b>	Vodacom (DHA) (IE00194)	223 343	74 448	74 448	818 924	1 786 482	Continued use of access links services after the expiry of the contract in Feb-19.
<b>Jul-19</b>	Liquid Telecommunications (SA) (Pty) Ltd (IE00204)	10 763	3 588	3 588	39 465	119 460	Incorrect application of the emergency procurement process to appoint a service provider for the installation and rental of a dataline on behalf of the client (Office of the Public Service Commission). LoB received verbal approval from the former CEO to procure the service via the emergency procurement process. The supplier was engaged and services rendered from 01 Aug 2018. A business case for emergency procurement was presented to the CFO in March 2019 where it was rejected due to insufficient motivation for the use of the emergency procurement process.
<b>Nov-19</b>	Vodacom (IE00222)	42 657	14 219	14 219	156 410	319 390	Irregular expenditure incurred due to the rental of data line services (GPRS APN) from Vodacom without a valid contract in place. LoB has indicated that requests were sent to SCM on several occasions to convert evergreen contracts to term contracts. This was never attended to due to staff turnover in the SCM environment.
<b>Apr-20</b>	Dark Fibre Africa	40 674	13 558	13 558	149 138	162 696	Continued use of access links after the approved RFQ expired in January 2020.

## **Support of SAPS STRLAB systems for 24 hours by Labware Solutions**

- 6.2.12 SITA submitted in its response that South African Police Service (SAPS) application support was critical on crime exhibit profiling.
- 6.2.13 Further that irregular expenditure amounting to R758 291 00 was incurred as a result of the continued monthly use of the Labware Consultant's services for the support of the DE-STRLab System on behalf of SAPS from April 2017 to April 2018 without a valid contract in place.
- 6.2.14 According to the evidence submitted by SITA, the LCC made a submission indicating that DE-STRLab is a forensic science service information management system which was customised by a Mr Stewart Allen, a former SITA employee who was the only person from SITA maintaining and supporting the system for SAPS.
- 6.2.15 During 2014, an additional three (3) resources were appointed to maintain and support the system. Mr Stewart Allen resigned at the end of July 2015 and started working for Labware. The remaining 3 team members had by this time only acquired functional application support skills and not the required technical expertise to fulfil the outstanding requests for service from the client.
- 6.2.16 The submission further detailed the sequence of events as follows :

Date	Event	Responsible Official	Designation
01-Apr-16 to 31-Mar-17	Contract DV 532-AM-2015 between Labware and SITA for the support of the DE-STRLab system.	Contract owner Susan Meyer	Former Senior Manager
13-Dec-16	Business case compiled for the extension of DV 532-AM-2015 and sent to Senior manager for review.	Samuel Mophatlane	Senior Software Developer
15-Dec-16	Business case reviewed and amended by Senior manager. No further evidence provided (neither emails nor approved BC) to indicate when the request was sent to SCM.	Susan Meyer	Former Senior Manager
06-Mar-17	SCM requests quote from supplier.	Weziwe Pityane	SCM official
09-Mar-17	Line of Business (LoB) follows up with SCM whether quote was received. Weziwe then informs LoB that she has handed the matter over to another SCM official.	Portia Mbhombi	SCM official
30-Mar-17	LoB requests feedback from SCM regarding NT approval and is informed that it was too late to do the submission to NT. Advised LOB to do a sole source procurement.	Weziwe Pityane	SCM official

10-Apr-17	Letter sent to National Treasury requesting approval to extend the contract.	SCM	
12-Apr-17	Response from National Treasury received rejecting the request as an extension of an expired contract is not possible.	National Treasury	
21-Apr-17 to 30-May-17	Business case compiled and approved up to Acting Executive level. DCEO office returned BC as DCEO's last day was 30 May 2017 and no business cases were being considered.	Office of DCEO Mboneli Dlangisa	DCEO
06-Jun-17	Meeting held with SAPS and Labware where it was decided that Labware will assist SITA by continuing to support the system whilst the contract issues were being dealt with.	Susan Meyer	SITA Representative Senior Manager
13-Jun-17 to 31-Jul-17	<b>Business case compiled and approved by CEO for the appointment of Labware as the sole supplier for support of the DE-STRLab system (<i>Own emphasis added</i>)</b>	<b>Samuel Mophatlane</b>	<b>Senior Software Developer</b>
04-Aug-17	SCM received approved business case for allocation to relevant SCM official.	Itumeleng Motaung and Audrey Baloyi	SCM officials
29-Aug-17	Audrey Baloyi sends request to Belinda Venter from Core Focus to assign request.	SCM	
31-Aug-17	Max (Romeo) Chigawa requests changes to Bid spec document and further info regarding the single source supplier.	SCM	
01-Sep-17	LoB requests meeting with SCM to discuss matter	Samuel Mophatlane	Senior Software Developer
01-Sep-17 to 13-Sep-17	SCM attempts to assign the request to several officials before it is finally assigned on 13-Sep-17.	Thato Meso	SCM official
13-Sep-17	Thato Meso communicates with LOB that she has been assigned the request and that Thembi Gumede will no longer be working on it.		
14-Sep-17	Samuel requested status update to provide feedback at the SAPS meeting. Thato stated that the pre-approval by the Executive for the deviation was compiled and was being reviewed by her managers.		
18-Sep-17	Email sent to LoB requesting info on how the irregular expenditure being incurred was being dealt with. Response below:	Samuel Mophatlane	Senior Software Developer

Thato

The reason for this email was to show that there is something that client want service provider to render and i Told them I cannot ask the service provider to do that as there is no contract in place so the problem was I Kept quiet and not respond to their email. Service Provider has a contract with SAPS currently so he is assisting Them but not for SITA to pay for that, so unfortunately on this one service provider informed that the request is Huge and can only be done with contract in place.

Regards  
Thabang

13-Oct-17	Specific instructions and assistance from SCM with regard to the preparation of the Bid Spec docs.	Thato Meso	SCM official
16-Oct-17	Bid published with closing date of 30-Oct-17.	Thato Meso	SCM official
14-Dec-17	2 year costing model sent to Labware.	Thato Meso	SCM official
10-Jan-18	LOB requested updated project plan from SCM	Thato Meso	SCM official
18-Jan-18	Feedback sent to LoB that the supplier quoted an amount above budget.	Thato Meso	SCM official
19-Jan-18	Project plan sent to LoB indicating expected completion of contracting in February 2018 and requested LoB to attend price negotiations on 23 Jan 2018.	Thato Meso	SCM official
31-Jan-18	SCM informed LoB of positive outcome of price negotiations and that the expected date of submission to MPC was 12 Feb 2018.	Thato Meso	SCM official
19-Feb-18; 06-Mar-18	LoB informed that the submission to MPC will be on 26 Feb 2018 and then on 07 Mar 2018	Thato Meso	SCM official
13-Mar-18	Email sent to Vernon John requesting clarity on comment made on BC which was requested by MPC upon submission on 12 March 2018.	Thato Meso	SCM official
10-May-18	Email to CEO indicating that contract has not as yet been awarded due to an ongoing investigation requested by MPC.	Walter Siwele	LoB
15-May-18	Email indicating that the Internal Audit memo regarding the investigation will be submitted to MPC on 15 May 2018.	Dave Boucher	Internal Audit
17-May-18	Award letter to Labware signed by SCM HoD.	Mogogodi Dioka	SCM HoD
17-Sep-18	BC for the payment of IE approved. Payment not yet done.		

6.2.17 The LCC submitted that the matter was discussed with Mr Samuel Mophatlane, the Senior Software Developer, who indicated that Col. Henop from SAPS (who is no longer with SAPS) insisted that the system was of such importance, that it was critical that the work should continue.

- 6.2.18 Further that Mr Samuel Mophatlane mentioned that although he was not at the meeting in June 2017, it was understood that Labware would assist SITA to fulfil the requests for service, but it was not expected that SITA would receive the bill for such services. Upon receiving the award and when contracting, the supplier refused to sign the contract without confirmation that they will receive payment for all the hours expended outside of contract. The contract to this date is still not finalised.
- 6.2.19 The LCC concluded that the facts above indicate that there was no sense of urgency in the SCM environment to fulfil the request of LoB.
- 6.2.20 It was recommended that disciplinary action as determined by the LCC be instituted against the responsible officials still in the employ of SITA namely :
- i) Weziwe Pityane: SCM official: For negligence and/or dereliction of duty for not requesting National Treasury approval for the extension of the contract before expiry.
  - ii) Marvin Sebela: Acting HoD - SCM Acquisitions (former): For negligence and/or dereliction of duty for not ensuring in a supervisory role that adequate processes were in place within the environment to provide an efficient service.
- 6.2.21 SITA further submitted that at the end of March 2019, there were still funds that were available on the contract, and all that was extended was the term (no additional funds required) and this is running until 31 March 2021 and that according to SITA there was no need for the matter to go to National Treasury.

**Support and Maintenance of Audio Visual and Video Conferencing systems by CHM Vuwani Computer Solutions**

- 6.2.22 SITA submitted that the irregular expenditure arose from the continued procurement of services from the service provider, in respect of SAPS Attachmate supreme contract that expired on 30 September 2014.

