

**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  
MALADMINISTRATION AND PROCUREMENT IRREGULARITIES BY THE  
KWAZULU-NATAL DEPARTMENT OF HEALTH**

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## **Executive Summary**

- (i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and hereby published in terms of section 8 of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into allegations of procurement irregularities and maladministration relating to the improper awarding of Tender no. ZNB 9281/2012H to Mzansi LifeCare and Mobile Satellite Technologies (MST), the improper awarding and extension of contracts to Meditech SA by the KwaZulu-Natal Department of Health (the Department) and the conflict of interest between the Department, and Dr JM Poo (Dr Poo).
- (iii) The initial complaint was lodged with my office on 23 June 2015 by Honourable Ncamisile Jericho Nkwanyana, an Inkatha Freedom Party (IFP) KwaZulu-Natal Member of the Provincial Legislature (MPL). A second complaint was received from the Democratic Alliance (DA) KwaZulu-Natal MPL, Honourable Imran Keeka on 05 August 2015.
- (iv) A further complaint was lodged with my office on 16 August 2016 by an Anonymous Complainant, relating to the improper awarding and extension of contracts to Meditech SA by the Department.
- (v) In essence the Complainants alleged that:
  - (a) The Department improperly awarded a tender to Mzansi LifeCare and MST for the provision of Mobile units to the KZN Department of Health;
  - (b) The Department failed to establish if the amount paid for the Mobile units was market-related and whether the cost incurred was justified as the Mobile units were leased and not purchased outright;
  - (c) Mzansi LifeCare, the company appointed by the Department for the supply of the Mobile unit, was only registered on 29 May 2012, twelve (12) days before the Department advertised the tender;

- (d) The Department had paid R61 million for four (4) Mobile units but only two were delivered;
  - (e) The procurement processes followed by the Department in appointing Meditech SA was improper;
  - (f) The process to appoint Meditech SA and extend the contracts resulted in irregular expenditure being incurred by the Department; and
  - (g) There was a conflict of interest between the Department, Meditech SA and Dr JM Poo (Dr Poo), as Dr Poo was an employee of the Department.
- (vi) On analysis of the complaint, the following issues were identified to inform and focus the investigation:-
- (a) Whether the Department improperly procured the Mobile units under Tender number ZNB9281/2012/H, and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.
  - (b) Whether the Department improperly procured and extended the services of Meditech SA and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.
  - (c) Whether the Department failed to consider the conflict of interest that existed between Dr. Poo a director in Meditech SA, when it appointed Meditech SA and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

(vii) The investigation process commenced with a preliminary investigation, followed by a formal investigation which was conducted through the exchange of correspondence with the Department, interviews with officials from the Department., as well as perusal of the relevant documents/correspondence, independent research received, inspection *in loco* as well and analysis and application of the relevant laws, policies and related prescripts Section 7(9)(a) Notices were issued in terms of the Public Protector Act, 1994 to the Department, Dr Zungu, and Dr Poo whom responses thereto were received and considered. Dr Mtshali did not submit any responses to the section 7(9) notice issued to him.

(viii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:-

**(a) Regarding whether the Department improperly procured the Mobile units under Tender number ZNB9281/2012/H, and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999**

(aa) The allegation that the Department improperly procured the Mobile units under tender no. ZNB9281/2012/H, is substantiated.

(bb) The processes followed by the Department to lease and consequently purchase the mobile units were improper and not in accordance with a system that is fair, equitable, transparent, competitive and cost effective in terms of Section 217 of the Constitution, and amounts to maladministration in terms of Section 6(4) of the Public Protector Act.

(cc) The allegation that the Department consequently incurred irregular expenditure and/or fruitless and wasteful expenditure is substantiated.

(dd) The expenditure incurred for both the purchase and consequently the lease of the Mobile units amounts to, irregular expenditure as envisaged

in Section 1 of the PFMA, and maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

- (ee) The expenditure incurred for the purchase of the Mobile units further amounts to, fruitless and wasteful expenditure as envisaged Section 1 of the PFMA, to an amount of R32 million, and maladministration as contemplated by section 6(4) of the Public Protector Act, 1994, as reasonable care was not exercised to ensure that the Mobile units that were purchased complied with the relevant regulations.
- (ff) Both the PFMA and the Treasury Regulations require of the accounting officer of a department to establish and maintain a proper competitive procurement system. The HOD as the Accounting Officer at the time failed to act in accordance with the requirements of section 57 the PFMA, National Treasury Regulation 8.1, 8.2 and 16A3.2 resulting in improper conduct as envisaged in section 6(4) of the Public Protector Act, 1994.
- (gg) The HOD further failed to take full responsibility and ensure that proper control systems existed for the assets of the Department when the Mobile units were purchased, as provided for in Section 38(1)(d) of the PFMA resulting in financial loss to the Department.
- (hh) The CFO and the HOD failed to ensure that the payments made to Mzansi Life Care for both the lease and the subsequent purchase of the Mobile units were approved and processed accordingly, and in line with the responsibilities entrusted to them as provided for in Sections 38 and 57 of the PFMA and National Treasury Regulation 8.1 and their conduct amounts to improper conduct as envisaged in section 6(4) of the Public Protector Act, 1994.
- (b) Regarding whether the Department improperly procured and extended the services of Meditech SA and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated**

**by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.**

- (aa) The allegation that Department improperly procured the services of Meditech SA, is substantiated.
- (bb) The extension of the subsequent contracts, with substantial extension in the scope of work, were also improper.
- (cc) The Department improperly extended the 2001 contract and the subsequent extensions with Meditech SA, and failed to ensure that the procurement followed a process that is transparent, equitable and fair in line with Section 217 of the Constitution and National Treasury Regulation 16A3.29 (a) and amounts to maladministration and improper conduct.
- (dd) The expenditure incurred as a result of the irregular extensions amounts to irregular expenditure as envisaged in section 1 of the PFMA, 1999.
- (ee) By entering into the 2016 project with Meditech SA, the Department failed to follow a process that is transparent, equitable and fair in line with Section 217 of the Constitution and National Treasury Regulation 16A3.29(a) and amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994.
- (ff) The 2016 project to implement the licences, included and increase the scope of work procurement of hardware at a substantial cost to the Department and amounts to irregular expenditure as envisaged in section 1 of the PFMA, 1999.
- (c) **Regarding whether Department failed to consider the conflict of interest that existed between Dr. Poo a director in Meditech SA, when it appointed Meditech SA 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 Department failed to consider the conflict of interest that existed between Dr. Poo, a director in Meditech SA, and the Department, when it appointed Meditech SA, is substantiated.
  - (bb) Although Dr Poo was not employed by Meditech SA when it entered into the initial contract with the Department in 1988, he was employed with the Gauteng Department of Health in March 2008, as a Sessional Doctor and in March 2009 by Meditech SA. He became a Director in Meditech on 22 May 2012.
  - (cc) Dr Poo's conduct as an employee of the state is in contravention of Regulation 13 (c) of the Public Service Regulation, 2016 that prohibits and employees of the Public Service from conducting business with an organ of state or to be a director of a company conducting business with an organ of state, and creates a conflict of interest as defined by the Directive on conducting business with the state.
- (ix) The appropriate remedial action I am taking as envisaged in section 182(1)(c) of the Constitution is the following:
- a. **Regarding whether Department improperly procured the Mobile units under Tender number ZNB9281/2012/H, and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.**

#### **The MEC KZN HEALTH**

- (aa) Take cognizance of the findings regarding the conduct and maladministration by the Department relating to the irregularities mentioned in the report.
- (bb) Ensure that the HOD considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA.



- (cc) Ensure that the HOD considers the acts of maladministration and improper conduct referred to in this report and takes appropriate disciplinary action against the officials of the Department in respect of their conduct referred to therein.
- (dd) Ensure that the HOD through the Provincial Treasury to take steps to recover the expenditure incurred by the Department as a result of fruitless and wasteful expenditure for the "*purchased Mobile Units*"

### **THE HOD KZN HEALTH**

- (aa) Considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA;
- (bb) Considers the acts of maladministration and improper conduct referred to in this report and takes appropriate disciplinary action against the officials of the Department in respect of their conduct referred to therein;
- (cc) The HOD, through the Provincial Treasury evaluates the effectiveness of the Department's internal controls on Supply Chain Management processes with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report;
- (dd) The HOD reports to the Provincial Treasury and the Auditor-General, particulars of the alleged financial misconduct and the steps taken in connection with such financial misconduct, in terms of section 84 and as contemplated in section 85 of the PFMA.
- (ee) To ensure that prior to signing a formal contract or service level agreement with a contractor, that such contracts or agreements are legally sound to avoid potential litigation and to minimise possible fraud and corruption. This must include legal vetting by at least the Legal Services of the Department. Such contracts or agreements must be

actively managed in order to ensure that both the Department and the service providers meet their respective obligations

- (ff) The HOD through the Provincial Treasury to take steps to recover the expenditure incurred by the Department as a result of fruitless and wasteful expenditure for the "*purchased Mobile Units*".

**b. Regarding whether the Department improperly procured and extended the services of Meditech SA and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.**

#### **THE MEC KZN HEALTH**

- (aa) Take cognizance of the findings regarding the conduct and maladministration by the Department relating to the irregularities mentioned in the report;
- (bb) Ensure that the HOD considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA;
- (cc) Ensure that the HOD considers the acts of maladministration and improper conduct referred to in this report and takes appropriate disciplinary action against the officials of the Department in respect of their conduct referred to therein; and
- (dd) Consider commissioning a forensic investigation into all Meditech SA contracts with the Department since 2001, and take measures to address any findings regarding systemic administrative deficiencies allowing maladministration and related improprieties in its procurement system;

### THE HOD KZN HEALTH

- (aa) Considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA;
  - (bb) Considers the acts of maladministration and improper conduct referred to in this report and takes appropriate disciplinary action against the officials of the Department in respect of their conduct referred to therein;
  - (cc) The HOD, through the Provincial Treasury evaluates the effectiveness of the Department's internal controls on Supply Chain Management processes, with specific reference to the procurement of IT related goods and services, with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report;
  - (dd) The HOD reports to the Provincial Treasury and the Auditor-General, particulars of the alleged financial misconduct and the steps taken in connection with such financial misconduct, in terms of section 84 and as contemplated in section 85 of the PFMA;
  - (ee) To ensure that prior to signing a formal contract or service level agreement with a contractor must ensure that such contracts or agreements are legally sound to avoid potential litigation and to minimise possible fraud and corruption. This must include legal vetting by at least the Legal Services of the Department.
- c. Regarding whether the Department failed to consider the conflict of interest that existed between Dr Poo, a director in Meditech SA, and the Department, when it appointed Meditech SA, and if so whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994**

### The MEC GAUTENG HEALTH

- (aa) Take cognizance of the findings regarding the issue of the conflict of interest mentioned in the report.

- (bb) Ensure that the HOD considers the report and, acts in terms of section 8 of the Directive on Conducting Business with an Organ of State and its regulations, that was issued by the Minister of Public Service and Administration in January 2017.

#### **THE HOD GAUTENG HEALTH**

- (aa) To take note of my findings in this report and act in accordance with his duty to report contraventions in terms of section 8 of the Directive on Conducting Business with an Organ of State and its regulations, that was issued by the Minister of Public Service and Administration in January 2017.

#### **d. THE DIRECTORATE OF PRIORITY CRIME INVESTIGATION**

- (aa) 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

#### **(x) MONITORING**

- a. The MEC and HOD must, within thirty (30) working days from the date of the issuing of this Report and for approval by the Public Protector, submit an implementation plan to the Public Protector indicating how the remedial action referred to in paragraph (x)[a, b, c and d] of this Report will be implemented.
- b. In line with the Constitutional Court judgment in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11, and in order to ensure the effectiveness of Office of the Public Protector, the remedial actions prescribed in this Report are legally binding , unless set aside by a Court order.

# **REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND PROCUREMENT IRREGULARITIES BY THE KWAZULU-NATAL DEPARTMENT OF HEALTH**

## **1. INTRODUCTION**

1.1 This is my report 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 This report, specifically the findings therein, are submitted, in terms of section 8 of the Public Protector Act, to the following people:

1.2.1 The MEC Health KZN;

1.2.2 The MEC Health Gauteng;

1.2.3 The KZN Provincial Treasury;

1.2.4 Dr SC Tshabalala, the HOD, KZN Department of Health;

1.2.5 Dr SM Zungu the erstwhile HOD, KZN Department of Health;

1.2.6 Dr Mtshali; the former HOD, KZN Department of Health;

1.2.7 Dr JM Poo of Meditech SA; and

1.2.8 The Complainant, Anonymous.

1.3 The report relates to an investigation into allegations of procurement irregularities and maladministration regarding the improper awarding of Tender no. ZNB 9281/2012H to Mzansi LifeCare and Mobile Satellite Technologies (MST), the improper awarding and extension of contracts to Meditech SA by the KwaZulu-Natal Department of Health (the Department) and the conflict of interest between the Department, and Dr JM Poo (Dr Poo).

## **2. THE COMPLAINT**

2.1 The initial complaint was lodged with my office on 23 June 2015 by Honourable Ncamisile Jericho Nkwanyana, an Inkatha Freedom Party (IFP) KwaZulu-Natal Member of the Provincial Legislature (MPL). A second

complaint was received from the Democratic Alliance (DA) KwaZulu-Natal MPL, Honourable Imran Keeka on 05 August 2015.

2.2 A further complaint was lodged with my office on 16 August 2016 by an Anonymous Complainant, relating to the improper awarding and extension of contracts to Meditech SA by the Department.

2.3 In essence the Complainants alleged that:

2.3.1 The Department improperly awarded a tender to Mzansi LifeCare and MST for the provision of Mobile units to the KZN Department of Health;

2.3.2 The Department failed to establish if the amount paid for the Mobile units was market-related and whether the cost incurred was justified as the Mobile units were leased and not purchased;

2.3.3 Mzansi LifeCare, the company which was appointed by the Department for the supply of the Mobile unit, was only registered on 29 May 2012, twelve (12) days before the Department advertised the tender;

2.3.4 The Department had paid R61 million for four (4) Mobile units but only two were delivered;

2.3.5 The procurement processes followed by the Department in appointing Meditech SA as the preferred service provider was improper;

2.3.6 The process followed to appoint Meditech SA and extend the contracts resulted in irregular expenditure being incurred by the Department; and

2.3.7 There was a conflict of interest between the Department, Meditech SA and Dr JM Poo (Dr Poo), as Dr Poo was an employee of the Department.

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

3.1 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.

3.2 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.”*

3.3 Section 182(2) of the Constitution further directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 In ***Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618***, the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect [at para 76]. 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”*.

3.5 In the above-mentioned matter of the ***Economic Freedom Fighters v Speaker of the National Assembly and Others***, the Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:

3.5.1 Complaints are lodged with the Public Protector **to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles** (para 65);

3.5.2 An appropriate remedy must mean **an effective remedy, for without effective remedies for breach, the values underlying and the rights**

**entrenched in the Constitution cannot properly be upheld or enhanced.**  
(para 67);

3.5.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints which was the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, **she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint** (para 68);

3.5.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their **nature, context and language**, to determine what course to follow. (para 69);

3.5.5 Every complaint requires a **practical or effective remedy** that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to. (para 70);

3.5.6 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the **subject-matter of investigation** and the **type of findings made**. (para 71);

3.5.7 Implicit in the words "*take action*" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "*action*" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that **she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence**; (para 71(a);



- 3.5.8 **She has the power to determine the appropriate remedy and prescribe the manner of its implementation** (para 71(d));
- 3.5.9 “*Appropriate*” means nothing less than effective, suitable, proper or **fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption**, in a particular case (para 71(e));
- 3.6 In the matter of the ***President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017)***, the court held as follows, when confirming the powers of the Public Protector;
- 3.6.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (paragraph 71 of the judgment);
- 3.6.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question. (paragraph 82 of the judgment);
- 3.6.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers( paragraph 100 and 101 of the judgment):
- a) Conduct an investigation;
  - b) Report on that conduct; and
  - c) To take remedial action.
- 3.6.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (paragraph 104 of the judgment);

- 3.6.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Paragraph 105 of the report). ;
- 3.6.6 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (paragraph 107 and 108 of the Judgment);
- 3.6.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment);
- 3.7 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and abuse or unjustifiable exercise of power in the conduct of state affairs or an improper or dishonest act by any person in the employ of government at any level;
- 3.8 The KZN Department of Health is a provincial public entity and its conduct falls within the Public Protector's mandate to investigate; and
- 3.9 The Public Protector's powers and jurisdiction to investigate and take appropriate remedial action was not disputed by the Department.

## **4. THE INVESTIGATION**

### **4.1 The Investigation Process**

- 4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- 4.1.2 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.

- 4.1.3 The investigation process included an exchange of correspondence with the Department, interviews, analysis of relevant documentation, research, inspection in *loco* and the consideration and application of relevant laws, regulatory framework and jurisprudence.
- 4.1.4 During the investigation process, notices in terms of section 7(9)(a) of the Public Protector Act dated 06 September 2019 were issued to the Department as well as the former HOD's, Dr Zungu and Dr Mtshali.
- 4.1.5 Dr. SC Tshabalala, the Head of Department (HOD) responded to the section 7(9) notice on 31 October 2019, wherein he submitted that the Department did not have any further inputs on the matter and would accordingly await my findings.
- 4.1.6 A further section 7(9) notice was issued to Dr JM Poo, to afford him an opportunity to respond to the allegations relating to the conflict of interest between him, as an employee of Meditech and the Department. Dr Poo however initially did not make any submissions in this regard. Meditech instead responded by making submissions relating to the contracts that were awarded to them and the subsequent extensions thereof. I have considered their submissions, but have not included it in this report, as my investigation focussed on the conduct of the Department and not Meditech as it is a private entity. The findings thereof that also are made against the Department and not Meditech.
- 4.1.7 On 5 December 2019, Dr Poo was made aware that the response from the CEO of Meditech did not contain any submissions regarding the conflict of interest matter that related to him. He subsequently submitted his response on 06 December 2019 which has been considered in this report.
- 4.1.8 Dr Zungu requested a meeting with the investigation team, which I acceded to and was held on 09 October 2019. Her response to the section 7(9) notice followed the meeting and was received on 16 November 2019. It has also been considered in this report.

4.1.9 Dr Mtshali was forwarded the section 7(9) notice on 10 October 2019 and did not make any submissions thereto.

## **4.2 Approach to the investigation**

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

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or improper conduct?

4.2.1.4 In the event of maladministration or impropriety, what would it take to remedy the wrong or to place the Complainant as close as possible to where he/she would have been but for the maladministration or improper conduct?

4.2.1.5 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. In this particular case, the factual enquiry principally focused on the issues raised in the complaint.

4.2.1.6 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been complied with by the Department, to prevent any irregularities, maladministration and improper conduct.

4.2.1.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct or maladministration.

**4.3 On analysis of the complaint, the following issues were identified to inform and focus the investigation:**

4.3.1 Whether the Department improperly procured the Mobile units under Tender number ZNB9281/2012/H, and if so, whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.

4.3.2 Whether the Department improperly procured and extended the services of Meditech SA and if so, whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.

4.3.3 Whether the Department failed to consider the conflict of interest that existed between Dr. Poo a director in Meditech SA, when it appointed Meditech SA and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

**4.4 The key sources of information**

**4.4.1 Documents received and considered:-**

MOBILE UNITS:

4.4.1.1 Response from the former HOD to the Public Protector , Dr ST Mtshali , dated 5 May 2016;

4.4.1.2 Submission by Dr T Mhlongo for "*Request for Proposal for the Universal Mobile Unit*" to Dr SM Zungu dated 04 May 2012;

4.4.1.3 Submission by Dr T Mhlongo for "*Request for Comments : Proposal for the Universal Mobile Unit*" to Mr Mkhize dated 11 May 2012;

4.4.1.4 Copy of RFI Reference Number : ZNB 9281/2011/H issued on 11 June 2012;

- 4.4.1.5 Report on the Presentations for ZNB9281/2012-H held on 20 August 2012;
- 4.4.1.6 CIPC search on Mzansi Lifecare;
- 4.4.1.7 Email sent on 6 November 2012 by Ms Dudu Mdlalose to Redeployment Camp Systems, MST Technologies, Istrodent Pty (Ltd) and Mzansi LifeCare;
- 4.4.1.8 Memorandum from Ms Mdlalose to Ms K Ngcobo, Senior Supply Management Officer dated 6 November 2012;
- 4.4.1.9 Memorandum from Mr N Mnyandu, Acquisition Management addressed to DBAC dated 06 November 2012;
- 4.4.1.10 Memorandum outlining the specifications; special terms and conditions and evaluation criteria for tender no ZNB 9281/2012-H. Ratified approval by Dr Zungu on 12 November 2012;
- 4.4.1.11 RFP document Reference Number : ;
- 4.4.1.12 Email request for information from the Public Protector to South African Products Regulatory Authority on 24 June 2019;
- 4.4.1.13 Email received by the Public Protector from South African Products Regulatory Authority on 25 June 2019;
- 4.4.1.14 Minutes of the meeting by the Technical Evaluation Committee(TEC) held on 5 December 2012;
- 4.4.1.15 Submission by Ms A Zondo, the Chairperson of the DBEC, to the Chairperson of the Departmental Bid Adjudication Committee (DBAC dated 7 December 2012);
- 4.4.1.16 Minutes of the DBAC meetings held between 16 January 2013 and 26 June 2013;
- 4.4.1.17 Submission by the Manager SCM to the Chairperson of the BAC on 24 May 2013 ratified by the earstwhile HOD Dr Zungu on 7 June 2013 ;
- 4.4.1.18 Government tender Bulletin publication of award dated 21 June 2013;
- 4.4.1.19 Appointment Letter to Mzansi Lifecare dated ....
- 4.4.1.20 Contract signed between the Department and Mzansi Lifecare on 2 August 2013;
- 4.4.1.21 Letter of appointment to MST dated 13 July 2013;
- 4.4.1.22 Article by Drum Digital Online with the title *"KZN's mystery R61 million bus tender"*; published on 27 January 2015;
- 4.4.1.23 Internet searches on Lamboo Medical Mobile and Mzansi Life Care's social media accounts and web sites (YouTube and Facebook):  
<https://www.mobile-medical.eu/projects/mobile-primary-care-truck-unit->

[delivered-south-africa/](#) and <https://youtu.be/NjFhwPCTWdE> accessed on 2 March 2019;

- 4.4.1.24 Submission by Dr.B.R Ndaba, (Dr Ndaba) the Manager : Medical Male Circumcision (MMC) and HIV Prevention, to the erstwhile HOD, Dr. Zungu requesting approval for the rental and purchase of four (4) Mobile Hospital Units dated 15 January 2015;
- 4.4.1.25 Proposal made by Mzansi LifeCare in January 2015;
- 4.4.1.26 Letter submitted by the DBAC,confirming that the tender was tabled before them dated 27 February 2015;
- 4.4.1.27 Submission by Mr Mlaba, the Acting General Manager, SCM to Mrs. N Maphumulo, the Deputy Manager, SCM on 2 March 2015;
- 4.4.1.28 Invoice submitted by Mzansi LifeCare for an for the amount of R31 200 000.00, for four (4) Mobile units on 1 March 2016;
- 4.4.1.29 Purchase order for Mzansi LifeCare completed on 6 March 2016;
- 4.4.1.30 Payment by the Department to Mzansi LifeCare on 27 May 2016;
- 4.4.1.31 Delivery note for each Mobile unit dated 27 April 2016, 29 April 2016 and 3 May 2016;
- 4.4.1.32 Email correspondence between Mzansi LifeCare and the Department's EMS Fleet Management dated 28 June 2018;
- 4.4.1.33 Letter to Mzansi LifeCare from Department's EMS Fleet Management submitted a responding to the email;
- 4.4.1.34 Email from Dr. Msimang to the Department's EMS Fleet Management directing them to release the other two trucks;
- 4.4.1.35 Temporary Permits and Certificate of Registration in Respect of Motor Vehicle, for the four (4) trucks;
- 4.4.1.36 Request by the Public Protector to the Road Traffic Management Cooperation (RTMC) on 17 April 2019;
- 4.4.1.37 Information received from the RTMC on 7 and 22 May 2019;
- 4.4.1.38 Pictures of the purchased Mobile units submitted by the Department on 21 September 2017;
- 4.4.1.39 Letter to Mzansi LifeCare notice on the termination of service by Mr Mlaba, the Chief Director, SCM on15 August 2016;
- 4.4.1.40 Email correspondence from Dr Msimang of Mzansi Lifecare to Mr C. Mlaba, on 28 November 2016;
- 4.4.1.41 On 15 December 2016 Mr Mlaba made a submission to the former HOD, Dr Mtshali with the title "*RE-LETTER OF CONCERN: ZNB 9281/2102-H MZANZI LIFE CARE (PTY) LTD*;

- 4.4.1.42 Addendum to the original agreement signed on 24 February 2017,
- 4.4.1.43 SCM Reporting Schedule sourced from the Department's Basic Accounting System (BAS) submitted by the Department indicating payments made to Mzansi Lifecare and MST;

#### MEDITECH SA

- 4.4.1.44 Response from the former HOD, Dr. S.T Mtshali to the Public Protector dated 31 March 2017 ;
- 4.4.1.45 Program License Agreement (PLA) for Software, for Tender P4062 signed on 30 April 1990;
- 4.4.1.46 Initial master rental agreement was entered into, and signed by the KwaZulu Natal Provincial Administration, Department of Health and Meditech SA on 03 July 2001 and 31 August 2001 respectively;
- 4.4.1.47 Document entitled "*SCHEDULE A TO MASTER RENTAL AGREEMENT*" indicating the rental agreement commencing on 15 May 1999 and expiring on 14 May 2004.
- 4.4.1.48 First addendum being signed in May 2006;
- 4.4.1.49 "*SCHEDULE A TO MASTER RENTAL AGREEMENT*" attached to the Master Rental Agreement indicating the rental agreement commencing on 15 May 1999 and expiring on 31 December 2006;
- 4.4.1.50 Software License Agreement for the Revit hospitals signed by Meditech SA on 19 August 2008 and by the Department on 10 September 2008,
- 4.4.1.51 Attachments to the agreement titled "*Article II delivery*" and "*Exhibit 1 Major Server Components*".

