

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

2021-05-27

A-F MPAC (05(b)-2021)

**MUNICIPAL PUBLIC ACCOUNTS COMMITTEE: REPORT ON THE ANNUAL
REPORT, INCLUSIVE OF ANNUAL FINANCIAL STATEMENTS (AFS) FOR THE
2019/20 FINANCIAL YEAR AND THE A-G REPORT**

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ABBREVIATIONS

AFS	Annual Financial Statements
A-G	Auditor General of South Africa
AR	Annual Report
BAC	Bid Adjudication Committee
BBC	Brakpan Bus Company
BEC	Bid Evaluation Committee
CoE	City of Ekurhuleni
CRM	Customer Relations Management
CSD	Central Supplier Database
EHC	Ekurhuleni Housing Company
ED	Department of Energy
ER&WS	Environmental Resources and Waste Management Services
ERWAT	East Rand Water Care Company
EMPD	Ekurhuleni Metropolitan Police Department
GPL	Gauteng Provincial Legislature
HOD	Head of Department
IA	Internal Audit
Ltd.	Limited
MPAC	Municipal Public Accounts Committee
MD	Managing Director
Pty	Proprietary Company
RED	Real Estate Development

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SAPS	South African Police Services
SARS	South African Revenue Services
SCM(P)	Supply Chain Management (Policy)
SCOPA	Standing Committee on Public Accounts
USDG	Urban Settlement Development Grant

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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 2019/20 financial year and the A-G Report.

2. EXECUTIVE SUMMARY

The Annual Report, Inclusive of Annual Financial Statements (AFS) for the 2019/20 financial year and the A-G 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 30th March 2021 for consideration and reporting in accordance with Rule 135 of the Standing Orders by Law, 2018. The Committee firstly convened on the 09th of April 2021 to consider the item. In this meeting, the Committee considered the item and formulated questions to be answered by the departments.

This meeting was followed by public hearings on the 16th, 30th of April 2021 and the 05th of May 2021, the Committee convened once more to complete its hearings with the departments which, hitherto, did not manage to appear before the Committee on the 14th of May 2021. The Committee deliberated on and adopted this MPAC oversight report including the recommendations to be adopted by the Council on the 18th of May 2021.

Based on their three (3) standard questions, the Committee (1) interrogated the details of each unauthorised, irregular, fruitless and wasteful expenditure incident stated in Note 49 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 other departments of the CoE, where applicable.

Out of the 18 UIFW expenditure incidents making up R212 863 231 considered, the Committee **WRITES OFF** ten expenditure in (10) matters amounting to a total of R74 061 596. One (1) incident amounting to R116 198 430, is referred for **INVESTIGATION** to the Internal Audit Department, four (4) incidents are still being investigated by the IA from the previous financial year, three (3) incidents worth R3 463 621 are to be **RECOVERED** and zero (0) amount is under the Committee's consideration or investigated by the South African Police Services (SAPS).

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3. BACKGROUND

The Annual Report, Inclusive of Annual Financial Statements (AFS) for the 2019/20 financial year and the A-G Report, was submitted to the MPAC for oversight. 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 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*

Due to COVID19 pandemic there was a delay in the submission of the final Annual Report occurred in March 2021, after the Unaudited Annual Report, Inclusive of Draft Annual Financial Statements (AFS) was scrutinised by other oversight committees by the end of November 2020, 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, must 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:

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- 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*
 - 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 **written-off**.

4. KEY DELIBERATIONS

In its deliberations over the report, the Committee focused on note 49: *Unauthorised, Irregular, and Fruitless and Wasteful Expenditure*. On this note, the Committee notes that there was a closing balance of R2,429,928,412 in irregular expenditure, R155,453,441 in fruitless and wasteful expenditure, and zero balance for unauthorised expenditure by the end of the 2019/20 financial year. In other words, the group accounts for a total of R2,585,381,853 in *Unauthorised, Irregular, and Fruitless and Wasteful Expenditure* in the 2019/20 Annual Financial Statements.

Regarding the irregular expenditure balance of R2,429,928,412 the Committee notes that there was an opening balance of R2,231,236,865, which means there was an increase of R198,691,547 in irregular expenditure in comparison with the previous (2018/19) financial year. A total amount of R210,849,512 (R118,317,574 for the 2019/20 F/Y + R92,531,938 for the prior year) in irregular expenditure was identified during the year under review. A total amount of R12,157,965 (R8,818,872 irrecoverable + R3,339,093 recovered) was written off by the end of the 2018/19 financial year. Meanwhile, the opening balance in fruitless and wasteful expenditure was R158,690,737. A total amount of R 2,059,658 (R101,391 for the year 2019/20 + R1,958,267 for prior years) was incurred during the 2019/20 financial year. A total amount of R5,296,954 was written off by the end of 2019/20 financial year.

The MPAC commends CoE for achieving an overall clean audit opinion from the A-G. A clean audit outcome occurs when submitted financial statements are free from material misstatements (in other words, a financially unqualified audit opinion), and

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there are no material findings on reporting on performance objectives and non-compliance with legislation.

The Committee continues to encourage the City's 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, (2) it does not have findings on its pre-determined objectives, and (3) compliance with laws and regulations. Further, there must not be dishonest deficiencies on its internal controls.

