

**CITY OF EKURHULENI METROPOLITAN MUNICIPALITY  
EXTRA-ORDINARY COUNCIL MEETING**

**2020-03-18**

**A-F (01-2020) (b) MPAC**

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**MUNICIPAL PUBLIC ACCOUNTS COMMITTEE REPORT ON THE ANNUAL REPORT, INCLUSIVE OF ANNUAL FINANCIAL STATEMENTS (AFS) FOR THE 2018/19 FINANCIAL YEAR AND THE A-G's REPORT: IDENTIFIED UNAUTHORISED, FRUITLESS, WATSEFULL AND IRREGULAR EXPENDITURE IN TERMS OF SECTION 32 OF THE MFMA**

**1. PURPOSE**

To report to Council on Municipal Public Accounts Committee's (MPAC's) consideration of the annual report, inclusive of Annual Financial Statements (AFS) for the 2018/19 financial year and the A-G's report in terms of section 32 of the MFMA.

**2. EXECUTIVE SUMMARY**

The annual report, inclusive of Annual Financial Statements (AFS) for the 2018/19 financial year and the A-G's report is the final draft of the annual report including the Auditor-General's report after the unaudited annual report was dealt with by the end of December 2019. This report was referred to the MPAC on the 30<sup>th</sup> of January 2020 for consideration and reporting in accordance with Rule 134 of Council Standing Orders. The Committee firstly forwarded its three (3) standard questions to the departments.

This was followed by public hearings on the 7<sup>th</sup>, 14<sup>th</sup>, 18<sup>th</sup> of February 2020, and continued on the 6<sup>th</sup> March 2020. In these hearings, the departments affected by unauthorised, irregular, fruitless and wasteful (UIFW) expenditure appeared before the Committee to make oral presentations and respond to the questions raised by the Committee. On the 9<sup>th</sup> of March 2020, the Committee considered, deliberated on and adopted this MPAC oversight report, including the recommendations to be adopted by the Council.

Based on their three (3) standard questions, the Committee (1) interrogated the details of each unauthorised, irregular, fruitless and wasteful expenditure deviations stated in note 52 of the Annual Financial Statements and the Auditor General's (A-G's) report, (2) sought to establish status of the cases in terms of accountability, and (3) wanted to know what corrective measures have been instituted by the affected departments in collaboration with the Department of Finance, where applicable.

**3. BACKGROUND**

The annual report, inclusive of Annual Financial Statements (AFS) for the 2018/19 financial year and the A-G Report, was submitted to the MPAC for oversight and scrutiny. The oversight process of the Committee is guided by the Supply Chain Management Policy (SCMP) of the City of Ekurhuleni (CoE), which seeks to promote

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fair, equitable, transparent competitive and cost effective process and section 32 (1) and (2) of the MFMA discussed below. Section 32 (1) states as follows:

- 1) *Without limiting liability in terms of the common law or other legislation: -*
  - a) *A political office-bearer of a municipality is liable for unauthorised expenditure if that office bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;*
  - b) *The accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);*
  - c) *Any political office bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure; or*
  - d) *Any political office-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.*

The final submission of the annual report occurred in January 2020, after the unaudited annual report, inclusive of draft Annual Financial Statements (AFS) was scrutinised by other oversight committees by the end of November 2019, as per Circular 63, read together with section 127 to 129 of the Municipal Finance Management Act (MFMA) (no. 56 of 2003). According to these prescripts, the unaudited annual report, inclusive of draft Annual Financial Statements, should be submitted to Council within two months after the end of the financial year, i.e., in August, for oversight by Council. After 7 months, i.e., by the end of January of each year, the final Annual Report, together with the A-G's report, must be tabled in Council and the MPAC must make its final pronouncement on the financial statements in conclusion of the oversight process of Council.

According to section 129 (1) of the MFMA (no. 56 of 2003), the oversight report must include whether Council approve, reject or refer the AR back. This is discussed in ITEM MPAC (01-2020) (a), which must be read together with the current report. In addition, the Committee must pronounce itself in accordance with section 32 (2) which states that:

- 2) *A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure –*
  - a. *in case of unauthorised expenditure is –*
    - i. *authorised in an adjustment budget; or*
    - ii. *certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and*

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- b. *in case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.*

In cases where the expenditure is recovered, the Committee must notify Council on this and recommend that the case be closed. In matters where the unauthorised, irregular or fruitless and wasteful expenditure cannot be recovered, the Committee must recommend to the Council that the expenditure be ratified (or written-off).