- 6.2.23 According to the Business Case, compiled in April 2016 to “ *Request to approve payment of irregular expenditure towards CHM VUWANI for maintenance services provided to SAPS Micro Focus*”, invoices were received from CHM Vuwani for the period October 2014 to 30 September 2015 for a total amount of R6 973 841.70 (VAT inclusive).
- 6.2.24 The Business Case stated the following in respect of the background information that led to the irregular expenditure :
- 6.2.24.1 That there has been a historical delay around the annual renewal of the Attachmate maintenance and Technical Support Subscription (MTS) program which has a due date of 1st October of each year for the South African Police Service;
- 6.2.24.2 That during the renewal discussion for the period 2014/15 between SAPS and SITA LOB, there were numerous delays and the final agreement to continue with a new three (3) year agreement was only approved by SAPS in December 2014. This was already three (3) months past the previous contract period which lapsed on 30 September 2014;
- 6.2.24.3 That SITA SCM published the replacement bid (RFB 1300/2014) In January 2015 with the aim to have it resolved within a couple of months’ time. The contract for the aforementioned bid was only finalised and duly signed on 22 September 2015. SITA BPA (Blanket Purchase Agreement) number 327224 was approved and issued to the awarded service provider (VC IT Insight (Pty) Ltd.) on 13 October 2015 for a total amount of R117,409,050.00 (VAT exclusive);
- 6.2.24.4 That during the non-contractual period, 1 October 2014 up until 30 September 2015, the previous service provider, CHM Vuwani continued to deliver the MTS program based on the assumption that a renewal contract was imminent as per the email that was sent to them in December 2014 to indicate that the SAPS have approved a new three (3) year contract term.

- 6.2.24.5 That the cost associated with this MTS program needs to be recovered by Attachmate so as to ensure that they are compensated for their part of honouring the MTS program in place at SAPS. Verbal agreements between the client (SAPS) and the OEM took place requesting that the MTS Services should continue due to the critical importance of ongoing service delivery between the client and the South African public, also ensuring the availability of the onsite resources.
- 6.2.24.6 That a point also to consider is that the outgoing MTS agreement between Attachmate and SAPS (as the end-user) stipulates certain clauses with regards to the cancellation of an existing MTS agreement. None of the clauses that cover the termination of the agreement were sent to Attachmate, thus based on this notion (and the point mentioned above) they continued to provide the MTS program along with their onsite support personal being onsite at the SAPS.
- 6.2.24.7 That Attachmate by way of their reseller have submitted a further discounted invoice (payable by 30 October 2015) in order to assist SITA LOB in recovering this cost from SAPS. The discounted invoice is for an amount of R6, 973,841.70 (VAT inclusive), which is significantly lower than the normal price of R20, 194,997.40 (VAT inclusive) which is the amount due for the MTS program delivered during the 2014/2015 period.
- 6.2.24.8 That Attachmate made this concession based on the following conditions:
- A. That a SITA order for an amount of R58,107,226.14 (1st year support and maintenance of the 3 year contract period) be issued to the newly awarded partner for RFB 1300/2014, VC IT Insight (Pty) Ltd. by end of business on 22 September 2015;
- The SITA BPA for the full contract amount of R117, 409,050.00 (VAT exclusive) was issued to the aforementioned awarded partner on 13 October 2015;



B. That the discounted invoice issued to SITA by CHM Vuwani for a total value of R6,973,841.70 (VAT inclusive) for MTS services rendered to SAPS from 1st October 2014 to 30th September 2015 be paid by latest 30 October 2015.

6.2.24.9 That if the above conditions were not to be met, Attachmate will instruct CHM Vuwani to invoice SITA for the full amount due for the SAPS back maintenance period i.e. R20, 194,997.40 (VAT inclusive). The SITA EXCO has resolved that a full forensic audit be executed on this matter. The audit is still not finalised and LoB will be informed to make available all correspondence that took place if requested.

6.2.24.10 That there was a legal obligation on SITA to pay the service provider for services rendered.

6.2.25 SITA submitted further that the LCC recommended disciplinary action against Ms Lindelwa Komna, and further that an open tender process (RFB 1178) was approved for 3 years from December 2014 to November 2017.

**Support and maintenance of switches and supply of diesel by Infrsol**

6.2.26 SITA submitted that the irregular expenditure was due to deviation from SITA procurement process in respect of acquisition of diesel for DATA center generators, as a result of the absence of a maintenance contract.

6.2.27 The critical nature of the service being provided that the emergency procurement process be followed. The irregularity was condoned by the SITA Board in January 2018 for an amount of R166 291 00.

6.2.28 Further irregular expenditure due to the continued services after the contract in respect of the provision of infrastructure maintenance services for SAPS had expired.

6.2.29 Payment for the irregular expenditure did not follow the set processes as the memorandum by LOB requesting approval for the payment was approved by the Senior Manager of the said LOB.

**Upgrading of SITA Next Generation Network (NGN) by BBI**

6.2.30 SITA submitted that the irregular expenditure was due to the broad band upgrades that were not properly approved by the delegated authority as a result of inadequate contract management.

6.2.31 Further that following a request from the Loss Control Committee, an investigation was initiated by SITA's Internal Audit Committee into the process that was followed to source additional services to the existing contract between SITA and Broadband Infracore SOC Ltd (BBI) that resulted in irregular expenditure of R100 747 331.00 as reported in SITA's annual financial statements for the year 2016/2017.

6.2.32 According to the findings of the investigation report SITA entered into a MSA with BBI for the provision of core transmission services for its Next Generation Network (NGN) commencing on 1 August 2014 and terminating on 31 July 2024, based on an approval on 31 July 2014 by the SITA Board.

6.2.33 Schedule 4 of the MSA outlined, in detail, the service migration plan which entailed the migration of the services from the previous service provider, Neotel (Pty) Ltd to BBI.

6.2.34 In this respect, it was noted that SITA requires fifty four (54) NGN layer 2 or Ethernet based services terminating at twenty five (25) SITA PoPs.

6.2.35 According to the migration plan, the services were to be migrated onto the BBI network, without SITA NGN interruption, for a period of approximately two (2) years.

- 6.2.36 The fifty four (54) services were clearly listed in the MSA as the pricing was largely based on these services.
- 6.2.37 The contract value in respect of the MSA was negotiated at R807 949 452.00 (VAT Excl.) and was payable as follows:
- 6.2.37.1 In terms of the MSA, provision was made for a 10% increase in bandwidth annually for the first three (3) years and from year four (4) an annual cumulative increase in bandwidth of 10 – 15%;
- 6.2.37.2 Approval for the new service between Bloemfontein and Cape Town was not obtained from the relevant authority prior to the implementation thereof. The MSA between BBI and SITA was approved in accordance with the SITA Delegation of Authority by the SITA Board and any additional costs over and above the approved amount of R807 949 452.00 (VAT Excl.) must be authorised by the SITA Board;
- 6.2.37.3 Approval for the new service between Bloemfontein and Cape Town that was requested by Mr Durant on 11 August 2014 was not obtained from the Board prior to the implementation thereof;
- 6.2.37.4 In terms of the Updated Guidelines on Irregular Expenditure that was issued by National Treasury in April 2015, the relevant authority is “*the person or institution whose approval would have been required prior to entering into the transaction or incurring such expenditure or the institution responsible for the relevant legislation*”; and
- 6.2.37.5 The new service between Bloemfontein and Cape Town was implemented at a total cost to SITA of R15 586 410.00 (Vat Excl.) being an additional cost over and above the approved amount of R807 949 452.00 (VAT Excl.).
- 6.2.38 Based on our enquiries it appears that the service between Bloemfontein and Cape Town was a critical need on the government’s core network to meet operational

requirements and SITA received the required service from BBI. No loss has therefore been suffered by SITA as a result of the irregular expenditure in relation to the new service between Bloemfontein and Cape Town.

- 6.2.39 Due to the fact that approval was not obtained from the Board prior to the commencement of the service, the amount paid to BBI in respect of the new service is considered to be irregular expenditure.
- 6.2.40 It was the view of the SITA's Internal Audit Committee that Mr Durant was accountable for causing the irregular expenditure to occur as he failed to obtain approval from the SITA Board prior to committing SITA to BBI for the new service between Bloemfontein and Cape Town. However, Mr Durant left SITA's employ during March 2018.
- 6.2.41 SITA's Internal Audit Committee found that from the business cases reviewed pertaining to Upgrade 2 and 3, that the business cases for Upgrade 2 and 3 were both approved by Ms Komna while she was not delegated to approve amendments to the MSA between SITA and BBI.
- 6.2.42 Ms Komna's explanation that it was her understanding that the upgrades were still under the contract value, is not plausible as it was inevitable that the additional costs for the upgrades would cause SITA to spend more than the approved amount which would result in additional irregular expenditure.
- 6.2.43 Whilst it was the SITA's Internal Audit Committee opinion that Ms Komna is accountable for incurring irregular expenditure, they were of the view that the total amount of R100 747 331.00 as reported in SITA's financial statements cannot be attributed to Ms Komna as the amount escalated from R10 296 039.00, as initially approved by Ms Komna, to R159 599 478.00 due to erroneous pricing that was submitted by BBI.