#### EVIDENCE SUBMITTED BY COMPLAINANT:

- 4.4.1.52 Memorandum submitted by Mrs P.K Padayachee, General Manager: Legal Services, to the then HOD, Dr Zungu, for the approval of the implementation agreement of the Revit Hospital software licenses on 19 October 2009,
- 4.4.1.53 Evidence indicated that during the year 2008 and 2009, the Department engagement with State Information Technology Agency (SITA), as per SITA Tender RFB 608;
- 4.4.1.54 Letters to Dectrix and Xon, indicating that the Department's approval of the implementation of the Health Information Systems Pilot, signed by the then Acting HOD, Dr YL Mbele on 09 December 2008;



- 4.4.1.55 Letters to XON and a company named Trifour from the former HOD Dr Mtshali on 4 November 2009;
- 4.4.1.56 Implementation agreement for the implementation of the licensed software for the Revit Hospitals entered into between the Department and Meditech SA, dated August 2010;
- 4.4.1.57 Copy of a letter dated 23 April 2012, from Meditech SA to Dr. T Mhlongo, titled "*Proposal for the Implementation of the Meditech HCIS in KZN NHI Pilot Districts*"
- 4.4.1.58 Submission dated 26 April 2012 "*Transfer of Meditech SA Software Licenses Already Paid For From the Revitalisation sites to the NHI sites*" from Dr T. Mhlongo, to the HOD, Dr Zungu, approved on 7 May 2012;

#### FURTHER EVIDENCE SUBMITTED BY THE DEPARTMENT

- 4.4.1.59 Letter signed by a person named "*Shezi*" on behalf of Mr. L.S Magagula, from Provincial Treasury to the HOD Dr Mtshali on 3 March 2016;
- 4.4.1.60 Submission by the Deputy Director-General, Corporate Management Services on 18 March 2016 to the Chief Financial Officer (CFO) , Mr S Mkhize, and the HOD Dr Mtshali, seeking approval of the budget, approved by the HOD on 29 March 2016.
- 4.4.1.61 Letter from the HOD, Dr Mtshali sent to Dr JM Poo, the Corporate Account Executive and Healthcare Advisor, Meditech SA , dated 17 March 2015 but was signed by the former HOD, Dr Mtshali, with a date stamp of 29 March 2016;
- 4.4.1.62 Submission by the Chief Director: Supply Chain Management (SCM), Mr C Mlaba (Mr Mlaba), to the HOD, Dr. ST Mtshali on 4 May 2016, approved by the HOD on 11 May 2016.
- 4.4.1.63 RFP for the 2016 Project under Bid ZNB 5486/2015-H with closing date for the bid was 20 May 2016;
- 4.4.1.64 Email correspondence from the Department's SCM office to Meditech SA on 16 May 2016;
- 4.4.1.65 Email response from On 18 May 2016, Mr Jacob M. Poo, the Corporate Account Executive and Health Advisor of Meditech SA to the Department on 18 May 2016;
- 4.4.1.66 Email correspondence from the Department to Mr Poo of Meditech SA on 19 May 2016;
- 4.4.1.67 Submission by the Department's Supply Chain Practitioner, Mr R Werner, to the Department Bid Evaluation Committee (DBEC) on 20 July 2016;

- 4.4.1.68 Letter to Meditech SA from Mr Mlaba informing them that the Bid Adjudication Committee had awarded the contract to them dated 12 August 2016;
- 4.4.1.69 Agreement of the 2016 Project signed between Meditech SA and the Department in August 2016;
- 4.4.1.70 Project Status Report dated 07 August 2017.

#### **4.4.2 Notices issued and responses received:**

- 4.4.2.1 Notice issued in terms of section 7(9)(a) of the Public Protector Act to the KZN Department of Health, dated 6 September 2019;
- 4.4.2.2 Notice issued in terms of section 7(9)(a) of the Public Protector Act to the former HOD, Dr SM Zungu, dated 6 September 2019;
- 4.4.2.3 Notice issued in terms of section 7(9)(a) of the Public Protector Act to the former HOD, Dr Mtshali, dated 6 September 2019;
- 4.4.2.4 Notice issued in terms of section 7(9)(a) of the Public Protector Act to Dr JM Poo, dated 6 September 2019;
- 4.4.2.5 Response to section 7(9)(a) Notice from the Dr Tshabalala, dated 31 October 2019;
- 4.4.2.6 Response to section 7(9)(a) Notice from Dr Zungu, dated 16 October 2019;
- 4.4.2.7 Response to section 7(9)(a) Notice from Meditech dated 10 April 2019; and
- 4.4.2.8 Response to section 7(9)(a) Notice from Dr Poo dated 6 December 2019

#### **4.4.3 Interviews Conducted:**

- 4.4.3.1 Interview conducted with Department officials of the Department on 18 and 19 September 2017; and
- 4.4.3.2 Interview conducted with officials from the Department's Emergency Medical Service (EMS) Fleet Management site in Jacobs, KZN on 7 March 2019;
- 4.4.3.3 Interview conducted with former official of the Department Mr Mashaka Enos Ravhura on 12 March 2019;
- 4.4.3.4 Meeting held with Dr SM Zungu, the erstwhile HOD, on 9 October 2019;

#### **4.4.4 Inspection *in loco***

- 4.4.4.1 Inspection *in loco* conducted on 07 March 2019, at the Department's Emergency Medical Service (EMS) Fleet Management site in Jacobs.

#### **4.4.5 Legislation and other prescripts:**

- 4.4.5.1 The Constitution of the Republic of South Africa, 1996;
- 4.4.5.2 The Public Protector Act No 23 of 1994;
- 4.4.5.3 The Public Finance Management Act 1 of 1999;
- 4.4.5.4 National Treasury Regulations in terms of section 76(4) (c) of the PFMA;
- 4.4.5.5 Preferential Procurement Policy Framework Act, 2000;
- 4.4.5.6 Preferential Procurement Regulations, 2011;
- 4.4.5.7 Implementation Guide: Preferential Procurement Regulations 2011
- 4.4.5.8 The Public Service Act, 1994
- 4.4.5.9 The Public Service Regulations, 2016; and
- 4.4.5.10 The Directive on Conducting Business with an Organ of State issued in January 2017 by the Minister of Public Service and Administration.

#### **4.4.6 Case law:**

- 4.4.6.1 *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618;
- 4.4.6.2 *President of the Republic of South Africa v Office of the Public Protector and Others* (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017); and
- 4.4.6.3 *Allpay Consolidated Investment Holding (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency* (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC);
- 4.4.6.4 *Minister of Transport v Prodiba (Pty) Ltd* (20028/2014) [2015] ZASCA 38 (25 March 2015)

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

**5.1 Regarding whether the Department improperly procured the Mobile units under Tender number ZNB9281/2012/H, and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999**

*Common Cause Issues*

5.1.1 It is common cause that the Department issued a Request for Information (RFI) for the provision of Mobile units under tender No. ZNB9281/2012/H on 11 June 2012.

5.1.2 It is also common cause that the Department appointed Mzansi LifeCare and MST for the provision of Mobile units in Kwazulu-Natal.

5.1.3 The issue for my determination is whether the procurement of the Mobile units by the Department complied with the relevant procurement legislation and prescripts and whether the costs incurred resulted in irregular and/or fruitless and wasteful expenditure.

*Issues in dispute*

5.1.4 The Complainants alleged that the procurement process followed by the Department in the awarding of tender no. ZNB 9281/2012-H was improper, and that the Department had incurred an expenditure of R61 000 000.00 (R61m) for the lease of two (2) Mobile units amounting to irregular and/or fruitless and wasteful expenditure.

5.1.5 The Complainant further argued that the Department failed to apply its mind in the awarding of the said tender as the Mobile units were leased and not purchased resulting in excessive expenditure being incurred.

5.1.6 On 5 May 2016, the former Head of Department (HOD), Dr ST Mtshali, (Dr Mtshali), responded to the allegations and provided documentary evidence which detailed the process that the Department followed in procuring the Mobile units. Dr Mtshali's response is canvassed below:

*The Request for Information (RFI) Process*

5.1.7 The evidence submitted to my office by the Department indicates that on 4 May 2012, the Acting General Manager: Health Services Policy and System Development, Dr T Mhlongo, (Dr Mhlongo), submitted a memorandum to the erstwhile HOD Dr SM Zungu, (Dr Zungu), requesting approval for Supply Chain Management (SCM) to advertise a "*Call for Proposals for Mobile units*".

5.1.8 The aforesaid memorandum stated, amongst other things, that the Mobile units would be a unique and innovative initiative to assist the Department to cover specialized services in remote areas and that ***the Call for Proposals would allow bidders to present ideas to the Department, and give the Department an opportunity to test the market*** (own emphasis). This memorandum was approved on 7 May 2012 by Dr Zungu and noting that "*in principle will need CFO's comments.*"

5.1.9 On 11 May 2012, Dr Mhlongo re-submitted a further memorandum with the same information but recommending that Mr S. Mkhize, the Chief Financial Officer, (Mr Mkhize), provide input and comments as per request from Dr Zungu. Mr Mkhize approved the memorandum on the 17 May 2012.

5.1.10 It is noted that the copy of the Request for Information (RFI) submitted by the Department had a Reference Number: **ZNB 9281/2011-H**, and stated that the date of issuing was 11 June 2012 and closing date 17 July 2012. This tender reference number differs from the advertised tender number.

5.1.11 Paragraph 1.3 of the RFI stated as follows :

*“This RFI has been issued to assist the Department in developing plans to identify the most suitable means to source Universal Mobile unit to provide integrated health services and to **Pre-qualify suppliers/vendors** with the capability and infrastructure to provide such units.*

*This RFI is intended to systematically identify similarities and differences between suppliers in the market and for the goods and services described as part of the opportunity, and additionally gain a greater understanding of specific suppliers’ abilities, core business and strategic outlook with respect to the provision of mobile and accessible health care facilities.*

*The Department intends to assess supplier responses and use the resultant assessments in future decision making with regards to supply of the Opportunity.”*

5.1.12 Paragraph 1.4 of the RFI , stated that the offering must meet the following minimum criteria:

**“a. The Unit**

- *Integrate all services at an outreach level (preventative, promotion, curative and rehabilitative);*
- *Easy to operate by staff;*
- *User friendly to both patients and staff;*
- *Adaptable to all weather and terrain;*
- *Equipment in the unit must be SABS approved and/or authorized to be used in South Africa;*
- *Equipment must be SABS approved and/or authorized to be used in South Africa;*
- *The Unit must be safe and well secured;*
- *Easy to maneuver in and around squatter camps;*
- *Must accommodate all socio-economic strata;*

**b. The vehicle**

- *Must comply with Road Traffic Inspectorate (RTI) and South African legislations;*
- *Built-in technology must be flexible, interchangeable, and adaptable;*
- *All technology must be compliant with South African legislations and regulation;*
- *Connectivity must be explored for possible telemedicine and telecommunication.*

*Service providers are also requested to provide information on their sales offering i.e whether they offer the Unit on rental, for sale, operational leases or other. It must be clearly indicated whether the service provider is a manufacture and whether the Units are manufactured. Further to this the service provider must indicate whether they have the capacity to service the Unit in KZN and what kind of capacity is in place.”*

5.1.13 Apart from the above minimum requirements, Part 3 of the RFI detailed other minimum information that suppliers were required to provide to the Department as shown below:

## **PART 3 – INFORMATION TO BE PROVIDED**

*This Part details the information suppliers are required to provide to the Department. Submitted information will be used by the Department as set out in Clause Error! Reference source not found.. The following minimum information is to be provided. If any additional information, over and above information requested below, is available on your website please provide the web address to enable the Department to undertake further analysis.*

### **3.1 Supplier details**

- a) Supplier name (Trading and Registered), company / business registration number, registered address.
- b) KZN Supplier Data Base number, if already registered on the KZN Supplier Data base (Please note - this is not a prerequisite to participate in this RFI).
- c) Details of supplier operations and operating locations.
- d) Supplier ownership information, including details of Directors and other key office bearers.
- e) Details of any current legal actions pending against the supplier or its directors and/or office bearers.
- f) Relationships with any parent Company (if applicable).
- g) Details of joint venture arrangements (if applicable).
- h) Details of when the supplier organisation was founded, including origins and historical development of the organisation.
- i) Details of BBBEE status.
- j) Details of opportunities or plans to increase BBBEE participation (if applicable).
- k) Total number of employees.

### **3.2 Supplier capabilities and experience**

- a) A description of the core supplier business, listing relevant case studies or examples (a maximum of three) that support this description. Where possible, include case studies that relate to activities consistent with the opportunity. Within necessary boundaries of confidentiality, please be as specific as you can.
- b) Additional services, products and works provided outside of supplier's core business which are related to the opportunity.
- c) Examples (if any) of goods and services (related to the opportunity) that supplier has provided to the KZN Government, or any Public entity, including the name of the Department representative/s concerned.
- d) Details of supplier infrastructure, including servicing and call out response capability.
- e) Technical details of the Unit and all types of health care services that can be offered using the unit.
- f) Details of where the proposed unit is currently operating and whether a live demo can be offered.
- g) Detailed description of warranties and maintenance plans that can be offered.

FOUNDED BY UZELWANE BHEBE LINES TEL: 031 261 1111 FAX: 031 261 1111

### **3.3 Supplier financials**

- a) Details of supplier's financial background, in particular latest annual report or latest financial statements.
- b) Details of supplier bank rating on bank letterhead and signed.
- c) Details of held insurances relevant to the Opportunity (Public Liability, Vehicles, Premises etc).

### **3.4 Permits, Certifications and Authorizations**

- a) Details of any recent external corporate awards, including the awarding body, if relevant to the Opportunity.

### **3.5 Policies & Plans**

- a) Details of all supplier policies and plans, including Health Care Plan, Health and Safety, Environmental/ Sustainability, Employee Relations and BEE Participation. Copies of policies are to be appended to your response.
- b) Details to indicate supplier understanding of the legislation, national standards and policies governing the management of Health Services.

### **3.6 Indicative Pricing**

- a) Details of indicative prices for the Unit.

### **3.7 Other information**

- a) Any further information you believe the Department may require in support of the RFI review process.



- 5.1.14 The RFI for the provision of Mobile units was advertised on 15 June 2012 in the Government Tender Bulletin, with a closing date of 17 July 2012. A compulsory briefing session was held on 03 July 2012.
- 5.1.15 The report submitted for the RFI presentations indicates that on 20 August 2012 the Department held presentations with ten (10) companies that responded to the RFI by the closing date.
- 5.1.16 The report further indicated, amongst other things, in Paragraph 3.3 under the heading "*Pre-Qualification on RFI*" that bidders were to supply information as detailed in paragraph 10.2.1.13 *supra*.
- 5.1.17 Paragraph 4.1 of the report stated that the purpose of the meeting was to:
- (a) Give the companies an opportunity to present their products offered;
  - (b) Allow the Technical Evaluation Committee (TEC) to evaluate the product offered and discuss areas of concern and give clarity;
  - (c) To gain a broader understanding of the product offered; and
  - (d) For the companies to answer questions that may be raised.
- 5.1.18 The presentation committee members raised various issues which included the fact that the RFI was ambiguous and therefore unclear, as it was not specific in stating what the Department was looking for and that the specifications **for the bid were to be specific in order to meet the main objective of the Department** (*own emphasis added*). The "*bid*" referred to herein, alluded to the Request for Proposal (RFP) that the Department intended to issue.
- 5.1.19 The aforesaid report further indicated that the Chairperson of the presentation meeting, Dr. T Mhlongo reported that a functionality scoring system must be used for the RFP and only companies that met the set threshold would be further considered for price and preference points.

5.1.20 The report stated further that four (4) companies demonstrated the required capacity to execute the contract and would be invited to bid. These companies were listed as Redeployment Camp Systems, MST Technologies, Istrodent Pty (Ltd) and Mzansi LifeCare.

5.1.21 An online search on the Companies and Intellectual Property Commission (CIPC) website regarding Mzansi Lifecare confirmed that it was registered on the 29 May 2012 and listed Ms. Nandi Sakhile Msimang and Andrey Timoshchenko as the company's Directors.

*The Request for Proposal (RFP) Process*

5.1.22 The evidence submitted to me by the Department, included an email communication sent on the 6 November 2012 by Ms Dudu Mdlalose, the Senior Supply Management Officer, Demand Management (Ms Mdlalose) to mobile Redeployment Camp Systems, MST Technologies, Istrodent Pty (Ltd) and Mzansi LifeCare. The email referred to a telephonic conversation with the suppliers and advising the companies that the Department "*invites your organization to pick up the bid documents for the above mentioned service*", and that the closing date was 26 November 2012 at 11h00.

5.1.23 Ms Mdlalose forwarded a memorandum to Ms K Ngcobo, Senior Supply Management Officer, Tender Advisory confirming that the companies were contacted and informed to collect the bid documents.

5.1.24 Further evidence included a memorandum from Mr N Mnyandu, of Acquisition Management dated 06 November 2012 addressed to Mrs A Zondo, Chairperson; Ms R Deonundhan, member; Mr M Mahlaba, member and Ms L.T Khumalo, member regarding "***ROUND ROBIN OF DBEC SUBMISSION FOR ZNB 9281/2012-H: THE PROVISION OF UNIVERSAL MOBILE UNIT SERVICES FOR THE KZN DEPARTMENT OF HEALTH FOR APPROVAL.***"  
(own emphasis added)

5.1.25 The memorandum stated that attached to the memorandum was the DBEC's submission for the above tender, which was "round robinned" for approval. The attachment is shown below :

ZNB 9281/2012-H THE PROVISION OF UNIVERSAL MOBILE UNIT SERVICES FOR KZN  
DEPARTMENT OF HEALTH

RECOMMENDATION:

MS R. DEOUNUNDHAN SIGN:	Recommendation approved <input checked="" type="checkbox"/> not approved <input type="checkbox"/>	<u>Bleee</u> DATE: <u>06/12/12</u>	<input type="checkbox"/>
MR M. MAHLABA SIGN:	Recommendation approved <input type="checkbox"/> not approved <input type="checkbox"/>	<u>Mf. Mahlaba</u> DATE: <u>06/12/12</u>	<input type="checkbox"/>
MS L.TKHUMALO SIGN:	Recommendation approved <input checked="" type="checkbox"/> not approved <input type="checkbox"/>	<u>(Signature)</u> DATE: <u>06/12/12</u>	<input type="checkbox"/>
MR C.G ROSSLEE SIGN:	Recommendation approved <input type="checkbox"/> not approved <input type="checkbox"/>	DATE: _____	<input type="checkbox"/>
MRS A. ZONDO SIGN:	Recommendation approved <input checked="" type="checkbox"/> not approved <input type="checkbox"/>	<u>(Signature)</u> DATE: <u>06/12/12</u>	<input type="checkbox"/>

5.1.26 On 8 November 2012, the Chairperson of the Bid Specification Committee (BSC), Mrs Padayachee, approved a memorandum outlining the specifications; special terms and conditions and evaluation criteria for tender no ZNB 9281/2012-H. Dr Zungu ratified the approval on 12 November 2012.

5.1.27 The memorandum stated under paragraph 2 with the heading "SCOPE OF WORK" that the Department was in the process of procuring a comprehensive Mobile unit service for four (4) service categories namely;

- (a) Mobile Hospital Unit;
- (b) Primary Health Care (PHC) Unit;
- (c) School Health Unit; and
- (d) Dental and eye-Curative Unit

5.1.28 Furthermore, the memorandum stated that the Department wished to procure a full service and not the vehicles and therefore the service providers were required to submit proposals indicating separate costs detailed as follows:

“ ...

(a) **Service only** = vehicle + maintenance + driver (each aspect must be costed and then carried through to the final cost); and

(b) **Service and staff** = vehicle + maintenance + driver + professional staffing (each aspect must be costed and then carried through to the final cost)

...”

5.1.29 The budget estimated for the project was R30 980 865.80 for an estimated period of 3 years. The procurement process that would be followed was a closed bidding process, whereby potential bidders who qualified in the RFI would be telephonically invited to collect bid documents.

5.1.30 Page 39 of the RFP document under Section U, contained the “*Special Terms and Conditions*”, which detailed specifications of the bid under the heading “**Compliance with Specification**”, and “**Documentation of Undertaking and Legislative Requirements**” as follows :

#### 4. COMPLIANCE WITH SPECIFICATION

- 4.1. Offers must comply strictly with the specification. Offers exceeding specification requirements are deemed to comply with the specification. The quality of products must not be less than what is specified. Where SABS/SANS or CKS specifications are called for, the Bidder must submit a certificate of compliance from the SABS with the submission of the bid. If the product is an SABS mark bearing product, this certificate will not be necessary.
- 4.2. SABS/SANS can be contacted for testing and conformity services at  
Tel: 031 – 203 2900/ Fax: 031 – 203 2907.
- 4.3. SANS, SABS AND CKS specifications will be for the account of the prospective bidder.
- 4.4. The equipment offered shall be CE approved and the equipment offered shall be affixed with a CE mark label attached to the bid and the CE certificate.
- 4.5. The bidder must fully comply with occupational health and safety act in terms of Section 37(2).
- 4.6. The vehicle must comply with Road Traffic Inspectorate (RTI) and South African Legislations.
- 4.7. All technology must be compliant with South African legislations and regulations;
- 4.8. Built in technology must be flexible, interchangeable, and adaptable.
- 4.9. Connectivity must be explored for possible telemedicine and telecommunication.

## 8. DOCUMENTATION OF UNDERTAKING AND LEGISLATIVE REQUIREMENTS

- 8.1. In the event of the bidder not being the actual manufacturer and will be sourcing the product(s) from another company, a letter from that company(ies)/supplier(s) confirming firm supply arrangement(s) including lead times in this regard, must accompany the bid at closing date and time
- 8.2. The said company/manufacturer/supplier issuing such a letter must confirm that it has familiarised itself with the item description/specification and bid conditions and if the bid is for more than one item, it should be clearly indicated in respect of which item(s) the supportive letter has been issued.
- 8.3. Bidders must state the Radiation Control Licence number of the make and model of the equipment offered. If this type of equipment/apparatus appears on the schedule of Hazardous Substances, issued by the Directorate: Radiation Control of the Department of Health, a licence in terms of the Act on Hazardous Substances (Act 15/1973) must be submitted with the bid document. The licence must be registered under the bidders name or the letter of Joint Venture must be submitted by the Licence holder where the licence is not in the name of the bidder.  
**BIDDERS THAT NEGLECT TO SUBMIT A LICENCE WILL NOT BE CONSIDERED.**
- 8.4. If more than one item of equipment is offered, bidders must submit the Radiation Control License for each item of equipment that is offered in the bid. The make, model and license number of the various items offered in the bid must be highlighted on the Radiation Control License.

Non-compliance with the above mentioned Special Conditions will invalidate the bid for such products offered.

5.1.31 Page 60 of the RFP document contained the Evaluation Criteria and indicated on paragraph 1 under the heading "*Specifications*" that "*only offers that meet the specification and Special Terms and Conditions in all aspects as stipulated in the bid documents shall be considered.*" (own emphasis added)

5.1.32 Further paragraph 3 under the heading "*Functional Evaluation*" stated that bidders were required to submit a detailed proposal in line with the proposed structure as defined in the terms of reference and that bidders were "*also required to submit detailed proof and documentary evidence that they have the required competence as a defined roll out plan to execute the contract in accordance with the scope, special conditions, specification and all applicable regulations.*" (own emphasis added)

5.1.33 On 24 June 2019, I requested information from the South African Health Products Regulatory Authority (SAHPRA) who are tasked with the responsibility of overseeing radiation control in South Africa, as mandated by the Medicines and Related Substances Act (Act No 101 of 1965 as amended) as well as the Hazardous Substances Act (Act No 15 of 1973).

- 5.1.34 The requested information was to confirm the Radiation Control Licence information relating to Mzansi LifeCare, for X-ray machines registered, as required in paragraph 8.3 of the Special Terms and Conditions. This document was not submitted in the bid documents of Mzansi LifeCare's bid proposal.
- 5.1.35 I received the following information on 25 June 2019 from SAHPRA; *"no company with the name "Mzansi Lifecare" appears on our database of licence holders - a licence holder being a legal entity permitted in terms of the Hazardous Substances Act to import a particular electromedical device (e.g. X-ray equipment)"* and further *"If the company in question ever had a licence issued to it in the name of Mzansi Lifecare and that licence had been cancelled for whatever reason, that information would have been retained on our database. To confirm, no historical or current information related to the company in question appears on our database."*
- 5.1.36 According to the minutes of the meeting held on 5 December 2012 by the TEC, only two (2) companies, namely MST Technologies and Mzansi LifeCare submitted their bid offers on the closing day of the bid, 26 November 2012. The TEC comprised of Dr T. Mhlongo as the Chairperson; Dr. J. Mthethwa, the General Manager, Non-Communicable Disease; Dr JV Dlamini, the Deputy Director General, District Health Services; Mr M. Mnyandu, SCM Practitioner, Acquisition Management and Ms. J Mnyandu Senior SCM Practitioner, Acquisition Management.
- 5.1.37 Further , the purpose of the aforesaid meeting was to:
- (a) Give the companies an opportunity to present their products offered;
  - (b) Allow the Technical Evaluation Committee (TEC) to evaluate the product offered and discuss areas of concern and give clarity; and
  - (c) To gain a broader understanding of the product offered.
- 5.1.38 It appears from the purpose of the meeting, as indicated in the minutes, that the TEC conducted a further presentation meeting with Mzansi LifeCare and MST. However no information on the minutes or the submission to the DBEC recorded the companies in attendance, nor was any attendance register

provided to indicate that this presentation meeting by the TEC indeed took place. The RFP, also did not contain any details of presentation meetings that were to be conducted with the bidders.