#### **4. KEY DELIBERATIONS**

In its deliberations, the Committee focused on note 52: *Unauthorised, Irregular, and Fruitless and Wasteful Expenditure*. On this note, the Committee notes that there was a closing balance of R2 209 451 566 in irregular expenditure, R158 695 298 in fruitless and wasteful expenditure, and zero balance for unauthorised expenditure by the end of the 2018/19 financial year. In other words, the group accounts (including CoE entities) for a total of R2 368 146 864 in *Unauthorised, Irregular, and Fruitless and Wasteful Expenditure* in the 2018/19 Annual Financial Statements, which is an increase of R388 620 198 (19.6%) from R1 979 526 666 in 2017/18 F/Y.

With regards to the irregular expenditure balance of R2 209 451 566, the Committee notes that there was an opening balance of R1 808 705 818, which means there is a difference of R400 745 748 (22.1%) in irregular expenditure in comparison with the previous (2017/18) financial year. A total amount of R610 963 978 (R274 094 194 for the 2018/19 F/Y + R336 869 784 for the prior year) in irregular expenditure was identified during the year under review. A total amount of R210 218 230 (R209 865 580 irrecoverable + R352 650 recovered) was ratified by the end of the 2018/19 financial year. According to the A-G's opinion report on the audit of the consolidated and separate financial statements, the reflected amount of irregular expenditure identified during the year under review ***“may not be complete as management was still in the process of investigating and quantifying the full extent of the irregular expenditure”*** (see Expenditure Management, point 30).

Meanwhile, the opening balance in fruitless and wasteful expenditure was R170 820 848, and an amount of R1 074 040 was incurred during the 2018/19 financial year. A total amount of R8 404 199 (R1 401 986 irrecoverable + R7 002 213 recovered) was ratified by the end of 2018/19 financial year. An amount of R4 795 391 was further reduced under the classification of 'Other prior year adjustments'.

The Committee is not able to account for the entire outstanding balance of R2 368 146 864 in UIFW as yet, but can report on the UIFW's amount for the 2018/19 financial year under review;

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- Of the fifteen (15) incurred expenditures amounting R 594,634,362<sup>1</sup> only one (1) was ratified amounting to R16 961. This means R 594,617,401 still outstanding and is disaggregated as follows;
  - Eight (8) incurred expenditures were referred to Internal Audit Investigation Out R 577,968,222 is being investigated by the IA department.
  - Three (3) incurred expenditures amounting to R 8,448,180 are under MPAC consideration.
  - Awaiting the department action, three (3) is an amount of R 8,200,999 made up of, the Committee is either still awaiting the department's submission of more information, completion of a disciplinary action, or SAP criminal case to deliberate and complete the associated matters. Legal department for recovery and SAPS account for R 0.

The Committee notes and welcomes the assurance provided by the Internal Audit department on matters associated with the UIFW expenditures incurred by the municipality. The Committee will be working with the Internal Audit (IA) department as well as A-G to trace the status of cases relating to the entire balance of R1 808 705 818. A progress report will be submitted to Council on matters deliberated and concluded.

As it was the case in the previous financial year (2017/18), the Committee encourages the municipality and its entities to strive for the achievement of a clean audit opinion from the A-G. As per the A-G's prescriptions, a clean audit outcome is understood by the Committee to mean the municipality and its entities has (1) unqualified opinion on its financial statements, it does not have findings (2) on its pre-determined objectives, and (3) compliance with laws and regulations. Further, there should not be dishonest deficiencies on its internal controls.

Along with the AFS' s, the A-G submitted Annexure C. These Annexures are the A-Gs opinion on the municipality and its entities. Below are the deliberations there of;

**The City of Ekurhuleni (Controlling Entity)**

The Committee notes that while the city achieved an unqualified audit on the financial statements, there is qualified opinion on predetermined objectives, and that there are

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The amounts listed here or in Annexure A may differ from the ones mentioned either in notes dealing with UIFWs (for instance note 52 of 2018/19 AFS) in the AFS or the A-G, as errors are picked and rectified during the oversight process. In some cases, the errors identified are just technical – such as typographical errors – while they material in nature in other cases. The latter come as a result of misstatements, which can be either deliberate or result from unavailable information at the time of initial recording of UIFW expenditures. Also, there are UIFW expenditure that come to the attention of the Committee although it is not mentioned in the note dealing with UIFW and the Committee records it. In other cases, some amounts are referred to the Committee for two years in a row. Such amounts are recorded the first time they are referred to the Committee.

