

**NATIONAL TREASURY FORENSIC INVESTIGATION TO VERIFY PRASA CONTRACTS
ABOVE R10 MILLION RAND AWARDED FROM 2012**

EXECUTIVE SUMMARY

1. Execute Summary

- 1.1.** This executive summary has been provided solely for purposes of giving a synopsis of our report and therefore cannot be relied upon for a detailed account of the findings and recommendations.
- 1.2.** Although the investigation covered all the issues we were required to investigate, the findings on several issues could not be made in the final report. This was due to a failure by PRASA to provide us with certain requested documents and information. We also record that most of the documents related to the tenders, were submitted undated, unsigned and in most instances, as indicated in the final report, incomplete.

2. Mandate

- 2.1.** PPM Attorneys' mandate was to:
 - 2.1.1.** investigate the procurement processes which were followed in the appointment of suppliers;
 - 2.1.2.** determine whether the appointments of identified service providers were made in line with the relevant prescripts and were approved by relevant authorities;
 - 2.1.3.** establish, where applicable, whether variations were in line with the relevant prescripts;
 - 2.1.4.** determine whether payments corresponded to the prescriptive bid price and or contractual agreement;
 - 2.1.5.** identify all persons or entities who unduly benefited as a result of irregular conduct; and
 - 2.1.6.** advise on remedial actions which must be taken in instances of maladministration and or where improper conduct has been detected.

3. Procedures performed

- 3.1.** We relied on documents provided by National Treasury, PRASA and the suppliers. Interviews and/or meetings to clarify evidence already gathered, as well as to obtain further evidence, were held. As indicated in the final report, we advise National Treasury that the information contained in the final report is as per what was disclosed and divulged to us as at the date of the request, or the day of the interview. Therefore, where we make reference to processes, payments, and completion of works, such reference is as per the information received / disclosed at the time. Accordingly, given the time lapse, the status of certain events may have changed as at the date of submission of our final report.
- 3.2.** We relied on the following legislation and prescripts to establish the applicable standard expected from PRASA:
- 3.2.1.** the Constitution of the Republic of South Africa Act, 108 of 1996;
 - 3.2.2.** the Labour Relations Act, 66 of 1995;
 - 3.2.3.** the Basic Conditions of Employment Act, 75 of 1997;
 - 3.2.4.** the Public Finance Management Act, 1 of 1999;
 - 3.2.5.** the Promotion of Administrative Justice Act, 3 of 2000;
 - 3.2.6.** the Promotion of Access to Information Act, 2 of 2000;
 - 3.2.7.** the Prevention and Combating of Corrupt Activities Act, 12 of 2004; and
 - 3.2.8.** the Broad Based Black Economic Empowerment Act, 53 of 2003.

4. Findings

In terms of our findings, we considered each supplier, the manner in which it was procured for the provision of the various services, any variations related to the appointments, the scope of work and the various payments made to the suppliers.

5. General comments

- 5.1.** Given the number of missing files and/or further missing documents within the files that could not be accounted for, it was difficult to express an opinion on some issues.
- 5.2.** Requested documents were not being submitted timeously. This impacted on our investigation timelines. We advise furthermore, that the fact that the files were not readily available indicates poor recordkeeping. This raises concern as to the authenticity of the documents that we were eventually provided.

6. Recommendations

6.1. Variation of Agreements

Paragraph 12.8.9 of the 2014 SCM Policy provides the following with respect to variation of contracts:

Any Variation of Contracts that amounts to extension of scope of work and / or increasing the liability of PRASA shall be limited to 10% of the value of the contract and shall be recommended by the CPO (Chief Procurement Officer) for approval by the GCEO (Group Chief Executive Officer) subject to the delegation of authority of the GCEO.

We advise that all PRASA members / employees adhere to the SCM Policy and ensure that any such variations to contracts are made in terms of the relevant prescripts.

6.2. Payments

Section 38 (1) (f) of the PFMA states as follows:

that the accounting officer for a department, trading entity or constitutional institution –

must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period.

A majority of the suppliers indicated that they experienced delays in payments for their services. Reference is made to the PFMA which provides that monies due should be paid timeously. PRASA should therefore ensure that it adheres to the prescribed timelines and ensure that its payments are made to all suppliers in a timeous manner.