4.1 Unauthorised, Irregular, Fruitless and Wasteful Expenditure

4.1.1 Ekurhuleni Housing Company (EHC)

The EHC accounts for three (3) incidents of irregular expenditures amounts which are R156 000, R3, 741 814.00 and R378 961 due to a contravention of the SCM policy and one (1) incident of fruitless and wasteful expenditure amounting to R55 452 for interest on late payments.

According to the department the first incident of irregular expenditure amounting to R156 000 was a result of obtaining a legal opinion on the salary adjustments of executives. The procurement was done through a panel of attorneys of the entity, this appointment did not occur through a quotation basis which contravenes the SCM policy. The entity stated that they were able to negotiate a R 23 000.00 downward adjustment on the invoice and ultimately no increases were approved by the board.

The Committee ascertains that obtaining a legal opinion was against the MFMA section 89(a) which states the parent municipality of a municipal entity must determine the upper limits of the salary, allowances and other benefits of the chief executive officer and senior managers of the entity, therefore, management neglected to follow the prescripts of legislation and to advise the EHC Board accordingly. **Therefore, the Board must be trained on SCM compliance to avoid the recurrence of such incidents. The Committee recommends that the amount of R156 000 be written off.**

Secondly, the amount of R3,741 814 was the result of awarding a cleaning tender to service providers. The contravention was the alteration of the criteria for evaluation of the tender during the BEC, namely section 21 (b) and 28 (1) (a) of the SCM policy. Last year the MPAC submitted to the Council Report Item A MPAC (03-2020) this item dealt with the cleaning tender being dealt with currently. At the time the irregular expenditure amount was R888 372 in the financial year of 2017/18.

Over the next 2 financial years the entity continued to incur irregular expenditure on the same contract. The entity informed the Committee that a further amount of R3, 198 137 was incurred in the same contract and value for money was received in that

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the companies did provide cleaning services in line with the contractual responsibilities. Committee notes with grave concern that the entity indicated that they did not receive the resolutions adopted by Council and therefore none of the resolutions were effected. Secondly the Committee is perplexed at managements disregard of their duties when coming to these matters. **Therefore, disciplinary action must be instituted against the MD for poor planning and negligence as legislated by section 78 of the MFMA and recommends the disciplinary matter be referred to the Disciplinary Board with quarterly updates on progress made. The Committee recommends that the amount of R3,741 814 be written off.**

Thirdly the irregular expenditure of R378 961 was as result of a contravention of the SCM policy, the entity awarded a long term contract in the current financial year for security services without advertising the tender for the stipulated 30 days. The reason adduced for this was that the Entity had included residential flats (Chris Hani) in the tender although these flats were yet to be handed over by the City to the Entity. This had the effect of increasing the bid value to more than R10 million, ultimately the flats were not handed over to the entity in time for inclusion in the tender and the actual amount was then below the prescribed R10 million. The entity further confirmed that value for money was received in that security services were provided in line with the specifications and in accordance with the approved rates, furthermore, the executives who were in charge of this SCM contravention have since resigned. The advertisement of this tender for a period less than the prescribed 30 days is a contravention of Regulation 22(1) (b) of the SCM Regulations. The Committee notes that management opted to advertise for 21 days instead of the legislated 30 days. **Therefore, the Committee recommends that the amount of R378 961 be written off.**

Lastly the amount of R55 452 in fruitless and wasteful expenditure was a result of interest incurred on the declarations submitted to the SARS. The interest was charged for the late payment of the provident fund accounts. The Committee notes with grave concern that the entity continues to have such tax compliance related matters, with every financial year the entity is paying penalties to SARS. Additionally, the fact that management has done nothing to mitigate this is appalling.

The Committee ascertains that the entity must request assistance from the parent municipality with these matters going forward, this is clearly supported by legislation in section 60 of the Municipal Finance Management Act 56 of 2003. No value can be received with fruitless and wasteful expenditure. **The Committee recommends that disciplinary action be instituted against the responsible and accountable person/s and the amount of R55 452 be recovered from them with quarterly updates furnished to the committee. That the EHC furnish the MPAC with progress report regarding steps taken to avoid the recurrence of this issue by 30 July 2021.**

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4.1.2 Department of Energy

The Energy department incurred an irregular expenditure of R1 544 666 due to conflict of interest-false declaration by the appointed service provider. The department went on open tender to appoint an electrical contractor for the design, manufacture, supply, delivery, offloading, installation, testing and commissioning of integrated solar photovoltaic LED street lighting on an as-and-when required basis from date of award until 30 June 2020. Secrete Steps Trading Pty Ltd was appointed, however the department was informed by Supply Chain Management not to place anymore orders with Secrete Steps Trading (Pty) Ltd as they have received an e-mail from (CoT) City of Tshwane Municipality, confirming that one of the Directors of Secrete Steps Trading (Pty) Ltd is employed by the CoT and failed to declare this.

Therefore, Secrete Steps Trading were in breach of Regulation 44(a) of the Municipal Supply Chain Management Regulations which provides that:

“44. The supply chain management policy of a municipality or municipal entity must, Irrespective of the procurement process followed, state that the municipality or municipal entity may not make any award to a person –

(a) Who is in the service of the state.”

The Energy department confirmed that of the amount of R 1 544 660 paid, work was done to the department’s satisfaction and in line with the contract in place at the time, therefore value for money was attained. Added to the aforementioned, the GCFO confirmed that the responsible Supply Chain Management officials failed to undertake a central supplier database (CSD) verification process and consequence management processes are underway (HR has been requested to initiate disciplinary processes).