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shortfalls in terms of compliance with laws and on internal controls. This is a decline from the 2017/18 audit findings, as there was an unqualified finding on predetermined objectives. Concerning this, the A-G has identified material misstatements on the number of days taken to process building plan applications (see points 24, 25 and 28).

On compliance with laws, the A-G found that the city was not able to take effective steps to prevent irregular expenditure of R413 006 296 recorded under note 52 of the Annual Financial Statements (see point 30). The majority of the irregular expenditure came as a result of non-compliance with the Supply Chain Management Regulations. In particular, it was found that some contracts were awarded to bidders based on functionality criteria that were not part of the original bidding invitation and that tenders were awarded to service providers who were not tax compliant.

The CoE's failure to take effective steps to prevent irregular expenditure of R413 006 296 is an indication of deficiencies in internal controls. As it was the case with the 2017/18 financial year, it was further found that the accounting officer did not implement adequate internal controls to ensure credible performance reporting and compliance with key legislation and senior management "did not ensure that systems of internal control were adequately implemented and monitored" (see point 38). Furthermore, the preparation and review process of the performance information was ineffective resulting in material errors and non-compliance matters identified in the annual performance report (see point 38).

The Committee has noted with concern that the following matters of emphasis are still persistent, as they were identified in the audit of 2017/18 annual report:

- **Restatement of corresponding figures** – "the corresponding figures for 30 June 2018 have been restated as a result of errors discovered in the consolidated and separate financial statements of the group for the year ended 30 June 2019";
- **Material uncertainties** – the municipality, with its entities, is a respondent in various lawsuits and it is not possible to determine or measure their outcomes;
- **Material losses** – material electricity losses amounting to R1 184 000 058 – 11.7% of total electricity purchased - were incurred. Out of this, R599 430 992 (50.62%) worth of electricity was due to non-technical losses such as illegal connections of electricity. Furthermore, material water losses worth R1 002 005 635 – 30% of water purchased – were incurred and R499 891 575 (14.93%) was due to non-technical losses.

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**Ekurhuleni Housing Company (EHC)**

The Committee has noted that the EHC has attained an unqualified audit on its financial statements and predetermined objectives, but there were material findings on compliance with legislation. In particular, the A-G could not get “sufficient appropriate audit evidence...that all contracts were awarded in accordance with the legislative requirements, as the procurement process document was destroyed in a fire that took place in the procurement office during the year” (point 23.) As it was also the case with the CoE audit, there was no reasonable steps taken to prevent fruitless and wasteful expenditure of R16 961 (point 24). This is in contravention of section 95 (d), which empowers the Accounting Officer of the entity to prevent such. On internal controls, it was found that “The Accounting Officer and senior management did not ensure that the information relating to the targets in the performance reports was consistent with the planned targets and that adequate compliance monitoring controls were in place” (point 30).

**Water Care Company (ERWAT)**

Similar to the CoE, the ERWAT obtained unqualified audit on its financial statements, but experienced issues with pre-determined objectives and compliance with law. Accordingly, the A-G found that the entity failed to define the source of information for their strategic objective “To promote integrated human settlements through massive infrastructure and service rollout”. On compliance with legislation, it was found that the entity breached SCM regulation 19 (a), which provides for procurement of goods and services over R200 000 to be done through a competitive bidding, and regulation 36, which allows the Accounting Officer to deviate from the normal procurement processes, but only under specific circumstances (point 23). Further, the A-G found that SCM regulation 27 (2) (a) (point 24), which prohibits biased compilation of bid specifications, and SCM regulation 95 (d) – as explained above - were contravened (point 25).

**Brakpan Bus Company (BBC)**

Amongst the four, **the BBC’s audit results are the poorest, disclaimer audit opinion.** This means that there was no sufficient information for the A-G to formulate an audit opinion on financial statements, and compliance with legislation, as well as the entity’s internal controls. The only area where the A-G did not express a disclaimer is with regards to the predetermined objectives. The Committee particularly takes exception on the BBC’s audit performance, which suggests there is no governance and administration in the entity.