6.3. Project Agreements

A majority of suppliers indicated to us, during the interviews conducted, that they either did not sign project agreements in time and/or no project agreements could be located at all for some of the suppliers. We were advised during an interview, that standard contracts were usually drafted by PRASA Corporate, but thereafter used by the different divisions of PRASA Group for simple contracts. However, for more complex contracts, PRASA employed the services of professional legal firms to assist with the drafting of contracts. These consultants could not deliver the contracts within 6 (six) months of the supplier being appointed, due to the complexity of most contracts. This led to suppliers initiating work based on the RFP together with the notice to proceed, and a contract only being drafted at a later stage. We therefore recommend that PRASA's legal department be utilised to draft contracts for the various projects and that these contracts be signed by PRASA and the suppliers timeously.

6.4. Recordkeeping

SCM policy provides as follows in this regard:

In terms of 9.2 of the 2014 SCM Policy, SCM has the responsibility, authority and is accountable for, inter alia:

The compilation of tender documents;

ensuring the completeness of tender documents;

arranging and managing tender briefing sessions and handling enquiries from tenderers;

ensuring that all potential suppliers are compliant with relevant legislation through ensuring the completion of background checks on these potential suppliers;

compiling a supplier recommendation report to the relevant adjudication committees;

ensuring that the tender process complies with policies, procedures and regulations;

maintaining records to ensure the existence of an audit trail;

performing all monitoring activities, inclusive of achievements in terms of preferential procurement and report them to the CPO.

- 6.4.1.** As indicated, various supplier documents, relating to the procurement process, have not been provided and those that have been provided to us were incomplete. This is not in line with PRASA's own policies which provide that all records must be maintained.¹ We recommend that PRASA appoints and/or nominates a member who must be responsible for the maintenance of all records that relate to SCM processes. We further recommend that PRASA ensures that the responsible party appointed for the maintenance of all records that relate to SCM processes conducts this function adequately, failing which, some training process be implemented if they are not performing this task accordingly. It is imperative that the appointed person manages and maintains proper records of all relevant documents. If this is not strictly adhered to, the appointed person should face some form of disciplinary action.
- 6.4.2.** Furthermore, with respect to the documents that are missing from Intersite which, are located at various other departments, we recommend that such documents, including the Intersite procurement files be located and kept in one central location. Electronic back-up copies of all relevant documents must be created and stored on a server by PRASA SCM so as to avoid irretrievable loss of such documents.
- 6.4.3.** Further as indicated in paragraph 2.10 of the final report, we inspected the SCM office at PRASA CRES where all procurement documents and files are kept. We noted that it is disorganised, has not been fireproofed, and the documents have not been electronically backed up. We recommend that record keeping mechanisms be improved.

6.5. Bid Evaluation Committee

In terms of 9.6 of the 2014 SCM Policy, the following is provided:

The BEC shall be established to perform, inter alia, the following functions:

conduct administrative compliance evaluation;

evaluate all tenders in accordance with the criteria specified in the bid documentation and the prescripts of the PPPFA;

ensure that all potential suppliers are compliant with all relevant legislation through ensuring the completion of background checks on potential vendors;

¹ Reference is made to sections 9.2 of the PRASA SCM Policy dated May 2014 (Supply Chain Management Department) maintaining records to ensure the existence of an audit trail.

compile evaluation reports for submission to the applicable adjudication committees;

make recommendations to the applicable adjudication committee regarding the outcome of the evaluation process; and

maintain records to ensure the existence of an audit trail.²

6.5.1. We recommend that more thought be given when appointing the members of the BEC. Although we were advised by Mr Mdluli that PRASA strives to appoint a committee based on their knowledge and expertise on the subject of the project, this is not always complied with. It is also imperative that people from different departments within PRASA be appointed in order to ensure a thorough evaluation. Additionally, it is imperative that all members of the BEC give input and have sight of the final recommendation reports, even if only the chairperson signs off on it. The reason for this is that it is the responsibility of the BEC to evaluate all bids for responsiveness. Additionally, the BAC should not usurp the functions of the BEC. Should the BAC find that a tender does not meet certain criteria, it should be sent back to the BEC for re-evaluation.