- 6.2.44 In this regard, it was the view of SITA's Internal Audit Committee that the difference between the amount irregularly approved by Ms Komna and the final pricing as negotiated by Ms Rasikhinya (R149 303 439.00) cannot be attributed to anyone in particular within SITA. In this respect, BBI was responsible for miscalculating the pricing.
- 6.2.45 It is further the view of SITA's Internal Audit Committee, based on their review of the motivations for the upgrades, that these upgrades were an operational requirement and that SITA has received the services that was paid for from BBI.
- 6.2.46 The irregular expenditure can therefore be argued to be administrative in nature as SITA did receive the service that was paid for and incurred no loss. The SCM process to obtain approval from the SITA Board for the revision of the capped amount and scope expansion with BBI was never finalised.
- 6.2.47 That according to the IA , it is apparent that the SCM process to obtain approval from the SITA Board for the scope expansion of the agreement between SITA and BBI after the price negotiation ended in January 2017, was never completed. As such, SITA continues to incur irregular expenditure as the new pricing structure has not been approved by the Board.
- 6.2.48 Based on the email correspondence reviewed, it appears that Ms Tlhako was of the view that Ms Komna had not provided answers to the questions from National Treasury, whilst it is apparent that Ms Komna did in fact, provide answers to the questions raised.
- 6.2.49 It is SITA's Internal Audit Committee's view that Ms Tlhako, in her capacity as Executive: SCM, should have taken the appropriate steps to obtain the approval for the scope expansion from the SITA Board to prevent SITA from incurring further irregular expenditure.
- 6.2.50 Based on the finding, the SITA's Internal Audit Committee recommended that:

- 6.2.50.1 The irregular expenditure should be reported and dealt with in accordance with the Updated Guidelines on Irregular Expenditure;
- 6.2.50.2 The Chief Financial Officer must take the required steps to ensure that the irregular expenditure is submitted to the relevant authority (SITA Board) for condonation of the irregular expenditure of R159 599 478.00 (VAT Excl.) as identified in this report and that this be dealt with in terms of the Updated Guidelines on Irregular Expenditure;
- 6.2.50.3 In this respect, SITA's Finance Division should ensure that the irregular expenditure is correctly calculated and that all irregular expenditure, i.e. in respect of the new service between Bloemfontein and Cape Town as well as the irregular expenditure in respect of Upgrade 2 and 3, is taken into account for reporting purposes;
- 6.2.50.4 Management should consider instituting corrective action. Management should, in conjunction with Employee Relations, consider instituting corrective action against Ms Komna for committing SITA to expenditure over and above the amount approved by the SITA Board and without obtaining prior and proper approval;
- 6.2.50.5 No action can be taken in respect of Mr Durant as he has left SITA's employ during March 2018;
- 6.2.50.6 Management should, in conjunction with Employee Relations, consider instituting corrective action against Ms Tlhako for failing to ensure that the appropriate SCM process was followed to ensure that approval for the scope expansion of the agreement between SITA and BBI is obtained from the SITA Board in order to prevent a continuance of irregular expenditure for the remainder of the contract period; and
- 6.2.50.7 The scope expansion of the agreement between SITA and BBI should be submitted to the SITA Board to prevent irregular expenditure in future SITA

Executive must, as a matter of urgency, take the appropriate steps to obtain approval from the SITA Board for the scope expansion of the agreement between SITA and BBI, to prevent future irregular expenditure emanating from the contract.

**Provision of Financial Modelling service by Meniko Records Management Services**

6.2.51 According to the LCC report the irregular expenditure amounting to R2 870 800 was incurred from 01 December 2017 to 31 January 2018 due to continued procurement of services after the contract had expired. This is in respect of provision of microfilm and archiving services to the Department of Defence.

6.2.52 Contract RFB 861/2010 was entered into for a period of 3 years 01 November 2011 to 31 October 2014. This contract was extended for one year on two occasions with the last extension expiring on 30 November 2016.

6.2.53 The following was submitted as the events that occurred :

Date	Event	Responsible Official	Designation
20-Nov-15	Business case for open tender submitted for approval	Martin Wooding	Snr Manager: HSP
21-Jan-16	Approved business case and specifications for open tender submitted to SCM	Kitsiso Mokgwabone	
31-Mar-16	Request received from SCM for updated Bid Specifications	Stephen Khesa	SCM: Sourcing Analyst
06-Apr-16	Updated Bid Specs sent to SCM	Martin Wooding	Snr Manager: HSP
12-Apr-16	Cross functional team discussed specifications	SCM	

10-May-16	Final Bid Specifications received from SCM to be signed off by LoB HoD	Stephen Khesa	SCM: Sourcing Analyst
23-May-16	Signed Bid Specifications submitted to BIDSPEC committee – were changes to the specifications were requested	Itumeleng Motaung	SCM official
22-Jun-16	Updated specifications submitted to BIDSPEC	Melanie Lee	Snr Manager: ICT Service Delivery
08-Jul-16	Received approval (resolution) from BIDSPEC	Willie Needham	HoD: Gov Information Management
28-Jul-16	Bid documents reviewed, signed and supplied to SCM as requested on same day.	Martin Wooding	Snr Manager: HSP
05-Aug-16	Bid published with closing date 26-Aug-16	Lesley Chauke	SCM: Sourcing Specialist
08-Sep-16	Tender technical evaluation complete		
19-Oct-16	Informed by SCM that tender will be cancelled as no bidders met the mandatory requirements and BC to re-appoint Meniko will be required	Martin Wooding	Snr Manager: HSP
26-Oct-16	Submitted BC for approval	Martin Wooding	Snr Manager: HSP
24-Nov-16	Approved business case submitted to SCM	Martin Wooding	Snr Manager: HSP
24-Nov-16	Request for approval for 1 year extension on contract submitted to National Treasury	Lesley Chauke	SCM: Sourcing Specialist
30-Nov-16	National Treasury approval obtained.		
09-Dec-16	Submission for re-appointment of Meniko served at MPC. MPC requested deviation business case.		
09-Dec-16	Letter submitted to NT to obtain approval for the single source appointment	Marvin Sebela	Act. HoD: Strategic Sourcing



13-Dec-16	Response received from NT not supporting the request		
14-Dec-16	Deviation business case submitted for approval	Martin Wooding	Snr Manager: HSP
19-Dec-16	Approved BC submitted to SCM	Martin Wooding	Snr Manager: HSP
26-Jan-17	Submission served at MPC. MPC requested SCM to get legal opinion and to request NT to approve appointment of single source		
25-Apr-17	Approved business case for new RFB and specifications submitted to SCM	Martin Wooding	Snr Manager: HSP
08-May-17	SCM explains initial request for deviation and subsequent request for single source appointment to National Treasury. NT responds that the request to rescind the initial request was not supported.	Lesley Chauke	SCM: Sourcing Specialist
07-Aug-17	Business case to condone irregular expenditure submitted for approval and is currently with Legal where Hlanganani Mtshali stated that there is no need for legal to sign this document. (the template requires signature of legal representative)	Martin Wooding	Snr Manager: HSP
08-Aug-17	Escalated to CPO	Martin Wooding	Snr Manager: HSP
01-Sep-17	RFB 1617_2017 for replacement contract was published and closed on 26-Sep-17.	Lesley Chauke	SCM: Sourcing Specialist
11-Dec-17	Submission served and was approved by MPC		
13-Dec-17	Award letter sent to Metrofile	Lesley Chauke	SCM: Sourcing Specialist

31-Jan-18	Memorandum of agreement signed	Lesley Chauke	SCM: Sourcing Specialist
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6.2.54 The LLC report stated that the delay in the contract replacement process was due to inability by the tender evaluation process to timeously identify the non-compliance of the bid responses to the mandatory requirements. The non-compliance was only identified by Internal Audit during the verification of the procurement process and this resulted in the tender being cancelled at a point where the existing contract was due to expire.

6.2.55 The sequence of events above indicates that there was a delay between 26-January 17 and 06 April 2017 when SCM was requested to seek legal advice and obtain National Treasury approval for a single source appointment. There was also a delay between 25 April 2017 and 01 September 2017 for the SCM process to start with regard to the new RFB.

6.2.56 Further that the following official be held accountable :

6.2.56.1 Lesley Chauke – SCM Specialist, Sourcing should be requested to account for this delay.

**Implementation of the Enterprise and Supplier Development Strategy (ESD) by Enterprise Room**

6.2.57 According to the evidence provided, SITA submitted that in 2015 it followed a competitive bidding process for the acquisition of a service provider to support SITA as an Implementation Execution Partner for the SITA ICT Economic Transformation Programme for a period of three (3) years.

6.2.58 The evidence obtained indicates that following the approved technical specifications, Business Case and BSC resolution, the RRB was published on 29 January 2016 on SITA website and the Government Tender Bulletin.

- 6.2.59 Five (5) responses were received and evaluated. Following the mandatory technical evaluation, Enterprise Room was the only Bidder that qualified to proceed to the non-mandatory evaluation. The evaluation report was submitted to the Management Procurement Committee for approval as per the SITA delegated Authority.
- 6.2.60 SITA submitted that its contract with Enterprise Room came to an end on 30 October 2019 and that it currently has no contract with Enterprise Room.