The department in consultation with the Department of Finance (Supply Chain Management), and Corporate and Legal Department concluded that the contract be cancelled and requested approval for the subsequent award to next highest scoring bidder. The Committee agrees with the actions of the departments and commends them on the velocity of the cancellation. **The Committee recommends that the department furnish a report on the disciplinary action by 30 July 2021 and quarterly thereafter. The Committee recommends that the amount of R1 544 666 be written off.**

4.1.3 ERWAT (East Rand Water Care Company)

The ERWAT accounts for seven (7) incidents of irregular expenditure, namely R154,745, R368 085, R32 492 762, R30 764 079, R15 335 976, R236 124 and R3 924 350.

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The irregular amount of R3 924 350 was the result of incorrect application of SCM regulation 36 (1)(v), and is made up of two amounts (R889 524 + R3 034 826). Regarding the amount of R889 524 the entity ERWAT went over to SOLAR in 2016 in-line with mSCOA requirements. The entity required assistance to align the asset register and the financial system with the requirements of mSCOA. Public Sector Solutions (PSS) was appointed during 2015/2016 FY as they were the sub-contractor used by the CoE. The entity entered into an agreement with PSS through a deviation, based on the above mentioned reasons. The entity identified that appointing a new service provider would pose a risk because a new service provider might not work well with the BCX and additionally the entity had to meet deadline of the alignment process. The department confirmed that indeed value for money was received for this contract as the entity aligned to mSCOA, furthermore and going forward all deviations are tabled at BAC for consideration prior to implementation.

The irregular amount of R3 034 826, the entity appointed GIB to supply short term insurance after conducting an insurance coverage review, and discovered that it is not adequately covered in the 2017/2018 financial year. ERWAT was insured for R2.1 Billion which was the net book value of the assets, while the replacement value was R6.5 Billion. The entity then entered into discussions with CoE regarding on-boarding onto the CoE short-term insurance contract. The CoE has indicated that ERWAT must rather proceed with the process of on-board its own short-term insurance company. The MD confirmed that value for money was received in that the entity was insured throughout the existence of this irregular expenditure. The Committee notes that the CoE has pledged to assist the entity regarding the developing the scope of work. **The Committee notes that the entity has committed its self to resolving the insurance issue in the next 5 months therefore the Committee requests that the entity furnish a quarterly report on the process of procuring its own insurance services. However, in the previous financial year the Committee referred this matter to the IA, therefore the Committee will await the investigation report and make its pronouncement.**

The irregular amount of R154,745 was as result of incorrect application of SCM regulation 36, ERWAT approved a deviation for venue hire for meetings with the Board of Directors, senior management, and MMC to set and meet operational and strategic objectives. The entity stated that when it participates in, or is invited to attend or intends to sponsor a specific event, it is not possible to obtain three quotations or go out on tender, as every event has its own unique costs and cannot be compared to any other quotation. Further, the entity stated that Birchwood has historically been the cheapest venue to hire. The MD confirmed that value for money was received and the venue in question generally came out cheaper in comparison. The Committee is satisfied that going forward this practice has been discarded by the entity. **That disciplinary action be instituted against the MD for negligence and quarterly updates be submitted to the committee. The Committee recommends that R154,745 be written off.**

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The irregular amount of R236 124 was the result of expenditure incurred after expiry of contract, the entity appointed ITEC for the leasing of printers and photocopy machines. The entity went on tender however tender was not awarded which led to the tender being declared a non-award as a result of all the bidders not complying with the required scope of works. Value for money was received and from 31 July 2019, ERWAT entered into new contracts with National Treasury transversal contractors. **However, in the previous financial year the Committee referred this matter to the IA, therefore the Committee will await the investigation report and make its pronouncement.**

The irregular amount of R368 085 was the result of incorrect application of SCM regulation 36, the entity appointed Arch Water for the supply and delivery of calcium hypochlorite solutions. Management initiated the process timeously however the tender was declared as a non-award due bidders not complying with the required scope of works. The Committee notes that the entity practices quality assurance on the tender requirements and specifications to ensure that the risk of a non-award are limited and value for money has been received this regard. **However, in the previous financial year the Committee referred this matter to the IA, therefore the Committee will await the investigation report and make its pronouncement.**

The irregular amount of R32 492 762 was the result of contract awarded to a contractor with incorrect CIDB grading. As per SCM regulation the value contract of a CIDB level 7 tender may not exceed the value of R40 000 000 however during audit the AG the tender awarded to service provider as R214 471 760 The entity appointed Entsika Consulting Services on a rates based and an as and when contract for the operations and maintenance of over 200 pump stations within the City.

