

101026 pclabour

TEMPLATE TO BE USED IN RESPONSE TO THE AUDITOR-GENERAL'S FINDINGS BY THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION (CCMA)

	List of findings by the AGSA	Recommendations by the AGSA	In-depth feedback on how implementation of the AGs recommendations would be conducted	Work in progress report together with timeframes
1	<p>The advertisement of the bid was not advertised in the Government Tender Bulletin for a minimum period of 21 days as stipulated in Treasury Regulation 16A6.3(c).</p>	<p>The Governing Body should ascertain the reasons why the service providers were appointed without following the supply chain management policies of the CCMA and stipulations of the PFMA and practice notes and regulations issued by National Treasury.</p>	<ol style="list-style-type: none"> <li>1. The CCMA investigated the reasons for service providers being appointed contrary to PFMA practice notes and regulations issued by National Treasury. In the main, the reasons for non-compliance were a result application of the CCMA supply chain policy and some directives which were not compliant with PFMA and Treasury prescripts.</li> <li>2. Resulting irregular expenditure has been identified and reported to the Governing Body and has been reflected in the Annual Report of the CCMA.</li> <li>3. Irregular expenditure has been regularised.</li> <li>4. From the beginning of the current financial year 01<sup>st</sup> April 2010, the CCMA has issued a directive to all users that all bids are required to be advertised in the Government Bulletin for a minimum period of 21 working days.</li> <li>5. With the advice of the Auditor General and approval of the Governing Body, the CCMA supply chain management practices have since 1 April 2010 been aligned with PFMA and National Regulations prescripts. The supply chain policy has been updated, aligned with advice from external auditors and considered by the Governing Body. Auditor General comments and input is pending prior to tabling the updated supply chain policy for approval by the Governing Body.<sup>i</sup></li> </ol>	<p>Recommendation: Implemented Status: Closed</p>
2	<p>The evaluation was conducted by a private company and there were limited scoring inconsistencies. The awarding of points was done in contravention of paragraph 4(1) of the PPPFA Regulations.</p>	<p>The Governing Body should consider possible actions against employees, in terms of the PFMA, who appointed service providers ascertain the reasons why the service providers were appointed without following the supply chain management policies of the CCMA and stipulations of the PFMA and practice notes and regulations issued by National Treasury.</p>	<ol style="list-style-type: none"> <li>1. The CCMA conducted investigation into reasons for non-compliance. The non-compliance occurred due to the CCMA supply chain management policy being misaligned with the legal prescripts. There were no acts of criminality and /or negligence on the part of those applying the policy, on which to base disciplinary action, accordingly no disciplinary action was taken.</li> <li>2. Evaluation of bids by the Bid Evaluation Committee ('BEC') is now aligned to PPPFA and BBBEE Codes. New procedures and forms have been developed in this regard.<sup>ii</sup></li> <li>3. New procedures and forms have also been introduced and implemented for the Bid Adjudication Committee ('BAC') to validate the accuracy of points allocated during the evaluation process.<sup>iii</sup></li> <li>4. The Governing Body has played an oversight role in development of the new procedures.</li> </ol>	<p>Recommendation: implemented Status: Closed</p>