5.1.39 The minutes further indicates that the TEC resolved as follows :

- (a) Mzansi Health Care be recommended for the Mobile Hospital Unit (Service only);
- (b) MST Technologies and Mzansi Health Care recommended for the PHC Mobile unit (Service only);
- (c) MST Technologies for School Health (Service only); and
- (d) MST Technologies for Dental and eye (Service only).

5.1.40 The comments by the TEC on paragraph 4 of minutes stated that MST was not recommended for the Mobile Hospital Unit as *“the bidder has not indicated that the Mobile unit will not render a full district package. Exclusions include, number of beds, theatre, rehabilitation, limited obstetrics, limited surgery, limited gynaecology, limited occupational health and limited dermatology.”*

5.1.41 It was further noted on the minutes that the TEC recommended that *“the Office of the Deputy Director General advise on specific quantities once the award had been made”*.

5.1.42 A submission compiled by Ms A Zondo, the Chairperson of the DBEC, dated 7 December 2012 and addressed to the Chairperson of the Departmental Bid Adjudication Committee (DBAC), stated that the offers for the bid were tabled before the DBEC for evaluation and for formulation of a recommendation at its meeting held on 5 December 2012. However due to some technicalities it was resolved at the meeting that this bid *“be round robinned”* to all the committee members for scrutiny and recommendation.

5.1.43 The submission recorded Mrs A Zondo, Chairperson as the Chairperson of the DBEC; Ms R Deonundhan, member; Mr M Mahlaba, member and Ms L.T Khumalo and stated that the DBEC considered the documents presented to

them, perused the comments of the TEC's report and were satisfied with the evaluation of the TEC. The DBEC further recommended that the DBAC consider and award the tender.

5.1.44 Minutes of the DBAC meetings held between 16 January 2013 and 26 June 2013 were analysed and indicates that the DBAC had failed on several occasions to, adjudicate the tender and instead referred the matter back to the Acquisition Unit to refine their submissions. The DBAC raised numerous issues with regards to the process followed as summarised in the table below:

DATE OF MEETING	DISCUSSION	RECOMMENDATION
16 January 2013	The DBAC raised concerns and requested more details on the following: <ul style="list-style-type: none"> <li>• Clarity on the number of vehicles required;</li> <li>• Clarity on the unit requirements (size, contents, etc.);</li> <li>• Clarity on the description of the bid-whether it includes the supply, delivery and maintenance of vehicle?</li> <li>• Price for outright purchase of each unit/vehicle;</li> <li>• Whether the cost of the maintenance per vehicle is realistic;</li> <li>• Clear indication as to the staffing requirements; and</li> <li>• Clarity on what is included in the lease</li> </ul>	<ul style="list-style-type: none"> <li>• Refine submission; and</li> <li>• Provide outstanding/requested information</li> </ul>
30 January 2013	DBAC noted that the concerns raised in the previous meeting were not yet resolved.	The Senior General Manager: Specialised Services and Clinical Support (Dr T Mhlongo) be consulted for assistance. <ul style="list-style-type: none"> <li>• The tender be held in abeyance.</li> </ul>
06 February 2013	DBAC noted that the concerns raised in the previous meetings were not yet resolved. The DBAC further noted the following: <ul style="list-style-type: none"> <li>• The quantities were not indicated;</li> <li>• The number of vehicles required to convert were not indicated;</li> <li>• The criteria used to eliminate bidders was not elaborated;</li> <li>• The matrix used to judge the companies on execution capacity was not indicated;</li> <li>• The exact measurements required were not indicated;</li> <li>• The TEC Report was not detailed.</li> </ul> <p><b>The DBAC questioned how the bids were invited and also raised the issue that the Department currently has a PHC facility that costs far less than the offer tabled. The Department had no justification for why the new facility was necessary and the cost thereof.</b></p>	The tender be held in abeyance, pending the submission of a comprehensive report to the Chairperson (Mr M Ravhura). The report should include the following information: <ul style="list-style-type: none"> <li>• Quantities;</li> <li>• Number of Vehicles to be converted;</li> <li>• Criteria used to eliminate bidders;</li> <li>• Matrix used to determine the companies' execution capacity;</li> <li>• Exact measurements required; and</li> <li>• Detailed Technical Evaluation Report</li> </ul>
13 February 2013	The DBAC raised concerns regarding: <ul style="list-style-type: none"> <li>• <b>The cost on a 3 year lease period and the fact that the vehicle would be returned to bidder thereafter;</b></li> <li>• <b>The cost for these facilities was extremely high compared to the Transversal contract.</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Negotiation be conducted in line with the prices of RT contract;</b></li> <li>• Negotiate price of maintenance;</li> <li>• Consider Purchasing vehicle outright ( not including maintenance or staff);</li> <li>• Consider purchasing vehicles directly from the RT contract;</li> </ul>



		<ul style="list-style-type: none"> <li>• Confirm with Demand Management that the budget is available for the vehicles at the negotiated prices;</li> <li>• Prepare letters for HOD and attach all letters to the companies for signature at the same time.</li> </ul>
27 February 2013	<p>The DBAC was advised on recommendations made at the previous meetings regarding negotiations:</p> <ul style="list-style-type: none"> <li>• Prices offered to be in line with those offers available on the RT contract;</li> <li>• Maintenance costs to be in line with the recommended 4-10% range.</li> </ul> <p><b>It was reported back to the BAC that there were no funds available and therefore negotiations were not conducted.</b></p>	<p><b>The Chairperson advised that the bid process cannot proceed if the funds are not available.</b></p> <p>DBAC recommended that:</p> <ul style="list-style-type: none"> <li>• SCM confirm availability of funds and end-user ASAP; and</li> <li>• Conduct negotiation with relevant companies.</li> </ul>
20 March 2013	<p>The DBAC was informed that:</p> <ul style="list-style-type: none"> <li>• negotiations could not be conducted until funding has been confirmed;</li> <li>• A response confirming funds had not been received by the End-user.</li> </ul> <p>The DBAC raised concerns that:</p> <ul style="list-style-type: none"> <li>• Funds should have been confirmed prior to the presentation to the BAC; and</li> <li>• It appeared that the bid had not been budgeted for.</li> </ul>	<p>DBAC recommended that:</p> <ul style="list-style-type: none"> <li>• The End-user be contacted to confirm the required availability of funds;</li> <li>• Letter be sent to the HOD indicating the frustrations experienced by the BAC and due to a lack of cooperation from the End-users; and</li> <li>• Consideration would be given at the next meeting to cancel the bid.</li> </ul>
10 April 2013	<p>Report was provided to the DBAC:</p> <ul style="list-style-type: none"> <li>• <b>The availability of funds had still not been confirmed by the End-user;</b></li> <li>• A submission dated 26 March 2013 was made to the HOD indicating the current status of the bid and seeking guidance on a way forward for the BAC to make a decision.</li> </ul> <p>The Chairperson of the DBAC advised that he had seen the correspondence to the HOD and that it did not provide a full background of the process followed and did not address all the issues raised.</p> <p>He further advised that he had seen an email sent to Dr T Mhlongo, on 20 March 2013, and was concerned that it appeared to be the first correspondence requesting information on the availability of funds.</p>	<p>The DBAC recommended that:</p> <ul style="list-style-type: none"> <li>• A submission be prepared for the HOD providing a clear outline of all the proceedings thus far, regarding the bid, including, the BAC's requirements/ recommendations.</li> <li>• The submission be made available to the Chairperson for checking and signing.</li> </ul>
15 May 2013	<p><b>Report was provided to the DBAC regarding the meeting with SCM and the Bidders on 13 May 2013, in which the following was discussed:</b></p> <ul style="list-style-type: none"> <li>• <b>Problems identified with medical equipment;</b></li> <li>• <b>Exorbitant maintenance prices;</b></li> <li>• <b>Outright purchase verse the leasing option; and</b></li> <li>• <b>Bidders agreed to review packages and reschedule meeting for 20 May 2013.</b></li> </ul> <p>The DBAC Chairperson stated that the District Offices were satisfied with the current models being presented and that a letter was received by Dr Zungu from the District Office requesting that the process continue in terms of the original bid requirements.</p> <p>The DBAC Chairperson further stated that he had had a meeting with Dr Zungu regarding the contract, where Dr Zungu argued that:</p>	<p>The DBAC recommended that:</p> <ul style="list-style-type: none"> <li>• The matter be re-tabled to the BAC on 22 May 2013 following the review of the bidders pricing packages on 20 May 2013.</li> </ul>

	<ul style="list-style-type: none"> <li>• Outright purchase could be a problem in registering and licencing vehicles following modifications;</li> <li>• Safe keeping of expensive equipment in the vehicles would be a risk;</li> <li>• Relevant staff members might not be available to move the vehicles when required.</li> </ul>	
22 May 2013	<p>Report was provided to the DBAC regarding:</p> <ul style="list-style-type: none"> <li>• That both companies agreed to review their pricing packages; and</li> <li>• The revised offers were received on 22 May 2013.</li> </ul>	Updated submission and preference point schedule will be presented at the next meeting.
05 June 2013	<p>The DBAC was advised that:</p> <ul style="list-style-type: none"> <li>• As advised in the meeting held on 29 May 2013, revised packages had been received from both companies.</li> <li>• The bidders had been informed that <b>a price list contract should be established, whereby the End-user will be able to purchase their requirements according to their needs as and when necessary. The companies understood and accepted the proposal made by the Department;</b></li> <li>• <b>3 options were now available. These were leasing option with or without staff and outright purchase.</b></li> </ul>	<p>The DBAC recommended that:</p> <ul style="list-style-type: none"> <li>• The tender be awarded as a price list tender (as negotiated) for a 3 year period.</li> </ul>
26 June 2013	<p>The DBAC was advised that:</p> <ul style="list-style-type: none"> <li>• The notice of award has been submitted for advertisement in the Government Bulletin</li> </ul>	The DBAC noted progress made regarding the tender , and considered the contribution and responsibility of the DBAC as finalised

5.1.45 Based on the summary of the minutes in paragraph 5.1.45 above, the Manager SCM, made a submission to the Chairperson of the BAC on 24 May 2013, requesting the BAC to reconsider and to proceed in awarding bid ZNB 9281/2012-H.

5.1.46 The following were indicated on the submission under the heading “*BAC Decision*” :

- (a) The BAC requested negotiations be conducted with the responsive bidders requesting price breakdown in terms of leasing options as well as outright purchase of the following units.
- (b) On 20 May 2013 Acquisition Management had a meeting with the bidders and the bidders had agreed to review their prices.
- (c) This bid was re-tabled before the BAC for award on 5 June 2013 and was approved.
- (d) The DBAC resolved that the bid be awarded with various options. The Department will exercise the following options when sourcing the units:
  - (aa) Leasing Option without staff;

- (bb) Outright Purchase; and
- (cc) Leasing Option with staff

- (e) The end user must obtain approval from the HOD prior to sourcing the units.
- (f) The BAC resolved that this bid be awarded as a "price list bid" as there were no quantities guaranteed to be sourced by the Department for the duration of the contract.

5.1.47 MST and Mzansi LifeCare submitted their revised proposal with options as tabled below:

MOBILE SATELITTE TECHNOLOGIES (PTY) LTD			
OPTION ONE : LEASE ONLY WITHOUT STAFF			
NAME OF UNIT	ORIGINAL OFFER FOR 36 MONTHS	MONTHLY PRICE (VEHICLES, MAINTENANCE, & DRIVER) SERVICE ONLY VAT INCLUSIVE	REVISED OFFER LEASING (VEHICLES, MAINTENANCE, & DRIVER) SERVICE ONLY VAT INCLUSIVE
MOBILE PRIMARY HEALTH CARE UNIT	R 12 506 940.00	R 347 415.00	R 347 415.00
MOBILE SCHOOL HEALTH UNIT	R 12 097 976.40	R 336 054.90	R 336 054.90
MOBILE DENTAL AND EYE-CURATIVE UNIT SERVICES	R 12 506 940.00	R 347 415.00	R 347 415.00

MOBILE SATELITTE TECHNOLOGIES (PTY) LTD	
OPTION TWO : OUTRIGHT PURCHASE	
NAME OF UNIT	OUTRIGHT PURCHASE PER VEHICLE VAT INCLUSIVE
MOBILE PRIMARY HEALTH CARE UNIT	R 4 900 000.00
MOBILE SCHOOL HEALTH UNIT	R 4 600 000.00
MOBILE DENTAL AND EYE-CURATIVE UNIT SERVICES	R 4 900 000.00

<b>MOBILE SATELITTE TECHNOLOGIES (PTY) LTD</b>			
<b>OPTION ONE : LEASE SERVICE AND STAFF</b>			
<b>NAME OF UNIT</b>	<b>LEASE SERVICE PER MONTH VAT INCLUSIVE</b>	<b>STAFF PER MONTHH</b>	<b>TOTAL SERVICE AND STAFF PER MONTH VAT INCLUSIVE</b>
MOBILE PRIMARY HEALTH CARE UNIT	R 458 565.00	R 111 150.00	R 569 715.00
MOBILE SCHOOL HEALTH UNIT	R 336 054.90	R 172 140.00	R 508 194.90
MOBILE DENTAL AND EYE-CURATIVE UNIT SERVICES	R 508 194.90	R 117. 990.00	R 626 184.90

<b>UMZANSI LIFE CARE</b>		
<b>OPTION ONE : LEASE SERVICE ONLY</b>		
<b>NAME OF UNIT</b>	<b>REVISED OFFER FOR 36 MONTHS – CHASIS BASED</b>	<b>MONTHLY PRICE ( VEHICLE , MAINTENANCE AND DRIVER ) SERVICE ONLY</b>
MOBILE HOSPITAL UNIT	R 52 520 580.00	R 1 458 905. 00

<b>MZANSI LIFE CARE</b>
<b>OPTION TWO : OUTRIGHT PURCHASE</b>
The cost of the mobile unit will be determined by the type of vehicle and equipment as per specifications

5.1.48 The submission was approved by the Chairperson of the DBAC, Mr E.M Ravhura (Mr Ravhura) on 6 June 2013 and ratified by the erstwhile HOD, Dr. Zungu on 7 June 2013. On 12 March 2019 I interviewed Mr Ravhura who confirmed that he approve the above submission and stated that as the BAC Chairperson he had held a meeting with the Dr Zungu who argued for the lease of the Mobile Units as per his feedback to the DBAC on 15 May 2013, which is detailed above in the table on paragraph 5.1.44.

5.1.49 The evidence from the Department indicates that on 21 June 2013 the Department published the award of the tender in the Government Tender Bulletin.

5.1.50 The Department appointed Mzansi LifeCare on 3 July 2013 for a total amount of R1 458 905.00 per month, for the provision of a Mobile Hospital Unit through a lease excluding staff, and the contract was signed on 2 August 2013.

5.1.51 A letter of appointment dated 13 July 2013, signed by Mrs. A Zondo, the Manager SCM, was sent to MST advising them that the DBAC had approved the tender for the provision of the Mobile units according to the options and prices as listed above in paragraph 5.1.47.

5.1.52 I have taken note of the article published by Drum Digital Online on 27 January 2015 with the title “KZN's mystery R61 million bus tender” which stated as follows :

*“A tender for four mobile clinics in KwaZulu-Natal will end up costing taxpayers a ‘crazy’ R61 million -- and only two of the units have been delivered. Of that amount, R52m is being spent on leasing a truck and trailer that has a standard X-ray machine, which at the end of the three-year lease, the department will not even own.*

*Two companies -- Mzansi Lifecare (Pty) Ltd and Mobile Satellite Technologies (MST) -- won the tenders.*

*The story caused an associate of Mzansi Lifecare to call a Sapa reporter and threaten to ‘deal with him personally’ if he wrote the ‘wrong thing’ about the tender (See KZN-HEALTH-THREAT sidebar).*

*These companies were meant to provide four mobile health units to the provincial health department. Only two were delivered and, by August 2016, they will have cost as much as R61 million.*

*MST was asked to provide one unit, but won a tender to provide three units without knowing it.*

*‘My stomach turns when I hear this. We only got an order for one unit. We only supplied one unit,’ said Mobile Satellite Technologies (MST) chief executive Fernando Acafrao.*

*According to the Government Gazette of June 21, 2013, the Cape Town-based MST was to provide the KwaZulu-Natal health department with three vehicles -- a mobile primary health care unit, a mobile school health unit, and a mobile dental and eye unit.*

*Johannesburg-based Mzansi Lifecare (Pty) Ltd was to provide a mobile hospital unit.*

*The tender, ZNB 9281/2012-H, appears in a document entitled The Main Contract Register 20122013, found on the department’s website. This register details what each company is to be paid and for what period.*

*The mobile school unit was billed at R4.6m. The primary health care unit and the dental and eye unit were listed as having cost the department R4.9m each.*

*The problem with the MST portion of the tender is that MST did not know it had won the tender for three vehicles.*

***Acafrao said his company had only ever been asked to provide one vehicle, which was delivered in October 2013. (own emphasis added)***

***Acafrao said the unit had been sold to the department for R4.9m and that the department was paying about R100,000 a month to MST for the vehicle's operational costs over three years ending August 2016. (own emphasis added)***

*In its bid Mzansi Lifecare submitted two quotes for the mobile hospital unit, for R54m and R62.8m. The latter figure included staff. The department however awarded it a tender for R52.5m.*

*A search on the Companies and Intellectual Properties Commission website revealed the company was registered on May 29, 2012, with Nandi Sakhile Msimang and Andrey Timshchenko as directors.*

*It was registered 17 days before the department published a request for information "for provision of universal mobile unit/s for provision of Integrated Health Services in KZN" in the Government Gazette of June, 15, 2012.*

*On August 2, 2013, Dr Sibongile Zungu, the embattled head of the KwaZulu-Natal health department, signed off on the tender, agreeing the department would pay Mzansi Lifecare R1.5m every month to lease the vehicle without staff.*

*It is not known how the bid evaluation committee and finally the bid adjudication committee reached the conclusion that Mzansi Lifecare's bid was the best one.*

*It is also not known how many companies submitted bids to provide the mobile hospital unit, or if in fact there were any other bidders apart from Mzansi Lifecare.*

*The company did not respond to questions from Sapa about its tax compliance certificate; or its broad-based black economic empowerment status. Sapa could not find copies of these certificates.*

*Mzansi Lifecare's vehicle was unveiled by KwaZulu-Natal health MEC Sibongiseni Dhlomo last July. The Newcastle Advertiser reported that at the event Dhlomo revealed the unit was one of four mobile hospitals the department planned on having. It was built by the Dutch company Lamboo Mobile Medical.*

*Wilfred van der Klauw, Lamboo's business development manager who attended the unveiling, said earlier this month his company had only supplied one vehicle to Mzansi Lifecare. He could not reveal for how much it was sold to Mzansi.*

*However, he provided detailed plans and pictures showing the vehicle's specifications.*

*To determine how much such a vehicle would cost, Sapa contacted a company not involved in the tender in any way and sent it the plans and pictures.*

*It was informed that the vehicle had cost the department US5.1m -- the dollar value of the R52.5m lease at the time the award was published in the Government Gazette of June 21. The company was not informed who had built the vehicle or who had been awarded the tender.*

*'That kind of money is crazy. If it cost that much, you already wasted four-and-a-half million [dollars],' was the reaction from Richard M Dinse, the vice president of LifeLine Mobile, a company based in the US state of Ohio that manufactures such vehicles.*

*After he had examined the pictures and the plan, Dinse wrote in an e-mail: 'As I mentioned to you, I couldn't believe the amount charged for the three-year 'lease' of this medical unit.*

*'For the price they were charged, LifeLine could have delivered four identical vans to Durban. And, it wouldn't be on a lease agreement; they would own all four of the vans.'*

*He said the company could supply a 12m-long vehicle with a comparable floor plan with an X-ray and ultrasound machine for about US1.1m (R12.5m at current exchange rate). That price, he said, would include a tent, training, and warranty costs.*

*'As I mentioned previously, this is the sale price, not a lease agreement,' he said.... "*

5.1.53 I also conducted internet searches on Lamboo Medical Mobile and Mzansi Life Care's social media accounts and web sites (YouTube and Facebook), and established that Lamboo Medical Mobile had published pictures on their website of the Mobile unit that was supplied to Mzansi LifeCare.

5.1.54 Mzansi LifeCare Medical published a video on 14 June 2014 on their YouTube account of the Mobile unit. The following pictures were reproduced from the

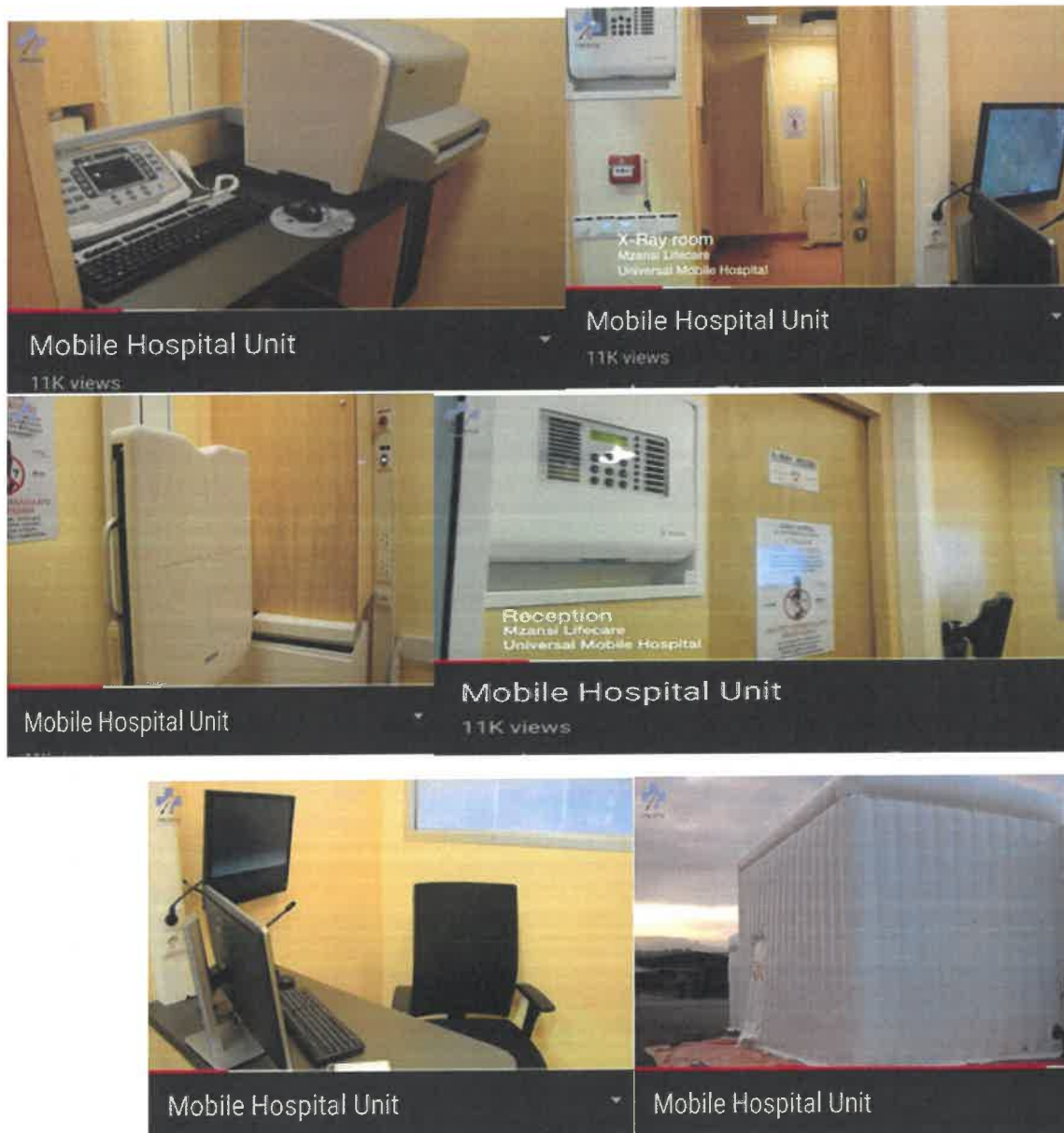
video, to indicate the modifications that were made to the Mobile unit as well equipment included in the Mobile unit:



Picture of Leased Mobile unit

<https://www.mobile-medical.eu/projects/mobile-primary-care-truck-unit-delivered-south-africa/> accessed on 02 March 2019.





<https://youtu.be/NjFhwPCTWdE> accessed on 2 March 2019

*Purchasing of Mobile units with Mzansi LifeCare*

5.1.55 On 8 January 2015, Dr.B.R Ndaba, (Dr Ndaba) the Manager : Medical Male Circumcision (MMC) and HIV Prevention, made a submission to the erstwhile HOD, Dr. Zungu requesting approval for the rental and purchase of four (4) Mobile Hospital Units. The availability of funds was confirmed by the CFO and on 15 January 2015 the submission was approved by the erstwhile HOD, Dr. Zungu.

5.1.56 A proposal made by Mzansi LifeCare in January 2015, indicates that the Mobile units supplied would have four (4) to six (6) consultation cubicles, PHC and counselling services as well as four (4) to six (6) procedure cubicles for MMC.