The entity declared to the A-G that the tender was not awarded at a fixed value as it was a rates based contract. The Committee notes that R214 471 760 is not the total value of the contract, but the total value of the contract amounted to R106 million. The A-G utilised this value because it was incorrectly captured on the CIDB website, what was captured was the total and subtotal rates per hour added together. In mitigating this, the entity no longer award tenders that stipulate any totals. The MD confirmed that the entity received value for money for the services rendered contractually and in accordance with the agreed rates. The Committee notes the entity is no longer in the practice of giving bidders the instruction of indicating sub totals and totals and have removed this from all bids for rates contracts and that the contract was terminated. **The Committee recommends that disciplinary action be instituted against the responsible person/s identified for negligence and quarterly reports be submitted on the disciplinary process. The Committee recommends that R32 492 762 be written off.**

The irregular amount of R15 335 976 made up of two amounts of (R5 624 997.97+R9 710 978.03) was the result of contravention of SCM policy. The

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ERWAT appointed two service providers Thuthukani: Cationic Poly Flocculants and Metsichem for the supply and delivery of Ferric via an open tender process. The Committee notes that first tender process resulted in a non-award due to bidders not meeting the mandatory criteria. The entity then went out on a 2nd tender process that would have resulted in a non-award due to the bidders not meeting mandatory criteria. The criteria were amended, the criteria pertaining to Chlorine which also included the Poly Flocculants and Ferric bid document; the bidders dedicated/appointed supplier must be registered with South African Qualification and Certification Committee (SAQCC) for Gas Practitioners. Bidders were required to conform to the standards and must submit proof thereof National Road Traffic Act 1996 (Act 93 of 1996) – Dangerous Good Legislation including training.

However, during bid evaluation stage management disregarded a technical requirement (which was included in the approved and advertised bid specifications) but the tender document issued to the bidders provided for this mandatory requirement. The BEC took the decision to disregard the requirement as this was going to result in another non-award that would have resulted in a deviation (Chemicals are a critical supply). The Committee notes that these contracts could not be cancelled due the fact that they related to the supply of critical chemicals and value for money was received. **However, in the previous financial year the Committee referred this matter to the IA, therefore the Committee will await the investigation report and make its pronouncement.**

The irregular amount of R30 764 079 made up of three irregular amounts of (R6 731 183+ R17 567 540 +R6 465 358) was the result of contracts varied/extended above threshold. The entity went beyond the permitted the 20% threshold. R6 731 183 was a result of the entity appointed Mulbert/ OMDS JV for the repairs, maintenance/servicing, replace where necessary and adhoc work (tricking filters) for a period of 36 months. In total the entity made a payment of R12 271 869.50 to the service provider for the 3-year contract resulting in a variation of R9 049 520.42 (R12 271 869.50-R3 222 349.08) resulting in the entity exceeding the allowable 20% variation of tender based on approval.

The irregular amount of R17 567 540 was a result of the entity appointing Lanazu Investment Pty Ltd for supply and delivery of mechanical spares, material and consumables for the ERWAT WWCW and pump stations for a 36 months' period. The SLA amounted to R7 871 000 and the variation of the tender value allowed based on approval was R1 574 200. The entity made a payment of R16 943 148.97 to Lanazu resulting in a variation of R 9 072 148.97 (R16 943 148.97- R7 871 000) resulting in the entity exceeding the allowable 20% variation of tender based on approval.

The irregular expenditure of R6 465 358 is the result as the above incidents of the entity paying Lanazu above the allowable threshold. The Committee notes that the entity sourced a legal opinion on the possibility to terminate the contracts identified as irregular expenditure. The opinion advised that ERWAT had no legal grounds to terminate the contracts as the perceived error was not the fault of the respective

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bidders. These three contracts have since lapsed. The bid document and evaluation templates were amended to not reflect totals and or sub totals. The entity calculates the total line items together to get to an indicative figure to determine the highest scoring bidder(s). No totals are included in the appointment letters. Furthermore, IA conducted an investigation on the incurred incidents and all the individuals identified for negligence have been disciplined and a progress report has been furnished to the Committee albeit it not being satisfactory. The entity confirmed that value for money was received on all three contracts. **The Committee recommends that a detailed report on the disciplinary process be submitted to Council by 30 July 2021 and Quarterly thereafter. The Committee recommends that R30 764 079 be written off.**

4.1.4 Environmental Resource & Waste Management Services

The Environmental Resource & Waste Management Services incurred an irregular expenditure amounting to R3 399,137 this was a result of a contravention in the SCM policy. The department through the then Acting HOD deliberately circumvented the SCM policy to appoint 3 services providers to provide services such as education, cleaning, awareness campaigns. Service providers were appointed via the EPMO panel and the services provided were not parallel to the deliverables of the awarded contract. Further, the Finance department alleged that the hours worked by respective service providers were not practically possible to be worked by an individual in a month.

The Acting GCFO through the IA department requested an investigation which indeed evidenced that SCM processes were circumvented deliberately. The IA department investigated the allegations and their recommendations were as follows; that the contracts of the 3 service providers, namely Lamela Consulting Pty Ltd, Glad Africa Project Managers Pty Ltd and Diges Group CC be rescinded and the proper SCM processes be followed in appointing services providers. The Committee notes that the department rescinded the appointments and a tender was advertised and awarded in 2019 and procurement policy guidelines were strictly adhered to. Further, the Committee notes that the identified HOD at the time of investigation, his contract had expired and therefore no consequence management could be recommended against him. **The Committee recommends that the amount of R3 399,137 be written off.**

4.1.5 Ekurhuleni Metropolitan Police Department

The EMPD accounts for one (1) incident of fruitless and wasteful expenditure amounting to R1 958 267, the department initiated the construction of the Kempton Park Precinct Station located on ERF 3/996 Kempton Park. The CoE, through Real

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Estate department, appointed Takgalang Consulting cc as the Principal Agent. Takgalang were appointed to perform stages 1 to 6 of the project. Sphandile Trading Enterprises were appointed as the Contractors for the project. The estimated cost of the project was R23 475 863.11 (excl VAT) (R26 762 483.95 Incl VAT).