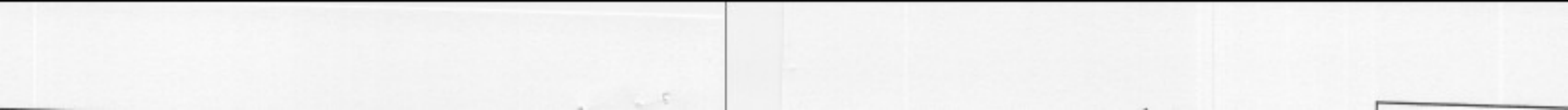
3	<p>There is no evidence that the BAC had considered the evaluation report by the private company. The approval was granted by the Finance and Risk Sub Committee of the Governing Body.</p>	<p>The Governing Body should consider whether expenditure incurred constitutes irregular expenditure as defined in the PFMA and if so report the irregular expenditure in terms of the PFMA.</p>	<ol style="list-style-type: none"> <li>1. All bid evaluations are being considered by the BAC.</li> <li>2. Thresholds for approval by the finance sub-committee of the Governing Body are also being considered for additional oversight by the Governing Body. This is a voluntary additional oversight mechanism which is not required by the AGSA.</li> <li>3. The CCMA conducted a quantification of the irregular expenditure on the contracts which were not investigated by the AGSA based on the findings and recommendations reported by the AGSA in the final investigation report.</li> <li>4. The quantification was considered by the Governing Body. The quantification focused on the past three financial years (2007/08, 2008/09 and 2009/10), however some of the contracts included in the summary were awarded as early as 2001. The irregular expenditure was condoned by the Governing Body.</li> <li>5. The CCMA has disclosed the quantified amount in its annual report of 2009/10 published on the 31<sup>st</sup> August 2010 as required by law and recommended by AGSA.</li> </ol>	<p>Recommendation: implemented <b>Status: Closed</b></p>
4	<p>The BAC approved the appointment of five service providers on August 2008. This was done without ensuring that bid proposals have been evaluated for compliance. One of the approved bidders approved by the BAC was appointed to provide renovation services in contravention of the SCM practice note 8 of 2007/08. The finance sub-committee has condoned the deviation and condoned the contravention on the procurement process and for not having a signed contract. The final condonation and approval by the governing body was on the 27 August 2009.</p>	<p>The Governing Body should consider taking effective and appropriate steps to prevent irregular expenditure for not complying with the supply chain management policies of the CCMA.</p>	<ol style="list-style-type: none"> <li>1. All bids are being adjudicated by the BAC and new procedures to provide evidence of adjudication have been developed and implemented.</li> <li>2. The CCMA has implemented a Decision Register to ensure that what is approved by the relevant committees is carried through to the contracts being entered into.<sup>iv</sup></li> <li>3. The CCMA has implemented a Deviation Register in the office of the accounting officer to record the reasons and approve any deviation including in the event of ceding payments.<sup>v</sup></li> <li>4. The CCMA investigated the irregular expenditure and reported this to the Governing Body. The Governing Body considered the report and after consideration the expenditure has been regularised.</li> <li>5. With the advice of the Auditor General and approval of the Governing Body, the CCMA supply chain management practices have since 1 April 2010 been aligned with PFMA and National Regulations prescripts. The supply chain policy has been updated, aligned with advice from external auditors and considered by the Governing Body. Auditor General comments and input is pending prior to tabling the updated supply chain policy with the Governing Body.</li> </ol>	<p>Recommendation: implemented <b>Status: Closed</b></p>

5	<p>Payments per annum exceeded R200,000 threshold for invitation of competitive bids, no evidence could be found for deviation from inviting competitive bids and approved by the accounting officer/authority or delegate as stipulated in Treasury Regulation 16A6.4.</p>	<p>The Governing Body should consider taking effective and appropriate steps to prevent irregular expenditure for not complying with the supply chain management policies of the CCMA.</p>	<ol style="list-style-type: none"> <li>1. The CCMA has implemented a Deviation register in the office of the accounting officer to record the reasons and approve any deviation including in the event of ceding payments.</li> <li>2. With the advice of the Auditor General and approval of the Governing Body, the CCMA supply chain management practices have since 1 April 2010 been aligned with PFMA and National Regulations prescripts. The supply chain policy has been updated, aligned with advice from external auditors and considered by the Governing Body. Auditor General comment and input is pending prior to tabling the updated supply chain policy for Governing Body approval.</li> <li>3. The CCMA management and supply chain practitioners have undergone extensive training on PFMA and Treasury prescripts in relation to Supply Chain procedures and processes.</li> </ol>	<p>Recommendation: implemented Status: Closed</p>
6	<p>The service provider misrepresented its BEE credentials.</p>	<p>The Governing Body should ascertain the reasons why the service providers were appointed without following the supply chain management policies of the CCMA and stipulations of the PFMA and practice notes and regulations issued by National Treasury.</p>	<ol style="list-style-type: none"> <li>1. The CCMA investigated the causes of the BEE credentials being incorrectly provided and captured by the CCMA and reported this to the Governing Body.</li> <li>2. Legal advice was sought and the contract that was entered into on the basis of a BBEE misrepresentation was cancelled with the authorisation of the Governing Body.</li> <li>3. The CCMA has since acquired the services of a commercial vetting company to verify the authenticity of information submitted by service providers when bidding, this includes the authenticity of the tax clearance certificates. The vetting process includes the related party checks, conflict of interest checks and all these checks are intended to ensure that there is no fronting, bid rigging and that CCMA officials (employees and Board members) are not conflicted.</li> <li>4. All service providers as from the 1 April 2010 are required to submit a valid BEE verification certificate from a DTI accredited company with SANAS certification.</li> </ol>	<p>Recommendation: implemented Status: Closed</p>
7	<p>The CCMA paid the service provider an amount of R3,025,380 which is more than R377,160 more than the approved amount of R2,648,220. No evidence could be submitted that the additional amount was approved by the finance sub-committee or that the amount was recovered from the service provider.</p>	<p>The Governing Body should consider taking effective and appropriate steps to prevent irregular expenditure for not complying with the supply chain management policies of the CCMA.</p>	<ol style="list-style-type: none"> <li>1. The CCMA investigated the overpayment and it was found to be due to incorrect recording of the contract amount in the contract.</li> <li>2. The Governing Body has considered the matter and resolved that management take steps to recover the overpayment and report on progress regularly.</li> <li>3. The CCMA is in the process of attempting to recover the overpayment.</li> </ol>	<p>Recommendation: <u>in process of being implemented.</u> Timeframe: <u>unspecified as dependent on recovery success</u> Status: Ongoing</p>