5.1.57 Paragraph 9.1.1 of the proposal provided a purchasing breakdown of prices as follows:

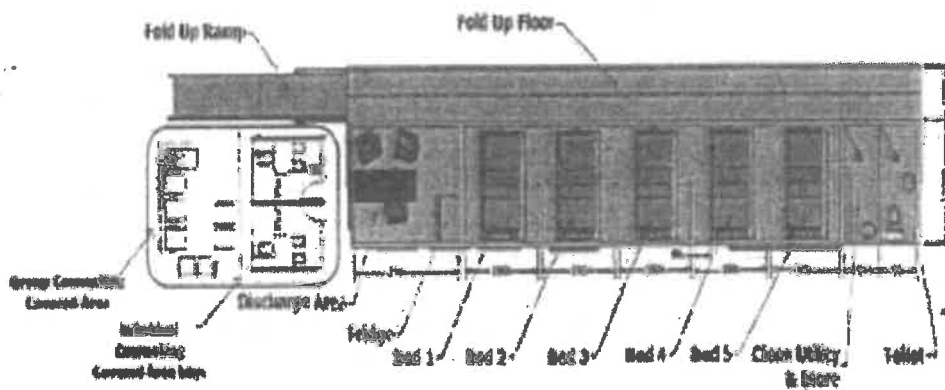
Description	Cost
Trailer Tata Novus 6x4	R 1 400 000.00
MMC unit Production	R 3 900 000.00
Space Slide out	R 800 000.00
CCTV/IT Solution	R 100 000.00
Patient Access Lift	R 130 000.00
Interior	R 270 000.00
Volume Tanks	R 70 000.00
Medical Equipment	R 330 000.00
Subtotal	R 7 000 000.00
Vat	R 980 000.00
Total	R 7 980 000.00

5.1.58 The following are pictures of the Mobile units that were submitted in the proposal :

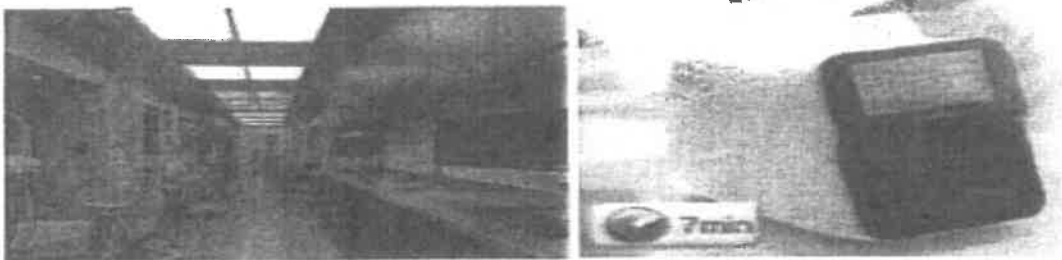
The truck has consultation and treatment areas including:

- 4-6 Consultation Cubicles PHC and counselling services
- 4-6 Procedure cubicles for MMC
- Integrated medical gas bank system including scavenging and medical vacuum.
- On-board bulk gas bank (cylinders) providing O<sub>2</sub>, N<sub>2</sub>O, and medical air with emergency supply, and internal gas supply status panel.
- Terminal HEPA filtered EU Gmp grade C air delivery system providing ultra-clean air, to all clinical areas with cascade pressures.

- Internal layout includes operating theatre / anaesthetic room / recovery room, utility room / changing room / clean store areas.
- Integral 63Kva back-up generator unit and UPS system covering internal essential electrical installations.



*A detailed truck spec is provided in Appendix A*



5.1.59 A letter was submitted by the DBAC, dated 27 February 2015, confirming, that the tender was tabled before them at a meeting held on the same date, and the DBAC approved the outright purchase option to be added to the existing contract to enable the Department to have more options to be used in procuring the School Health Mobile units.

5.1.60 On 2 March 2015??, Mr Mlaba, the Acting General Manager, SCM made a submission to Mrs. N Maphumulo, the Deputy Manager, SCM stating that a request was made to look at the outright purchase and that a negotiated price had been finalised. He stated further that the purchase order must be issued on the negotiated price of R 7 980 000.00 for the outright purchase of the vehicle.

5.1.61 On 1 March 2016, Mzansi LifeCare submitted an invoice for the amount of R31 200 000.00, for four (4) Mobile units, a purchase order was completed on 6 March 2016 for Mzansi LifeCare, and was paid by the Department on 27 May 2016.

5.1.62 A delivery note for each Mobile unit was submitted which indicated the following make/model of trucks and trailers, medical equipment received , and date received by the Department are summarised in the table below:

TRUCK AND TRAILER MAKE /MODEL	MOBILE UNIT 1 TRUCK-IVECO 180E28 TRAILER- RAPID TRUCK BODIES	MOBILE UNIT 2 TRUCK-IVECO 180E28 TRAILER- RAPID TRUCK BODIES	MOBILE UNIT 3 TRUCK-IVECO 180E28 TRAILER- RAPID TRUCK BODIES	MOBILE UNIT 4 TRUCK-IVECO 180E28 TRAILER- RAPID TRUCK BODIES
RECEIVED BY	MR K NAIDU OF KZN DEPARTMENT OF HEALTH EMS FLEET MANAGEMENT			
DATE	03 May 2016	29 April 2016	29 April 2016	27 April 2016
<b>MEDICAL EQUIPMENT</b>				
ELECTRICAL SURGICAL KNIFE 4	✓	✓	✓	✓
GLOCOMETER 1 1	x	✓	✓	✓
GLUCOMETER STRIPS 50'S 1	✓	✓	✓	✓
AUTOCLAVE 1	✓	✓	✓	✓
RESUSCITATOR ADULT SILICONE 1	✓	✓	✓	✓
ADVANCED LIFE SUPPORT JUN 1	✓	✓	✓	✓
AED 1	✓	✓	✓	✓
STETOSCOPE CLASSIC 1	✓	✓	✓	✓
BP UNIT ANERIOD WALL MOUNT 1	✓	✓	✓	✓
THERMOSCAN 1	✓	✓	✓	✓
EXAMINATION LIGHT 5	✓	✓	✓	✓

EXAMINATION COUCH 5	✓	✓	✓	✓
SMALL MEDICAL TROLLEY 5	✓	✓	✓	✓
MEDIUM MEDICAL TROLLEY 5	✓	✓	✓	✓
SCALE DIGITAL 1	✓	✓	✓	✓
DIAGNOSTIC SET WALL MOUNT 1	✓	✓	✓	✓
<b>NON MEDICAL EQUIPMENT</b>				
LEGS 2	✓	✓	✓	✓
STAIRS 2	✓	✓	✓	✓
STAIRS RAIL 4	✓	✓	✓	✓
TABLE 1	✓	✓	✓	✓
METAL CAPBOAT 1	✓	✓	✓	✓
COMPUTER 1	x	x	x	x
PRINTER 1	x	x	x	x

- 5.1.63 On 18 September 2017 I held interviews with Mr Bongani Khanyile (Mr Khanyile), the Department's Transport Manager. An enquiry was made with Mr Khanyile as to whether the purchased Mobile units were still operating. I was informed that the purchased Mobile units were not in use and were parked at the Department's Emergency Medical Service (EMS) Fleet Management site in Jacobs, KZN since they were purchased.
- 5.1.64 The Department indicated that Mzansi LifeCare had purchased the trucks for the Mobile units from a company named Iveco and had transferred the trucks onto their name. This rendered the trucks technically second hand, meaning that the Department had to obtain a certificate of roadworthiness, to comply with the registration requirements to take ownership of the trucks.
- 5.1.65 The Department further indicated that the Mobile units could not be transferred to the Department as there were issues relating to the outstanding license fees owed to the Licencing Authority by Mzansi LifeCare, as well as compliance issues relating to the capacity of the truck versus the capacity of the trailer , explaining further that the capacity of the trucks were not adequate to pull the trailer that was supplied, as the trailers were too large for the trucks.(Refer to pictures on paragraph 10.2.1.76)
- 5.1.66 On 7 March 2019, I conducted an *inspection in loco* with the objective of viewing the purchased Mobile units and their current state.

5.1.67 Upon arrival at the Department's EMS Fleet Management site I was informed that the Mobile units had been removed from the site by Mzansi LifeCare.

5.1.68 The Department provided me with correspondence between Department's EMS Fleet Management and Mzansi LifeCare. The correspondence indicates that on 28 June 2018 , Dr Nandi Msimang (Dr Msimang), the Director of Mzansi LifeCare, submitted an email to the Department's EMS Fleet Management which stated as follows :

*"Dear Kuben*

*From the time we last met, you had alerted to us the mechanical/technical issues that you faced with the trucks which were delivered to you by Andrey Timoshchenko.*

*I'd like to make you aware, that Andrey Timoshchenko has left and I have not seen him, which leaves you guys with a problem utilising the entity for good use and what it was expected to do.*

*We have tirelessly been looking for a way to assist you, in order for the entity not ending it as scrap, considering the fact that the mobile clinics have been stationed there for over **2 years (my emphasis)**.*

*We have managed to find a way how we can do some configurations and changes in terms of strategy and etc, to lift this problem of your hands and put them into the system for the use it was initially intended to do.*

*My suggestion is we start with 2 trucks, and following that we can alleviate and assist with the other 2.*

*Kindly release the 2 mobile trucks, and we will update you on the progress and subject to a successful roll out, we can start discussing the other 2.*

*Kind Regards,*

*Dr. Nandi Msimang"*

5.1.69 On the same date the Department's EMS Fleet Management submitted a letter to Mzansi LifeCare responding to the email stating that "two IVECO

*Horse's with VIN AANA1TM004K623968 and VIN AANA1TS004K623981" were released to Mzansi LifeCare.*

- 5.1.70 A further email on the same date was sent from Dr. Msimang to the Department's EMS Fleet Management directing them to release the other two trucks, as *"they have received notice from the parties that they have mandate to view and purchase them all."*
- 5.1.71 On 7 March 2019 ,Mr Khanyile, indicated that the Department of Transport had issued a report indicating that the vehicles had several issues relating to compliance e.g, the axle capacity of the truck was not sufficient for the capacity of the trailer. He further stated that to date the Department has never taken ownership of the assets (Paragraph 5.1.76, Picture B)
- 5.1.72 The Department's EMS Fleet Management further submitted the Temporary Permits and Certificate of Registration in Respect of Motor Vehicle, for the four (4) trucks, which indicate that the trucks Temporary Permits were issued on 8 July 2016 and the trucks were registered on 12 August 2016 in the name of Mzansi LifeCare.
- 5.1.73 It was noted that only one (1) Temporary Permit for the trucks was filled in pencil with the dates *"2016-07-08 to 2016-08-28"*, and a note submitted in the documents provided by the Department, stated *"To fill dates : 21 days from starting date: Example: 15-06-2016-05-07-2016. If you are not sure, please don't hesitate to phone: ....(Claudia)"*.
- 5.1.74 On 17 April 2019, I made a request to the Road Traffic Management Cooperation (RTMC), as the custodian of the electronic national administration traffic information system (E-Natis system) to provide me with information relating to the current and previous ownership of the undermentioned vehicles, including the date of registration of ownership to Mzansi LifeCare.
- 5.1.75 The following information was subsequently received from the RTMC.

VIN/CHASSIS	Vehicle Licence Nr.	MV Status	Licence Expiry Date	ID Type	NaTIS Business Registration Number (BRN)	Business Registration number	Owner	Ownership Start Date	Sequence of Ownership	Status
KL3K7CEF1DK000489	NP195193	Licensed	2015-07-31	BRN	F120926090023	2012/092609/07	MZANSI LIFECARE (PTY) LTD	27-Aug-14	1	Current
				BRN	F120926090023	2012/092609/07	MZANSI LIFECARE (PTY) LTD	22-Aug-14	2	Previous
				BRN	Z061773690012	2006/177369/23	TRANS-SCOTT TRUCKS	03-Jul-14	3	Previous
AANA1TM004K623968	HP39NSGP	Registered (Exempt from Licensing)		BRN	1029629230019	2010/029629/23	TRANS WES AFSLAERS	03-Sep-18	1	Current
				BRN	F174165160013	2017/416516/07	BREANNER TRADING ENTERPRISE(PTY)	31-Aug-18	2	Previous
				BRN	F174165160013	2017/416516/07	BREANNER TRADING ENTERPRISE(PTY)	31-Aug-18	3	Previous
				BRN	F174165160013	2017/416516/07	BREANNER TRADING ENTERPRISE(PTY)	12-Aug-16	4	Previous
				BRN	F120926090023	2012/092609/07	MZANSI LIFECARE (PTY) LTD	12-Aug-16	5	Previous
AANA1TM004K623971		Registered (Exempt from Licensing)		BRN	1029629230019	2010/029629/23	TRANS WES AFSLAERS	13-Aug-18	1	Current
				BRN	F174165160013	2017/416516/07	BREANNER TRADING ENTERPRISE(PTY)	03-Aug-18	2	Previous
				BRN	F120926090023	2012/092609/07	MZANSI LIFECARE (PTY) LTD	12-Aug-16	3	Previous
AANA1TS004K623980		Registered (Exempt from Licensing)		BRN	1029629230019	2010/029629/23	TRANS WES AFSLAERS	14-Aug-18	1	Current
				BRN	F174165160013	2017/416516/07	BREANNER TRADING ENTERPRISE(PTY)	02-Aug-18	2	Previous
				BRN	F120926090023	2012/092609/07	MZANSI LIFECARE (PTY) LTD	12-Aug-16	3	Previous
AANA1TS004K623981	HP39KMGP	Registered (Exempt from Licensing)		BRN	1029629230019	2010/029629/23	TRANS WES AFSLAERS	03-Sep-18	1	Current
				BRN	F174165160013	2017/416516/07	BREANNER TRADING ENTERPRISE(PTY)	31-Aug-18	2	Previous
				BRN	F174165160013	2017/416516/07	BREANNER TRADING ENTERPRISE(PTY)	30-Aug-18	3	Previous
				BRN	F174165160013	2017/416516/07	BREANNER TRADING ENTERPRISE(PTY)	12-Aug-16	4	Previous
				BRN	F120926090023	2012/092609/07	MZANSI LIFECARE (PTY) LTD	12-Aug-16	5	Previous

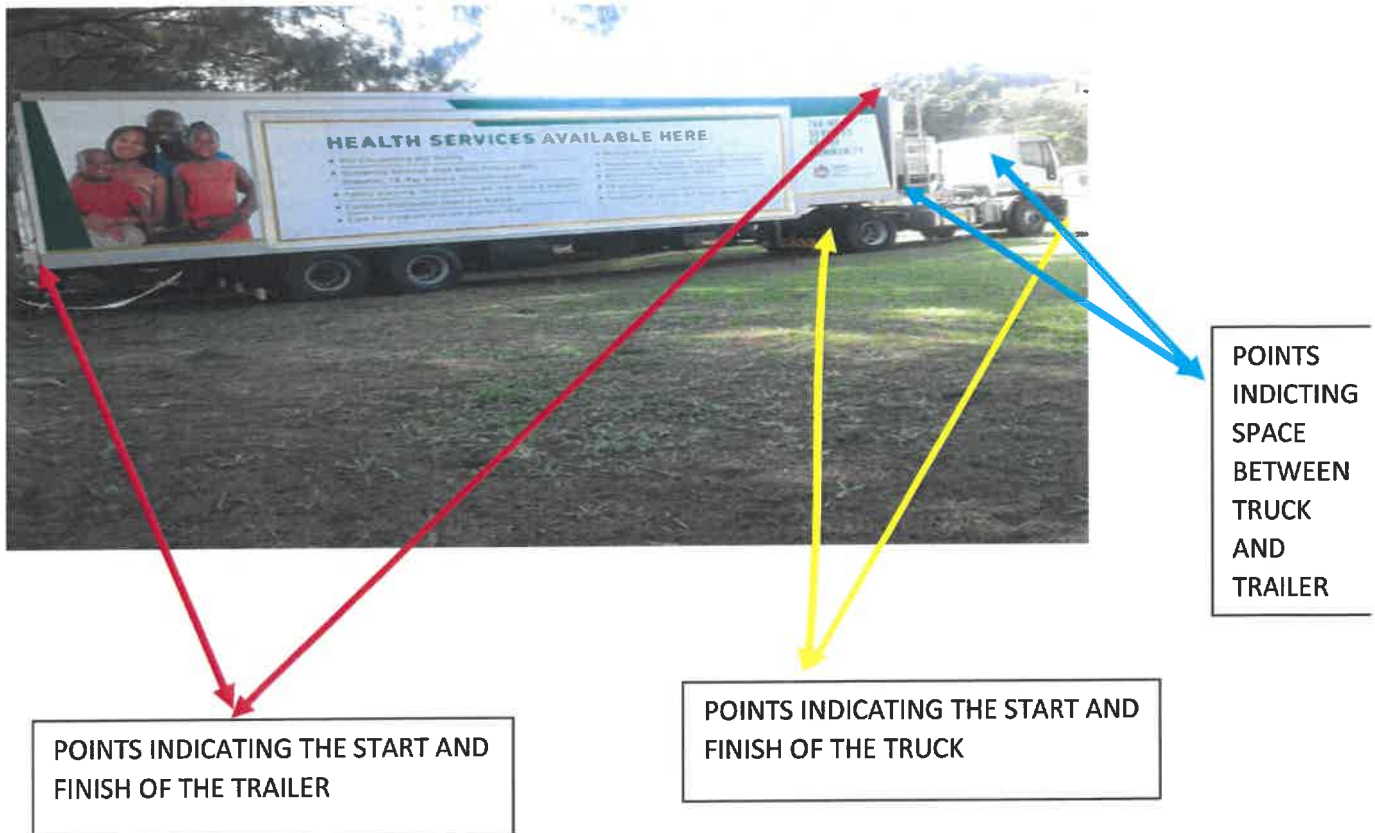


5.1.76 Below are pictures submitted by the Department on 21 September 2017 of the purchased Mobile units that were parked since their purchase at the Department's EMS Fleet Management.

**Picture A**



**Picture B**



**Picture C**



**Extension of Contract with Mzansi LifeCare**

- 5.1.77 On 15 August 2016, Mr Mlaba, the Chief Director, SCM, submitted a letter to Mzansi LifeCare advising them that the Department wished to provide them with a month's notice on the termination of service, that there would be no extension and that Mzansi LifeCare was required to cease their services by 31 August 2016.
- 5.1.78 On 5 December 2016, Dr Msimang sent an email to Mr C. Mlaba, indicating that on 28 November 2016, Mzansi LifeCare was asked to stop work in the Ethekwini Inanda C area, and requested to park the truck as their contract had already expired.
- 5.1.79 On 15 December 2016 Mr Mlaba made a submission to the former HOD, Dr Mtshali with the title "*RE-LETTER OF CONCERN: ZNB 9281/2102-H MZANZI LIFE CARE (PTY) LTD*".
- 5.1.80 The submission noted that:

- (a) According to the Contract Register, the contract with Mzansi LifeCare had commenced on 1 September 2013 and the expiry date was 31 August 2016;
- (b) The purchase order was issued to Mzansi LifeCare on 20 June 2014, nine (9) months after the contract commencement date;
- (c) According to the payment report, the Department has made **twenty-nine (29) payments** totalling R42 308 245.00 to Mzansi LifeCare for services rendered to the Department;
- (d) According to the Purchase order, if the lease was 36 months, there is a balance of **seven (7) months** outstanding which amounts to R10 12 335.00 for the balance of the lease in order to reach a total amount of R 52 520 580.00 as per the Purchase order; and
- (e) Mzansi LifeCare has continued to render services to the Department for a further three (3) months after the expiry of the contract, but has not been remunerated by the Department.

5.1.81 The submission further requested the former HOD, Dr Mtshali to consider and grant approval for the proposed negotiations between Mzansi LifeCare and the Department in which two (2) options will be tabled, Either:

- (a) The Department pay Mzansi LifeCare for only the three (3) months in which services were rendered after the contract expired, leading to an abandonment of the remaining four (4) months; alternatively
- (b) The Department pays for the three (3) months that they had provided their services for and additionally, request that they assume their duties for the remainder of the four months, which will then amount to a total of seven months that remain in abeyance.

5.1.82 On 24 February 2017, Mzansi LifeCare signed an addendum to the original agreement signed on 2 August 2013, whereby the parties agreed to amend the duration of the agreement. The Department signed the addendum on 28 February 2017.

5.1.83 Paragraph 2.1 of the addendum stated that a new clause is inserted into the Universal Mobile unit Service Agreement, which reads as follows:

*“The contract period shall be extended for a further period of four (4) months, which shall commence on 01 March 2017 and shall terminate on 20 June 2017.*

*The parties agree that KZN Department of Health shall continue to make payment to Mzansi for the Services rendered during the four month period, which completes the contract of 36 (thirty six) months in line with the purchase order dated 20 June 2014”*

Payments Made for Mobile units

5.1.84 The SCM Reporting Schedule sourced from the Department’s Basic Accounting System (BAS), indicates that the following payments were made to Mzansi LifeCare and MST :

**MZANSI LIFECARE**

	Date	Purchase order number	Amount Paid in Rands)
1	18/08/2014	C0574044	1 458 905.00
2	08/09/2014	C0648125	1 458 905.00
3	13/10/2014	C0191950	1 458 905.00
4	10/11/2014	C0192095	1 458 905.00
5	26/11/2014	C0227641	1 458 905.00
6	12/12/2014	C0228109	1 458 905.00
7	17/12/2014	C0228114	1 458 905.00
8	13/01/2015	C0232674	1 458 905.00
9	28/01/2015	C0232697	1 458 905.00
10	18/02/2015	C0228149	1 458 905.00
11	18/03/2015	C0259951	1 458 905.00
12	08/04/2015	C0234070	2 660 000.00
13	16/04/2015	C0309255	1 458 905.00
14	07/05/2015	C0310773	1 458 905.00
15	27/05/2015	C0310979	1 330 000.00
16	27/05/2015	C0310980	1 458 905.00
17	27/05/2015	C0310979	1 330 000.00
18	26/06/2015	C0342865	1 458 905.00
19	26/06/2015	C0310979	1 330 000.00

20	29/07/2015	C0343525	1 458 905.00
21	29/07/2015	C0310979	1 330 000.00
22	08/09/2015	C0376559	1 458 905.00
23	08/09/2015	C0341848	1 458 905.00
24	28/09/2015	C0376925	1 458 905.00
25	16/10/2015	C0377092	1 458 905.00
26	16/10/2015	C0377091	1 458 905.00
27	27/01/2016	C0378276	1 458 905.00
28	25/02/2016	C0573840	1 458 905.00
29	13/04/2016	B0748974	1 458 905.00
30	26/04/2016	D0036156	1 458 905.00
31	27/05/2016	D0036526	1 458 905.00
32	27/07/2016	D0036583	1 458 905.00
33	22/08/2016	D0037138	1 458 905.00
34	30/09/2016	D0037342	1 458 905.00
35	20/01/2017	D0144624	4 376 715.00
		<b>TOTAL</b>	<b>54 664 960,0</b>

### MOBILE SATELLITE TECHNOLOGIES

	Date	Purchase order number	Amount Paid in Rands)
1	06/01/2014	C0512544	5 586 000.00
2	31/03/2014	C0552012	524 400.00
3	15/08/2014	B0252437	131 100.00
4	15/08/2014	B0252435	131 100.00
5	15/08/2014	B0252436	131 100.00
6	25/09/2014	B0254439	131 100.00
7	25/09/2014	B0254441	131 100.00
8	25/09/2014	B0254440	131 100.00
9	28/11/2014	B0708932	131 100.00
10	10/12/2014	B0708933	131 100.00
11	19/12/2014	B0708988	138 834.90
12	27/02/2015	B0707389	138 834.90
13	27/02/2015	B0707390	138 834.90
14	31/03/2015	A0738518	138 834.90
15	15/05/2015	A0738547	138 834.90
16	30/06/2015	C0257711	138 834.90
17	30/06/2015	C0257717	138 834.90
18	20/07/2015	C0257738	138 834.90
19	31/08/2015	C0258319	138 834.90
20	30/09/2015	C0258338	138 834.90
21	10/11/2015	C0258921	138 834.90
22	20/11/2015	C0258932	138 834.90
23	15/01/2016	C0391409	138 834.90
24	29/01/2016	C0391413	138 834.90
25	11/04/2016	C0392241	138 834.90
26	11/04/2016	C0392240	19 992.21
27	29/04/2016	C0392764	290 997.94
28	10/06/2016	C0392784	145 498.97
29	15/06/2016	C0392797	145 498.97
30	29/07/2016	C0393225	145 498.97
31	09/09/2016	C0393247	145 498.97
31	15/09/2016	D0046430	145 498.97
33	14/10/2016	D0047314	145 498.97
34	23/11/2016	D0047377	145 498.97
35	15/12/2016	D0047337	145 498.97
36	31/01/2017	D0046529	145 498.97
37	15/03/2017	P0086303	145 498.97
		<b>TOTAL</b>	<b>11 007 703,35</b>

**Dr Zungu's response to the section 7(9) notice received on 16 October 2019**

5.1.85 Dr Zungu submitted that the complaint pertaining to the allegation of the improper awarding of Tender no. ZNB 9281/2012 to Mzansi LifeCare and Mobile Satellite Technologies (MST) had been a subject of a Parliamentary Question raised by Honourable Imran Keeka and was responded to extensively as well as discussed in the KwaZulu-Natal Legislature in the presence of both members. She further states that she refuted the allegations due to the following reasons :

5.1.84.1 Leasing the mobile vehicles was meant to avert risk for the Department as the view of the Accounting Officer at the time was that a lease would allow for services to commence without an upfront payment that could crowd out the funds for other services. She stated further that besides the vehicles being expensive, they were carrying expensive medical equipment which require constant servicing and that experience from other vehicles that carry medical equipment has shown that the maintenance costs and losses from accidents places the Department at risk. She submitted that as an example, one fully equipped ambulance costs more than a million rand. If it gets involved in an accident one month after purchase, it becomes a total loss as the government is an own insurer.

5.1.84.2 She submitted that issues pertaining to the date of registration of a company would not ordinarily be immediately accessible to the Accounting Officer, since it was a request for information, it would not be impossible to get new players responding and that according to her recollection and perusal of the documents supplied it did not point to the date of registration being a requirement.