According to the department and as confirmed by the IA investigation report, Sphandile showed signs of struggling from the onset, failing to spend the initial set target of R3.0 million per month. This affected progress of the project negatively both from the project perspective and on the payments to the contractor leading to the principal agent, Takgalang to issue a series of letters of concern and a default notice.

However, Sphandile was given opportunities to improve on their performance through the letters of concern but there was no improvement in the performance. The key issue noted was a failure by Sphandile to procure the necessary building materials on time in line with the project budget an indication of cash flow problems.

The department then embarked on a process to engage a new principal agent and contractor to take over the project and take it over through to completion. A total of R12 197 724.28 was spent on the project with an overall performance of – only 51% of building works completed and only 72% of external works completed as at 30 June 2018. The IA investigation found that Sphandile was allocated multiple projects by the Real Estate department at the same time, which affected their ability to deliver in the projects. The EMPD department indicated that they were not aware that Sphandile was allocated all these projects.

The lack of financial capacity was clear from the onset of the EMPD Precinct project as Sphandile failed to procure materials required for the project and the project was behind schedule from early on. The EMPD project manager, Real Estate and EPMO were aware of Sphandile's failure to perform on the project from the onset and were copied in all correspondence, but did not take any timely action in line with the Joint Building Contracts Committee (JBCC) to proceed to termination. The EMPD project manager informed the Committee that he was brought to the project to provide logistical support and not technically as he had no technical skill to oversee the project. Furthermore, a new contractor, Anita Construction was appointed and upon commencing the project it found that the roof trusses that which had been procured for R217 822.50 were not safeguarded from the elements such that they had to be replaced resulting in fruitless and wasteful expenditure.

The take-on report produced by the new contractors revealed that there were issues with the quality of work that was performed by Sphandile and work amounting to R2 034 185.11 had to be re-done by Anita Building Construction at an additional cost resulting in further fruitless and wasteful expenditure for the work performed by Sphandile.

The Committee notes that the root causes of this incident of fruitless and wasteful expenditure was the lack of an effective contract management system at Real Estate or EPMO to track poor performers and take action regarding future appointments.

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Failure of the principal agent, Takgalang, and EMPD project manager to implement the provisions of the JBCC beyond the letters of concern/default notice essentially the JBCC provides for the management of the contractor activities by putting them on notice for contract performance breaches and if they remain in default they may be terminated.

The lack of timely action by the project manager, EPMO and Real Estate to address the obvious impending failure of the project due to Sphandile's inability to deliver throughout the project phases gravely concerns the Committee as both departments were aware that the EMPD project manager did not have the adequate skill as admitted. Based on the assessment conducted by the IA and confirmation by the EMPD, it is concluded that the CoE did not get value for money from the construction of the Kempton Park EMPD Precinct. As a consequent of the lack of value for money, there was fruitless and wasteful expenditure identified on the construction of the Kempton Park EMPD Precinct. The Committee ascertains that all departments involved in this project caused the CoE fruitless and wasteful expenditure. **Therefore, disciplinary action must be instituted against the Project Manager, HOD, and DH of EMPD. That disciplinary action be instituted against the responsible person/s in the Real Estate department and the EMPO for failure to take action through their monitoring and oversight, despite clear evidence of impending project failure. The Principal Agent Takgalang for failure to issue penalties on Sphandile's failure to complete the project. The matter be referred to the Disciplinary Board. That the amount of R1 958 267 be recovered from the principal agent Takgalang, Sphandile. That quarterly updates on the disciplinary action and recovery of the amount of R1 958 267 be submitted to the committee.**

4.1.6 Real Estate Department

The Real Estate department accounts for two (2) irregular expenditures, R116,198,430 and R 724,951. R 116,198,430 the department awarded a panel of cleaning contractors in 2019. This was to be valid from date of award to 30 June 2022. A total of 20 contractors were appointed, each allocated its own CCC. The scope of the contract included, amongst others, the supply and installation of sanitary materials and sanitary wipes, which were also used for Covid19.

According to the department the A-G identified errors which were done during evaluation as well as implementation of the contract and such errors range from capturing to billing. The Committee notes that in terms of billing the department states that they sent letters to services providers to recover the overpayment which was calculated at R262.50. per unit but the department paid on R294 resulting in an overall over-payment of R31.50. According to the department this over-payment occurred only for a limited period, i.e. March 2020 to June 2020 as dispensers were a once-off installation totalling R89,867.01.

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Secondly, the incorrect capturing of bill of quantities (BoQs) during the evaluation process. According to the department it was discovered during the evaluation that the rates appearing on the BoQs were incorrectly captured on the system by the data capturers. The consequence was that some bidders were incorrectly ranked and subsequently allocated areas with bigger or smaller sizes than they must have been allocated had the BoQs been properly captured. Or even some that must not have been appointed have been appointed. The department concurs that the entire process was found not to be fair as per SCM processes. The department failed to satisfactorily answer the Committee regarding both these incidents. **The Committee recommends that the matter be referred to the IA for investigation.**

The irregular amount of R 724,951 was as a result of an amended IPW without appropriate approval. The department appointed Thembakele Consulting Engineer under Contract Number: PS-RE 02-2016 on an as-and-when required basis that was for Project/Programme Management with a Multi-Disciplinary Professional Team to tender full consulting services on an as and when required basis for Real Estate and its Client departments in CoE.