**Dynatrace Application Performance Monitoring Technology by Mediro Belay Managed Services**

- 6.2.61 According to the evidence provided, on 09 March 2018 SCM requested NT to approve contract extension for RFB 1245/2014 for License Maintenance of the Dynatrace Application Performance monitoring Technology for a period of one (01) year.
- 6.2.62 On 28 March 2018 National Treasury responded to SITA as follows:
- “The reason provided to extend the contract for twelve (12) months is not justifiable.*
- The National Treasury supports the extension for six (06) months. SITA must put measures to finalise the bid during the extension period.*
- The institution has obligation to ensure that any contract for goods and services is in accordance with a system of procurement which is fair, equitable, transparent, competitive and cost effective”.*
- 6.2.63 On 29 March 2018 The Management Procurement Committee resolved to approve the extension of the contract for RFB 1245/2014 as follows:
- “The increase of VAT to 15% effective 1 April 2018 may affect the amount. This is subject to National Treasury approval.”*

- 6.2.64 On 10 May 2018 SITA SCM wrote to NT to appeal the six (6) months extension.
- 6.2.65 SITA indicated in its appeal to NT that they approached the Service Provider with the six (6) months renewal and the Service Provider indicated that licenses can only be renewed annually; therefore they cannot provide SITA with six (6) months renewal. On 10 May 2018 SITA SCM wrote to National Treasury to appeal the six (6) months extension.
- 6.2.66 On 28 May 2018 National Treasury responded to the appeal as follows:
- The reason provided to extend the contract for additional six months due to poor planning is not justifiable*
- National Treasury does not support the extension for additional six months.*
- The institution has an obligation to ensure that any contract for goods and services is in accordance with a system of procurement which is fair, equitable, transparent, competitive and cost effective.*
- 6.2.67 SCM awarded the six (6) months period to the Service Provider as per National Treasury approval and the Service Provider accepted the award.
- 6.2.68 SITA submitted that the contract for which extension was requested is RFB 1245 and not RFB 1603. RFB 1603 expired in March 2019 and after that no service was rendered. The replacement contract that covers both contracts is RFB 2053 and it was awarded in August 2020 to Gijima.

**Broad Session Strategy by CEO of A2D24**

- 6.2.69 SITA submitted that there was no irregularity found in respect of the procurement of professional services to appoint a facilitator for the Board Strategy Session that was awarded to ADA24.

- 6.2.70 The evidence indicates that on 22 January 2018 a Business Case was compiled seeking approval to appoint a single source service provider (facilitator), for the Board Strategy Session to be held on 29 January 2018.
- 6.2.71 A letter dated 26 January 2018 submitted by Mr Mogogodi Dioka, the HOD, Tactical Sourcing to NT requested approval for the deviation to appoint a single source service provider.
- 6.2.72 On 30 January 2018, NT responded to the request, indicating that even though the letter was dated 26 January 2018, it was only received on 29 January 2018.
- 6.2.73 NT stated that the reason provided by SITA for the deviation, that the CEO of A2D4 extensively assisted SITA to establish the Product Solution (PSS) Division which included defining the new IT service delivery model, developing the optimal service capability model and the industry capability model, and that he is best positioned to articulate a clear understanding of the SITA business model, **was not verifiable** (*Own emphasis added*)
- 6.2.74 NT directed that the request for deviation, be dealt with in accordance with paragraph 3.3.3 of National Treasury Instruction Note 8 of 2007/2008, in that if it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the accounting officer / authority or his / her delegate. Further that SITA had an obligation to ensure that any contract for goods and services is in accordance with the system that is fair, equitable, transparent, competitive and cost-effective.
- 6.2.75 **Information obtained from SITA's Annual Report for the year 2016**
- 6.2.75.1 Details of Irregular Expenditure obtained from the 2016 Annual Report

STATE INFORMATION TECHNOLOGY AGENCY SOC LTD

NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2016  
(continued)

1. Details of Irregular Expenditure - Detected during the current year

In Rand			
Incident	Prior Year 2015	2016	Total
IE00091 Irregular expenditure arising from the continued procurement of systems maintenance services, including rental of the required backhaul service without a valid contract in place, after expiry of the initial contract extension on 31 January 2014	(1,041,030)	-	(1,041,030)
IE00092 Irregular expenditure arising from the continued leasing of desktops and laptops after expiry of the contract extension on 31 March 2015	-	(6,039,805)	(6,039,805)
IE00093 Irregular expenditure arising from continued procurement of service (VPN Supreme Services) after expiry of the contract	-	(39,026,891)	(39,026,891)
IE00094 Irregular expenditure arising from the continued procurement of office cleaning services without a valid contract in place, after expiry of the initial contract extension on 30 June 2015	-	(33,227)	(33,227)
IE00095 Irregular expenditure arising from the continued procurement of security services without a valid contract in place, after expiry of the initial contract extension on 30 June 2015	-	(95,388)	(95,388)
IE00096 Irregular expenditure arising from the continued procurement of systems security services, after expiry of the contract	(6,973,842)	-	(6,973,842)
IE00097 Irregular expenditure due to deviation from the SITA procurement process in respect of acquisition of diesel for DATA centres generators	-	(166,291)	(166,291)
IE00098 Irregular expenditure due to deviation from SITA procurement process with regards to the procurement of accommodation in respect of GovTech 2015 event	-	(1,317,555)	(1,317,555)
IE00099 Irregular expenditure due to continued procurement of mail cleansing services, from the service provider after contract expired	-	(807,500)	(807,500)
IE00100 Irregular expenditure arising from procurement of maintenance and support services in respect of the Track and Trace System IT requirements, outside the contract period	(919,494)	-	(919,494)
IE00101 Irregular expenditure arising from continued occupation of office premises after expiry of the lease contract	-	(774,119)	(774,119)
IE00102 Irregular expenditure due to exceeding of the contract amount in respect of provision of Business Analysis services	-	(1,837,972)	(1,837,972)
IE00103 Irregular expenditure due to booking of accommodation at rates higher than the approved National Treasury rates in respect of GovTech 2015 event	-	(2,001,600)	(2,001,600)
IE00104 Irregular expenditure due to quotation period being shorter than required by policy	-	(13,242)	(13,242)
IE00105 Irregular expenditure due to lack of clarity on the request for quotation that was sent to prospective suppliers which resulted in other bidders being disqualified	(155,982)	-	(155,982)
IE00106 Irregular expenditure due to the price adjustment on the extension of the original contract being more than the allowable threshold	(2,214,570)	-	(2,214,570)
<b>Total</b>	<b>(11,304,918)</b>	<b>(52,113,590)</b>	<b>(63,418,508)</b>

6.2.75.2 The Report of the Auditor-General to Parliament as at March 2016, obtained from SITA's Annual Report for the year 2016, made the follow comments on page 84 in respect of expenditure management :

***“Expenditure Management***

25. *Effective steps were not taken to prevent irregular expenditure, amounting to R63 418 508 as disclosed in note 28 to the financial statements, as required by section 51(1) (b) (ii) of the Public Management Act.*
26. *Effective steps were not taken to prevent fruitless and wasteful expenditure, amounting to R1 272 407 as disclosed in note to the financial statements, as required by section 51 (1) (b) (ii) of the Public Management Act”.*

**6.2.76 Information obtained from SITA’s Annual Report for the year 2017**

**6.2.76.1 Details of Irregular Expenditure obtained from the 2017 Annual Report**

STATE INFORMATION TECHNOLOGY AGENCY SOC LTD  
NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2017 (continued)

1 Details of Irregular Expenditure - Detected during the current year

Figures in Rand thousand

Item No.	Incident	Prior Year 2016	Current Year	Totals
1	IE00107 Irregular Expenditure arising from exceeding the contract amount due to inclusion of services within the contract without costing.	-	9,661	9,661
2	IE00108 Irregular Expenditure due to a deviation from the normal SITA SCM procurement process without the required approval.	-	1,224	1,224
3	IE00110 Irregular Expenditure arising from continued procurement of system support services for South African Air Force's Integrated Command and Control system after the contract expired.	-	9,044	9,044
4	IE00111 Irregular Expenditure arising from continued procurement of microfilm and archiving services after the contract expired.	-	924	924
5	IE00112 Irregular Expenditure arising from continued procurement of infrastructure maintenance services after the contract expired.	-	1,876	1,876
6	IE00113 Irregular Expenditure arising from continued procurement of Access Link & Bandwidth services after the expiry of RFQs validity periods.	260,803	50,897	311,700
7	IE00120 Irregular expenditure arising from broad band upgrades that were not properly approved by the delegated authority.	100,474	-	100,474
8	IE00121 Irregular expenditure arising procurement of financial modelling services without following competitive bidding process due to inadequate planning.	183	707	890
9	IE00122 Irregular expenditure arising procurement of consulting services without following competitive bidding process due to inadequate planning.	-	12,281	12,281
10	IE00123 Irregular expenditure arising procurement of leadership development services without following competitive bidding process due to inadequate management of the procurement process.	1,864	47	1,911
<b>Totals</b>		<b>363,324</b>	<b>86,661</b>	<b>449,985</b>