6.5.2. Further, given that, PRASA CRES does not require the evaluation of tenders by third parties / consultants, any reference to such aspect of the services provided should be excluded from the scope of work. This will therefore ensure that PRASA avoids fruitless or wasteful expenditure.

6.6. Bid Adjudication Committees

The roles and responsibilities of the CTPC and the DTPC are set out in 9.8 and 9.9 of the 2014 SCM Policy.³ The BAC members should ensure that their roles as provided in the policy are followed and implemented. Further, the BAC should not usurp the functions of the BEC. Should the BAC find that a tender does not meet certain criteria, it should be sent back to the BEC for re-evaluation.

6.7. Training

Section 16A.5 of the National Treasury regulations provides as follows (Training of supply chain management officials)

² Please note that the functions outlined in the SCM policy are in line with the PFMA, National Treasury Regulations 16.

³ Ibid.

The accounting officer or accounting authority must ensure that officials implementing the institution's supply chain management system are trained and deployed in accordance with the requirements of the Framework for Minimum Training and Deployment issued by the National Treasury.

We believe it's imperative that PRASA trains both BEC as well as BAC members on proper SCM procedures. All members should have a substantial knowledge and understanding of the SCM Policy that is in place. It is advised that mandatory workshops are held for all BEC and BAC members before they are appointed to evaluate any tenders. Additionally, annual refreshers should be held in order to ensure that the SCM Policy is continuously complied with.

6.8. SCM

6.8.1. We have been informed that it is the responsibility of the SCM department to have oversight and keep minutes of the evaluation meetings. It is imperative that the skills profile of the people appointed to this task are in line with skills required to carry out the task effectively.

6.8.2. Furthermore, we advise that per financial year, PRASA ensures that it does not allocate projects to the same supplier, thereby creating a monopoly. In other words, PRASA should determine annually the capped amounts that can be allocated to a particular supplier. This should be communicated to SCM and monitored by them. In doing so, not only will other service providers be afforded an opportunity to render services / products, but this will also contribute to minimising risk, as it would be spread amongst more companies, as opposed to appointing one service provider on multiple projects. This recommendation should be incorporated into the SCM Policy and all tender bid documents so that suppliers know upfront and can make a determination as to whether they should bid or not.

6.9. Procurement (Intersite)

It was indicated during our interview processes that Intersite was tasked with following its own procurement process, however, due to allegations of impropriety, employees were suspended and PRASA Corporate took over the procurement function. We advise that more stringent measures be implemented with regard to procurement. There should be checks and balances in place in order to ensure that the correct supplier is awarded the contract. Employees involved in the procurement process need to be trained and have sufficient experience before they are appointed to make decisions. This is particularly relevant in instances where a specialised skills set is required for projects.

6.10. Legal

- 6.10.1.** We attended a consultation with certain members of the legal department on 30 August 2016. This was in order to obtain a view from the legal department regarding the matters currently being investigated. We discussed contentious matters with the legal department and their view was that the various departments should always forward matters to legal for an opinion on the best way to proceed. They advised that although this is the suggestion they provide, the various departments do not always refer the matters to the legal department. This in our view impedes the procurement processes given that such departments do not necessarily have knowledge on the best way to proceed.
- 6.10.2.** We were also advised that contracts with the various suppliers are not always drafted and/or vetted by the legal department. The risk of this being that contracts that are entered into may not have the material terms of agreements and may also contain cumbersome clauses which may be prejudicial to PRASA. We therefore recommend that all contracts, especially complex contracts, be forwarded to legal for their consideration before they are presented to the supplier for signature.
- 6.10.3.** Further, we were advised that a legal policy was put forward to the board in 2014, which sets out the process of dealing with matters within the departments and also to standardise process within the departments. This draft policy has however not been approved by the board. We advise that this draft policy be reviewed and thereafter approved by the board in order to provide a guideline to the legal department, as well as all other PRASA departments.

7. For a more detailed account on each supplier investigated, reference may be made to the PowerPoint presentation provided together with the final report.