The then Customer Relations Management Department (CRM): HOD, issued an Instruction to Perform Work (IPW) under the Real Estate department contract - IPW PS-RE 02-2016/CRM-05 - for professional services for the building of a unified command centre (UCC) in Kempton Park. The development was to be undertaken in partnership with other nine other departments in the CoE. The cost of this project was to be borne by CRM. Subsequent to issuing the first instruction, changes to the instruction were made and it was directed that professional work must be for a Disaster Recovery Centre (DRC) and have a functionality of the Call Centre in the event of a disaster by the CRM department. After the change of the scope, other departments withdrew their participation in the project, thus leaving the project implementation to CRM.

Thembakele Consulting Engineers was requested to provide a quotation for the development of the Unified Command Centre. Their work was differentiated in six stages. The investigation found that Thembakele Consulting Engineers rendered services for Stages 1 and 2 for the "*Design of the new UCC (Unified Command Centre) Building in Spartan – Kempton Park*" as per contract. Further, the IA investigation established that any payment beyond the initial cost of R1 335 214,00 for Stages 1 and 2 would constitute "Irregular Expenditure" as defined in the Municipal Finance Management Act.

The Real Estate Department approved payments for Thembakele Consulting Engineers using IPW PS-RE 02-2016/CRM-05 that reflected that the total fee for the project was R7 631 570,00 (Excluding VAT). Thembakele Consulting Engineers only performed work up to Stage 2 of the project and there is no additional work claimed

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for. The Committee notes that the Real Estate department confirmed that there was delivery of services for Stages 1 and 2.

A total amount of R1 382 288,82 was paid to Thembakele Consulting Engineers. The IA investigation found that the Real Estate Department approved payments for Thembakele Consulting Engineers using IPW PS-RE 02-2016/CRM-05 that reflected that the total fee for the project was R7 631 570,00 (Excluding VAT). Further, the Divisional Head: Property Development, approved payment certificates that included R724 950,59 in error, based on the claims by the Thembakele Consulting Engineers that used the Capital cost for the project at R159 620 929,00. The Committee notes that any payment that was made above R1 335 214,00 for Stages 1 and 2 was approved in error.

The Committee notes the following IA recommendations;

1. We recommend that Thembakele Consulting Engineers be informed that all payments will be done as per IPW PS-RE 02-2016/CRM-05 for R7 631 570,00 (Excluding VAT) and made provision for Stage 1 and 2 at R1 335 214,00 and no further payment will be made beyond what was paid.
2. We recommend that the City of Ekurhuleni institute a civil claim arbitration to recover an amount of R724 950,59 that was paid to them above the contracted amount of R1 335 214,00 for Stages 1 and 2 after they unilaterally amended the Capital amount from R44 603 500,00 to R159 620 929,00 thus inflating their fees unjustifiably.

On recommendation 1 the Committee agrees with the IA observations. On recommendations 2 the department failed to confirm that indeed an arbitration took place and lastly, the City Manager confirmed that disciplinary action was commenced with against Ms Jonathan. **Therefore, the Committee recommends quarterly report updates on disciplinary action instituted against Ms Jonathan. The amount of R724 950,59 be recovered from Thembakele Consulting Engineers. The department submit a progress report on the recovery to Council by end July 2021.**

4.1.7 Brakpan Bus Company (BBC)

The BBC accounts for two (2) incidents of irregular expenditure amounts of R264 265 and R1,165 173.

R264 265 (R20,000.00 + R144,264.72) was incurred as a result of a contract expiring. The Committee notes that that an amount of R 120,000.00 was paid to Escape Dynamics in the 2019/20 financial year. Escape Dynamics was providing the maintenance of the ticket system software at R10,000.00 each month for twelve months. The contract between the entity and the service provider expired on 30 June 2019. At that time the entity had already started the process of procuring a new

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ticketing system, as a result the contract was not terminated instead it went on month to month with the anticipation that the new ticket system will be available within a short period of time.

However, the procurement of the ticket system was placed on hold by CoE indicating that it will provide the system to the entity. The entity did confirm receiving value for money from Escape Dynamics for the amount paid. The Committee advises the entity to plan accordingly as such incidents can be avoided. **The Committee recommends that the amount of R120 000 be written off.**

The irregular amount of R144,264.72 was paid to Santam insurance for the insurance of the busses and other assets owned by the entity. In 2018 November the Governance, Risk and Compliance manager who was the project owner for the insurance contract resigned from the entity and the new manager was appointed in April 2019, due to the gap between the resignation and the appointment of the manager there was no hand over which resulted in the insurance contract expiring without going on tender for the appointment of a new service provider. The new manager started a process of getting a new service provider after being notified of the expired contract in August 2020. As per the entity's assertions, value for money was received in that Santam did provide insurance services to the entity on the agreed premiums. The Committee is gravely concerned at the ineffectiveness displayed by management within the entity and advises the parent municipality to look into these matters and assisting the entity in terms of Section 60 of the MFMA wherever possible. **The Committee recommends that disciplinary action be instituted against the responsible person/s identified with submission of quarterly updates on the disciplinary process. The Committee recommends that the amount of R144,264.72 be written off.**