5.1.84.3 Dr Zungu stated that the procurement of the mobile units occurred after her time. The funding arrangement (motivation to access more funding from Treasury), delivery and payment happened after her time as she left the

Department on the 2 April 2015 and Dr Simelane was appointed as Acting Head of Department on 1 April 2015.

- 5.1.86 Dr Zungu further submitted that in terms of demand management for the identified services of providing access to health services in underserved area, the Department at its strategic planning session in 2010/11 and 2011/2012 conducted a situation analysis of Primary Healthcare (PHC) services per district, and that it became apparent that the informal settlements and the former black townships remained underserved with a rising burden of disease.
- 5.1.87 She stated that the building of clinics was going to take long, require more staff and that there was insufficient budget to cover all areas with well resources clinics. Further that, land to build the clinics was not immediately available. The end users realised that the existing mobile facilities were insufficient and prohibitive in terms of cost, not providing a comprehensive services and void of dignity to the users.
- 5.1.88 Dr Zungu submitted that the Department then did a call for information to establish what innovative services existed in the market and that to manage the acquisition, the Department requested proposals from the service providers that were promising innovative approaches to service delivery covering most of the areas that had been outlined in the call for information.
- 5.1.89 She state that this was how the two service providers that were eventually contracted were identified. The total cost of ownership was calculated, risks were factored in, and the Accounting Officer had continually emphasized the lease option considering the total cost of the mobiles, their maintenance, security of expensive equipment installed, etc.
- 5.1.90 Dr Zungu submitted that the logistics were managed by the Districts and the scheduling of the mobile points for both school health and the comprehensive Primary Health Care. She stated that the services rendered and the communities reached showed value add brought by the intervention. The end

user report from the EThekweni district manager further illustrates the points made in the presentation.

- 5.1.91 The expenditure incurred in terms of the mobiles for Male Medical Circumcision occurred after her time as the Accounting Officer and that the Acting Accounting Officer Dr Simelane, managed that process including request for additional funds from the National Department of Health. She indicated that all other processes that occurred after 02 April 2015 were after her time as the Accounting Officer.

### **Application of relevant legal prescripts**

#### **The Constitution**

- 5.1.92 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)**

- 5.1.93 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.
- 5.1.94 Fruitless and wasteful expenditure is defined by section 1 as: *“expenditure which was made in vain and would have been avoided had reasonable care been exercised”*.



- 5.1.95 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”*.
- 5.1.96 Section 57 of the Act 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

- 5.1.97 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.
- 5.1.98 Expenditure management of *inter alia*, public entities is regulated by Part 4 of the Treasury Regulations.

5.1.99 Regulation 8.1 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.

1.1.1 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.

5.1.100 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”.*

5.1.101 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.

5.1.102 16A6.3 *The accounting officer or accounting authority must ensure that –*

*(a) bid documentation and the general conditions of a contract are in accordance with –*

*(i) the instructions of the National Treasury; or ..*

*(b) bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);*

*(c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, **except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine;***

5.1.103 The Preferential Procurement Policy Framework Act, Act No, 5 of 2000 (PPFA) provides that procuring entities should consider only “*acceptable tenders*”. An “*acceptable*” tender, in turn, is defined in section 1(i) of the Act as “... *any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document*”.

Preferential Procurement Regulations, 2011

5.1.104 The Preferential Procurement Regulations, 2011, defines "functionality" as *"the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer."*

Implementation Guide: Preferential Procurement Regulations 2011

5.1.105 In terms of Paragraph 5 of the Implementation Guide: Preferential Procurement, 2011<sup>1</sup>, prior to the invitation of bids Accounting Officers are required to properly plan for the provision of services, works or goods in order to ensure that the resources that are required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price, place and that the quantity and quality will satisfy those needs.

5.1.106 As far as possible, accurately estimate the costs for the provision of the required services, works or goods. This is in order to determine and stipulate the appropriate preference point system to be utilised in the evaluation and adjudication of the bids and to ensure that the prices paid for the services, works and goods are market related.

5.1.107 Estimated costs can be determined by conducting an industry and commodity analysis whereby prospective suppliers may be approached to obtain indicative market related prices that may be utilised for benchmarking purposes. Based on the findings, the relevant preference point system (80/20 or 90/10) to be utilised for the evaluation of the bid must be stipulated in the bid documents.

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<sup>1</sup> Pertaining to the Preferential Procurement Policy Framework Act, Act No, 5 of 2000

5.1.108 In terms of Paragraph 6.2 of the Implementation Guide on Preferential Procurement, when an institution invites a bid that will also be evaluated on the basis of functionality as a criterion, the Accounting Officer must clearly specify the following aspects in the bid documents:

(a) *“Evaluation criteria for measuring functionality:*

*The evaluation criteria may include criteria such as the consultant’s relevant experience for the assignment, the quality of the methodology; the qualifications of key personnel; transfer of knowledge etc.*

(b) *Weight of each criterion:*

*The weight that is allocated to each criterion should not be generic but should be determined separately for each bid on a case by case basis.*

(c) *Applicable value:*

*The applicable values that will be utilised when scoring each criterion should be objective. As a guide, values ranging from 1 being poor, 2 being average, 3 being good, 4 being very good and 5 being excellent, may be utilised”.*

#### Applicable Case Law

*Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)*

5.1.109 In his judgment on 29 November 2013 Justice Froneman held that:

*“It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner”.*

5.1.110 The Court further held that:

*“...deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences”.*

### **Conclusion**

5.1.111 I have noted several irregularities and inconsistencies in the processes that were followed by the Department to procure the Mobile units as well as the subsequent invoicing and payments to the service providers, which are outlined below :

### **The RFI Process**

5.1.112 The RFI that was issued by the Department for bidders to present ideas and provide the Department with an opportunity to test the market was improperly used to evaluate and eliminate bidders since the RFI outlined evaluation criteria, but did not provide a clear indication of how the criteria would be used to technically evaluate and pre-qualify the bidders at the presentation meeting.

5.1.113 The criteria in the RFI was to determine the functionality as stipulated in the definition of the Preferential Procurement Regulations which include *“quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer”*.

5.1.114 The members of the committee applied subjective methods during the presentation meeting, to disqualify bidders from proceeding further to the RFP process, in that the technical evaluation conducted by the Department was in fact a functional evaluation of criteria and did not contain any scoring/weights and therefore did not meet the requirements of the PPPFMA.

- 5.1.115 The RFI did not contain Information that bidders were required to conduct presentations and further that they would be subjected to a technical evaluation at the presentation meeting.
- 5.1.116 Therefore, Dr Zungu as the erstwhile HOD, and Accounting Officer did not ensure that the RFI documents complied with National Treasury Regulation 16A6.3 (a)(b)(c) which required that Dr Zungu ensures that the bid documents are evaluated and adjudicated in accordance with the requirements of the PPPFMA and its regulations.
- 5.1.117 The purpose of the RFI was to engage potential bidders in the preparation of the procurement strategy, but instead the Department eliminated potential bidders and compromised the procurement process in such a way that it was no longer fair, equitable, transparent, competitive and cost effective, as required by section 217 of the Constitution and National Treasury Regulation 16A 3.2.
- 5.1.118 A fair , equitable, transparent, competitive and cost effective process required the Department to use information from the RFI process to develop specifications and thereafter advertising an open tender to allow all potential bidders to submit their proposals, evaluating the proposals on criteria and scoring/weights that have been included in RFP, and thereafter awarding the bid.
- 5.1.119 Dr Zungu's submission in response to the section 7(9) notice that the actual procurement of the mobile units occurred after her time cannot be accepted. The evidence before me indicates that she approved the initial RFI for the procurement, ratified the DBAC's submission on 07 June 2013 as well as the submission by Dr Ndaba in January 2015 to lease and purchase mobile units. The Department proceeded to request the proposal for the purchase of the mobile unit from Mzansi Lifecare, after her approval. According to Dr. Zungu's submission she left the Department on 2 April 2015, the DBAC approved the purchasing option to be added to the existing tender in February 2015.

5.1.120 Her submission relating to the analysis that was conducted with regards to the need for the mobile units in order to provide access to health services in underserved areas is noted. However, as stated above the process that was followed by the Department in the “*call for information*” in order to eliminate service providers was not fair, equitable, transparent, competitive and cost effective.

### **The RFP Process**

5.1.121 The Department exceeded the budget that it had initially allocated to the project by almost three (3) times the original projection, as indicated in BAS payments provided to me.

5.1.122 The Department did not conduct an initial needs analysis as well as realistic cost assessments for the project as indicated in the minutes of the DBAC, to determine the number of Mobile units that were required and the actual cost implications.

5.1.123 The Department did not also consider the transversal contract that was already in place through National Treasury for the provision of the Mobile units as indicated by the DBAC. At the time the Department issued the RFP, it had approved the leasing option for the Mobile units, but nonetheless altered the terms and conditions of the RFP to purchase the Mobile units.

5.1.124 The Department therefore did not meet the standards imposed on them in terms of the National Treasury Regulation 16A3.2 (d), to ensure that the procurement and provisioning system provided for, demand management; acquisition management; logistics management; disposal management and risk management is complied with.

5.1.125 The evidence obtained from SAHPRA indicates that Mzansi LifeCare was never issued with a Radiation Control Licence, for the use of the X-Ray Machine in the Mobile unit, a material requirement that was stipulated in the RFP document, in paragraph 8.3 of the Special Terms and Conditions.



5.1.126 The Department did not confirm whether Mzansi LifeCare was ever issued with a Radiation Control Licence as required by the RFP condition. Instead it improperly continued to appoint them as a preferred service provider, which is in contravention of section 1(i) PPPFMA, which provides for the definition of an acceptable tender that it should comply in all respects, with the specifications and conditions of tender as set out in the tender document.

5.1.127 Only one (1) bid, which was Mzansi LifeCare, was considered for the provision of the "*Hospital*" Mobile unit. As a result thereof, the process was uncompetitive and any comparative consideration of cost-effectiveness became impossible, a contravention of section 217 of Constitution.

5.1.128 There was a substantial difference in cost between the Mobile unit that was leased by Mzansi LifeCare at a price of R1 458 905.00 per month, and the Mobile unit leased by MST at a cost of R347 415.00 on a monthly basis. The article outlined in paragraph 10.2.1.48 *supra*, also remarks on concerns raised by a service provider regarding the costs that the Department incurred to lease the Mobile units.

5.1.129 The erstwhile HOD Dr Zungu, was obliged to have complied with section 57 of the PFMA and ought to have accordingly exercised a duty of care in respect of the spending of public funds, by ensuring that the prices quoted for the Mobile units were economical and fair.

5.1.130 The evidence from the BAS payment records for MST supports the statements made by the CEO of MST in the Drum Digital Online article dated 27 January 2015, that the Department purchased one Mobile unit from MST and paid them a monthly operational cost. This is in direct contrast to Dr. Zungu's submission relating to the decision to lease the Mobile Units.

5.1.131 The BAC improperly changed the original RFP criteria from a lease option to a price list contract, whereby the end-user will be able to lease or purchase mobile units according to their needs, as and when necessary, ultimately leading to excessive expenditure, and a process that was no longer fair and

transparent. This is contrary to the provisions of KZN Provincial Treasury Practice Note Number SCM-03 of 2006, that requires bids to be evaluated in accordance with criteria in the bid document and the provisions contained in the Implementation Guide on the Preferential Procurement Regulations of 2011.

5.1.132 The process followed by the Department to award the tender to Mzansi LifeCare and MST, failed to meet the standards imposed on it, as required by section 217 of the Constitution, National Treasury Regulation 16.3.2A, section 1(i) of the PPPFMA and section 4 of the Preferential Procurement Regulations, 2011.

5.1.133 This therefore resulted in irregular expenditure being incurred by the Department as the process was not in accordance with the requirements of the Constitution, PPPFMA, Preferential Procurement Regulations and National Treasury Regulations.

**Extension of Contract of Leased Mobile unit**

5.1.134 The Department improperly specified its own conditions for the tender, whereby the end-users were able to lease or purchase the mobile units according to their needs, as and when necessary, a condition that was not part of the RFP.

5.1.135 The contract for the lease of the mobile units with Mzansi LifeCare was signed in August 2013 for a period of three (3) years, ending in August 2016. Mzansi Life Care only started to render services to the Department nine (9) months later, in June 2014 after the Department submitted, that a request was made by the end-user.

5.1.136 The leased mobile unit with vehicle registration number NP195 193, is recorded on the E-Natis system, as being registered to Trans-Scott Trucks on 3 July 2014 and to Mzansi LifeCare only on 12 August 2014.

5.1.137 Therefore, Mzansi LifeCare had only taken ownership of the Mobile unit in August 2014, despite the fact that the Department entered into a contract with Mzansi LifeCare in August 2013.

5.1.138 The Department proceeded to extend the contract with Mzansi LifeCare from April 2017 to July 2017, in order to adjust for the nine (9) months that Mzansi did not render services to the Department, to ensure that they are paid for a total of thirty six (36) months.

5.1.139 It is apparent that Mzansi LifeCare could only offer services to the Department in August 2014, only when it had taken ownership of the Mobile unit. Therefore the Department's submission that the service was requested as a result of a request from the end-user, is misleading and misguided.

5.1.140 The contract's extension from April 2017 to July 2017 was done on an invalid contract as the contract had already expired on 31 August 2016. There was in fact no need for the extension of the contract, as the BAS payment schedule indicates that Mzansi LifeCare had already received thirty five (35) payments from August 2014 to September 2016, for twenty six (26) months service.

5.1.141 The erstwhile HOD, Dr Zungu did not comply with Part 4 of the Treasury Regulation 8.1 that required the accounting officer of an institution to ensure that internal procedures and internal control measures are in place for payment approval and processing.

#### **The purchasing of Mobile units**

5.1.142 The RFP that was initially issued for the lease of vehicles was subsequently used for the purchasing of the Mobile units. The RFP did not contain specifications on the make and model of the vehicles that the Department intended to purchase, resulting in Mzansi LifeCare submitting a proposal for the purchase of TATA make vehicles and actually supplying the Department with an IVECO make vehicle.

5.1.143 The purchased Mobile units did not include the cubicle modifications that was submitted in the proposal. The evidence from witnesses that I interviewed on

7 March 2019, indicates that the mobile units were not compartmentalised or structured as depicted in the pictures submitted in Mzansi Life Care's proposals and this was confirmed by the pictures submitted by the Department on paragraph 5.1.76.

5.1.144 The Department received the Mobile units on 27 April 2016 to 3 May 2016, whereas the E-Natis records indicates that the mobile units were only registered on the name Mzansi Life Care on 12 August 2016.

5.1.145 The E-Natis records further indicates that on 12 August 2016 the ownership of the mobile units were recorded as Breanner Trading Enterprise (PTY) LTD, and that between August 2018 and September 2018, the ownership details of the mobile units are recorded as Trans Wes Afslaers.

5.1.146 As such, the Department failed to ensure that the vehicles that were purchased indeed met with the Department of Transport's compliance requirements for roadworthiness as required in the RFP, in order for it to obtain the vehicles' roadworthiness certificates, register and take ownership of the vehicles. The vehicles have subsequently rusted due to the Department's failure to comply with National Treasury Regulation 16A3.2 (d) that required the Department to apply appropriate acquisition management processes when it purchased the Mobile units.

5.1.147 The procurement of the four (4) mobile units resulted in fruitless and wasteful expenditure of R32 million as the mobile units were never recorded as assets of the Department. This expenditure would have been avoided had reasonable care been taken by the Department to verify that the mobile units supplied met with the requirements of the RFP in terms of RTI compliance and modifications.

### **Payments Made**

5.1.148 The BAS payments records indicate that sixteen (16) payments were made to Mzansi LifeCare for services rendered for a six (6) months' period for the lease of the Universal mobile unit, resulting in overpayments and financial

mismanagement. Payments were made in advance to Mzansi LifeCare, with double payments made in November 2014, December 2014, January 2015, June 2015, July 2015 and October 2015 and triple payments being made in April 2015 and September 2015. Four (4) payments were made in May 2015.

5.1.149 In a period of twenty seven (27) months, Mzansi LifeCare received payment from the Department for services rendered for thirty five (35) months, if indeed services were rendered for every month that invoices were submitted, as the Department did not submit a complete record of invoices and proof of services that were rendered by Mzansi Lifecare.

5.1.150 Further inconsistencies were identified wherein the licence document of the purchased mobile units, indicates that Mzansi LifeCare had licensed and registered the purchased mobile units in their name on 12 August 2016. However the delivery notes submitted by the Department indicate that the Department received one (1) of the purchased Mobile units on 27 April 2016, two (2) on 29 April 2016 and one (1) on 03 May 2016. The Department paid Mzansi LifeCare R31 200 000.00, for the four (4) mobile units on 27 May 2016. This indicates that either the Department paid for goods that it had not actually received, or that it received the four (4) unregistered and unlicensed Mobile units from Mzansi Lifecare.

5.1.151 Dr Zungu as the erstwhile HOD and Accounting Officer did not act in accordance with Section 57 of the PFMA and National Treasury Regulation 8.1 to ensure that she exercised a duty of care in respect of the spending of public funds and that internal procedures and internal control measures were in place for payment approval and processing thereof.

5.1.152 Dr Zungu's submission that the expenditure incurred for the purchased mobile units occurred after her time as Accounting Officer is noted. The purchase order was issued in March 2016 I note that the actual payment to Mzansi Lifecare was only made in May 2016. However, when Dr. Zungu left the Department on 02 April 2015, she had approved the purchase of the mobile units in January 2015 as well as the budget thereof. Invoices for the payments

of the leased Mobile Units from August 2014 to March 2015 also fell under her purview at the time.

- 5.2 Regarding whether the Department improperly procured and extended the services of Meditech SA and if so, whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.**

Common Cause Issues

- 5.2.1 It is common cause that in 1988, the former Natal Provincial Administration, advertised a tender for a Provincial Hospital Information System, Tender P4062 SA, with Addington Hospital as a pilot project. The Complainant alleged that the Department had improperly procured and extended the services of Meditech SA for various contracts, and in doing so incurred irregular expenditure.
- 5.2.2 The tender was awarded to Meditech SA for an amount of R2 728 475.00.

Issues in dispute

- 5.2.3 The issue for my determination is whether the Department improperly procured the services of Meditech SA and improperly extended their contracts, and if the expenditure incurred resulted in irregular expenditure.
- 5.2.4 On 31 March 2017 the former Head of Department, Dr. S.T Mtshali (Dr. Mtshali) responded to the allegations and provided documentation relating to the contracts the Department had with Meditech SA. On 17 September 2017, I interviewed officials from the Department, whereby the Department provided me with additional documents and information relating to the matter under investigation.

- 5.2.5 The Department submitted the Program License Agreement (PLA) for Software, for Tender P4062 that was entered into by the then Natal Provincial Administration and Meditech SA, on **01 June 1989**, signed on **30 April 1990**.
- 5.2.6 The PLA stated that Meditech SA would deliver “*an executable version of and documentation for the Program Property for use on the Licensee’s DX 5500 Computer*”.
- 5.2.7 Based on the explanation provided by the Department, this initial contract was for the supply of a Meditech SA software license for a Health Information System, which was piloted at Addington Hospital, KZN.
- 5.2.8 The Department further submitted that in 2001, they requested a proposal from Meditech SA for the rental of the Meditech SA Billing module to replace non-compliant software in ten (10) hospitals and Emergency Medical Services (EMS), and that this request was linked to the original tender, as the intention was to roll it out to other hospitals.
- 5.2.9 This **initial master rental agreement** was entered into, and signed by the KwaZulu Natal Provincial Administration, Department of Health and Meditech SA on **03 July 2001** and **31 August 2001** respectively.
- 5.2.10 A document entitled “*SCHEDULE A TO MASTER RENTAL AGREEMENT*” indicates that the rental agreement was to commence on **15 May 1999** and expire on **14 May 2004** and was for an amount of R 2 729 023 for a period of sixty (60) months.
- 5.2.11 It further indicates that items that were rented included application software for the Billing Accounts Receivable Module, Meditech SA Workstation Module as well as server hardware as shown below :

MASTER RENTAL AGREEMENT MONTHLY RENTAL CHARGE SCHEDULE		
Line Items Inclusive of VAT		
EXCHANGE RATE BASED ON ZAR 5.60 = US\$1,00 BASED ON PRIME OVERDRAFT RATE		
Application Software		
1	Billing Accounts Receivable Module	1
2	Meditech Workstation Software	2
Server Hardware		
1.	DG507M20 AV-DS300 32MB Dual N+1 Power. CD MSE	2
2.	DG507GM Replace 32 MB With 128 MB	2
3.	DG7094 128Mb ECC DIMM RAM	2
4.	DG5200TSK 1500GB DLT Tape Drive Internal	1
5.	DG6103-SJ 2Gb Quick Swap Disk	2
6.	DG7462 Adapter SCSI Controller Clarion AV2150/2600/3650	2
7.	DG15485E1 3m Wide Dlt SCSI cable Clarion Intel	2
8.	DG5513SH Rackmount Monitor Shelf	1
9.	DG14002 73" Deeprack Cabinet	1
10.	DG78201R Rackmount 10 Bay Ultra SCSI HA Army	1
11.	DG79166 64MB ECC Memory	2
12.	DGC79013-H 8.6 GB Clarion Disk Module	7
13.	C4DVR 14" Digital .28 1024 x 768 non-Interlace 60Khz	1
14.	DG5513CAB Cables for Concentrator Switch	2

*999*

*Just*

15	DG5513CM4 4 Port Concentrator Switch	1
16	DG5235TCB Medstroke logic base	2
First Year	Monthly Rental Charge (variable per prime rate)	R45 483.73
Second Year	Monthly Rental Charge (variable per prime rate)	R45 483.73
Third Year	Monthly Rental Charge (variable per prime rate)	R45 483.73
Fourth Year	Monthly Rental Charge (variable per prime rate)	R45 483.73
Fifth Year	Monthly Rental Charge (variable per prime rate)	R45 483.73
<b>TOTAL</b>	<b>60 MONTHS (Inclusive of VAT)</b>	<b>R 2 729 023.48</b>

5.2.12 The Department further submitted that this contract was renewed several times, with the **first addendum being signed in May 2006** and the last renewal signed in **2015**.



5.2.13 The **first addendum** alluded to by the Department, indicated *inter alia* the following:

- (a) That the **Master Rental Agreement** was signed respectively by the KwaZulu Natal Provincial Administration, Department of Health and Meditech SA on **03 July 2001 and 31 August 2001**;
- (b) That the Master Rental Agreement made provision for the Meditech SA Billing and Accounts Receivable Module and workstation Module as well as the rental of 2 Data Avion 9500 mini computers and ancillary equipment;
- (c) That the server hardware had failed and was replaced by a Compaq DS 10 server which was agreed and recorded in an addendum signed on 3 March 2003; and
- (d) The parties extend the duration of the Master Rental Agreement for a further 18 months commencing on **1 May 2004** and terminating on **31 December 2005**, referred to as the **First extended Period**.

5.2.14 The addendum also stated that the parties now agreed to amend the Master Rental Agreement as follows :

- (a) The parties wish to renew the Master Rental Agreement for a further period (referred to as **Second Extended Period**) commencing on **01 January 2006 and terminating on 31 December 2006**;
- (b) Clause 2 of the Master Rental Agreement be deleted and replaced with a clause to give the Department the right to renew the agreement for a further period (referred to as the **Third Extended Period**) upon termination of the Second Extended period, and that Meditech SA would be provided with written notification requesting the extension of sixty days prior to the commencement of the Third Extended Period;



Hospitals, and that following a number of variations a final proposal was submitted for implementation to five (5) selected **Revit Hospitals**, namely King George V Hospital, now called King Dinizulu Hospital Complex, (KDHC), Ngwelezane Hospital, Lower Umfolozi War Memorial Hospital, Hlabisa Hospital and Rietvlei Hospital. (*own emphasis added*)

5.2.18 The **Software License Agreement for the Revit hospitals** was signed by Meditech SA on **19 August 2008** and by the Department on **10 September 2008**, for an amount of R17 127 801.00 (*own emphasis added*)

5.2.19 The attachments to the agreement titled "*Article II delivery*" and "*Exhibit 1 Major Server Components*" as shown below :

**ARTICLE II - DELIVERY**

The LICENSED SOFTWARE listed below is being priced and licensed to the CUSTOMER to service the specific information processing needs of only the following identified facility (ies). The license fees have been calculated based on the overall Kwa Zulu Natal Department of Health operating budget for the 2007/08 financial year and apportioned on a per bed basis to the hospital facilities as listed:

1. King George V Hospital (930 Beds)
2. Ngwelezane Hospital (604 Beds)
3. Lower Umfolozi War Memorial Hospital (255 Beds)
4. Hlabisa Hospital (308 Beds)
5. Rietvlei Hospital (205 Beds)

MTSA agrees to deliver to the CUSTOMER on or about the specified delivery dates the LICENSED SOFTWARE for use at the above facilities along with 1 (one) copy of the associated Reference Manuals in electronic format. Additional copies of documentation will be provided by MTSA at its then standard rates; alternatively, the CUSTOMER may reproduce copies of the documentation so long as access to any such copies is restricted in accordance with this Agreement.