The Committee, together with other Section 79 oversight committees of Council, more especially, the Finance, Corporate and Shared Services, and Water and Energy

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Oversight Committees, will be closely monitoring the related departments' performance with regard to these areas.

The following departments were affected by unauthorised, irregular, fruitless and wasteful expenditure. In note 52 of the AFS, the matters/cases are categorised into UIFW expenditures that occurred in the financial year under review (2018/19) and the ones identified in the current financial year (2018/19) but relating to or occurred in the previous financial years. Nonetheless, the following discussion is arranged per departments, although an attempt is made to mention whether the expenditure happened during the financial year under review or the previous financial years:

**4.1. Unauthorised, Irregular, Fruitless and Wasteful Expenditure**

***4.1.1 Finance Department***

The Finance Department has incurred a total irregular expenditure amount of R15 726 657 made up of 2 amounts, namely R 15, 526, 658 and R199 999.00.

The R15,526,658 was spent during the course of 2018/19 financial year on three tenders. According to the finance department, the main reason for the irregular expenditure was the awarding of awards to bidders deemed tax non-compliant. Section 12.6 of the CoE Supply Chain Management policy requires that prospective providers submit a valid tax clearance certificate for all quotations above R 15 000.00 (Inclusive of all applicable taxes).

In the 1<sup>st</sup> tender - contract number A-WMS 11/2016(T) - the City of Ekurhuleni (CoE) relied on the tax clearance certificate that was attached in the bid document and the tax clearance certificate was valid at the time of award. The bid evaluation committee did not obtain a Central Supplier Database(CSD) report prior to the award of the tender to confirm real time compliance status. The Central Supplier Database (CSD) is a single database that serves as the source of all supplier information for organs of state. The supplier information is verified with institutions such as the South African Revenue Service, Companies and Intellectual Property Commission, Department of Home Affairs etc. All suppliers are required to complete required information on the CSD website and must ensure it is complete, accurate and comprehensive.

With regards to contract C-ICT 03/2019 – the second tender - the award was done through a deviation process, meaning it did not go through the Bid Evaluation Committee. The Bid Adjudication Committee (BAC) verified the tax status of the awarded service provider on the 28<sup>th</sup> of May 2019, and the appointment letter was signed on the 4<sup>th</sup> of July 2019, and the CSD report was not printed to confirm if the status has not changed from the last 7 days. As in the above case, the Committee is of the view that there was a negligence on the part of the tendering committees

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involved in this case. Finally, 3<sup>rd</sup> tender PS-RE39-2016 the, CoE relied on the tax clearance certificate that was attached to the bid document which was valid at the time of award. The bid evaluation committee however did not obtain a CSD report before the award was made to confirm real time compliance status.

The Committee notes the National Treasury Instruction no 09 of 2017/18 issued on April 2018 pertaining to tax compliance status verification which gives guidance on the implementation of the revised South African Revenue Service (SARS) system for the management of tax compliance and the introduction of a revised standard bidding document 1(SBD1) to give effect to the tax compliance status system.

**Therefore, the Committee resolved to refer the matter to IA department for investigation and to investigate (1) what transpired with regards to this expenditure, (2) the possibility of negligence on the of BAC, and (3) whether there was value for money on this expenditure.**

The Committee notes the on-going discussions between the CoE, National Treasury and COGTA. In its hearings the Committee was informed that a meeting amongst the CoE, the National Treasury and COGTA, to be held on the 19<sup>th</sup> March 2020 to clarify these tax compliance matter. The Committee would like to be furnished with a report on the outcome of the engagement amongst the three.

The second amount, R199 999 in irregular expenditure, was incurred as a result of a contravention of the section 4.2 of supply chain management policy on application of the preferences, wherein the preference points being calculated using the price exclusive of VAT instead of calculating a price that is VAT inclusive. This resulted in the wrong supplier being awarded the bid, as using the VAT exclusive price resulted in the incorrect awarding of BBBEE points. **The Committee resolved to refer the matter to IA department investigation.**

**4.1.2 Information and Communication Technology (ICT)**

The ICT department incurred for the following expenditures 4 624 829 and R 1 508 235. The irregular expenditure of R 4 624 829 came as a result of incorrect application of the SCM regulation 36 (v), which allows the Accounting Officer to deviate from official procurement processes “in any other exceptional case where it is impractical or impossible to follow official procurement process”. According to the department, it was difficult to find panel replacement service providers for the renewal of software licence contracts that expired in June 2018 since such service providers require Original Equipment Manufacturers (OEMs) accreditation. According to the ICT, only 5 out of 15 software bids on tender A-ICT 01-2019 had the accreditation. This meant that 10 service providers could not be appointed, but the department renewed contracts of the service providers that were already holding the licences.