Lastly, the Committee notes the last irregular expenditure of R1,165 173 was a result of not following the procurement processes, this amount is made up of (R175,547.50+R672,687.76 + R316,937.82). The amount of R175,547.50 was paid E-Bus for the repairs and maintenance of Wayfarer machines. E Bus is the original manufacturer of the Wayfarer machines, so the machines were taken to E bus for repairs and maintenance using the Asset Policy which was approved in 2015 which allowed assets to be repaired by the original manufacturers, the entity has since removed the clause on repairs and maintenance by the original manufacturer which led to these instances of irregular expenditure. Furthermore, the entity confirmed that they did receive value for money in this regard. **The Committee recommends that the amount of R175,547.50 be written off.**

The amount of R672,687.76 for legal fees was incorrectly disclosed as irregular expenditure. According to the entity the SCM process was done by CoE and the entity received the appointment letter from the CoE for the company that was awarded the

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tender. **The Committee recommends that the amount of R672,687.76 be written off.**

The amount of R316,937.82 was incurred due to the entity procuring staff uniform using the R 30,000.00 quotation process. The amount is disclosed as irregular expenditure because it exceeded the R 200,000.00 threshold which means that the entity must have gone on tender process instead of splitting. The entity cited that due to Covid-19, the entity did not have time to tender as BBC employees threatened to strike as the entity had not provided uniforms for over three years. In response to the strike threats management decided to procure the uniform using the R 30,000.00 SCM process to calm the situation as quick as possible. The Committee ascertains management failed to plan in this matter and there should be consequence for their ineffectiveness. **The Committee recommends that disciplinary action be instituted against the responsible person/s identified with quarterly progress report on the disciplinary process. The Committee recommends that the amount of R316,937.82 be written off.**

In conclusion the Committee makes the following observations about the entities of the City;

Firstly, for an entity to have sound financial controls, the appropriate level of management should regularly review interim/monthly reporting and prepare regular, accurate and complete financial and performance reports that are supported by reliable sources of information. Leadership and management must also regularly review and monitor compliance by officials with applicable laws and regulations.

Secondly, the risk of perpetual SCM Regulation 36 deviations and related request for write offs should be cause for concern to the City. The City and its entities need to work collaboratively on preventative measures to reduce these high levels of deviations and report on the management of this risk quarterly to MPAC and any other relevant committee of Council.

5. LEGAL COMMENTS

The MPAC is a standing committee of Council established in terms of Section 79 of the Municipal Structures Act, 117 of 1998, the aforementioned process was also guided by the SALGA/ National Treasury guidelines on the establishment of MPACs. For purposes of guiding the committee in the exercise of its oversight mandate, powers, duties and responsibilities, the municipal council approved the committee's terms of reference.

Clause 4 of the Terms of Reference states the objectives of the committee as to assist council to ensure that:

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The municipality fulfils its constitutional mandate of service delivery to the community and achieves the set objectives;

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- The municipality is managed in an efficient, effective and ethical, corruption and fraud free manner; and
- The municipal resources are utilised in an economic manner and are fully accounted for.

Clause 4.2.3.3 of the ToR requires that all reports of the Auditor- General should be submitted to the committee as they become available.

The Standing Orders By-Laws is also relevant in the operations of MPAC as it relates to, inter alia the composition and conduct of the committee meetings, powers of the committee (Rule 121) and reports to Council (Rule 135). In this case Rule 135 finds application in that it requires the committee to submit the committee report on annual reports within 60 days after referral by Council in terms of Rule 122(1).

The Municipal Finance Management Act and the regulations promulgated in accordance therewith is an integral piece of legislation in the committee execution of its functions, the aforementioned Act has as its object to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for-

- a. Ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities;
- b. The management of their revenues, expenditures, assets and liabilities and the handling of their financial dealings
- c. Budgetary and financial planning processes and the co-ordination of those processes with the processes of organs of state in other spheres of government;
- d. Borrowing;
- e. The handling of financial problems in municipalities;
- f. Supply chain management; and
- g. Other financial matters.

The municipal council referred the Auditor-General's report in accordance with the Terms of reference of the committee and the committee is giving effect to its mandate in line with the prescribed processes and timelines, therefore this report finds support from a legal perspective.

6. PUBLIC PARTICIPATION AND SUBMISSIONS

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.

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7. RECOMMENDATIONS

The Municipal Public Accounts Committee (MPAC), after consideration of **the Annual Report, Inclusive of Annual Financial Statements (AFS) for the 2019/20 financial year and the A-G Report**, is making the following recommendations to Council:

7.1. **That** the contents of the Annual Report, Inclusive of Annual Financial Statements (AFS) for the 2019/20 financial year and the A-G Report tabled to Council as Item A-F (01-2021) **BE NOTED**.

7.2. **That** it **BE NOTED** that the following matters, as outlined according to the department and brief description, were referred by the Committee to the Internal Audit department **FOR INVESTIGATION**. Below is a table outlining the amounts:

No.	Amount	Department	Description
a)	R116 198 430	Real Estate	Contravention of SCM Policy
R 116 198 430		TOTAL	

7.3 **That** the following incurred incidents, as outlined according to the department and brief description are still being investigated by the IA and will be submitted to the MPAC once finalised.

No.	Amount	Department	Description
a)	R 368,085	ERWAT	Incorrect application of SCM regulation 36
b)	R 15,335,976	ERWAT	Contravention of SCM Policy
c)	R 236,124	ERWAT	Expenditure incurred after expiry of contract
d)	R 3,924,350	ERWAT	Incorrect application of SCM regulation 36 (1)(v)
R19 864 535		TOTAL	

7.4 **That** the following matters, as outlined according to the department and brief description be certified to be irrecoverable and **BE WRITTEN OFF** by Council as per section 32 of the MFMA of 2002.

