

Commission for Conciliation, Mediation and Arbitration

Extended messaging document

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INTRODUCTION

- This document sets out allegations against the CCMA made by the Auditor General of South Africa in his July 2010 report
- It transcribes those allegations into accessible English, notes CCMA's response to specific allegations and notes the corrective action CCMA has taken in response to the allegation... where such corrective action is or was necessary
- The document gives CCMA spokespeople, members of the governing body and management an accessible list of key messages that address issues the entity deals with at present
- The document may be used to understand specific allegations being made against CCMA and CCMA's stance (and key messages) on those allegations

THE AUDITOR GENERAL'S ALLEGATIONS AGAINST CCMA

THE BROAD ALLEGATIONS

- The Auditor General makes a cluster of allegations around procurement of services and third party suppliers
- His allegations are that:
 - The appointment of service providers was in contravention of and breached Treasury regulations
 - Services required were not advertised in the government tender bulletin for 21 days
 - Bids were evaluated by a private company
 - There was no evidence to indicate that the Bid Adjudication Committee (BAC) considered the recommendations made in the private company's evaluation report
- Specifically, these allegations are made around appointing providers to supply the following services to CCMA:
 - Printing services;
 - Information and communication technology (ICT) systems
 - Quantity surveyor and project management services
 - A service provider to migrate the CCMA's case management system to an online system

- A service provider to assist with process systems, structure, innovation and design
- Accounting and payroll solutions
- A service provider to supply portable voice recording devices; and
- Extension of a contract for IT services, specifically to maintain and support CCMA's server equipment

CCMA's RESPONSE TO THESE BROAD ALLEGATIONS

CCMA's messages and responses to the Auditor General's findings in each of these instances and across all of these allegations are as follows:

- It is true that CCMA did not comply fully with National Treasury policies for seeking and appointing service providers
- In instances where bids were especially technical in nature, CCMA sought the services of external (private) specialist agencies to evaluate those bids. In these instances services of the internal bid evaluation committee were not used
- The CCMA's most recent procurement policy (drafted and applied in May, 2008) was misaligned to National Treasury Regulations and Practice Notes (that became effective April, 2005)
- The approval of service providers was done in accordance with the CCMA policy where bids of a value greater than R1,000,000 were submitted to the Finance and Risk Sub Committee of the Governing Body for approval. However the AG found that the bids of this value should be submitted to the bid evaluation committee (were CCMA management presides)
- CCMA's misinterpretation was that the governing body adhered to a higher standard of governance
- The appointment of service providers was in line with CCMA policy but not in line with National Treasury Policies

MESSAGES THAT ARTICULATE WHAT CCMA IS DOING TO PREVENT FURTHER REGULARITIES IN THE SUPPLY

- CCMA has suspended its 2008 Supply Chain Management policy. It now defaults to the National Treasury Regulations and National Treasury Practice Notes when procuring services
- CCMA has subsequently (and after receiving the final investigation report from AG) instructed all officials that all bids need to be submitted to the BAC for adjudication and approval while the SCM policy is in the process of being amended

- So from now on all CCMA calls for bids will be advertised in the government tender bulletin for a minimum period of 21 days before being advertised in the popular press. CCMA notes, however, that bids were advertised in national newspapers with the understanding that the bid would get adequate coverage there, as opposed to in the government tender bulletin
- Since April 1, 2010 CCMA has had all other bid committees of specification (BSC), evaluation (BEC) and adjudication (BAC) in place and functioning in compliance with national policies and guidelines
- To ensure there is neither fronting, nor bid rigging, nor CCMA board and employee conflict of interest, CCMA has acquired the services of a commercial vetting company to verify the authenticity of information submitted by bidders. The vetting company screens and checks the authenticity of
 - 1) tax clearance certificates;
 - 2) party checks; and
 - 3) it also undertakes conflict of interest checks
- CCMA has developed a 'Decision Register' for each bid committee to enable that bid committee to report on activities performed around particular bids
- The 'Decision Register' will help to identify inefficiencies and allow CCMA management to take corrective action *before* bids are awarded
- The Register comes into effect on September 1, 2010

MESSAGES THAT DEAL WITH SPECIFIC ALLEGATIONS AROUND SUPPLY CHAIN MANAGEMENT

- The Auditor General makes specific allegations in relation to a number of supply chain irregularities
- These allegations require specific CCMA responses
- Where these responses are required, they are given here

MESSAGES THAT DEAL WITH SPECIFIC ALLEGATIONS AROUND SUPPLY CHAIN MANAGEMENT

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AG allegation CCMA awarded a contract for the supply and maintenance of printing services to a service provider who was not BEE compliant