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When testing this, however, the A-G found that “based on the review of documentation submitted by management including their evaluation of relevant management comments, they did not agree with management assertion that they deviated from inviting competitive bids on the basis that it was “impractical” to do so”.

The bone of contention for the A-G is that the municipality had successfully embarked on a competitive bidding for the same tender. It was not clear, therefore, why the department opted to re-appoint or renew the contracts of the service providers whose contracts have expired, although they did not submit their bids. **The Committee resolved to refer the matter to IA department for investigation.**

The Committee noted that the amount of R1 508 234.80 on irregular expenditure came as a result of the procuring of 250 laptops for the City of Ekurhuleni (CoE) using rebates from Telkom. This matter was referred by the Finance Oversight Committee and in its report it came to light that the matter was referred to the Internal Audit department (IA) for further investigation. The Internal Audit Department conducted the investigation and on the 4<sup>th</sup> of February 2019 produced the report: Forensic Investigation Report into Allegations of Possible Irregular Expenditure with Regards to Procurement from Telkom Ref:037for1819, which was then sent to the respective department for engagement.

The MPAC has considered this matter, Item *A MPAC (31-2019)- pg. 376, Council Agenda November 2019*. **The Committee resolved that it must be furnished quarterly progress reports from the department regarding the status of the SAPS/HAWKS investigation before making any further pronouncement on this matter. The Committee still has to be furnished with a quarterly progress report by the ICT department from regarding the SAPS/HAWKS investigation.**

#### **4.1.3 Human Settlements Department**

The Human Settlement department incurred for 2 amounts of irregular expenditure, namely R1 117 153. 26 and R 4 807 974. The first amount, R1 117 153.26, came as a result of the installation of basic services (water and electricity) project after the end of Contract RFP 167/2017 with a contractor named GIBB for Birchleigh North Extension 4 township. On examination of the item, however, the Committee realised that its contents are not in line with the above mentioned legislation and were contradictory to its heading. The item sought to “request permission from Council to pay [an amount of R1 117 153. 26] for the installation of services project for the Birchleigh North Extension 4.

The Committee has further noted that the Finance Department is duly not able to process the payment to the service provider. This was further supported by the legal opinion from the Corporate Legal department in its determination that the procurement of these services would indeed be irregular. In line with the prescripts of section

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32(2)(b) outlined above, the Committee has nothing to investigate in this case. **Therefore, the Committee urges the Office of the Executive Mayor to refer this matter to the Accounting Officer for determination in accordance with MFMA.** Section 62 (1) gives the accounting officer a responsibility of “managing the financial administration of the municipality”, while section 65 (1) states that “The accounting officer of a municipality is responsible for the management of the expenditure of the municipality”. The Committee is of the view that these sections are more appropriate to deal with this situation, as opposed to section 32 (2)(b).

The irregular expenditure amount of R 4 807 974 was for repairs and maintenance completed without first obtaining official orders. According to the department issued work without rotating work amongst available service providers. This practice was not in line with the Departmental Standard Operating Procedures and in contravention of the SCM policy. The lack of official order numbers in the works orders has resulted in the department failing to process and approving invoices for payment, which has resulted in few companies threatening to sue the department.

it was found that the management and leadership of the Community Safety and Relationship Management unit did not ensure that there were adequate and effective operating procedures for the unit in line with the requirements of the MFMA and best practice. The disciplinary action has been taken against all the implicated officials. Six officials have been dismissed, while the Divisional Head’s contract has expired. The cases for the other 3 are still on going.

The Committee reflects on the fact that the people responsible for these UIFW expenditures are no longer in the employment of the CoE and thus recommends that they be added in the database of people who resigned under the cloud of IA department’ findings. **The Committee recently received a report from the IA and will consider the matter and report to Council in May 2020.**

**4.1.4 Ekurhuleni Housing Company (EHC)**

The EHC incurred 2 amounts, R16 961 fruitless and wasteful, and R3 198 137 in irregular expenditure.