6.2.76.2 The Report of the Auditor-General to Parliament as at March 2017, obtained from SITA's Annual Report for the year 2017, made the follow comments on pages 94 and 95 in respect of expenditure management, procurement and contract management :

**“Expenditure management**

20 *Effective steps were not taken to prevent irregular expenditure during the current period, amounting to R449 985 582 (2017:R86 661 562; 2016:R363 324 020) identified in the current year, as disclosed in note 28 of the annual financial statements, as required by section 51(1) (b) (ii) of the PFMA. Of the R86 661 562 disclosed, R25 728 987 were as a result of new transactions identified in the current year whereas the remaining amounts are from previous years transactions regarded as irregular but still active.*



**Procurement and contract management**

21 *Deviations were approved by the delegated accounting official even though it was not impractical to invite competitive bids, in contravention of treasury regulation 16A6.4”.*

**6.2.77 Information obtained from SITA’s Annual Report for the year 2018**

**6.2.77.1 Details of Irregular Expenditure obtained from the 2018 Annual Report**

**NOTES TO THE ANNUAL FINANCIAL STATEMENTS**  
FOR THE YEAR ENDED 31 MARCH 2018

Item No.	Incident	In Rand Thousand		Current Year		Total Current and Prior Year
		Prior Year	Current Year	Detected in current year incurred in current year	Current Year Total	Total Irregular expenditure incurred
5	IE00125 Irregular expenditure resulting from continued procurement of access links after expiry of contract on 31 October 2016 due to inadequate contract management (SITA KZN).	-	715	866	1 581	1 581
6	IE00126 Irregular expenditure resulting from the installation of a business intelligence tool. This was due to the recommendation of a service provider to the Department of Defence by a SITA employee that did not have delegation to make such recommendation.	-	292	-	292	292
7	IE00127 Irregular expenditure due to appointment of physical security service provider without following the required SCM processes. This was due to the fact that the appointment was based on Treasury Regulation 16A6.6, which was incorrectly applied.	-	17 536	-	17 536	17 536
8	IE00128 Irregular expenditure resulting from the continued occupation of office accommodation at SITA Patchefstroom after the expiry of the contracts. A single source deviation was applied for and a new contract for one year is in place from 02 August 2017.	-	-	109	109	109



6.2.77.2 The Report of the Auditor-General to Parliament as at March 2018, obtained from SITA's Annual Report for the year 2018, made the follow comments on page 99 in respect of expenditure management, financial and contract management :

***“Expenditure Management***

19. *Effective steps were not to prevent irregular expenditure amounting to R351 649 000, as disclosed in note 28 to the amount financial statements, as required by section 51 (1) (b) (ii) of the PFMA. Of this amount, R278 631 000 relates to non-compliances with legislation relating to prior years that was identified in the current year. Majority of the irregular expenditure was caused by the lack of effective implementation of contract monitoring measures to track expiry of contracts timeously.*
20. *Effective steps were not taken to prevent fruitless and wasteful expenditure amounting to R2 886 512, as disclosed in note 28 to the annual financial statements, as required by section 51 (1) (b) (ii) of the PFMA. The majority of the fruitless and wasteful expenditure was caused by long outstanding invoices and contract that was unlawfully terminated.*

***Financial and performance management***

30. *There is a lack of effective implementation of contract monitoring measures to tract expiry of contracts timeously to ensure prevention of non-compliance with laws and regulations”.*

6.2.78 **Information obtained from SITA's Annual Report for the year 2019**

6.2.78.1 Details of Irregular Expenditure obtained from the 2019 Annual Report



STATE INFORMATION TECHNOLOGY  
AGENCY SOC LTD **NOTES TO THE ANNUAL  
FINANCIAL STATEMENTS** FOR THE YEAR  
ENDED 31 MARCH 2019 (CONTINUED)

01. DETAILS OF IRREGULAR EXPENDITURE - DETECTED AND/OR INCURRED DURING THE CURRENT YEAR					
Item No.	Incident	Prior Year	Current Year		Current Year Total
		Detected in prior years incurred in current year	Detected in current year incurred in prior years	Detected in current year incurred in current year	
11	<b>IE00183</b> Irregular expenditure incurred as a result of continued support of the DE-STR Lab system on behalf of a customer without a valid contract in place.	-	653	6	659
12	<b>IE00184</b> Irregular expenditure incurred as a result of continued use of licences and support without a valid contract in place.	-	-	23 604	23 604
13	<b>IE00186</b> Irregular expenditure incurred as a result of the continued use of the switching centre in Welkom after the expiry of the lease agreement on 31 October 2018.	-	-	48	48
14	<b>IE00187</b> Irregular expenditure incurred as a result of the irregular award of contracts for the procurement of maintenance and support of the SAPS Rofin, Nikon and Spheron equipment and maintenance and technical support of the Firearms Permit System.	-	558 294	-	558 294
15	<b>IE00188</b> Irregular expenditure incurred as a result of the continued use of printing equipment after the expiry of the lease agreement on 31 October 2018.	-	-	997	997
16	<b>IE00144</b> Irregular expenditure incurred within the contract period but exceeding the awarded value in respect of Hardware maintenance, selected software support and replacement of WAN and LAN on behalf of a customer.	-	14 897	86 931	101 828
17	<b>IE00189</b> Irregular expenditure incurred due to the continued support and maintenance of leased computer equipment without an approved agreement in place since April 2015.	-	45 470	11 316	56 786
18	<b>IE00190</b> Irregular expenditure incurred due the installation of licences over and above those SITA was entitled to in terms of the contract with the supplier.	-	-	11 335	11 335
19	<b>IE00191</b> Irregular expenditure incurred due to overspending on the contract with the supplier providing diesel for the customer switching centres and Nodal points without obtaining appropriate approval.	-	-	540	540
20	<b>IE00192</b> Irregular expenditure incurred due to the occupation of office premises for a period of three months without an approved extension of the lease agreement.	-	-	96	96

6.2.78.2 The Report of the Auditor-General to Parliament as at March 2019, obtained from SITA's Annual Report for the year 2019, made the follow comments on page 103 in respect of expenditure management and internal control deficiencies :

**“Expenditure management**

25. *Effective and appropriate steps were not taken to prevent irregular expenditure amounting to R1 030 465 000, as disclosed in note 28 to the annual financial statements, as required by section 51 (1) (b) (ii) of the PFMA. Of this amount, R626 882 000 relates to irregular expenditure incurred in prior years that was identified in the current year.*

26. *Majority of the irregular expenditure was caused as a result of competitive bidding processes not followed for the awarding of a specific contract.*

**Internal control deficiencies**

33. *I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the significant internal control deficiencies that resulted in the finding on the annual performance report and the findings on compliance with legislation included in this report.*
34. *The public entity developed an audit action plan to address internal and external audit findings; however, actions implemented were not always effective to prevent non-compliance with supply chain management legislation, including detecting and correcting misstatements in the financial statements.*
35. *Contract management is not effectively implemented to prevent non-compliance with laws and regulations.*
36. *The record keeping system is also inadequate to enable reliable reporting of achievements in the annual performance report”.*

**SITA's Response to the section 7(9) Notice**

6.2.79 With respect to the Access Data Link, SITA submitted as follows :

6.2.79.1 That it agrees that payments that were made from April 2014 to March 2019 under the relevant contracts constitute irregular expenditure. SITA submitted that it followed the guidelines on irregular expenditure. In terms of sections 38(1)(h)(iii) and 51(1)(e)(iii) of the PFMA, the accounting officer or accounting authority must take effective and appropriate disciplinary steps against any official in the service of their respective institutions who makes or permits irregular expenditure. In its response to this matter, the Board indicated that it had followed the National Treasury prescripts in dealing with irregular expenditure. The Loss Control Committee (“LCC”) and internal audit were tasked with investigations and conduct disciplinary hearing against the transgressor(s).

- 6.2.79.2 SITA further submitted that it cannot be expected that the Board will go beyond what the LCC and Internal Audits recommended. By doing so, the Board would have undermined the authority it gave to the committee. The Board cannot suggest that a specific individual must be accountable over what has been recommended in the Investigation report and the findings of the LCC and Internal Audit.
- 6.2.80 In respect of SAPS STRLAB, CHM Vuwani Computers and InfrasoI SITA submitted that after investigations, consequence management was undertaken against SITA responsible employees. This irregular expenditure was reported to National Treasury as required by the Guidelines on irregular expenditure. The same principle as above is also applicable in this case.
- 6.2.81 In respect of the SITA Next Generation Network (NGN) by BBI and Meniko Records Management Services SITA submitted that after investigations, consequence management were undertaken against SITA responsible employees. This irregular expenditure was reported to National Treasury as required by the Guidelines on irregular expenditure. The same principle in 5.2.80 is also applicable in this case.
- 6.3 SITA's concern regarding Public Protector's finding that the former Board and Dr Setumo Mohapi, former CEO's conduct in not taking decisive action to prevent irregular expenditure, is noted.
- 6.4 It should be pointed out that section 51(1) of the PFMA places a responsibility on the former Board to amongst other things take appropriate steps to prevent irregular expenditure. The former Board did indeed authorise several investigations to be conducted by SITA's Internal Audit, on various contracts, and disciplinary action was taken against officials implicated by the Internal Audit reports. However the focus of the Public Protector's investigation was on the conduct of Dr Setumo Mohapi, the former CEO and the former Board, which would not necessarily have formed part of the scope of the Internal Audit investigation.