	<p>The CCMA has extended the contract on several occasions until 30 September 2010 from 2001. There is no evidence to support the extensions or that a contract existed for certain periods although payments were made to the service provider. The services rendered was for maintenance support covering all server equipment to the value of R406,296 for the duration of 12 months.</p> <p>The total payments made to the service provider for the period 29 August 2001 to 31 March 2009 according to the CCMA according records amounted R4,611,092. However, due to lack of information the amount to be regarded as irregular expenditure could not be accurately determined.</p>	<p>The Governing Body should consider taking effective and appropriate steps to prevent irregular expenditure for non compliance with the supply chain management policies of the CCMA.</p>	<ol style="list-style-type: none"> <li>1. As above, the CCMA has implemented a Decision Register to ensure that what was approved by the relevant committees is carried through to the contracts being entered into.</li> <li>2. Refer to point 4 above.</li> </ol>	<p>Recommendation: implemented <b>Status: Closed</b></p>
8	<p>Two instances have been identified where two sole providers were appointed for the rendering of services, to the value of R110,595 and R53,140 respectively without obtaining three quotes. No evidence could be found that the accounting authority or delegated authority approved the deviation as stated in paragraph 3.3.3 of SCM practice note 8 of 2007/08.</p>	<p>The Governing Body should ascertain the reasons why the service providers were appointed without following the supply chain management policies of the CCMA and stipulations of the PFMA and practice notes and regulations issued by National Treasury.</p>	<ol style="list-style-type: none"> <li>1. The CCMA has investigated the matter in the main has found that the reasons for non compliance are a result of inadequate recording of the failure of the first successful bidder and then obtaining goods from the second best bidder.</li> <li>2. The Decision Register and Deviation Registers have been developed and implemented to monitor this going forward and ensure compliance.</li> </ol>	<p>Recommendation: implemented <b>Status: Closed</b></p>
9	<p>The CCMA appointed a recruitment agency, however only one recruitment agency was considered. Three potential contractors from the same recruitment agency were evaluated and the CCMA did not obtain three quotes from three different recruitment agencies. The finance sub-committee subsequently approved and condoned the deviation for not inviting three quotations and the related expenditure in August 2008, the expenditure incurred amounted to R607,299.</p>	<p>The Governing Body should consider possible action against employees, in terms of the PFMA, who appointed service providers and ascertain the reasons why the service providers were appointed without following the supply chain management policies of the CCMA and stipulations of the PFMA and practice notes and regulations issued by National Treasury.</p>	<ol style="list-style-type: none"> <li>1. The CCMA investigated the matter and reported this to the Finance Sub-Committee and Governing Body and condonation was granted in 2008 for deviation was provided.</li> <li>2. The CCMA has implemented a Deviation Register in the office of the Accounting Officer to record the reasons and approve any deviation including in the event of ceding payments.</li> </ol>	<p>Recommendation: implemented <b>Status: Closed</b></p>