The R16 961 fruitless and wasteful expenditure came as a result of a delay in payment to SARS of the first provisional tax payment for the financial year of 2019. The amount was due on 31<sup>st</sup> December 2018 and was only paid in January 2019 resulting in a penalty of R790 798. According to the department, this delay was due to cash and administration constraints associated with the resignation of the CFO. The entity engaged with SARS and successful reversed the penalties from R773 837 to R16 961. The second provisional tax payment for 2019, as well as the first provisional payment for 2020 have been affected in time. **The Committee ratifies the amount of R16 961.**

The Committee notes that an amount of R3 198 137 referred to Council for the second time, as they were already identified in the 2017/18 financial statements.

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Subsequently, the Committee referred this matter to the IA department for investigation, the report of which is still under the MPAC consideration. **The Committee will consider the matter and report to Council in May 2020.**

**4.1.5 Department of Water**

The Water department accounts for two (2) irregular expenditures which are R 251 189 881 and R 134 031 567 totalling R 385 221 448. According to the department, was as a result of a contract for hiring, delivery and maintenance of chemical toilets which was awarded in 2016. The evaluation of the bid was in contravention of supply chain policy as there were flawed specifications that resulted in the inconsistent evaluation of the bid. **The Committee resolves to refer the matter for investigation to IA department.**

**4.1.6 ERWAT (East Rand Water Care Company)**

During the financial year under review, the ERWAT accounts for R 615 010, in fruitless and wasteful expenditure, and R172 395 288 in irregular expenditure which is made up of R12 159 691 and R 159 691 415. The Committee notes that these UIFWs emanated mainly as a result of the following reasons;

- Approval of extension of a project without the required level delegation of authority;
- Incorrect application of SCM regulation 36 on deviation;
- Award of contracts without sourcing three quotes; and
- Payment of expired contracts based on an illegal month-to-month clause;

The Committee notes with grave concern that for three years in a row, the ERWAT provided the same reasons for their UIFW matters. Thus, the Committee is of the view that the entity's action constitutes non consideration and total disregard of the resolutions and recommendations of both the Committee and Council. The Committee notes the additional reason, i.e. bid specifications for some tenders drafted in a biased manner and did not allow all potential suppliers to bid. The Committee notes that instead of the situation improving it appears to be deteriorating, on interrogation this may be attributed to administration.

Based on the responses by the ERWAT, the Committee reflects on the fact that the people responsible for these UIFW expenditures are no longer in the employment of the entity and thus recommends that they be added in the database of people who resigned under the cloud of IA department' findings. **The Committee resolved to refer the matter to the IA department for investigation.**

**4.1.7 Brakpan Bus Company (BBC)**

The BBC incurred two expenditures, the fruitless expenditure of R442,069 as well as the irregular expenditure of R 5, 575, 611. The Committee notes the amount of R442,069 came as a result of SARS penalties. It was referred to Council for the second time, as they were already identified in the 2017/18 financial statements.

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Subsequently, the Committee referred this matter to the IA department for investigation, the report of which is under the MPAC consideration. **The Committee will consider the matter and report to Council in May 2020.**

The irregular amount of R 5, 575, 611 came as a result of costs of fuel incurred by Brakpan Bus Company for the 2019 financial year period. According to the BBC, the CoE and BBC entered into a contract by virtue of a resolution of the Mayoral Committee passed on 2010/04/06 for the lease of buses to the BBC. The contract was signed by the then City Manager on 19/05/2010 and became effective on 01 July 2010. This contract also stipulated that the CoE of the BBC would carry the day-to-day maintenance and running costs of the busses and on a monthly basis and the company would be invoiced for the costs.

During the 2019 year, the entity started negotiations with the Real Estate Department of the CoE which were aimed at renewing the current lease or concluding a new lease agreement. These negotiations did not yield the desired results due to the following reasons:

- The two parties could not reach a mutual agreement with regard to the costs of the lease.
- The then BBC Managing Director, who was key in leading these negotiations, resigned before the process could be concluded.

The Committee notes that this contract was and is still based on the principle of in-kind. The Committee urges that in order to prevent a similar case of irregular expenditure from occurring BBC must resuscitate the negotiations with the CoE with the aim to renewing the lease or signing a new one. **The Committee shall await the finalisation report on the negotiation process to make a pronouncement on the matter.**

## **5. PUBLIC HEARINGS**

The Committee extended its invitation for public hearings to the community and relevant stakeholders. However, there was neither oral nor written submissions from the community and stakeholders on matters discussed.