LICENSED SOFTWARE LINE ITEM	INSTALL DATE	LICENSE FEE TOTAL (Rands) *	HOSP. 1	HOSP. 2	HOSP. 3	HOSP. 4	HOSP. 5
Admissions module	June 2008	819,512	331,080	215,024	90,780	109,648	72,980
Medical Record Index Module	June 2008	819,512	331,080	215,024	90,780	109,648	72,980
Order Entry	June 2008	1,229,268	496,620	322,536	136,170	164,472	109,470
Imaging and Therapeutic Services Module	June 2008	1,229,268	496,620	322,536	136,170	164,472	109,470
Community wide Scheduling Module	June 2008	819,512	331,080	215,024	90,780	109,648	72,980
Abstracting Module	June 2008	819,512	331,080	215,024	90,780	109,648	72,980
Pharmacy Module	June 2008	1,639,024	662,160	430,048	181,560	219,288	145,968
Materials Management Module **	June 2008	409,756	165,540	107,512	45,390	54,824	36,490
Billing and Accounts Receivable Module	June 2008	2,046,760	827,700	537,560	226,950	274,120	182,450
Electronic Medical Record Module	June 2008	2,458,536	993,240	645,072	272,340	328,944	218,940
Corporate Management Software Module	June 2008	819,512	331,080	215,024	90,780	109,648	72,980
Executive Support Systems Module	June 2008	1,229,268	496,620	322,536	136,170	164,472	109,470
Data Repository Module	June 2008	0	0	0	0	0	0
Portal			107,512	71,512	30,261	36,550	24,321
Microbiology Interface Portal	June 2008	273,171	110,363	71,676	30,261	36,550	24,321
<b>SUBTOTAL</b>		<b>15,024,387</b>	<b>6,069,803</b>	<b>3,942,108</b>	<b>1,664,301</b>	<b>2,010,214</b>	<b>1,337,961</b>
<b>VAT @ 14%</b>		<b>2,103,14</b>	<b>849,772</b>	<b>551,895</b>	<b>233,002</b>	<b>28,142,96</b>	<b>187,314</b>
<b>TOTAL INCL OF VAT</b>		<b>17,127,801</b>	<b>6,919,575</b>	<b>4,494,003</b>	<b>1,897,303</b>	<b>2,038,356</b>	<b>1,525,275</b>

\* This is a "Once-off" cost for a perpetual license.

\*\* The Materials Management Module is licensed for Pharmacy Inventory use only.

(Ref: MTSA-KZN DOH-SWA- 12/2/08)

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*[Handwritten signatures]*

*[Handwritten signatures and initials]*

**EXHIBIT I  
MAJOR SERVER COMPONENTS**

ITEM	PRODUCT CODE/DESCRIPTION	
<b>1.</b>	<b>BLADE CENTRE 1 with SAN Switch</b>	
	IBM eServer BladeCenter™ H Chassis with 2x2900W PSU	4
	IBM BladeCenter™ H 2900W AC Power Supply Modules	4
	Cisco Systems GbE Switch Module for IBM BladeCenter	8
	Brocade® 20-port 4 Gb SAN Switch Module for IBM BladeCenter™	4
	4 Gbps SW SFP Transceiver-4 Pack	6
	BladeCenter Redundant KVM/Advanced Management Module	4
	HS21, Xeon Quad Core E5450 80W 3.00GHz/133MHz/12MB L2, 2x1GB Chk, O/Bay SAS	44
	Quad-Core Intel Xeon Processor E5450 80w 3.0GHz/12MB L2	44
	2GB (2x1GB) PC2-5300 CL5 ECC DDR2 Chipkill FBDIMM Memory kit	44
	IBM 36.4GB 10K SFF SAS HDD	88
	QLogic 4Gb SFF Fibre Channel Expansion Card for IBM eServer BladeCenter	28
	<b>2.</b>	<b>RACK MOUNT SERVERS</b>
X3650, Xeon Quad Core X5450 120W 3.0GHz/1333MHz/12MB L2, 2x1GB Chk, O/Bay 3.5in HS SAS, SR 8K-1, PCI-E Riser Card, Ultrabay		3
Quad-Core Intel Xeon Processor X5450 120W 3.0GHz/1333MHz/12MB L2		3
4GB (2x2GB) PC2-5300 CL5 ECC DDR2 Chipkill FBDIMM Memory Kit		3
2GB (2x1GB) PC2-5300 CL5 ECC DDR2 Chipkill FBDIMM Memory Kit		3
IBM 300GB 3.5in 15K HS SAS HDD		6
ServerRAID-8k Adapter		3
XSeries 835W Redundant Power Option		3
<b>3.</b>	<b>DR SERVER</b>	
	X3850 M2, 2xXeon Quad Core X7350 130W 2.93GHz/1066MHz/8MB L2, 8x1GB, O/Bay HS 2.5in SAS, UltraSlim enhanced CD±RW DL, DVI Aap., Eth Giga, Vista	1
	Intel Xeon Quad Core Processor X7350 130W 2.93GHz/1066MHz/8MB L2	2
	IBM 73.4GB 2.5in 10K HS SAS HDD	2
	Qlogic 4Gb FC Single-Port PCIe HBA for IBM System x	2
	5M FC CABLE LC-LC CHANNEL PRICE	2
<b>4.</b>	<b>IBM 42U Enterprise Rack Primary</b>	
	IBM 2x16 Console Switch	1
	1U 17in Flat Panel Monitor Console Kit with Optical Drive Bay w/o keyboard	1
	IBM DPI C19 Enterprise PDU w/o Line Cord	4
	DPI Universal Rack PDU (South Africa)	2
	IBM 42U Enterprise Expansion Rack Secondary	
	DPI Universal Rack PDU (South Africa)	2
	IBM DPI C19 Enterprise PDU w/o Line Cord	2

ITEM	PRODUCT CODE/DESCRIPTION	
<b>5.</b>	<b>TS3310 TAPE LIBRARY</b>	<b>1</b>
	Capacity Expansion	1
	Path Fallover	1
	Additional Power Supply	2
	5M LC/LC Fibre Channel Cable	4
	Ultrium 4 Fibre Channel Tape Drive	4
	TS3310 Tape Expansion Module	1
<b>6.</b>	<b>REMOTE CLIENT 3</b>	
	(9636-72G) A55 Small Form Factor Intel 946GZ, E 2140, 1x1 GB PC2-5300 (667), 160 GB (S), DVD±RW DL, DVI Adap., Eth Giga, Vista	3
	Business 32, 1 Year On-Site Warranty	
<b>7.</b>	ThinkCenter 1GB PC2-4200 CL4 NP DDR2 SDRAM UDIMM	3
	<b>STORAGE RACK</b>	
	STORAGE SOLUTIONS SYSTEM	1
	RUGGEDIZED RACK FEATURE	1
<b>8.</b>	<b>TWO-SIDE MOUNT 1 - PHASE PDUS-OPT</b>	<b>1</b>
	<b>IBM SYSTEM STORAGE DS4800 WITH 9Xexp 810</b>	
	DS4800 DISK STYSTEM MODEL 84 (8GB CACHE)	1
	(26K7941) SW 4Gbps SFP transcvr pair	4
	(39M5696) Fiber Cable 1m Multimode (LC-LC)	6
	(22R4246) DS4800 Flash/VolumeCopy	1
	(22R4251) Windows Host Kit	1
	DS4800 64-STORAGE PARTITIONS	1
	DS4000 EXP810 Expansion Unit Model 81	9
	(26K7941) SW 4Gbps SFP transcvr pair	9
	16-Pk 4 Gbps FC, 146.8 GB/15K E-DDm	9
	(39M5696) 1m 50u Fiber Optic Cable (LC-LC)	18
	<b>9.</b>	<b>Non-MEDITECH Software</b>
Windows Svr Ent 2003 R2 OLP NL GOVT		48
Office 2007 OLP NL GOVT		11
SQL Svr Standard Edtn Win32 SA OLP NL GOVT		1
SQL CAL 2005 OLP NL GOVT User CAL		20
Symantec PC Anywhere 12.1 Computer STD Lic		51
SYMC ENDPOINT PROTECTION 11.0 BNDL STD LIC GOV		51
(39M5696) 1m 50u Fiber Optic Cable (LC-LC)		18

5.2.20 The Department indicated that from these Revit Hospital licenses, only King Dinizulu Hospital was implemented using Meditech SA.

5.2.21 The Complainant submitted evidence which indicated that on 19 October 2009, Mrs P.K Padayachee, General Manager: Legal Services, submitted a memorandum to the then HOD, Dr Zungu, for the HOD's approval of the implementation agreement of the Revit Hospital software licenses. The memorandum indicated amongst other that :

(a) The then Acting HOD, Dr Y Mbhele had approved the commencement of the implementation of the licenses purchased for the Revit Hospitals;

(b) The implementation agreement was for an amount of R18 911 232.00, and that additionally the *"then Acting HOD, also granted approval for the inclusion in the agreement of an implementation of software at Addington Hospital as well with an additional implementation fee of R2 363 904.00"*;

(c) The agreement was signed by Meditech SA on 11 August 2009, received by Legal Services on 31 August 2009 as was delayed as a result of queries raised by Legal Services; and

(d) On 19 October 2009, the then HOD, Dr Zungu, penned on the memorandum ***"the discussions at MANCO today 19.10.2009 indicated limited favour for automation of the HIS project. The implementation agreement therefore not be signed"***. (own emphasis added)

5.2.22 Further evidence submitted by the Complainant indicated that during the year 2008 and 2009, the Department engaged with State Information Technology Agency (SITA), the preferred service providers as per SITA Tender RFB 608, to be appointed for the Pilot Project for Health Information Systems.

5.2.23 Two (2) companies namely Dectrix and Xon, were subsequently each issued with letters dated 09 December 2008, signed by the then Acting HOD, Dr YL Mbele, indicating that the Department had approved the implementation of the

Health Information Systems Pilot at five hospitals and five (5) clinics, at an approved budget of R30 million.

5.2.24 Further evidence indicates that in 4 November 2009, the former HOD Dr Mtshali submitted letters to XON and a company named Trifour stating that the Department was requested by the Provincial Treasury to cut back on the budget by 7, 5 % and as a result of the budget reprioritisation, the Department has decided to stop the implementation of new or pilot projects and that the companies are "*ordered to withdraw with immediate effect*".

5.2.25 The Complainant submitted an implementation agreement for the implementation of the licensed software for the Revit Hospitals entered into between the Department and Meditech SA, dated August 2010. The implementation agreement was at a cost of R18 911 232.00, and an added implementation fee of R2 363 904.00 for the implementation of modules listed in the license agreement for Addington Hospital. Each page of the implementation agreement contained the initials of six (6) signatories as shown below:

MTSA shall fulfil all the obligations and responsibilities as stipulated in the contents of this agreement and in Schedule II, Schedule VIII, Schedule IX, Schedule X and Schedule XI.

**B. RESPONSIBILITIES AND OBLIGATIONS OF KZNDOH**

1. The total implementation fee of R18 911 232-00 (Eighteen Million Nine Hundred and Eleven Thousand Two Hundred and Thirty Two Rand, inclusive of VAT), will be paid to MTSA for the implementation of the modules listed in the license agreement in the following 5 hospitals:  
Ngwalezane Hospital  
Lower Umfolozi War Memorial Hospital  
Hlabisa Hospital  
King George V Hospital  
Redvale Hospital

Additionally, an implementation fee of R 2,363,904-00 (Two Million Three Hundred and Sixty Three Thousand Nine Hundred and Four rand, inclusive of VAT) will be paid to MTSA for the implementation of the modules listed in the license agreement in the Addington Hospital.

If any additional hospitals, other than those listed above, are added to the list, then each additional hospital will constitute a project scope change. Additional implementation and other fees will apply, project timelines will alter, and resources will have to be reassessed. In the event that these scope changes occur, these will be covered in separate addenda to be appended to this Agreement. A detailed list of the modules to be implemented in each hospital is included in Schedule XIII.

2. KZNDOH shall pay to MTSA implementation fees according to the milestones stipulated in Schedule XII.

KZNDOH or its designated appointee, will fulfill all the obligations and responsibilities as stipulated in Schedule III.

**C. DURATION OF THIS AGREEMENT**

This Agreement will commence upon date of the last signature of the agreement and will terminate within 2 years 6 months of date of last signature of the agreement.

**D. DELAYS**

1. Should any Party anticipate a delay, a notice to such effect shall be provided to the other Party, and such notice must be in writing and not backdated and shall be delivered by hand or by fax.
2. If, during the execution of the implementation, either Party is delayed or impeded by any act or omission of the other Party, or any circumstance beyond the reasonable control of the other, the delayed Party may request an extension of time. Any extension with cost implications will be referred to the Department for approval within seven days of the submission.
3. Should KZNDOH discover any discrepancies, errors, mistakes or omissions in documentation or other information supplied to it by MTSA, MTSA shall correct or repair such discrepancies, errors, mistakes or omissions at its own cost, provided they are not due to changes to documentation and information supplied or decisions made by KZNDOH.
4. If there is any delay, which is caused by the breach of KZNDOH of this Agreement (other than as caused by or contributed to by MTSA), then KZNDOH shall reimburse MTSA its reasonable costs incurred as a result of the breach on the condition that MTSA provides to KZNDOH the reasonable proof of its losses in this case. Should the delay be caused by a breach of this Agreement by MTSA, MTSA must reimburse the KZNDOH, upon submission of reasonable proof, its reasonable costs and actual loss incurred as a result of the breach.

(Ref: MTSA – KZN DOH – 1A Aug 2010)  
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5.2.26 The Complainant also provided a copy of a letter dated 23 April 2012, from Meditech SA to Dr. T Mhlongo, titled “*Proposal for the Implementation of the Meditech HCIS in KZN NHI Pilot Districts*”.

5.2.27 The letter stated that the proposal submitted to the Department “*evolves from a meeting KZNDOH senior management and Meditech SA (MTSA) had on 6 March 2012 at Redlands Hotel*” and further indicates that the Department wished to relocate licenses already paid for, to the NHI pilot District, namely Umgungundlovu, Umajuba and Umzinyathi. It also stated that Meditech SA has agreed to relocate these licenses and grant the Department a credit of R8 954 587.00 for the license fees paid for the Revit Hospitals.

5.2.28 Further, the letter stated that the functionality of the modules for Revit Hospitals software licenses had to be “*tweaked*” to make implementation of the software licenses at the NHI hospitals and that the proposal addressed these issues. Also that as per the discussions, the proposal included prices for Northdale and Newcastle referral nodes as well as Greys Hospital.



- 5.2.29 The Complainant also provided a submission dated 26 April 2012 with the title “*Transfer of Meditech SA Software Licenses Already Paid For From the Revitalisation sites to the NHI sites*” from Dr T. Mhlongo, addressed to the HOD, Dr Zungu, providing a report on the progress made with the matter and requesting approval of the recommendations set out in the document.
- 5.2.30 The submission again referred to the meeting that was held with Meditech SA and the Department at the Redlands Hotel, highlighting that the meeting was held with the HOD, Dr Zungu, ManCo members, Meditech SA Senior Executives and the CEO of Meditech SA on 6 March 2012. It stated that the Department already has a credit of R8 954 587.00 paid for the licenses of the Revit hospitals, which would significantly reduce the costs of piloting the NHI.
- 5.2.31 The submission further stated that whilst the credited amount would not be sufficient for the NHI pilot project, it provided a “*cushion for the start-up and depending on the modules and the size agreed upon, (i.e how much facilities should the pilot cover), prices can be negotiated with Meditech SA*”. The submission was approved by HOD, Dr Zungu on 7 May 2012.
- 5.2.32 The Department submitted that following the purchase of the Meditech SA licenses several submissions were made from 2012 to the Department’s Management Committee (ManCO) for the approval of funds to implement the licenses, however no funds were made available.
- 5.2.33 The Department submitted further that in March 2015 ManCO approved the implementation of the Meditech SA licenses at Greys Hospital, KwaMashu Community Health Centre and Ntuzuma Clinic, using the remaining licenses purchased in 2008, at a cost of R12 642 521.00 for implementation and R5 668 719.00 for software support for two (2) years. According to the submission by the Department this contract was signed in August 2016.
- 5.2.34 The **new software service agreement** was signed between Meditech SA and the Department in **October 2015** for licenses of Addington and King Dingizulu Hospitals. (*own emphasis added*)

- 5.2.35 According to the evidence at my disposal, on 23 February 2016 the former HOD, Dr Mtshali submitted a letter to the HOD of Provincial Treasury, indicating that the Department had an agreement with Provincial Treasury that, if in the financial year end 2014/2015, the additional funds would be allocated to the Department only to be used to enhance the revenue collection system.
- 5.2.36 The letter stated that the Department had started negotiations with Meditech SA, to have the rental agreement amended for Meditech SA to supply the latest version of Meditech SA software with other added functionality.
- 5.2.37 Further the letter stated that the proposal was presented to the Department and approved by ManCo for implementation and requested Provincial Treasury to support the Meditech SA proposal so that the implementation could commence.
- 5.2.38 On 3 March 2016, a letter signed by a person named “*Shezi*” on behalf of Mr. L.S Magagula, from Provincial Treasury was forwarded to the HOD Dr Mtshali, stating that Provincial Treasury supported the lease-to-own proposal of Meditech SA, and that although the initiative was in line with the Revenue Enhancement Strategy, the Department was urged to ensure that the Service Level Agreement did not prejudice the Department and ultimately the province’s objective to maximise revenue.
- 5.2.39 On **18 March 2016**, the Deputy Director-General , Corporate Management Services made a submission to the Chief Financial Officer (CFO) , Mr S Mkhize, and the HOD Dr Mtshali, seeking approval of the budget to implement the “*idle Meditech SA Licenses (originally purchased for Revite Hospitals) at Greys Hospital, Kwa Mashu CHC and Ntuzuma Clinic*”. The submission was recommended by the CFO on 18 March 2016, and approved by the HOD on **29 March 2016**.
- 5.2.40 The evidence submitted by the Department further indicates that a letter from the HOD, Dr Mtshali was sent to Dr JM Poo, the Corporate Account Executive and Healthcare Advisor, Meditech SA, stating amongst others:

- (a) That a proposal was requested from the Department for Meditech SA, to have the rental agreement updated in terms of providing the latest software of Meditech SA and upgrading the servers;
- (b) Added to the proposal request was an added functionality to increase revenue collection within the Department and also to change the agreement to a lease-to-own;
- (c) The Department is happy to communicate that the proposal had gone through all the required committees and was approved. The proposal has received the support of the Kwa Zulu Natal Provincial Treasury;
- (d) Requesting to now work with the DDG: Corporate Management Services to have a contract drafted and signed in line with the proposal; and
- (e) That the contract should include the implementation, rollout and support of the Meditech SA solution.

5.2.41 The letter was dated **17 March 2015** but was signed by the former HOD, Dr Mtshali, with a date stamp of **29 March 2016**. *(own emphasis added)*

5.2.42 On **4 May 2016**, the Chief Director: Supply Chain Management (SCM), Mr C Mlaba (Mr Mlaba), made a submission to the HOD, Dr. ST Mtshali, requesting him to grant approval for deviation from normal SCM processes to a bid for the *“appointment of a service provider to implement Meditech SA Licence for a system which is already in existence for Greys Hospital, KwaMashu Community Health Care (CHC) and one adjoining clinic and also provide support at three hospitals, one CHC and one clinic for a period of three years”*, (2016 Project). The submission was recommended by the CFO on **09 May 2016** and approved by the HOD on **11 May 2016**. *(own emphasis added)*

5.2.43 The RFP for the 2016 Project under Bid ZNB 5486/2015-H indicated that the closing date for the bid was 20 May 2016. On 16 May 2016 the Department’s

SCM office submitted an email to Meditech SA, inviting them to submit a proposal on or before **20 May 2016 at 11:00**.

5.2.44 On 18 May 2016, Mr Jacob M. Poo, the Corporate Account Executive and Health Advisor of Meditech SA responded to the email indicating that in relation to Bid ZNB 5486/2015-H, requesting an extension until Friday 27 May 2016 to complete their submission.

5.2.45 On 19 May 2016 the Department submitted an email to Mr Poo of Meditech SA, informing him that the request was considered and that Meditech SA should complete and submit the documents to the Department by the **25 May 2016**. (*own emphasis added*)

5.2.46 Pages 54 to 56 of the RFP contained the Terms of Reference for the 2016 Project as indicated below:

## 1. TERMS OF REFERENCE

### 1.1. THE SCOPE OF WORK IS AS FOLLOWS

- (i) KZN Department of Health requires the services of the service provider to assist with the customisation and implementation of MEDITECH Licences (version 6.1) at Greys Hospital, KwaMashu CHC and its referring clinic namely, Ntuzuma Clinic. Proposals must be from MEDITECH Certified Software Implementation Companies with MEDITECH version 6.1 experience. Proven track record in the Implementation/upgrade, application support and maintenance of MEDITECH 6.1 is mandatory. The following are the objectives of the project :
- (ii) KZNDOH awarded a tender to Meditech SA in 1988 to implement a limited number of modules at Addington Hospital as a pilot hospital the intention being to roll out province wide. Whilst this implementation was successful, rollout to other hospitals never occurred due to lack of funds. With Y2K looming, KZNDOH had to replace their billing solution at 11 district hospitals and Emergency Medical Services. This was achieved with a rented billing solution from MTSA. This solution included hardware and software and is hosted at Addington Hospital. The solution whilst deliberately scoped from the outset to be limited in functionality, has assisted the department to collect a significant amount of revenue. Software upgrade and hardware refresh for the billing solution is long overdue and user training is required at facilities not billing optimally. In 2008, as part of the revite program, KZNDOH licensed a further set of limited modules to implement at several of its facilities in the province. As the risk of failure at some of these Revite Hospitals was considered significant, the department re-allocated these software licences to other hospitals. Implementation at these hospitals however stalled after Addington and KDHC went live on 6.0. The major reason for this was the lack of human and material resources within the KZNDOH.
- (iii) Following a review of investments made in the Meditech System area, KZNDOH now wishes to implement modules paid for and to realise the full benefit of what it has procured. Given difficulties with previous implementations, KZNDOH seeks MEDITECH Implementation and Support Expertise to assist in the implementation/upgrade, and application support and maintenance of modules paid for at following institutions:
- Addington Hospital and KDHC: Upgrade from M-AT 6.0 to 6.1
  - Greys Hospital and Kwa-Mashu CHC and Ntuzuma Clinic: Rollout of Modules as paid for in 1998.
  - NB:** This excludes the MEDITECH 6.1 implementation currently underway at IALCH under the auspices of the PPP.
- ~~(iv) Implementation of the MEDITECH 6.1 at the various hospitals has occurred over a period of time and the various~~  
directorates and consequently the implementation to date lacks a common strategic thread.
- (v) The implementation as envisaged is expected to assist KZNDOH to meet its stated objectives as outlined in the Annual Performance Plan and the Strategic Plan 2015-2019. These documents are available on the KZNDOH website: [http://www.kznhealth.gov.za/resouce\\_centre.htm](http://www.kznhealth.gov.za/resouce_centre.htm). Whilst the department acknowledges that

functionality purchased will not allow it to meet all its stated objectives, the service provider is expected to optimise the implementation of what has been licensed and assist in maximising the benefit to the KZNDOH. Key objectives for this implementation are summarized below:

- (vi) KZNDOH intends to use this implementation to improve operational efficiencies at facility level and to better manage costs related to patient care such as laboratory costs, medication costs, radiology costs etc. This includes but is not limited to implementation of NHLS gatekeeping rules devised by KZNDOH.
- (vii) Improve cost effective and efficient referral between the facilities and IALC. In pursuance of this objective, the provider is expected to assist in the review of key processes to enable better management of patient waiting times and reduction of costs related to patient care.
- (viii) Improve clinical outcomes through implementation of KZNDOH defined treatment protocols by making judicious use of order sets. This is subject to limitations of functionality purchased.
- (ix) Improved and automated management reporting that complies with local, provincial as well as national reporting requirement whilst reducing tedious duplication that currently exists.
- (x) Support infection control and outbreak response initiatives in the province.
- (xi) Create an appropriate model for referral between PHC and Hospitals using the MEDITECH System
- (xii) To ensure that the existing business processes are reviewed or re-defined and documented for automation through the implementation of the MEDITECH Modules. The customisation and implementation of these MEDITECH Modules aims to automate the business processes at the 3 facilities mentioned above in line with the capability of the available MEDITECH modules pointed out below.
- (xiii) The customisation and implementation of the MEDITECH Modules at the mentioned facilities aims to automate the referral path from **Ntuzuma Clinic - KwaMashu CHC - Addington Hospital then Greys Hospital**. It must however be noted that Addington Hospital is already running on MEDITECH (Version 6.1).
- (xiv) The remaining portion of the Licences which aims to automate the tertiary health services is required to be implemented at Greys Hospital. It should also be noted that Greys Hospital runs an old version of the MEDITECH Magic System which is used for billing purposes only. Data migration from the Magic Billing Module into Version 6.07 Billing Module will also be required as part of this process.
- (xv) Addington Hospital and KDHC:

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The set of modules implemented are as per Table 1 above and dates of implementation/upgrades are as per table 2 above. Take note however of the following limitations:

- Whilst the system is live at both hospitals, adoption is varied from department to department due to lack of infrastructure and change management issues.
  - Pharmacy Implementation at Addington Hospital is in progress whilst at KDHC adoption is still suboptimal.
  - Materials Management is licenced only for the hospital pharmacy stores. Whilst it is capable of running hospital general stores, it is not licenced for this purpose. This application is also not licenced to run Provincial Pharmaceutical Supply Depot (PPSD). Consideration has been made to interface Material Management directly to PPSD.
  - Both Addington and KDHC would require System Optimization
- xvi) The following are the MEDITECH modules that make up the current Licences which require customisation and implementation in line with the business processes to be mapped out:
- a) Admissions
  - b) Medical Record Index
  - c) Order Entry
  - d) Imaging and Therapeutic Services
  - e) Community Wide Scheduling
  - f) Abstracting
  - g) Pharmacy
  - h) Billing and Accounts Receivable
  - i) Electronic Medical Record
  - j) Executive Support Systems
  - k) Corporate Management Software
  - l) Laboratory Interface Portal
  - m) Microbiology Interface Portal
  - n) Anatomical Pathology Portal
  - o) Data Repository

5.2.47 On 20 July 2016, the Department's Supply Chain Practitioner, Mr R Werner, compiled a submission to the Department Bid Evaluation Committee (DBEC), recommending that the DBEC formulate a recommendation to the Department Bid Adjudication Committee (DBAC).