Finding of the Auditor General	Corrective action either taken or planned
<ul style="list-style-type: none"> • The service provider was not BEE compliant • The service provider misrepresented its BEE credentials 	<ul style="list-style-type: none"> • The CCMA has terminated the contract with the service provider who misrepresented its BEE status • Legal counsel was sought when terminating the contract. Counsel's advise to CCMA was that the governing body would have to condone the expenditure because the company did, indeed, deliver a service • To make sure this situation does not arise again, all service providers as from April 1, 2010 are required to submit a valid BEE verification certificate from a DTI accredited company with SANAS certification

AG allegation CCMA paid an ICT service provider a sum of money greater than that approved by CCMA's Committee on Finance

Finding of the Auditor General	Corrective action either taken or planned
<ul style="list-style-type: none"> • This tender was irregularly awarded • It exceed the sum approved by CCMA's Committee on Finance 	<ul style="list-style-type: none"> • The governing body committee mandated management to negotiate with the appointed service provider terms favourable to the CCMA when concluding the contract • Legal counsel was sought after receipt of the Auditor General final investigation report around the treatment of the expenditure to date and the validity of the contract • Counsel's advice was that the governing body should condone the expenditure • The contract remains valid

AG allegation CCMA paid in full for work on office renovations (supply and maintenance of quantity surveyor and project management services) of poor quality

Finding of the Auditor General	Corrective action either taken or planned
<ul style="list-style-type: none"> • There was no evidence that competitive bids were secured by CCMA for this work • Services rendered in office renovations were of poor quality, yet CCMA paid the service provider in full 	<ul style="list-style-type: none"> • The service provider was selected from a list of candidates approved by the BAC to be on a panel for a period of three years for purposes of providing project management services • CCMA concedes that prior approval was not sought when engaging the service provider • The governing body subsequently approved and condoned the expenditure. This was duly reported in the 2008/2009 annual report of the CCMA • Controls have been tightened to ensure that this kind of error does not recur <p><u>On payment against poor quality work delivered</u></p> <ul style="list-style-type: none"> • CCMA took the contractor to task. It compiled a snag list of deficiencies for the contractor to give attention to and to rectify. The majority of these deficiencies have been corrected and CCMA is satisfied that work delivered is sufficiently in line with both its expectations and the fee paid to the contractor

AG allegation There was no need for services from a process systems, structure, innovation and design service provider. Further, the company was paid in spite of the fact that the AG saw no significant changes in processes or operations brought about by the company that was contracted

Finding of the Auditor General	Corrective action either taken or planned
<ul style="list-style-type: none"> • CCMA contracted a service provider whose services it did not need • The service provider was paid in spite of the fact that it wrought no significant changes at CCMA 	<ul style="list-style-type: none"> • CCMA is satisfied that this company's services were, indeed, required at CCMA and that profound and positive structural changes have come about as a result of its professional services and recommendations to CCMA • For example, CCMA now has a corporate structure where this was absent before • Several units (required by law) have been set up as a direct result of recommendations made by the service provider • They include the Supply Chain Management Unit; the Risk Unit; and the Offices of the Chief Financial Officer

and General Manager: Corporate Services

AG allegation CCMA paid an accounting and payroll service provider more than the sum initially agreed

Finding of the Auditor General	Corrective action either taken or planned
<ul style="list-style-type: none"> • CCMA paid the service provider more than the sum initially agreed 	<ul style="list-style-type: none"> • CCMA management admits the payment error. There was a service provider error at invoicing stage that CCMA did not note, only discovering the error once payment had been made to the service provider • CCMA has been in contact with the service provider to rectify this situation • The service provider is in agreement with CCMA • CCMA is in the process of recovering the money • The CCMA is in a process of putting in place a contracts management process which will ensure that this kind of error does not recur

AG allegation irregularity around the extension of a contract for IT services for maintenance and support of CCMA's server equipment

Finding of the Auditor General	Corrective action either taken or planned
<ul style="list-style-type: none"> • Extensions of the service provider contract were in violation of due process and policies with CCMA routinely extending the service provider contract without calling for new bids • The contract (that commenced in 2001) was extended until 2008 • CCMA could not give AG evidence that it had followed the correct public sector procedures for extending a contract • Such public sector procedures require that 1) extensions only be made for a period not exceeding the initial period and 2) further extensions must be 	<ul style="list-style-type: none"> • CCMA admits to having had inadequate (poor, even) contract management systems in place • The situation around this particular contract was a management oversight • It is true that CCMA did not comply fully with policies around contract extensions • The CCMA's most recent procurement policy (drafted and applied in May, 2008) is misaligned to National Treasury Regulations and Practice Notes (that became effective April, 2005) • CCMA notes that this situation arose (in 2001) before present management was appointed • It is a historic situation that present CCMA management inherited • Present management is determined to rectify the situation and prevent a recurrence of this (or similar) situation • The 'Decision Register' (that has been developed by CCMA and that comes into operation in September, 2010) will eliminate situations such as these arising again at CCMA