## **6. LEGAL COMMENTS**

In terms of information at my disposal, I submit as follows;

The Municipal Public Accounts Committee (MPAC) is constituted in terms of section 79 of the Municipal Structures Act 117 of 1998 and is tasked with assisting the effective and efficient performance of the Municipality's functions. Section 53 of the Municipal Systems Act 32 of 2000 empowers a municipality to establish terms of reference, which shall define the specific roles and area of responsibility for any of its political structures.

The terms of reference for MPAC were duly adopted in 2017. Authority to hold public hearings and instruct other committee members, management and other employees to be present at a given meeting to hear and answer for themselves and for possible

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interview and input regarding items in the agenda has been conferred upon the committee by the terms of reference read with section 129(1) of the Municipal Finance Management Act 56 of 2003, which provides that the council of a municipality must consider the annual report of the municipality and of any municipal entity under the municipality's sole or shared control, and by no later than two months from the date on which the annual report was tabled in the council in terms of section 127, adopt an oversight report containing the council's comments on the annual report, which must include a statement whether the council-

- (a) has approved the annual report with or without reservations;
- (b) has rejected the annual report; or
- (c) has referred the annual report back for revision of those components that can be revised.

Section 165 of the MFMA, read with item 4 of the MPAC's terms of reference, which state that the committee will have the technical support of Internal Audit and it may direct any matter for investigation through the relevant investigative department as it is barred from making a pronouncement on a matter that it has not investigated.

Section 32(2) empowers the committee to write off expenditure that is unauthorized, irregular, fruitless and unlawful, if such expenditure has been certified as irrecoverable by the committee following an investigation.

On 7, 14 and 18 February 2020 the MPAC conducted meetings in Alberton, Edenvale and Springs respectively in compliance with section 130 of the MFMA read with rules 28 and 121 of the City of Ekurhuleni Standing Orders. This report pertains to functions of the MPAC with reference to the responsibility invested upon it in terms of the MFMA, specifically s129(1).

The recommendations of the committee reflect its authority as derived from the a-fore mentioned legal framework.

**RECOMMENDATION**

1. **That** the contents of the report of the Municipal Public Accounts Committee on the annual report, inclusive of Annual Financial Statements (AFS) for the 2018/19 financial year and the A-G's report tabled to Council as Item A-F (01-2020) (b), **BE NOTED**.

**CITY OF EKURHULENI METROPOLITAN MUNICIPALITY  
EXTRA-ORDINARY COUNCIL MEETING**

**2020-03-18**

**A-F (01-2020) (b) MPAC**

2. **That it BE NOTED** that the following matters, as outlined according to the department and brief description and the amounts, were referred by the Committee to the Internal Audit department for further investigation.

<b>No.</b>	<b>Amount</b>	<b>Department</b>	<b>Description</b>
a)	<b>R 15 526 658</b>	<b>Finance</b>	Awarding bid to a non-tax compliant bidder
b)	<b>R R199 999</b>	<b>Finance</b>	Awarding bid to incorrect bid to incorrect bidder due to incorrect calculation of preference points
c)	<b>R 4 624 829</b>	<b>ICT</b>	Re-appoint or renew the contracts of the service providers whose contracts have expired, although they did not submit their bids
d)	<b>R 4 807 974</b>	<b>Human Settlements</b>	The department issued work without rotating work amongst available service providers
e)	<b>R 385 221 448</b>	<b>Water Department</b>	A contract for hiring, delivery and maintenance of chemical toilets.
f)	<b>R 615 010</b>	<b>ERWAT</b>	Various transactions paid in contravention of procurement legislative provisions
g)	<b>R159 691 415</b>	<b>ERWAT</b>	Various transactions paid in contravention of procurement legislative provisions
h)	<b>R 12 159 691</b>	<b>ERWAT</b>	Various transactions paid in contravention of procurement legislative provisions
<b>R 577,968,222</b>		<b>TOTAL</b>	

- 3 **That** the fruitless expenditure of R16 961 relating to Ekurhuleni Housing Company, **BE RATIFIED** in terms of section 32(2) of the MFMA no 56 of 2003.
4. **That** the Office of the Executive Mayor refer the amount of R1 117 153.26 matter to the Accounting Officer **FOR DETERMINATION** in accordance with the provisions of sections 60, 63 and 65 of the MFMA no 56 of 2003.