5.2.48 The submission indicated *inter alia*:

- (a) The closing date of the bid was 25 May 2016.
- (b) One (1) bid was received.
- (c) On 15 July 2016 an amended request for the composition of the TEC, comprising of Mr TB Shezi the DDG IT Governance and Systems, Mr B Shezi, Acting Chief Director and Director Clinical was submitted to the HOD.
- (d) The Technical Evaluation Committee (TEC) was requested to proceed to evaluate the bid as discussed with the HOD and was assured that that the Committee will be approved.
- (e) The Bid was presented to the Technical Evaluation Committee (TEC) on the 18 July 2016, however approval from the TEC was still pending.
- (f) Based on the comments and functionality score of the members of the TEC, the committee found the bidder to be fully compliant with regards to the evaluation and that the bidder scored 88.5 out of 100 for functionality.
- (g) The submission was compiled by Mr Werner and checked by Mrs. N Khanyile, Assistant Director on 20 July 2016.
- (h) Mr C. Mlaba, Mr R Sibiyi, and Mr A Memela further endorsed their signatures on the document without any date of their signatures.

5.2.49 On 12 August 2016 Mr Mlaba, forwarded a letter to Meditech SA informing them that the Bid Adjudication Committee had awarded the tender to them at a total cost of R27 722 023.00.

5.2.50 The Department submitted that the agreement for the project which was **signed in August 2016** was for a total cost of R31 920 000.00, plus R15 million for computer servers over a three (3) year period. A further amount of R 9 410 767.00 to be paid for software support for Addington and KDHC

Hospitals for a period of three (3) years. This new agreement allowed the Department to own the hardware and software at the end of the three years.

5.2.51 The following are significant extracts from the agreement signed in August 2016, which outlined the historical contracts between Meditech SA and the Department as well as aspects of the 2016 Project.

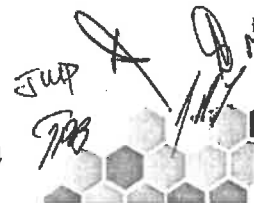
**Historical Contracts**

Annexure E: - Contract: Addington Hospital Software Licence Agreement (Made 1 June 1989 and Signed 30 April 1990)

Annexure F: - Contract: Master Rental Agreement ( Signed 03 July 2001)

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Annexure G: - Addendum to Master Rental Agreement (Signed 05 May 2006)

Annexure H: - Contract: Software Licence Agreement for Revite Hospitals (Made and Signed 19 August 2008)

Annexure I: - Contract: Software Support for Addington and King Dinizulu (Signed October, 2015)

Annexure J: - Related documentation of Bid Number 5486/2015-H as part of Project 1 and 3.



Product and Services pertaining to **Project 1:** the "MEDITECH Basic PAS Solution at 11 hospitals plus EMS (One Central EMS Billing Location to be decided on by KZNDOH)

Payment 1: - On the initiation of the Licensed Software R 10 533 600;

Payment 2: - On the "Go-Live" of the first Hospital R 10 533 600

Subsequent payments shall be, as and when, each Hospital attains "Live" status. Each subsequent Hospital payment will be an amount of R 1085 280. If for any reasons a Hospital does not attain "Live" status within three (3) months of the live date in the agreed Project plan, this payment will become payable in full.

Product and Services pertaining to **Project 2:** the Greys Hospital and the Kwa-Mashu CHC and Ntuzuma F Clinic will be made as follows:

**For Year One**

**For Greys Hospital:**

Payment 1 - On the initiation of Licensed Software; R 2 533 600

Payment 2 - On the completion of the Application Training to Core group members R 2 070 604;

Payment 3 - On the completion of the Unit and Integration testing R 1 533 781;

Payment 4 - On the attainment of "Live" status R 1 533 781. If for any reason Greys Hospital does not attain "Live" status within three (3) months of the live date in the agreed Project plan, as a result of a KZNDOH material default, this payment will become payable in full.

**For Kwa-Mashu CHC:**

Payment 1 - On the initiation of Licensed Software R 1 431 501

Payment 2 - On the completion of the Application Training to Core group members R 1 389 398;

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Payment 3 - On the attainment of "Live" status R 1 389 398. If for any reason Kwa Mashu CHC does not attain "Live" status within three (3) months of the live date in the agreed Project plan, as a result of a KZNDOH material default, this payment will become payable in full.

**For the Ntuzuma F Clinic:**

Payment 1 - On the Initiation of Licensed Software R 259 529;

Payment 2 - On the completion of the Application Training to Coregroup members R 251 896;

Payment 3 - On the attainment of "Live" status R 251 896. If for any reason Ntuzuma F Clinic does not attain "Live" status within three (3) months of the live date in the agreed Project plan, as a result of a KZNDOH material default, this payment will become payable in full.

**For Year Two**

**For Greys Hospital, KwaMashu CHC and Ntuzuma F Clinic:**

Payment 1 - Software Support ; R 2 736 948 on the 1<sup>st</sup> October 2017

**For Year Three**

**For Greys Hospital, KwaMashu CHC and Ntuzuma F Clinic:**

Payment 1 - Software Support ; R 2 931 771 on the 1<sup>st</sup> October 2018

3) Product and Services pertaining to Hardware Servers; Project 3; will be paid in three (3) equal tranches of R 5 000 000 each. Should the payment milestones not be realised, MTSA reserves the right to take legal and remedial action

Payment 1 - On the delivery of the hardware;

Payment 2 - On the 1st May 2017;

Payment 3 - On the 1st May 2018.

4) Product and Services pertaining to Project 4 : charges for Software Support at Addington and King Dinizulu Hospitals. These amounts were awarded as part of Bid Number 5486/2015-H

**For Year One**

**For Addington and King Dinizulu Hospitals :**

Payment 1 - Software Support ; R 2 770 664 on the 1<sup>st</sup> October 2016

**For Year Two**

**For Addington and King Dinizulu Hospitals :**

Payment 1 - Software Support ; R 3 192 362 on the 1<sup>st</sup> October 2017

**For Year Three**

**For Addington and King Dinizulu Hospitals :**

Payment 1 - Software Support ; R 3 447 751 on the 1<sup>st</sup> October 2018

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2.1.6 The Annual totals for all four Projects under this Agreement for the term of this Agreement are contained in the table below.

	Year 1	Year 2	Year 3	Total Per Project Incl VAT
<b>Project 1: Upgrade of Billing Functionality</b>				<b>R 31 920 000</b>
On the initiation of Licensed Software	R 10 533 600			
The "Go-Live" of the first Hospital	R 10 533 600			
The "Go-Live" of each Subsequent Hospital		R 10 852 800		
<b>Project 2: Greys, KwasMashu; &amp; Ntuzumu Bid Number 5486/2015-H</b>				<b>R 12 642 521</b>
On the initiation of Licensed Software - Greys	R 2 530 738			
On the initiation of Licensed Software - KwaMashu	R 1 431 501			
On the initiation of Licensed Software - Ntuzuma	R 259 529			
Completion of Application Training - Greys	R 2 070 604			
Completion of Unit & Integration Testing - Greys	R 1 533 781			
On attainment of "Live" Status - Greys		R 1 533 781		
Completion of Application Training - KwasMashu		R 1 389 398		
On attainment of "Live" Status - Kwa Mashu		R 1 389 398		
Completion of Application Training - Ntuzuma		R 251 896		
On attainment of "Live" Status - Ntuzuma		R 251 896		
Software Support Year 2		R 2 736 948		R 5 668 719
Software Support Year 3			R 2 931 771	
<b>Project 3: Product &amp; Services pertaining to Hardware Servers</b>				<b>R 15 000 000</b>
On the Delivery of the Hardware	R 5 000 000			
On the 1st May 2017		R 5 000 000		



*Reaching productivity.*

On the first of May 2018			R 5 000 000	
<b>Project 4: Software Support Addington Hospital &amp; KDHC</b>				<b>R 9 410 767</b>
Software Support Year 1	R 2 770 654			
Software Support Year 2		R 3 192 362		
Software Support - Year 3			R 3 447 751	

**SCHEDULE I**

**MTSA Monthly Software Service Fee per Facility (RANDS)**

**Facilities:**

- KR Khan Hospital (RKK)
- Ladysmith Hospital (LSMTH)
- Dundee Hospital (DUN)
- Vryheid Hospital (VRY)
- Newcastle Hospital (NEW)
- Estcourt Hospital (EST)
- Eshowe Hospital (ESH)
- Greytown Hospital (GREY)
- Northdale Hospital (NOR)
- Wentworth Hospital (WENT)
- EMS: One Central Billing Location (EMS)
- Greys Hospital (Excluded here. It is now part of Project 2 with expanded modules)

**TABLE 1**

MTSA STANDARD MONTHLY SOFTWARE SERVICE FEE												
APPLICATIONS	RKK	LSMTH	DUN	VRY	NEW	EST	ESH	GREY	NOR	WENT	EMS	TOTAL
Admissions	R 6 789	R 4 819	R 2 388	R 3 827	R 4 105	R 3 316	R 4 904	R 2 207	R 4 105	R 2 281	R 853	R 38 593
Medical Record Index	R 5 789	R 4 819	R 1 946	R 3 119	R 3 344	R 2 702	R 3 996	R 1 798	R 3 344	R 1 859	R 869	R 33 585
Order Entry	R 4 277	R 3 560	R 1 438	R 2 304	R 2 471	R 1 996	R 2 952	R 1 329	R 2 471	R 1 373	R 642	R 24 812
Abstracting	R 2 851	R 2 373	R 958	R 1 536	R 1 647	R 1 331	R 1 968	R 886	R 1 647	R 916	R 428	R 16 542
Laboratory Interface Portal	R 2 894	R 2 409	R 973	R 1 569	R 1 672	R 1 351	R 1 998	R 899	R 1 672	R 929	R 434	R 16 792
Microbiology Interface Portal	R 2 894	R 2 409	R 973	R 1 569	R 1 672	R 1 351	R 1 998	R 899	R 1 672	R 929	R 434	R 16 792
Billing and Accounts Receivable	R 17 367	R 14 457	R 5 838	R 9 356	R 10 033	R 8 105	R 11 988	R 5 395	R 10 033	R 5 577	R 2 606	R 100 754
HL7 Meditech ADT Interface to OV Ancillary System	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 7 960
HL7 Meditech OE Interface to OV Ancillary System	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 7 960
HL7 OV Ancillary System to MEDITECH	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 7 960
HL7 Meditech to OV 3M Ancillary System	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 724	R 7 960

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Exhibit I

<b>MEDICAL INFORMATION TECHNOLOGY SA (PTY) LTD</b> <b>AGREEMENT FOR THE SALE OF SERVER HARDWARE</b> <b>HARDWARE SCHEDULE I</b> <b>For: KWA ZULU NATAL DEPARTMENT OF HEALTH</b>			
ITEM	PRODUCT CODE/DESCRIPTION	QTY	TOTAL PRICE
1.	HP 3PAR StoreServ 8200 2N Stor Cent Base	1	R 8 343 161.98
	• SAS & SSD – 243TB RAW		
2.	HP DL560 Gen 9 Servers (ESX Hosts)	1	R 3 080 809.46
	• 18 Core CPU		
	• 512 GB RAM		
	• VMware Std License		
	• MS Data Centre Addition		
	• VMware vCentre		
<del>3.</del>	<del>HP DL560 Gen 9 Server (Spare)</del>	<del>1</del>	<del>R 579 582.98</del>
	<del>• 12 Core CPU</del>		
	<del>• 512 GB RAM</del>		
4.	HP DL380 Gen 9 Server (Software Back-up Server)	1	R 184 048.23
	• MS WS12		
5.	HP 5120-48G E1 Switch	1	R 106 010.40
6.	HPE MSL2024 0-Drive Tape Library	1	R 340 890.18
	• 2 x LTO-7 Drives		
7.	HPE 8/24 Base 16-port	1	R 297 398.58
8.	HP UPS and HP Rack	1	R 107 652.48
9.	Bridgehead Back-up Software	1	R 1 043 229.00
	<b>SUB-TOTAL</b>		<b>R 14 082 783.29</b>
	<b>VAT @ 14%</b>		<b>R 1 971 589.66</b>
	<b>TOTAL:</b>		<b>R 16 054 372.95</b>

**NB.** The following Software will be required for the Hardware:

Microsoft Licensing

- Ms-Word
- SQL Server
- RDP Cals

Antivirus Software

- 88 Antivirus Licenses

*~ JWP*

5.2.52 The information obtained from the evidence of various contracts entered into between the Department and Meditech SA, are summarized in the table below:

ITEM	DATE AGREEMENT COMMENCED	VALIDITY	DATE AGREEMENT SIGNED	SUMMARY	COST	REFERENCE IN REPORT
<b>Tender P 4062 SA</b>	1 June 1989	Purchase	30 April 1990	Addington Hospital Pilot Project Package of 19 Magic Modules.	R 2 728 475.00 for purchase	
<b>Master Rental Agreement</b>	15 May 1999	15 May 1999 to 14 May 2004 (5 years)	03 July 2001 by Department 31 August 2001 by Meditech SA	Billing and Accounts Receivable Module x1 Meditech Workstation Software 2 Server Hardware ( Various) Server Hardware Replaced on 03 March 2003	R 2 729 023.48 5 years	
<b>First Extended Period Addendum</b>	15 May 2004	15 May 2004 to 31 December 2005 (18 months)				
<b>Second Extended Period Addendum</b>	1 January 2006	15 May 1999 to 31 December 2006	20 December 2005 by Department 05 May 2006 by Meditech SA	Billing Accounts Receivable Module x 1 Meditech Workstation Software 2 Server Hardware ( Various) as per Indicated in agreement that the basis of the original rental fee allowed the Department to use the software in 10 Hospital facilities , and that the initial hospitals where the system was implements are listed	R 526 653.72 for 12 months excl VAT	
<b>Revit</b>	19 August 2008	19 August 2008	19 August 2008 by Meditech SA 10 September by Department	Licensed Software with specified modules Purchased for 5 Revit as per Only King Dinginzulu implemented	R 17 127 801.00	

<b>Software Service Agreement</b>	23 October 2015 to 23 October 2016 12 months	16 October 2015 HOD Department 23 October 2015 Meditech SA	Software Service Agreement <b>Various Modules for Addington Hospital, Kingdinizulu Hospital Complex, Billing and Accounts Receivable Module</b> Greys Hospital, RK Khan Hospital Ladysmith, Dundee, Vryheid, Newcastle	R 238 526.00 x 12h = R2 8 62 312.00	
<b>Health Information System Master Agreement</b>	1 September 2015		Note: Department indicates that this initial rental agreement was from 2001 and now will be a lease to own Billing Module upgraded and Revenue Collection automated 11 Hospitals  Computer Servers  4 remaining Revit Licenses transferred to Greys hospital, Kwa Mashu CHC, Ntuzuma Clinic,  Annual License Maintenance Agreement for Addington and King Dinizulu	R 31 920 000.00 Paid Over 3 years  R15 000 000.00 Paid Over 3 years + additional R 5 000 000.00  R 12 642 000.00 indicated by Department Cost as per agreement R27 722 023  R 2 770 000.00	

<b>Software Service Agreement</b>	16 October 2015		31 August 2016 2016	Software Service Agreement for Addington Hospital, Kingdinizulu Hospital Complex, Greys Hospital, Kwa-Mashu CHC, and Ntuzuma F Clinic		
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5.2.53 According to Paragraph 4.2 of the Project Status Report dated 07 August 2017, various challenges have been encountered since the inception of the project. The challenges, its impact and recommendations that were submitted by ICT Unit Management Team are detailed below:



Description of the Constraint	Cause	Action Plan	Executive Intervention Required
There is a high shortage of the end user devices such as computers, label printers, document printers and laptops.	<ul style="list-style-type: none"> <li>There is no dedicated budget allocated for the procurement of end user devices in this project</li> <li>The ICT Unit is encountering high financial constraints.</li> <li>Slow procurement process which is further exacerbated</li> </ul>	<ul style="list-style-type: none"> <li>IT Management has managed to secure funding for the purchase of a number of end user devices at the prioritized sites however it is not adequate.</li> <li>The various CEOs have been approached to consider purchase sponsoring of the PCs from the institutional budgets.</li> <li>The initiative of leasing end user devices can assist with the resolution of this challenge and the process to get this approved is currently underway.</li> </ul>	<ul style="list-style-type: none"> <li>An intervention at the Executive level is required to intervene by making available a budget for the end user devices.</li> <li>Computer leasing initiative should be afforded high priority.</li> </ul>
Shortage of network points at hospitals particularly in the wards	<ul style="list-style-type: none"> <li>Lengthy SITA procurement processes</li> <li>The backlog of network points at hospitals is very high thus costly</li> <li>High Budget constraints</li> </ul>	<ul style="list-style-type: none"> <li>The IT Management is currently pursuing the possibility of participating in the cabling contract used by the Department of Human Settlement.</li> <li>SITA is also busy with a transversal cabling contract for the province.</li> <li>The IT Management is considering to implement a wireless network solution which is deemed less costly and faster to install.</li> </ul>	<ul style="list-style-type: none"> <li>An intervention at the Executive level is required to intervene by making available a budget for the installation of network points.</li> </ul>
Poor participation of the CEOs and members of Head Office's Service Delivery Branches in the Project Steering Committee	<ul style="list-style-type: none"> <li>This could be due to the reason that the visibility of the implementation Team is not yet realized at some hospitals</li> </ul>	<ul style="list-style-type: none"> <li>Reconstruct the Project Steering Committee to be compulsory for those CEOs the implementation phase is active. The other CEOs can join the Project Steering Committee as and when the implementation phase is active at their respective institutions.</li> </ul>	<ul style="list-style-type: none"> <li>The Executive Management is requested to intervene.</li> </ul>
Poor bandwidth performance	<ul style="list-style-type: none"> <li>The current speed of the data lines is of a very low capacity that is 2 MB at maximum. The recommended speed is 6 MB.</li> <li>Lengthy SITA Procurement processes</li> <li>The cost of implementing the data lines through SITA is highly exorbitant.</li> <li>The cost of upgrading the</li> </ul>	<ul style="list-style-type: none"> <li>The lines must be upgraded to 6 MB.</li> <li>The IT Management is currently working on an alternative long term solution of implementing a second private network.</li> </ul>	<p>The Executive Management is required to consider the alternative network solution which will save the Department a lot of money. Furthermore, additional funding will be required to enable the implementation of the private network solution.</p>

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Description of the Constraint	Cause	Action Plan	Executive Intervention Required
	<ul style="list-style-type: none"> <li>data lines adds more to the financial constraints that the ICT Unit is encountering.</li> </ul>		
<i>The implementation phase at Port Shepstone Hospital will be delayed by a period of over 6 months.</i>	<ul style="list-style-type: none"> <li>Port Shepstone Hospital's IT infrastructure has been severely damaged by the fire event that occurred in the server room.</li> <li>The repair of the damaged IT infrastructure is highly dependent on the building repair project which is not expected to be ready for some time.</li> <li>There is currently not money in the ICT Unit to fund the repair costs of the IT infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>A short term solution of connecting the critical end users at the hospital has been put in place however the solution is not adequate to run the MEDITECH system</li> </ul>	<ul style="list-style-type: none"> <li>The Executive Management is required to intervene by prioritising the recovery plan for Port Shepstone Hospital.</li> </ul>
<i>The reason for mentioning Port Shepstone is because Port Shepstone was the first hospital to 'Go Live'. Everything had been in finalised and in place for Go Live in June, 2017. Actually, on the day the fire happened, ICT staff were in Port Shepstone, to connect the last printers, and the Hospital was then to Go Live that week.</i>			
Competing initiatives in respect of the RX Solution and Meditech system	<ul style="list-style-type: none"> <li>Poor communication, consultation and clear direction in respect of implementing health information systems in the Department.</li> <li>The Meditech system has a pharmacy module which gives a rise to conflict among end users who aware of RX Solution as the mandatory pharmaceutical system.</li> </ul>	<ul style="list-style-type: none"> <li>A consultation process with all the hospitals affected by this issue has been initiated. A clear resolution is expected to be reached before 31 July 2017.</li> <li>A final report with recommendation will be table MANCO for a decision making based on the recommendations agreed upon.</li> </ul>	<ul style="list-style-type: none"> <li>The Executive Management will be required to provide clear direction once the report is tabled.</li> </ul>



#### 4.3. Impact Analysis of the Identified Challenges

While there are some successes which have been reported, the constraints alluded to above are a reality with the possibility of rendering delays in the project and in the course of time identified action steps needs to be taken as required. This is because of the following reasons:

- The end user devices are a fundamental dependency required for the system to function accordingly however the limited number of these devices (i.e. label printers) would mean that the installation of the Meditech software will be delayed. Instead of using SITA, the IT unit is liaising with the Departmental SCM unit to purchase these. Budgets have been reprioritized within IT to purchase these devices.
- The network points are also key to the connection of computers to the network which will enable the users to have access to the Meditech system on the servers hosted at SITA, Pietermaritzburg. Without the network points, the installation of the Meditech will be delayed. The limited budget and slow procurement processes are the major causes which must be addressed by establishing a standing contract to procure those service.
- The ICT Unit is not in a position to fully fund these requirements due to a budget shortfall incurred from the previous financial years over the debt owed to SITA and the budget cuts. A budget prioritization is being done, at least to cover Hospitals as per the project plan, on Hospital at a time.
- The impact of non-participation of critical stakeholders (CEOs, and Cluster Senior Managers) is of a great concern which tends to put the responsibility of ensuring that this project's deliverables are met on the sole shoulders of the ICT Unit. In that way this project is thus seen as an IT project, though such projects are regarded as business projects since they mainly concern the reengineering of business processes in hospital management. The involvement and participation of the service delivery branches is key towards ensuring that the project is managed accordingly, the challenges identified in this report are addressed as a collective unit, and lastly to ensure that there is buy-in of this project at all levels of the institutions.

5.2.54 It is noted that paragraph 5.2 of the Project Status Report states that the total financial implications, *“for all the dependencies required to make the project successful is R 12 147 000.00 as a once off”*.

#### Responses to the section 7(9) notice:

#### Dr Zungu’s response dated 16 October 2019.

5.2.55 Dr Zungu submitted that the appointment of Meditech happened in 1988, by the Natal Provincial Administration, and that she was not the Accounting Officer at that time.

5.2.56 She stated that the extension of the contract in 2009/10, the Department signed for software licences of a stipulated amount on 10 September 2008, as well as for implementation to commence. She submitted that it seemed that in the paragraphs that followed the same HOD of that time issued letters to two service providers.

## Application of relevant legal prescripts

### The Constitution

5.2.57 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)

5.2.58 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.

5.2.59 Fruitless and wasteful expenditure is defined by section 1 as: *“expenditure which was made in vain and would have been avoided had reasonable care been exercised.”* and

5.2.60 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.”*

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

- (f) *“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;*

- (g) *is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;*
- (h) *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;*
- (i) *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*
- (j) *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

5.2.62 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.

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

5.2.64 Regulation 8.1 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.

5.2.65 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.

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

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

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

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

*(g) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and*

*(h) provide for at least the following: –*

*(vii) demand management;*

*(viii) acquisition management;*

*(ix) logistics management;*

*(x) disposal management;*

*(xi) risk management; and*

*(xii) regular assessment of supply chain performance.”*

5.2.67 National Treasury Regulation 16A6.4 regulates the procurement of goods and services through 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.

5.2.68 16A6.3 *The accounting officer or accounting authority must ensure that –*

*(d) bid documentation and the general conditions of a contract are in accordance with –*

*(i) the instructions of the National Treasury; or ..*

*(e) bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);*

*bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, **except in urgent cases when bids may be advertised for such shorter period** as the accounting officer or accounting authority may determine”.*

#### Case Law

5.2.69 The case of Minister of Transport v Prodiba (Pty) Ltd (20028/2014) [2015] ZASCA 38 (25 March 2015), which deals *inter alia* with the award of a single tender in 1997 to one service provider, the court found that it was incumbent on the Accounting Officer of the Department, “to have regard to Constitutional principles, the provisions of the sub-section set out above and other statutory prescripts. The high court erred by not having sufficient regard to constitutional norms and statutory requirements and concluding that the decision to produce the new licences in-house could only have been facilitated by an extension of Prodiba’s contract and that a competitive bid would not have been viable where the supply of services would have been for a very limited duration. The high court ignored the very extensive period during which Prodiba enjoyed a monopoly and did not properly appreciate that the five year extension period was not of very limited duration. More importantly, the agreement was one in

*respect of which Prodiba was required to provide a new service dealing with new technology in respect of which potential competitors were not engaged”.*

Conclusion

- 5.2.70 The evidence before me revealed that, in 2001 the Department entered into a five (5) year rental agreement with Meditech SA contending that this was a further roll out of Tender P4062 awarded in 1988. This agreement was signed in August 2001, but in actual fact it had already commenced in May 1999, twenty seven (27) months prior to the signing of the rental agreement.
- 5.2.71 The Department contracted with Meditech SA in 2001, whereas such extension did not form part of the original contract awarded to Meditech SA in 1988, as the PLA entered did not contain any clause or section that outlined the intention of the Department to further extend the project to other hospitals, or that the extension would be contracted to Meditech SA. The evidence submitted to me also does not indicate that the original tender contained information relating to which hospitals the rollout would be carried out at, or the costing of such a rollout taking into consideration that each hospital has varying number of beds.
- 5.2.72 The contract with Meditech SA for Tender P4062 was for a period of sixty (60) months and even if this tender did contain any clause or section to further be rolled out to other hospitals with Meditech SA, the Department did not carry this out within the contract period. It was therefore improper for the Department to continue with the agreement in 2001, eight(8) years after the initial contract with Meditech SA had ended, without due regard to the Constitutional principles and statutory prescripts relating to procurement at the time
- 5.2.73 The Department continued to renew this 2001 rental agreement after the agreement had ended in 2004, as it appears in the First and Second Addendums of the Master Rental agreement, extending the rental agreement with additional hardware. Tender P4062 was for the purchase of the software licence only, which was to be used on the Department's hardware.