Application of the relevant law and prescripts

**The Constitution of the Republic of South Africa, 1996 (the Constitution)**

6.4.1 Section 217(1) of the Constitution provides that: -

*“When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”*

**The Public Finance Management Act, 1999 (the PFMA)**

6.4.2 The purpose of the Act is to regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively, to provide for the responsibilities of persons entrusted with financial management in those governments, and to provide for matters connected therewith.

6.4.3 SITA is listed in Schedule 3A as a national public entity in the PFMA and is therefore required to comply with the provisions of the Act.

6.4.4 Section 1 of the PFMA defines irregular expenditure as: -

*“...expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including (a) this Act...”*

6.4.5 Section 51(1) of the PFMA provides for the general responsibilities of accounting authorities. It provides that: -

- “(1) An accounting authority for a public entity –*
- (a) must ensure that that public entity has and maintains effective, efficient and transparent systems of financial and risk management and internal control; an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.*
  
  - (b) must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity.*
  
  - (c) is responsible for the management, including the safe-guarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity.*
  
  - (d)*
  - (e) ...*
  - (f) ...*
  - (g) ...*
  - (h) must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity.”*

6.4.6 Section 50 of the PFMA relating to the Fiduciary duties of accounting authorities states that :

*“(1) The accounting authority for a public entity must—*

*...*

*(b)*

*act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;*

*...*

*(d)*

*seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.*

*(2) A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not—*

*(a)*

*act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; ...”*

**National Treasury Instruction Note 3 of 2016/2017 on preventing and combating abuse in the supply chain management system.**

6.4.7 This National Treasury Instruction took effect from 01 May 2016. It is applicable to all public entities including SITA.

6.4.8 Paragraph 9 of the Instruction Note provides that: -

*“9.1 The Accounting Officer/Accounting Authority must ensure that contracts are not varied by more than 15% or R15 million (including VAT) for all goods and or services of the original contract value.*

*9.2 Any deviation in excess of the prescribed thresholds will only be allowed in exceptional cases subject to prior written approval from the relevant treasury.”*

**SITA Supply Chain Management Policy dated 01 April 2015 (2015 SCM Policy).**

6.4.9 Paragraph 3 of the 2015 SCM Policy provides that: -

*“General Policy Provisions*



*3.3 The CEO is accountable for compliance to this policy by SITA, while the Board maintains oversight over the implementation thereof. The CPO, supported by the SCM division, is the custodian of this policy and is accountable for the implementation thereof, together with all SITA officials.”*

6.4.10 Paragraph 23.1 of the 2015 SCM Policy provides that: -

*“System of Acquisition Management*

*23.1.1 Goods and services shall only be procured in accordance with authorised quotation or bidding processes within threshold values determined by National Treasury.”*

6.4.11 Paragraph 23.4.4 of the 2015 SCM Policy provides that: -

*“Above the Transaction Value of R10 000 but not exceeding R500 000 (Vat Included)*

*23.4.4.1 SITA may invite and accept written price quotations for requirements up to an estimated value of R500 000 from as many suppliers as possible, that are registered on the prospective provider list.*

*23.4.4.2 Where no suitable suppliers are available from the prospective list, written price quotations may be obtained from other possible suppliers.*

*23.4.4.3 If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the delegated SITA official.*

6.4.12 Paragraph 23.4.5 of the 2015 SCM Policy provides that: -

*“Competitive Bids (Transaction value above R 500 000)*

*23.4.5.1 As a rule, SITA shall invite competitive bids for all procurement requirements above R500 000.00 except where reasonable and justifiable circumstances dictate a deviation from competitive bidding process.*

*23.4.5.6 Contracts may be extended or renewed by not more than 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount. Any deviation in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury.”*

6.4.13 Paragraph 23.7 of the 2015 SCM Policy provides that: -

*“Types of competitive Bids*

*23.7.1.6 RFQ – Request for Quotation is used for bids which result from RFA’s (request for accreditation) where a preferred list (or panel of service providers) exists for a particular commodity and in some instances for specific provinces...It is a preferred method of sourcing goods/services where a pre accreditation process has already occurred. Only bidder’s accredited for the required product / service(s) may be invited to submit bids. Technical evaluation should not be conducted if preferred list suppliers were already accredited and found to be technically qualified to provide the required goods and services and there are no other special business requirements. Therefore, only price and preferential points evaluation should be conducted. In cases where technical evaluation is not required, bidders are required to sign a declaration that the offered pricing is based on the specification published with the invitation. This is for all values applicable.”*

6.4.14 Paragraph 31.1 of the 2015 SCM Policy provides that: -

*“Conclusion of contracts*

*31.1.1 SCM must act on the award decision by issuing the letter of acceptance, the formal contract, including the service level agreement, where applicable, to the successful bidder/s.*

*31.1.3 For quotations, the delegated official shall sign the letters of acceptance and contract form or other necessary documentation to commit SITA. SITA must be satisfied that all necessary contractual conditions have been included prior to signing.*

*31.1.6.1 Upon finalisation of the bid process, a formal contract shall be concluded whereupon orders may be placed with the successful provider.”*

6.4.15 Paragraph 35.4.16 of the 2015 SCM Policy provides that: -

*“Contract Variations / Amendments*

*35.4.16.2 Contracts may be amended/varied/modified according to the Board’s delegated powers to achieve the original objective of the contract. Amendments may not materially alter the original objective; as such amendments should form part of a new bid invitation. All contracting parties must agree to the amendment in writing.*

*35.4.16.3 No contract can be amended after the original contract has ceased to exist. Purchase order and service requests should be executed within the contract duration and execution outside the contract duration will be deemed as irregular expenditure.”*

6.4.16 Paragraph 23.14 of the 2015 SCM Policy provides that: -

*“Sole Source Procurement*

*23.14.1 Sole source procurement takes place when there is only one supplier for the required services or products (e.g. OEM or Sole distributor or Agent). If a vendor is a sole supplier or agent of a product, the responsible Procurement*

*Manager must furnish substantiation on how that matter was ascertained as well as a letter of confirmation from the manufacturer that the tenderer is the sole supplier or agent. The letter of confirmation or substantiation must be included as part of the adjudication/award submission report to the adjudication and award structure.”*

6.4.17 Paragraph 23.15 of the 2015 SCM Policy provides that: -

*“Single Source Procurement*

*23.15.3 SITA may use single source procurement, only in the following exceptional circumstances:*

*23.15.3.1 Where SITA applied the competitive bidding process, but the bids received were all non-responsive, thus the time required to go out on the same process has elapsed.*

*23.15.3.2 Where SITA can buy under exceptionally advantageous conditions that only arise in the very short term.*

*23.15.3.3 In the event that a change of provider would compel SITA to obtain spare parts or additional equipment or services that are not compatible or interchangeable with existing equipment or services that were obtained from an original provider.*

*23.15.3.4 For tasks that represent a natural continuation of previous work done where appointing another supplier is impractical.*

*23.15.3.5 The goods, services or works to be bought have to be designed by the provider.*

*23.15.3.6 When goods, services or works can only be supplied or rendered by a particular provider and no reasonable alternative or substitute exists.*

*23.15.3.7 There are legislative, technological or safety reasons to restrict purchases to providers who have proven their capacity.”*

*23.15.4 Request for single source procurement must be pre-approved by the CPO before the targeted supplier is engaged through a written motivation submission substantiating reasons for considering single source instead of an open bid process. The CPO may reject the request and recommend for an open bid process.”*

## **Conclusions**

### **Access Data Links by following service providers:**

- 6.4.18 SITA conceded that it incurred irregular expenditure in terms of Section 1 of the PFMA.
- 6.4.19 It is evident that in terms of SITA’s 2015 SCM Policy that Dr Setumo Mohapi, the former CEO and the Board had both accountability and oversight responsibility to ensure compliance and implementation of the SCM Policy.
- 6.4.20 I have taken note of SITA’s submission that it has adequate systems in place to deal with irregular expenditure and deviations, and that various committees within SITA submit reports to the Board, however it is evident that both Dr Setumo Mohapi, the former CEO and Board failed to perform their accountability and oversight responsibilities.
- 6.4.21 Even though SITA became aware of the continuing irregular expenditure, both the Dr Setumo Mohapi, former CEO and Board failed to take decisive action to prevent

same from recurring in terms of the Board's responsibility as envisaged in Section 51 (1) of the PFMA. This is evident in that the irregular expenditure is still occurring to date.

6.4.22 The Board also failed to hold Dr Setumo Mohapi, the former CEO accountable for irregular expenditure incurred during his tenure.

6.4.23 I find it most alarming that SITA has allowed such a vast amount of irregular expenditure to continue being incurred without taking appropriate remedies to resolve the situation.