14	<p>A deed of settlement was signed and concluded between SARS and CCMA on 02 April 2009. The CCMA was of the view that no penalty and interest should be imposed by SARS as a result of its voluntary disclosure to SARS. This was accepted by SARS and it was agreed that the CCMA had to pay R11,045,339. Payment was done in two instalments of R6,000,000 and R5,045,339 on the 31 March 2009 and 04 April 2009 respectively. The fruitless and wasteful expenditure was reported in the annual report for the 2008/09 financial year. Note 23 disclosed of the annual report disclosed a contingent liability with regard to the IT3a for the 2007 tax year. The CCMA has complied (for tax years 2008 and 2009) with paragraph 2(1) of the Fourth Schedule of the Income Tax by deducting PAYE from part time commissioner's remuneration and issued IT3a and IRP5 certificates to part time commissioners.</p> <p>The fruitless and wasteful expenditure was reported in the annual report for the 2008/09 financial year. Note 23 disclosed of the annual report disclosed a contingent liability with regard to the IT3a for the 2007 tax year. The CCMA has complied (for tax years 2008 and 2009) with paragraph 2(1) of the Fourth Schedule of the Income Tax by deducting PAYE from part time commissioner's remuneration and issued IT3a and IRP5 certificates to part time commissioners.</p>	<p>The Governing Body should attempt to recover taxes not declared and paid to SARS by part time commissioners.</p> <p>The Governing Body should make settlement arrangement with SARS regarding non-compliance with the Income Tax Act for the 2007/08 tax year.</p>	<ol style="list-style-type: none"> <li>1. The Governing Body has resolved that the CCMA should continue to take steps to attempt to recover the money paid by the CCMA to SARS in settlement and on behalf of those commissioners for whom tax had not been deducted as a result of the incorrect interpretation of the tax treatment of independent contractors which resulted in non-compliance of R11,045,339.</li> <li>2. The CCMA is waiting on SARS to assess the IT3a submitted for the 2007/08 tax year.</li> <li>3. Once SARS has issued the final assessments to affected individuals and advised the CCMA, external expertise will be sought to assist in the task of recovering the amounts. The CCMA envisages that the exercise will take a period of 48 months to ensure that recovery is done.</li> <li>4. The Governing Body will exercise oversight and receive regular updates on progress.</li> </ol>	<p><b>Recommendation:</b> <u>in process of being implemented</u></p> <p><b>Timeframe:</b> <u>unspecified as dependent on recovery success and SARS assessment.</u></p> <p><b>Status:</b> <u>Ongoing</u></p>
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15	<p>The provident fund administrator confirmed that during the period 01 March 2008 to January 2010, the CCMA only paid the August 2009 contributions later than what the Pension Fund Act stipulates.</p> <p>The contribution of R1,631,101 for August 2009 to the provident fund was only paid on 17 September 2009, which was done in contradiction with the Pension Fund Act. Therefore, the CCMA had to pay interest amounting to R11,257. the interest was paid over to the provident fund on 29 October 2009. The interest is deemed fruitless and wasteful expenditure.</p>	<p>According to the PFMA, fruitless and wasteful expenditure is defined as "<i>expenditure which was made in vain and would have been avoided had reasonable care exercised</i>". The interest amounting to R11,257 paid to the provident fund administrators should therefore be regarded as fruitless and wasteful expenditure. The Governing Body should report the fruitless and wasteful expenditure in terms of section 55(h)(i) of the PFMA.</p>	<ol style="list-style-type: none"> <li>1. The CCMA investigated the cause of the late payment and this was considered by the Governing Body. The reasons were as a result of late payment of funding to the CCMA by the Department of Labour, which was at the time unexpected as undertakings had been made that the funding would be available to the CCMA.</li> <li>2. The Governing Body disclosed and reported the interest paid over to the provident fund administrator as fruitless and wasteful expenditure in the annual report for the 2009/10 financial year and to the National Treasury as required by law.</li> </ol>	<p>Recommendation: implemented <b>Status: Closed</b></p>
16	<p>Based on the information received, the risk manager was appointed in line with prescribed legislation and regulations and he had the necessary skills and qualifications (B.com, Certified Internal Auditor, Certificate in Control Self Assessment and an executive member of the Institute of Risk Management of South Africa).</p> <p>Based on the information obtained, the allegation that the human resource manager was not in line with prescribed legislation and regulations are unjustified as the reasons for the deviation from supply chain management processes was approved by the finance sub-committee.</p>	<p>No recommendation</p>	<p>No action taken</p>	<p>Recommendation: none required <b>Status: Closed</b></p>
17	<p>The salary advance was not granted in accordance with the approved policy with regard to salary advances, dated November 2000.</p>	<p>The salary advance to the part time commissioner was in contradiction with the CCMA policy, the payment should be regarded as irregular expenditure.</p>	<ol style="list-style-type: none"> <li>1. The CCMA investigated the matter and has taken disciplinary action against the employee involved in irregularly granting the salary advance.</li> <li>2. The salary advance has been recovered in full.</li> <li>3. The Governing Body have had oversight and have regularised the expenditure and reported this in the Annual Report of 2009/2010.</li> </ol>	<p>Recommendation: implemented <b>Status: Closed</b></p>



findings which

- As an overall and thorough compliance
- The Auditor

i Refer to Annex

ii Refer to Annex

iii Refer to Annex

iv Refer to Annex

v Refer to Annex

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The evaluation was not granted a National The AGS still operating current as 2010.

## General Notes

- Most of the 3 were first