<p>made only after a full and competitive bid process where the initial service provider proves its competitiveness, capacity and pricing efficiency</p> <ul style="list-style-type: none"> • Furthermore, CCMA could not give an explanation why it had deviated from prescribed procedure 	<ul style="list-style-type: none"> • The 'Decision Register' enables CCMA and its bid committees to track contracts and bids • It will help to identify inefficiencies and allow management to take steps in line with policies and procedures before contracts are automatically extended • Specifically, the 'Decision Register' will ensure service providers that hold CCMA contracts compete against other providers in the market when the time comes for either renewing a contract or identifying a new service provider
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AG allegation irregularities around appointing a service provider to supply portable voice recording devices	
Finding of the Auditor General	Corrective action either taken or planned
<ul style="list-style-type: none"> • Payments were not made in terms of a session ceding agreement 	<ul style="list-style-type: none"> • CCMA admits a management oversight, and has taken steps to prevent such an oversight occurring again • The ceding agreement was violated in so far as it (the agreement) did not stipulate specifically that delivery (and payment) may not be split • When the service provider delivered the equipment, it was delivered in batches, and payment was made in batches • Ultimately, full payment was made for the full service

AUDITOR GENERAL ALLEGATIONS AROUND MATTERS OTHER THAN SUPPLY CHAIN.

- Other than supply chain issues, the Auditor General also alleges fruitless and wasteful expenditure at CCMA around a number of other operational/management matters
- These allegations are summarised here
- CCMA key messages (and explanations) are provided for each allegation

AG allegation the appointment of 15 service providers was in contravention of Supply Chain Management processes Specifically: the CCMA did not comply with Supply Chain Policy in that it did not obtain competitive quotes from three different service providers for contracts worth R200 000 or more		
Finding of the Auditor General	CCMA's response to AG's finding	Corrective action either taken or planned
<p>The AG alleges that there were irregularities around the appointment of various service providers, including:</p> <ul style="list-style-type: none"> • Human resources service providers (CCMA did not obtain quotes from three different agencies... so the tender was split in contravention of policy) • IT service providers (job 	<ul style="list-style-type: none"> • The AG makes numerous allegations around suppliers, competitive quotes and tax implication matters • None of the issues or findings noted in the AG's report around these matters was raised with CCMA prior to publication of the AG report • Had they been raised, CCMA would happily have answered the allegations fully at the time • These allegations are unjustified. For example: HR Service providers three quotes were sought from three different contractors at the same agency. It was not a deliberate error. Rather it was a misinterpretation of policy. CCMA notes this and will ensure that such misinterpretation does not occur again IT services were, indeed, provided on tender and after due bidding processes. In some instances fewer than three service providers responded to invitations to bid and the urgency of the service required compelled CCMA to proceed in the absence of a third bid. This is in line with 	<ul style="list-style-type: none"> • There is a stringent enforcement of Treasury Regulations for CCMA employees involved in supply chain processes • Three quotations are always sought and secured • In rare cases where three quotations are not secured, a

<p>awarded to provider that did not score highest and was not recommended by the BEC)</p> <ul style="list-style-type: none"> Digital signage service providers (no competitive bidding process) 	<p>procurement policy. In another instance only one service provider's technology was compatible with the bar code system CCMA uses and this provider was appointed. This was, again, proper and in line with procurement policy</p> <p>Lowest quotations not accepted CCMA interrogated quotations and found that the lowest quotation in these instances did not offer value for money. CCMA elected to appoint the service provider that offered best value for money. This is in line with procurement policy</p> <p>Where amounts of money paid to service providers differed from amounts quoted, this was due to fluctuations in the exchange rate for goods sourced from abroad</p> <p>Tax All suppliers to CCMA are registered for VAT. In one instance a data capturing error resulted in an incorrect VAT number being recorded for a supplier. This was easily rectified when the error was identified. CCMA is in possession of valid tax clearance certificates of all suppliers. The Auditor General did not ask for these. Had he asked for them, they would have been provided to him</p>	<p>deviation request must be submitted to the accounting officer or her delegated authority</p>
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AG allegations around fruitless and wasteful expenditure at CCMA in regard, specifically to the appointment of a corporate services manager and three commissioners at head office who did not relocate to the Johannesburg head office, incurring wasteful travel costs to CCMA		
Finding of the Auditor General	CCMA's response to AG's finding	Corrective action either taken or planned
<p>Wasteful and fruitless expenditure was incurred through the commuting costs of employees and commissioners who were appointed to CCMA but not relocated to Johannesburg</p>	<ul style="list-style-type: none"> The contract of employment was negotiated between CCMA and the employees CCMA management is determined to attract and retain superior talent for the work that CCMA delivers to South Africa Expenses deemed fruitless and wasteful were, in fact, ordinary business expenses In some instances these expenses actually saved CCMA money 	<ul style="list-style-type: none"> CCMA notes that allegations of fruitless and wasteful expenditure is without foundation here CCMA will ensure in future that individuals employed by CCMA reside in the specific region