#### **Support of SAPS STRLAB systems for 24 hours by Labware Solutions**

6.4.24 SITA conceded that it incurred irregular expenditure in terms of Section 1 of the PFMA. It is however noted that the irregular expenditure identified was only confined to the R758 291 00 incurred as a result of the continued monthly use of the Labware Consultant's services for the support of the DE-STRLab System on behalf of SAPS from April 2017 to April 2018 without having a valid contract in place.

6.4.25 I have further noted that SITA undertook to appoint Labware as a sole supplier from 2017 for a further 2 year period. It is evident that SITA had created its own need for a sole supplier as they had failed to plan properly in order to timeously replace the existing contract, and this fell out of the requirements in terms of Section 217 of the Constitution and SITA's 2015 SCM Policy on sole source procurement

6.4.26 Dr Setumo Mohapi, the former CEO was responsible for approving the business case for the sole supplier and therefore was accountable for such improper conduct. The Board failed to adequately identify the irregularity attributable to the approval of appointing the sole supplier.

**Support and Maintenance of Audio Visual and Video Conferencing systems by CHM Vuwani Computer Solutions**

- 6.4.27 SITA conceded that it incurred irregular expenditure in terms of Section 1 of the PFMA. It is however noted that the irregular expenditure identified was due to poor planning and contract management.
- 6.4.28 It is evident that during the renewal discussion period 2014/15 between SAPS and SITA LOB, there were numerous delays and the final agreement to continue with a new three (3) year agreement was only approved by SAPS in December 2014. This was already three (3) months past the previous contract period which lapsed on 30 September 2014. SITA must have followed the supply chain processes afresh instead of renewing a contract which had already expired and this resulted in an irregular expenditure.
- 6.4.29 Even though SITA became aware of the continuing irregular expenditure, both Dr Setumo Mohapi, the former CEO and Board failed to take decisive action to prevent same from recurring in terms of the Board's responsibility as envisaged in Section 51 (1) of the PFMA. This is evident in that the irregular expenditure is still occurring to date.

**Support and maintenance of switches and supply of diesel by Infrsol**

- 6.4.30 It is evident that there is a pattern by SITA to continue receiving/utilising services on expired contracts. This practice resulted in irregular expenditure that could have been prevented had proper contract management systems been in place.
- 6.4.31 It is evident that both Dr Setumo Mohapi, the former CEO and Board failed to perform their accountability and oversight role to ensure that risks associated with poor contract management processes are mitigated in accordance with Section 51 (1) of the PFMA. This required Dr Setumo Mohapi, the former CEO and the Board

to ensure that SITA “*maintains an effective, efficient and transparent systems of financial and risk management and internal control...*”

#### **Upgrading of SITA Next Generation Network (NGN) by BBI**

- 6.4.32 SITA conceded that it incurred irregular expenditure as a result of broad band upgrades not being properly approved by the delegated authority as a result of inadequate contract management.
- 6.4.33 Although SITA’s IA report identified individuals against whom corrective action should be taken, the ultimate accountability and oversight function in ensuring that processes and systems in place for the effective and efficient is vested in Dr Setumo Mohapi, the former CEO and the Board.
- 6.4.34 Approval for the new service between Bloemfontein and Cape Town that was requested by Mr Durant on 11 August 2014 was not obtained from the Board prior to the implementation thereof. It appears that the IA and LCC reports were only concluded somewhere in 2018.
- 6.4.35 Dr Setumo Mohapi, the former CEO and the Board failed to timeously put in adequate measures to prevent further irregular expenditure from being incurred.
- 6.4.36 I am again inclined to conclude that Dr Setumo Mohapi, the former CEO and the Board failed to perform their accountability and oversight role to ensure that risks associated with poor contract management processes are mitigated in accordance with Section 51 (1) of the PFMA. This required Dr Setumo Mohapi, the former CEO and the Board to ensure that SITA “*maintains an effective, efficient and transparent systems of financial and risk management and internal control...*”

#### **Provision of Financial Modelling service by Meniko Records Management Services**



- 6.4.37 This contract is proof of further poor contract management systems within SITA. The contract was renewed multiple times since its initial expiry in 2014. I have again identified the practice of SITA using a single supplier procurement to circumvent going out on open tender as a result of its negligence in managing the contract effectively.
- 6.4.38 It is evident that SITA had created its own need for a single supplier as they had failed to effectively manage the contract when it neared its expiry period. This is contrary to the requirements in terms of Section 217 of the Constitution and SITA's 2015 SCM Policy on single source procurement
- 6.4.39 Dr Setumo Mohapi, the former CEO was responsible for approving the business case for the sole supplier and therefore was accountable for such improper conduct. The Board failed to adequately identify the irregularity of appointing the single source supplier.
- 6.4.40 It is evident that both Dr Setumo Mohapi, the former CEO and Board failed to perform their accountability and oversight role to ensure that risks associated with poor contract management processes are mitigated in accordance with Section 51 (1) of the PFMA. This required Dr Setumo Mohapi, the former CEO and the Board to ensure that SITA "*maintains an effective, efficient and transparent systems of financial and risk management and internal control...*"

**Implementation of the Enterprise and Supplier Development Strategy (ESD) by Enterprise Room**

- 6.4.41 There has been no irregular expenditure identified by SITA on this contract. SITA has submitted documents relating to the process it followed in appointing Enterprise Room for the Implementation of the ESD and I could not find any

evidence pointing to any irregularity in the process. Furthermore, the contract between SITA and Enterprise Room terminated on expiry.

**Dynatrace Application Performance Monitoring Technology by Mediro  
Belay Managed Services**

6.4.42 SITA's poor planning processes was pointed out by National Treasury when it stated that SITA's reason to extend the above contract was not justifiable and was as a result of poor planning.

6.4.43 I am again persuaded by the evidence that Dr Setumo Mohapi, the former CEO and the Board failed to perform their accountability and oversight role to ensure that risks associated with poor contract management processes are mitigated in accordance with Section 51 (1) of the PFMA. This required Dr Setumo Mohapi, the former CEO and the Board to ensure that SITA "*maintains an effective, efficient and transparent systems of financial and risk management and internal control...*"

**Broad Session Strategy by CEO of A2D24**

6.4.44 I have noted SITA's contention that the service rendered to it by A2D24 did not amount to irregular expenditure. I am however not persuaded by SITA's contention as the evidence indicates that the amount spent on services provided by A2D24 amounted to irregular expenditure.

6.4.45 It is evident that SITA did not timeously make its submission to NT to request deviation for the appointment of A2D24, and that NT indicated that the reason to appoint A2D24 was not verifiable.

6.4.46 SITA failed to provide evidence to indicate that a thorough analysis of the market was conducted, as stipulated in SITA's SCM policy and it is clear that this information was not submitted to NT as it did not accept SITA's reason for deviation.

## 7. FINDINGS

Having regard to the evidence as well as the regulatory framework determining the standard that should have been complied with by SITA and/or any other persons that were involved in the matters under investigation, the following adverse findings are made:

**7.1 Regarding whether Dr Setumo Mohapi, the former CEO's relationship with Mr Thami Msimango, the Managing Director of CIPAL influenced the appointment of CIPAL through a deviation process without the approval of NT and continued with the expansion of the scope of work to CIPAL despite National Treasury not supporting such expansions, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.**

7.1.1 The Public Protector could not establish any evidence to support the allegation of the existence of an improper relationship between Dr Setumo Mohapi, the former CEO and Mr Thami Msimango influencing the appointment of CIPAL.

7.1.2 The evidence indicates that Dr Setumo Mohapi, the former CEO was appointed in April 2015 while CIPAL was appointed through a deviation process during the course of 2008. CIPAL was therefore appointed as a service provider to SITA long before the former CEO was appointed to SITA.

7.1.3 Neither could the Public Protector establish any evidence that an improper relationship between the former CEO and Mr Msimango influenced the expansion of the scope of work to CIPAL.

7.1.4 However, the evidence indicates that the former CEO requested approval for NT for the deviations in 2018 , but NT did not support the period of extension requested

by SITA and instead supported a shorter extension periods. The evidence indicates that the contract between SITA and CIPAL was in existence for a total period of fifteen (15) years since the initial appointment. The former CEO was aware that the contract with CIPAL would be coming to an end and only started a flawed procurement process as well as engaging NT on 02 May 2018, 28 days before the expiry of the contract. This shows a clear lack of proper planning and contract management by SITA in contravention of paragraph 4 of National Treasury SCM Guide of February 2004.

- 7.1.5 The Public Protector was not provided with evidence that the former CEO prioritised the development of a new strategy, for the replacement of the current SLIMS, despite NT indicting to the former CEO in its letter dated 19 June 2018 that the initial contract was for a period of three(3) years and that the previous extensions were for a cumulative contract period of six years in the amount of R49 375 359.77 which is a variance of 169.71 % against the original contract value and further that the new contract is for a period of two (2) years from 1 July 2018 to 20 June 2020 in the amount of R18 747 487.20 which is a variance of 64.43% of the original contract value. The cumulative contract variance is 234.14 % and the cumulative contract amount will be R 95 155 571.77,
- 7.1.6 Dr Setumo Mohapi, the former CEO therefore failed to properly manage the contract extensions during his tenure and to put measures in place for the replacement of the current SLIMS, that led to the contract of CIPAL being extended for such a long period of time. SITA further did not provide any evidence to indicate that it put in place measures to prioritize the development of a new strategy for the replacement of the current SLIMS as indicated in the NT letter 30 May 2018.
- 7.1.7 In this regard the failure of Dr Setumo Mohapi, the former CEO, was in contravention with the requirements of section 217 of the Constitution, wherein SITA had to ensure that any contract for goods and services is in accordance with

a system of procurement which is fair, equitable, transparent, competitive and cost effective.