Department conceded that it entered into a series of other contract with Meditech SA.

- 5.2.74 The 2001 agreement with Meditech SA for the rental of the Billing and Revenue Collection Module for the eleven (11) hospitals was improper. The further extensions from 2004 onwards were also improper and in contravention of Section 217 of the Constitution and Regulation 16A3. 29(a) of the National Treasury Regulations, as the Department did not carry out a competitive process that would have allowed it to test the market and determine if other service providers could have offered competitive prices.
- 5.2.75 The submission by the Department that each Addendum was an extension of the original contract is deceptive. This is distinctly articulated in the case of *Minister of Transport v Prodiba (Pty) Ltd (20028/2014) [2015] ZASCA 38 (25 March 2015)* where it was stated that “... *the Third Addendum Agreement is deceptive as it created the impression that the agreement in question was merely an extension of an existing agreement*”.
- 5.2.76 In 2008, the Department further proceeded to contract with Meditech SA when it requested a proposal directly from Meditech SA for the Revit Licenses, for a completely new service that involved the purchase of licences with additional modules which had major cost implications, whereby competitors were not engaged, which is contrary to the provisions of Section 217 of the Constitution and Regulation 16A3. 29(a) of the National Treasury Regulations.
- 5.2.77 The Department submitted to me that since 2012 it made several submissions for funding to implement the Revit licenses, which were not approved. However the Implementation Agreement signed in 2010 with various initials affixed on it suggests that in 2010, the Department concluded the Implementation Agreement with Meditech SA.
- 5.2.78 The Department contends that it did not implement the 2008 Revit licenses, as the motivation for the 2016 Project was to implement “*idle Meditech SA Licenses (originally purchased for Revite Hospitals) at Greys Hospital, Kwa Mashu CHC and Ntuzuma Clinic*”.

- 5.2.79 The initial processes followed in 2001 and 2008 to lease and/or acquire the software licences and hardware were improper on the basis that the Department did not undertake a competitive process to contract with Meditech SA. The Department further appointed Meditech SA for the 2016 Project which included, additional scope for goods and services at a cost implication of approximately R90 million.
- 5.2.80 The Department engaged Meditech SA as early as 2012 as indicated by the contents of the letter from Meditech SA to the Department dated 23 April 2012 to submit a proposal for this 2016 Project; reference in the letter to the meeting with Meditech SA and the Department at the Redlands Hotel on 6 March 2012 and the submission by Dr Mhlongo for the "*Transfer of Meditech SA Software Licenses Already Paid For From the Revitalisation sites to the NHI sites*" that was approved by the then HOD, Dr Zungu.
- 5.2.81 Furthermore the "*closed tender*" process was a mere attempt by the Department to purport that it had undertaken a regular process to appoint Meditech SA for the 2016 Project, whereas on 29 March 2016 the former HOD, Dr Mtshali had already submitted a letter to Meditech SA indicating that their proposal had gone through all the required committees and was approved and that Meditech SA was to work with the DDG, Corporate Management Services to have a contract drafted and signed in line with the proposal.
- 5.2.82 The Department's contention that it had gone out on a tender process for the 2016 Project, by advertising what it termed a "*closed tender*", is a further indication of its semantic stratagems to continue work with Meditech SA. Meditech SA has since the award of a single tender in 1988, had over twenty eight (28) years of uncontested monopoly in the supply of the software licences and hardware to the Department.
- 5.2.83 I have further established that each time the Department contracted with Meditech SA, it changed or added hospitals to the contract. This practice substantially increased the number of licences required as certain hospitals



had additional beds and the cost of the software licenses are calculated by Meditech SA based on the number of beds.

5.2.84 The 2016 Project that the Department entered into with Meditech SA was deceptive as it created an impression that the Department intended to implement Meditech SA Licence for a system which was already in existence. However the agreement included new software licences with increased functionality as well as new hardware being sourced. The hardware procured by the Department from Meditech SA at a cost of approximately R20 million, could have been procured from any other service provider.

5.2.85 The Department therefore improperly procured and extended the services of Meditech SA for the supply of software licenses and hardware contrary to the provisions of Section 217 of the Constitution, section 57 of the PFMA and National Treasury Regulation 16A3. 29(a) which resulted in irregular expenditure being incurred by the Department as the process was not in accordance with the requirements of the Constitution, PFMA, Regulations National Treasury Regulations and SITA Act.

**5.3 Regarding whether the Department failed to consider the conflict of interest that existed between Dr. Poo, a director in Meditech SA, and the Department, when it appointed Meditech SA, 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*

5.3.1 It is common cause that Meditech SA was appointed by the Department since 1988, for the supply of software licenses and hardware.

5.3.2 It is also common cause that Dr Poo was a Director at Meditech SA.

Issues in Dispute

- 5.3.3 The Complainant alleged that Dr Poo who was one of the Directors of Meditech SA, was also an employee of the Department and that the Department failed to consider the conflict of interest, as government officials are prohibited from conducting business with the State.
- 5.3.4 The issue for my determination is whether the Department failed to consider the conflict of interest that existed between Dr. Poo, and the Department, when it appointed Meditech SA.
- 5.3.5 The Department submitted an internal memorandum dated 11 August 2016 that was forwarded by Mrs N Khanyile, the Assistant Director SCM to Mr Mlaba, requesting approval to communicate in writing with Meditech SA, further bringing to Mr Mlaba's attention that Meditech SA had indicated in their bid, that one of their directors namely Mr JM Poo is employed by the Gauteng Department of Health.
- 5.3.6 On the same date Mr Mlaba forwarded a letter to Meditech SA, requesting them to advise as to whether approval was granted by the HOD in Gauteng for Mr Jacob Maleme Poo to conduct business with the state, as this is prohibited.
- 5.3.7 Apart from the bid submission of Meditech SA indicating that Mr JM Poo was a director in the company and a government employee with a PERSAL number, the Central Supplier Data Registration Report dated 10 August 2016, submitted by the Department, further verified that Dr Poo was employed by the Gauteng Department of Health and a Director of Meditech SA.
- 5.3.8 On 12 August 2016 Dr JM Poo, submitted a letter to the Department confirming that he is in the employ of the Gauteng Department of Health as Sessional Medical Officer at Odi Hospital, with effect from 1 March 2008. He further stated that his functions and duties are described contractually and that the duties did not involve anything outside patient care and clinical duties.

5.3.9 Dr Poo submitted to the Department the employment memorandum entered into between him and the Chief Executive Officer of the ODI District Hospital. Annexure A of the memorandum detailing the functions and duties of Dr Poo and the offer of employments are shown below :

## **ANNEXTURE A**

### **FUNCTIONS AND DUTIES**


The functions, duties and services which the employee is required to perform in accordance with this Agreement is as follows:

1. Support and assist Primary Health care Nurses
2. Primary Health Care
3. Geriatric and Chronic Care
4. Medico Legal duties including:
  - Examination and treatment of sexual assault cases
  - Persons suspected of driving under the influence of alcohol or drugs
5. Assist at Crises Centres
6. Ex- officio functions, namely: assessment of single care and disability grants and old age pension applications (excluding pre- employment medical and medical boarding)
7. Be willing to perform duties even beyond your work station.

### **7. OFFER OF EMPLOYMENT**

- 5.1 I trust that you will find this offer of employment and the conditions pertaining thereto acceptable
- 5.2 This employment is in accordance with the provisions of the Public Service Regulations 2001 and Public Finance Management Act of 1999
- 5.3 I would like to emphasise that information regarding the package offered should be treated strictly confidential and should under no circumstances be discussed with other persons.
- 5.4 Attached find a copy of this offer of employment to be signed by yourself and send back to me to indicate your acceptance of the conditions of employment. This offer is subject to CV verification.
- 5.5 We are looking forward to welcoming you in our team to face challenges that lie ahead of us

Kind regards,

  
KS BOKANYO  
CHIEF EXECUTIVE OFFICER  
ODI DISTRICT HOSPITAL

**Dr Poo's response to the section 7(9) notice submitted on 06 December 2019**

- 5.3.10 Dr Poo submitted that he joined Meditech SA in March 2009 after *“a very hectic few year stint as a Medical Manager at Odi Hospital”*.
- 5.3.11 He further submitted by the end of 2008, due to health and other reasons he resigned from working for the state, and took a full time position at Meditech SA as a Corporate Account Executive and Healthcare Advisor.
- 5.3.12 He stated that upon submitting his resignation, he agreed with the then CEO and Acting Medical Manager, of the Odi Hospital, to continue to render services to the hospital and to his community on a sessional basis. The contract was subsequently drawn up as referred to in paragraph 5.3.9 above
- 5.3.13 He indicated that the contract was acceptable to the management of Odi Hospital as well as Meditech SA, as it did not pose any conflicts. He submitted further that, in addition to this he had applied for, permission to do remunerative work outside public service to the Gauteng Department of Health, even though he felt that he did not need such permission as his main employ was in the private sector in a non-clinical role. He indicated further that the only response ever received was an acknowledgement of receipt.
- 5.3.14 Dr Poo stated that on 22 May 2012 he was appointed a Director at Meditech SA, whilst still serving as a sessional doctor at the Odi Hospital. He submitted that in their (his and Meditech SA's) interaction with existing clients, no problems were raised, and during this period no new bids were won. He indicated that where questions were asked regarding the possible conflict, a letter to clarify his active Persal number was always sufficient.
- 5.3.15 Dr Poo stated that in May 2016 the Department advertised a tender ZNB5486/2015-H for the implementation of software licences to Grey Hospital. The Department then raised questions about the possible conflict of interest and clarity and contracts were provided.

5.3.16 He submitted that with the advertisement of a tender in Free State in November 2018, he decided seek clarity from National Treasury. Dr Poo's communication to National Treasury and the response he received thereto is provided below :

Good Afternoon

I am a medical doctor employed by GDOH at Odi Hospital on a sessional basis, doing a maximum of 80 hours/month. My duties in the public service only relate to after-hours patient care at a facility level. I have no managerial responsibility and no involvement whatsoever in SCM processes either at the hospital, district or provincial level.

My full-time employment is with Medical Information Technology SA (MEDITECH SA), where I am an executive director. MEDITECH SA services clients in both private and public health care. Its core business is the development, implementation and support of its software used in healthcare (HCIS). Current public sector clients are FSDOH, KZNDOH and SANBS.

On a number of occasions when there are tenders or RFQ's I have been asked by our public clients if I have received permission from GDOH to do work outside of public service, i.e. has GDOH given permission for me to do work outside of public service. My view is that this is not applicable as my engagement with public sector is:

1. Limited hours clinical work
2. Focussed at hospital level with no managerial and SCM responsibility.

In spite of my contention I have tried to get this approval and have received nothing more than an acknowledgement to my request. A letter was written to GDOH in 2016 requesting permission and there has only been acknowledgement of receipt.

My questions is are as follows:

1. Given the above circumstances above, do I need this approval.
2. Is the declaration in SBD 4, of position as a company director and government employment status as a clinical sessional post, not sufficient to address any possible allegations of favouritism?

Your prompt response will be highly appreciated as the company is currently responding to a tender.

Please be advised that Session doctors are appointed as Public Service employees in terms of the Public Service Act, 1994 (see section 8). As such, they are also regulated by the Public Service Regulations, 2016 and regulation 13(c) also applies to them. If you are a director of a company conducting business with an organ of state, you would be contravening this regulation. No public service employee can apply to obtain permission to conduct business with an organ of state. The Directive on Conducting Business with an organ of state also does not exclude session doctors from regulation 13(c), only those who render a service to SASSA.

In light of the above, you cannot obtain approval as doing business with the state in the circumstances mentioned above is prohibited, irrespective of what is written in the SBD 4.

Kind regards

- 5.3.17 Dr Poo stated that that upon the advice of National Treasury he resigned from the Board of Meditech SA on 26 November 2018, and communicated such with National Treasury, who advised further that *“you would still have to request permission from your employer, if you have not already done so (in terms of the Code of Conduct, Public Service Regulations, 2016), to perform other remunerative work (outside of the public service)”*.
- 5.3.18 Dr Poo stated that according to him his resignation from the Board would seem to resolve matters, however *“some are still of the opinion that a sessional doctor, whose main income is outside the state, still has to ask the state for permission to earn a living outside the state”*.
- 5.3.19 Dr Poo submitted that he tried to secure permission to perform remunerative work out of public service from the MEC and only received an acknowledgement, which he was told is tantamount to granting permission.

*Application of the relevant law*

- 5.3.20 Section 8 of the Public Service Act, 1994 details the composition of public service as follows :

*“(1) The public service shall consist of persons who are employed-*

*(a) in posts on the establishment of departments; and*

*(b) additional to the establishment of departments.*

*(2) Subject to the prescribed conditions, any person referred to in subsection*

*(1) may be employed permanently or temporarily and in a full-time or part-time capacity.*

*(3) For the purpose of this Act, in relation to employment-*

*(a) the word 'permanently' or 'permanent', in respect of an employee, means an employee to whom a retirement age referred to in section 16 applies; and*

*(b) the word 'temporarily' or 'temporary', in respect of an employee, means not permanently employed”.*

- 5.3.21 The Public Service Regulations, read in conjunction with the Public Service Act 103 of 1994 that came into effect on 1 August 2016 regulates conflict of interest for employees in the Public Service.
- 5.3.22 Regulation 13 (a) of the Public Service Regulation states that in respect of ethical conduct, an employee shall *“not receive, solicit or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), from any employee or any person in return for performing or not performing his or her official duties.”*
- 5.3.23 Regulation 13 (c ) of the Public Service Regulation, 2016 prohibits employees of the Public Service from conducting business with an organ of state or to be a director of a company conducting business with an organ of state.
- 5.3.24 **The Directive on conducting business with the state issued by the Minister for Public Service and Administration in January 2017** defines conflict of interest as *“conflict between the public duties and private interests of an employee, in which the employee has private interests which could improperly influence him/her, and/or negatively impact on his/her disposable time to work, and/or negatively impact of his/her official obligations or official duties and/or negatively impact on the public interest”.*
- 5.3.25 Annexure A to the Directive listed *“the activities by employees not constituting conducting business with an organ of state.”* Point 6 of Annexure A provides that *“official activities undertaken on a part-time basis, either temporarily or permanently to a number of Departments in terms of an employee’s employment.”*

### Conclusion

- 5.3.26 The evidence before me indicates that Dr Poo was employed by the Gauteng Department of Health in 2003 and not in 1988 when the Department initially contracted with Meditech SA.
- 5.3.27 After his resignation he was employed within the Gauteng Department of Health as a Sessional Medical Officer, from 01 March 2008, whereby his functions and duties are described contractually.
- 5.3.28 Although at the time when Dr Poo was issued with the section 7(9) notice, it appeared that no conflict of interest existed between Dr Poo and the Department as stated in Annexure A of the Directive on Conducting Business with the State, National Treasury communicated with Dr Poo that sessional doctors are appointed as Public Services employees and in terms of section 8 of the Public Service Act, regulated by section 13(c) of the Public Service Regulations that as a Director of a company conducting business with an organ of state, he would be contravening this regulation and that no public service employee can apply to obtain permission to conduct business with an organ of state.
- 5.3.29 National Treasury further advised that the Directive on Conducting Business with an organ of state also does not exclude session doctors from regulation 13(c), only those who render a service to SASSA, and that he cannot obtain permission to conduct business with the state as it was prohibited in the circumstances mentioned, irrespective of him having declared such in the SBD4 forms when applying for the tender.
- 5.3.30 Although Dr Poo resigned as Director of Meditech SA in November 2018, he was still employed Meditech SA as an employee since March 2009 and continued to perform work as Sessional Doctor for the Gauteng Department of Health. His request to the MEC to secure permission to perform remunerative work out of public service and the subsequent acknowledgement thereof cannot be viewed as permission being granted.



5.3.31 Therefore his employment with Meditech SA and the Gauteng Department of Health, is in contravention of Regulation 13 (c) of the Public Service Regulation, 2016 that prohibits and employees of the Public Service from conducting business with an organ of state or to be a director of a company conducting business with an organ of state, and creates a conflict of interest as defined by the Directive on conducting business with the state.

## **6. FINDINGS**

Having considered the evidence received during the investigation, the regulatory framework determining the standard that should have been complied with, I make the following findings:

**6.1 Regarding whether the Department improperly procured the Mobile units under Tender number ZNB9281/2012/H, and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.**

6.1.1 The allegation that the Department improperly procured the Mobile units under tender no. ZNB9281/2012/H, is substantiated.

6.1.2 The processes followed by the Department to both lease and purchase the mobile units were improper and not in accordance with a system that is fair, equitable, transparent, competitive and cost effective in terms of Section 217 of the Constitution, and amounts to maladministration in terms of Section 6(4) of the Public Protector Act.

6.1.3 The allegation that the Department consequently incurred irregular expenditure and/or fruitless and wasteful expenditure is substantiated.

6.1.4 The expenditure incurred for both the purchase and the lease of the Mobile units amounts to, irregular expenditure in terms of Section 1 of the PFMA, and maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

- 6.1.5 The expenditure incurred for the purchase of the Mobile units further amounts to, fruitless and wasteful expenditure in terms of Section 1 of the PFMA, to an amount of R32 million, and maladministration as contemplated by section 6(4) of the Public Protector Act, 1994, as reasonable care was not exercised to ensure that the Mobile units that were purchased complied with the relevant regulations.
- 6.1.6 Both the PFMA and the Treasury Regulations require of the accounting officer of a department to establish and maintain a proper competitive procurement system. The HOD as the Accounting Officer at the time failed to act in accordance with the requirements of section 57 the PFMA, National Treasury Regulation 8.1, 8.2 and 16A3.2 resulting in improper conduct and terms of section 6(4) of the Public Protector Act, 1994.
- 6.1.7 The HOD further failed to take full responsibility and ensure that proper control systems existed for the assets of the Department when the Mobile units were purchased, in terms of Section 38(1)(d) of the PFMA resulting in financial loss to the Department.
- 6.1.8 The CFO and the HOD failed to ensure that the payments made to Mzansi Life Care for both the lease and the purchase of the Mobile units were approved and processed accordingly, and in line with the responsibilities entrusted to them in terms of Sections 38 and 57 of the PFMA and National Treasury Regulation 8.1 and their conduct amounts to improper conduct in terms of section 6(4) of the Public Protector Act, 1994.
- 6.2 **Regarding whether the Department improperly procured and extended the services of Meditech SA and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.**

- 6.2.1 The allegation that Department improperly procured the services of Meditech SA, is substantiated.
- 6.2.2 The subsequent extension of the contracts, with substantial extension in the scope of work, were also improper.
- 6.2.3 The Department improperly extended the 2001 contract and the subsequent extensions with Meditech SA, and failed to ensure that the procurement followed a process that is transparent, equitable and fair in line with Section 217 of the Constitution and National Treasury Regulation 16A3.29 (a) and amounts to maladministration and improper conduct.
- 6.2.4 The expenditure incurred as a result of the irregular extensions amounts to irregular expenditure in terms of section 1 of the PFMA, 1999.
- 6.2.5 By entering into the 2016 project with Meditech SA, the Department failed to follow a process that is transparent, equitable and fair in line with Section 217 of the Constitution and National Treasury Regulation 16A3. 29(a) and amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994.
- 6.2.6 The 2016 project to implement the licences, included and increase the scope of work procurement of hardware at a substantial cost to the Department and amounts to irregular expenditure in terms of section 1 of the PFMA, 1999.
- 6.3 **Regarding whether the Department failed to consider the conflict of interest that existed between Dr Poo, a director in Meditech SA, and the Department, when it appointed Meditech SA, and if so whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.**
- 6.3.1 The allegation that the Department failed to consider the conflict of interest that existed between Dr. Poo, a director in Meditech SA, and the Department, when it appointed Meditech SA, is substantiated.

6.3.2 Although Dr Poo was not employed by Meditech SA when it entered into the initial contract with the Department in 1988, he was employed with the Gauteng Department of Health in March 2008, as a Sessional Doctor and in March 2009 by Meditech SA. He became a Director in Meditech on 22 May 2012.

6.3.3 Dr Poo's conduct as an employee of the state is in contravention of Regulation 13 (c) of the Public Service Regulation, 2016 that prohibits and employees of the Public Service from conducting business with an organ of state or to be a director of a company conducting business with an organ of state, and creates a conflict of interest as defined by the Directive on conducting business with the state.

## **7. REMEDIAL ACTION**

In light of the above, and having taken into account evidence before me, the appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution are the following:

**7.1 Regarding whether the Department improperly procured the Mobile units under Tender number ZNB9281/2012/H, and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.**

### **THE MEC KZN HEALTH**

7.1.1 Take cognizance of the findings regarding the conduct and maladministration by the Department relating to the irregularities mentioned in the report.

7.1.2 Ensure that the HOD considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA.

7.1.3 Ensure that the HOD considers the acts of maladministration and improper conduct referred to in this report and takes appropriate disciplinary action

against the officials of the Department in respect of their conduct referred to therein.

- 7.1.4 Ensure that the HOD through the Provincial Treasury to take steps to recover the expenditure incurred by the Department as a result of fruitless and wasteful expenditure for the "*purchased Mobile Units*"

#### **THE HOD KZN HEALTH**

- 7.1.5 Considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA;
- 7.1.6 Considers the acts of maladministration and improper conduct referred to in this report and takes appropriate disciplinary action against the officials of the Department in respect of their conduct referred to therein;
- 7.1.7 The HOD, through the Provincial Treasury evaluates the effectiveness of the Department's internal controls on Supply Chain Management processes with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report;
- 7.1.8 The HOD reports to the Provincial Treasury and the Auditor-General, particulars of the alleged financial misconduct and the steps taken in connection with such financial misconduct, in terms of section 84 and as contemplated in section 85 of the PFMA;
- 7.1.9 To ensure that prior to signing a formal contract or service level agreement with a contractor, that such contracts or agreements are legally sound to avoid potential litigation and to minimise possible fraud and corruption. This must include legal vetting by at least the Legal Services of the Department. Such contracts or agreements must be actively managed in order to ensure that both the Department and the service providers meet their respective obligations; and

7.1.10 The HOD through the Provincial Treasury to take steps to recover the expenditure incurred by the Department as a result of fruitless and wasteful expenditure for the "*purchased Mobile Units*",

**7.2 Regarding whether the Department improperly procured and extended the services of Meditech SA and if so whether such conduct was improper and amounted to maladministration and irregular and/or fruitless and wasteful expenditure as contemplated by section 6(4) of the Public Protector Act, 1994 and section 1 of the Public Finance Management Act, 1999.**

### **THE MEC KZN HEALTH**

7.2.1 Take cognizance of the findings regarding the conduct and maladministration by the Department relating to the irregularities mentioned in the report;

7.2.2 Ensure that the HOD considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA;

7.2.3 Ensure that the HOD considers the acts of maladministration and improper conduct referred to in this report and takes appropriate disciplinary action against the officials of the Department in respect of their conduct referred to therein; and

7.2.4 Consider commissioning a forensic investigation into all Meditech SA contracts with the Department since 2001, and take measures to address any findings regarding systemic administrative deficiencies allowing maladministration and related improprieties in its procurement system.

## **THE HOD KZN HEALTH**

- 7.2.5 Considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA;
- 7.2.6 Considers the acts of maladministration and improper conduct referred to in this report and takes appropriate disciplinary action against the officials of the Department in respect of their conduct referred to therein;
- 7.2.7 The HOD, through the Provincial Treasury evaluates the effectiveness of the Department's internal controls on Supply Chain Management processes, with specific reference to the procurement of IT related goods and services, with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report;
- 7.2.8 The HOD reports to the Provincial Treasury and the Auditor-General, particulars of the alleged financial misconduct and the steps taken in connection with such financial misconduct, in terms of section 84 and as contemplated in section 85 of the PFMA; and
- 7.2.9 To ensure that prior to signing a formal contract or service level agreement with a contractor must ensure that such contracts or agreements are legally sound to avoid potential litigation and to minimise possible fraud and corruption. This must include legal vetting by at least the Legal Services of the Department.

- 7.3 **Regarding whether the Department failed to consider the conflict of interest that existed between Dr Poo, a director in Meditech SA, and the Department, when it appointed Meditech SA, and if so whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994**

**The MEC GAUTENG HEALTH**

- 7.3.1 Take cognizance of the findings regarding the issue of the conflict of interest mentioned in the report.
- 7.3.2 Ensure that the HOD considers the report and, acts in terms of section 8 of the Directive on Conducting Business with an Organ of State and its regulations, that was issued by the Minister of Public Service and Administration in January 2017.

**THE HOD GAUTENG HEALTH**

- 7.3.3 To take note of my findings in this report and act in accordance with his duty to report contraventions in terms of section 8 of the Directive on Conducting Business with an Organ of State and its regulations, that was issued by the Minister of Public Service and Administration in January 2017.

7.4 **THE DIRECTORATE OF PRIORITY CRIME INVESTIGATION**

- 7.4.1 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



## 8. MONITORING

- 8.1 The respective MECs, the respective HODs and the head of the DPCI, must within thirty (30) working days from the date of the issuing of this Report and for approval by the Public Protector, submit the implementation plan to the Public Protector indicating how the remedial action referred to in paragraphs 7.1, 7.2 and 7.3 and 7.4 of this Report will be implemented.
- 8.2 In line with the Constitutional Court judgment in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11, and in order to ensure the effectiveness of Office of the Public Protector, the remedial actions prescribed in this Report are legally binding , unless set aside by a Court order.



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ADV. BUSISIWE MKHWEBANE

PUBLIC PROTECTOR OF SOUTH AFRICA

DATE: 13...../...../ 2020