No.	Amount	Department	Description
a)	R156 000	Ekurhuleni Housing Company	Payment for legal opinion

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b)	R3, 741 814	Ekurhuleni Housing Company	Payment for cleaning tender awarded in contravention of the SCM policy 21
c)	R378 961	Ekurhuleni Housing Company	Contravention of SCM Policy
d)	R1 544 660	Energy	Conflict of Interest-False Declaration
e)	R3 399137	Environmental Resource and Waste Management Services	Contravention of SCM policy, appointed services providers and scope of work not in line with the contract.
f)	R 154,745	ERWAT	Incorrect application of SCM regulation 36
g)	R 32,492,762	ERWAT	Contract awarded to a contractor with incorrect CIDB grading
h)	R30,764,079	ERWAT	Contracts varied/extended above threshold
i)	R1 650 474	Brakpan Bus Company	Procurement process not followed
j)	R264 265	Brakpan Bus Company	Payments of expired contracts.
R74 061 596		TOTAL	

7.5 That the following incurred incidents, as outlined according to the department and brief description be **RECOVERED** by Council as per section 32 of the MFMA of 2003.

No.	Amount	Department	Description
e)	R724 951	Real Estate	Amendment of IPW without appropriate Approval
f)	R55 452	Ekurhuleni Housing Company	Interests on late SARS payments
g)	R1 958 267	Ekurhuleni Metropolitan Police Department	Fruitless expenditure, payment made to service provider for the construction of centre, Value for money not obtained.

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R3 436 621	TOTAL
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7.6 **That**, the following be referred for **DISCIPLINARY ACTION** processing by the Accounting Officer or Disciplinary Board as the case may be;

	Department/Entity	Implicated person/s	Description
a)	EHC	CEO	Contravention of Regulations 21 and 28 of the SCM regulations, CEO failed to plan properly and to ensure the implementation of council resolutions thus leading to the continuation of above-mentioned contravention. Quarterly progress reports be submitted to the committee.
b)	EHC	Responsible/accountable persons in the office of the CFO.	Negligence of the accountable persons to prevent the recurrence of interest charges levied by SARS as a result late payment by the Entity. Quarterly progress reports be furnished to the committee
c)	ENERGY	2 SCM officials	The department furnish a report on progress made on the ongoing disciplinary action by 30 July 2021 and quarterly thereafter.
d)	ERWAT	Managing Director	Incorrect application of the SCM deviation process. quarterly updates be submitted to the committee
e)	ERWAT	Responsible persons mentioned in the entity's responses.	Awarding a contract to a bidder with incorrect CIDB grading. quarterly reports be submitted on the disciplinary process
f)	ERWAT	Disciplinary processes ongoing.	Extension of a contract beyond the 20 percent threshold. A detailed report on the ongoing disciplinary process be submitted to Council by 30 July 2021 and quarterly thereafter.
g)	EMPD, RED & EPMO	Project Managers(EMPD, RED and EPMO)	Contract management function failures/negligence. Quarterly progress reports to be submitted to the committee.
h)	RED	Divisional Head	Approval for payment not in line with approved IPW. Progress report on ongoing disciplinary

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			action by 31 July 2021 and quarterly updates thereafter.
i)	BBC	Responsible persons mentioned in the entity's responses.	Failure to adhere to procurement processes in terms of SCM regulations. Quarterly updates must be submitted to the committee.
j)	BBC	Responsible persons mentioned in the entity's responses.	Splitting of quotations in contravention of the SCM Regulations. Quarterly updates must be submitted to the committee.

7.7 **That** the Chairperson of MPAC **SUBMITS** the names of identified officials on recommendation 7.6 above to the Speaker of Council who will then forward the names to the Secretary to Council for submission to the City Manager.

7.8 **That** the City Manager **INSTITUTES** a process to blacklist Takgalang Consulting cc and Sphandile Trading Enterprises from obtaining business from the municipality.

8. ACKNOWLEDGEMENTS

The Chairperson of MPAC would like to acknowledge the contribution of all members of the Committee, especially the MPAC administrative staff, for their dedication and hard work in the accomplishment of this report. In particular, to note and appreciate the assurance provided by the Internal Audit department led by HOD Lindiwe Hleza and DH Lesley Vilakazi; on matters related to UIFW expenditures incurred by the municipality and entities.

Thanks to the Accounting Officer, Dr. Imogen Mashazi, the GFCO Kagiso Lerutla and Chief Risk Officer Phindi Shabalala for always being available to provide necessary support to the Committee, and the Office of the Auditor General South Africa (AGSA). We would also like to thank the following organisations, and entities for their support during the process of completing this report:

- The Chairperson of Gauteng Provincial Legislature's (GPL's) Standing Committee on Public Accounts (SCOPA);
- The Audit Committee members
- The faith-based sector;
- The business sector;
- Ward committee members; and

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- The City of Ekurhuleni residents

9. CHAIRPERSON'S SIGN-OFF

I declare that I am satisfied that the item sufficiently reflects the deliberations and recommendations of the Committee.

Name: Cllr Sizakele Masuku

Designation: CHAIRPERSON: MUNICIPAL PUBLIC ACCOUNTS COMMITTEE

Signature: _____

Date: _____