7.1.8 Therefore, the conduct of Dr Setumo Mohapi, the former CEO wherein he failed to properly manage the contract extensions during his tenure and put measures in place for the replacement of the current SLIMS constituted improper conduct as envisaged by section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged by section 6(4)(a)(i) of the Public Protector Act, 1994.

7.2 **Regarding whether the SITA Board failed to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expenditure incurred relating to the various contracts, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994 :**

7.2.1 The allegation that the SITA Board failed to hold the Dr Setumo Mohapi, former CEO accountable for the irregular expansion of contract that was not approved by National Treasury, relating to the various contracts is substantiated.

7.2.2 Irregular expenditure is defined in section 1 of the PFMA, 1999 “as expenditure, other than unauthorised expenditure incurred in contravention of or that is not in accordance with a requirement of any applicable legislation”.

7.2.3 Dr Setumo Mohapi, the former CEO and the Board both had an accountability and oversight responsibilities to ensure compliance to the provisions of the PFMA, 1999; the National Treasury Regulations and the SCM Policy. Despite the Auditor General’s comments relating to amongst other expenditure management and contract management within SITA, effective steps were not taken by the former CEO and the Board to prevent such from recurring.

- 7.2.4 Even though SITA became aware of the continuing irregular expenditure, both Dr Setumo Mohapi, the former CEO and the Board failed to take decisive action to prevent same from recurring in terms of the Board's responsibility as envisaged in Section 51 (1) (a) (iii) and 51 (1) (b) (ii) of the PFMA. The Board failed to act in a manner that was consistent with its fiduciary responsibilities as contemplated by section 50(1)(b), 50(1)(d) and 50(2)(a). This is evident in that the irregular expenditure is still occurring to date, in some of the contracts such as the Access Data Link contract.
- 7.2.5 The Board also failed to hold Dr Setumo Mohapi, the former CEO accountable for irregular expenditure incurred during his tenure in terms of its responsibility as required by section 51(1) (e) (iii) of the PFMA.
- 7.2.6 In these circumstances, the failure by the SITA Board to hold Dr Setumo Mohapi, the former CEO accountable for the irregular expansion of contract equated to improper conduct as envisaged by section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged by section 6(4)(a)(i) of the Public Protector Act, 1994.

## **8. REMEDIAL ACTION**

- 8.1 In response to the section 7(9) notice and in particular the intended remedial action SITA submitted the following :
- 8.1.1 CIPAL: SITA has taken ownership of SLIMS and therefore no irregular expenditure will be incurred in this regard;
- 8.1.2 Access Data Links: SITA is in process of changing the current business model to avoid further irregular expenditure.

- 8.1.3 SAPS STRLAB and CHM Vuwani Computers: Consequence management was conducted against certain SITA employee. This action by SITA served as a deterrent against employees who may want to delay the project. In addition, supply chain processes has been improved through the introduction of new policy and the argumentation of the staff to ensure proper and speedy handling of client's request;
- 8.1.4 SITA Next Generation Network (NGN) by BBI and Meniko Records Management Services: as it has been indicated in the report, this was a clear violation of the Delegations of Authority and the individual concerned is no longer at SITA. In addition, the current Delegations of Authority makes it clear that employees are not allowed to approve transactions that are beyond their delegation.
- 8.1.5 SITA submitted that it has established a compliance unit in 2015. Its main function is to identify legislations through a regulatory universe to comply with by each SITA business unit. SITA also developed SCM policy that guide employees on deviations and the authority to approve thereof.
- 8.1.6 SITA's submission on the establishment of the Compliance Unit is noted, however it is concerning that the Compliance Unit failed to perform its function effectively in light of the numerous Internal Audit findings.
- 8.1.7 SITA submitted that the following training interventions were conducted in 2020/2021 F/Y within the SITA SCM environment:
- 8.1.8 SCM training done from January 2020 are as follows:
- SCM Policy – 7 July 2020
  - Bid Committees – 9 July 2020
  - PPPFA – 3 December 2020
  - Local Content – 10 December 2020

- Remedy 9 – 11 May 2020
- Oracle EBS Sourcing Module and Supplier registration – 1 June 2020
- Sharepoint – 17 July 2020
- gCommerce – 13 & 18 May 2021

8.1.9 SITA submitted that in addition, during 2020, the following technology platforms have been implemented to further enhance the capacity of the SCM Division:

SCM procurement tracking; eProcurement and Contract Management and a SharePoint

8.1.10 SITA further submitted that Internal Audit performs audit on the internal processes and control systems of SITA on an ongoing basis the reports are made available to the management, Supply Chain Management and the line of business concerned. All activities of the Internal Audit division are reported to the Audit, Risk and Compliance Committee on a quarterly basis. All audits are conducted in line with a risk based approach and according to the Board approved annual internal audit plan and three year strategic rolling plan.

8.1.11 In respect of the Audit Committees ensuring Institutional Compliance, Internal Audit and AGSA reports in its quarterly meetings, SITA submitted that this is a standard responsibility and role of the SITA Audit and Risk Committee, which meets at least on a quarterly basis. The Committee's Charter, MOI and DOA states that the Audit and Risk Committee is responsible for, amongst others, the he quality and effectiveness of the work of internal audit and the external audit process as well as the progress made in addressing the recommendations of internal audit and the Auditor-General. AGSA has a standing invitation.

8.2 Having regard to the meeting held with SITA on 20 January 2022 and the further submissions made to the Public Protector on 2 February 2002, regarding the



proposed remedial action, the remedial action contained in this report is deemed appropriate to address the remaining improprieties to assist in preventing future recurrence. The appropriate remedial action that the Public Protector is making as contemplated in section 182(1)(c) of the Constitution, in this report is the following:

**The Accounting Authority of SITA to: -**

- 8.2.1 Take cognisance of the findings of maladministration and improper conduct as well as irregular expenditure by Dr Setumo Mohapi, the former CEO as envisaged in section 51(b) (ii) of the PFMA and ensure that such action is not repeated and appropriate corrective action is taken to prevent the recurrence of the improprieties identified and referred to in the report.
- 8.2.2 To ensure that SITA's SCM and Compliance unit, on a regular basis, monitors compliance to applicable laws, regulations, prescripts, policies and procedures and strengthens the adequacy and effectiveness of control measures as envisaged by section 51 (1) (a) (i) (iii), 51 (1) (b)(ii), 51 (1) (e) of the PFMA, and that deviations from inviting competitive bids, as contemplated by National Treasury Regulation 16A6.4, are used strictly to procure goods and services of critical importance and only when it is impractical to invite competitive bids,
- 8.2.3 To consider, in terms of paragraph 1.12.1 of Annexure C: Code of Ethics of the 2017 SCM Policy, consider SITA's duty to report any irregular expenditure, (including any identified in this report), to the Auditor General and National Treasury, where same has not occurred yet.

**The Auditor General of South Africa: -**

- 8.3 To take note of the findings relating to the improper conduct and/or maladministration by SITA reported herein.

- 8.4 Within its own discretion consider the findings and intended remedial action in this report and consider taking any action deemed appropriate under the circumstances in terms of any applicable legislation.

**The Minister of Communications and Digital Technology: -**

- 8.5 To take cognisance of the findings of maladministration and improper conduct by SITA;
- 8.6 Include in his oversight role over SITA, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of the powers conferred under section 182(2)(c) of the Constitution, 1996.

**The Speaker: -**

- 8.7 To ensure that the report is tabled before the Communications Portfolio Committee for deliberation regarding :
- (d) Investigations conducted into allegations of financial misconduct committed by members of the Accounting Authority in terms of Treasury Regulation 33.1.3;
  - (e) Instances of irregular and fruitless and wasteful expenditure that have been investigated to determine if disciplinary steps needs to be taken against liable officials; and
  - (f) Whether disciplinary steps have been taken against any officials who made or permitted irregular expenditure based on outcome of investigation in terms of PFMA section 51(1)(e)(iii).

**The Directorate of Priority Crime Investigation to: -**

8.8 Consider this report and establish if any acts of impropriety identified herein amount to acts of a criminal conduct in terms of the Prevention and Combating of Corrupt Activities Act, 2004 and if so, pursue criminal investigations against the perpetrators.

**9. MONITORING**

9.1 The Accounting Authority of SITA to submit an action plan to the Public Protector **within thirty (30) working days** from the date of this report a plan on the implementation of the remedial action referred to in paragraph 8.2.

9.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with, within the period prescribed in this report to avoid being in contempt of the Public Protector.



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

**DATE:** 30/03/2022

*Assisted by Ms Vanessa Mundree,  
Provincial Representative  
Free State Provincial Office*