	<p>In the instance of the corporate services manager:</p> <ul style="list-style-type: none"> • Her benefits were not extraordinary and were not fruitless and wasteful expenditure • The AG did not request any of the employee's payslips. AG's allegation that these were not provided and that total costs for flights (and etc) could not be determined is without foundation. Copies of all documentation exists and is available for scrutiny • Payments deemed 'fruitless and wasteful' were in lieu of relocation costs. Had CCMA relocated the employee, the costs would have been higher than the travel and accommodation costs noted by the AG • Other costs (such as cell phone costs) are ordinary business allowances that all National Management Committee members are entitled to <p>In the instances of the National Senior Commission – Mediation</p> <ul style="list-style-type: none"> • The employee relocated to Johannesburg at the beginning of 2009. His travel costs are for work he did in other regions of South Africa and would have been incurred no matter where he resided. They are ordinary business expenses of CCMA and are neither fruitless nor wasteful 	<p>close to the office where they are employed</p>
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<p align="center">AG allegation around payments to the South African Revenue Service Specifically: CCMA has not collected PAYE from part-time commissioners and has not paid these taxes over to SARS resulting in penalties of R11 045 339.16 to CCMA</p>		
<p align="center">Finding of the Auditor General</p>	<p align="center">CCMA's response to AG's finding</p>	<p align="center">Corrective action either taken or planned</p>
<p>It was alleged that CCMA has in the past not collected and paid over PAYE from part-time commissioners to</p>	<ul style="list-style-type: none"> • CCMA concedes that there were oversights in regard to PAYE for part time commissioners • The historic context giving rise to this issue is relevant • On instruction in 1996 (when CCMA was established) part-time commissioners 	<ul style="list-style-type: none"> • By agreement between CCMA and SARS the outstanding money was paid in two installments last year • CCMA is now fully tax compliant in

<p>the South African Revenue Service (SARS) and therefore had to pay penalties and interest to SARS</p>	<p>where treated as independent contractors for tax purposes. This situation endured until February 2007</p> <ul style="list-style-type: none"> • Consequently, CCMA did not deduct tax from them • In the meantime, tax regulations have changed, and CCMA has brought its practices fully in line with the new tax regulations • In August 2007 SARS advised CCMA that part-time commissioners should be treated as employees and CCMA immediately started deducting 25 percent tax from payments made to them • CCMA, at this time, also immediately commenced negotiation with SARS to find a solution in respect of the shortfall for preceding years • The AG report says SARS 'investigated' CCMA. There was never such an investigation. CCMA voluntarily approached SARS to settle the matter and to ensure it complied with all tax legislation 	<p>regard to all employees, both full time and part time</p> <ul style="list-style-type: none"> • The CCMA sought non-binding private opinion from SARS with regard to the interpretation of Income Tax legislation and the tax treatment of part-time commissioners • The CCMA has commenced deducting tax from payments made to all part-time commissioners. This has also been applied retrospectively
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AG allegation around payments to the provident fund		
Finding of the Auditor General	CCMA's response to AG's finding	Corrective action either taken or planned
<ul style="list-style-type: none"> • Payments to the fund were not made on time incurring CCMA interest and penalty fees for late payment • AG determined that this late payment was because CCMA experienced cash flow problems in August 2009 • Interest of R11 256.80 was incurred 	<ul style="list-style-type: none"> • This matter was beyond CCMA's control and was dependant on funding received from the National Department of Labour • Although the Department promised CCMA would receive funds on time, the money was deposited two weeks late • CCMA paid funds over to the Provident Fund as soon as it was able to, curbing the sum of interest and penalty fees that were payable 	<p>CCMA has adopted has a process of early engagement with the Department of Labour in relation to budget or cash flow requirements</p>

AG allegation around a salary advance to a part-time commissioner

Finding of the Auditor General	CCMA's response to AG's finding	Corrective action either taken or planned
<ul style="list-style-type: none"> • In January 2009 CCMA authorised an advance to a part-time commissioner • The salary advance exceeded the maximum advance that policy deems should be paid • Further, the advance was recovered by CCMA over a longer period of time (ten months) than policy stipulates (two months) 	<ul style="list-style-type: none"> • CCMA concedes the salary advance to the part-time commissioner was not in accordance with policy • The full sum has been recovered from the employee 	<ul style="list-style-type: none"> • The CCMA has taken appropriate steps against the officials that authorised the advance • The full amount has been recovered from the part-time commissioner.

Ends