



AUDITOR - GENERAL
SOUTH AFRICA

MEDIA RELEASE

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Auditor-General issues first certificate of debt

PRETORIA – Auditor-General (AG) Tsakani Maluleke has issued the first certificate of debt (CoD) since the Public Audit Act's (PAA) extended powers came into effect in April 2019.

The CoD, to the amount of R4 616 074,66 (together with interest applicable to the period between 30 days after this certificate has been served and the date of full payment of the debt due), is against the municipal manager, who is the accounting officer of Ngaka Modiri Molema District Municipality in the North West province.

This CoD follows the material irregularity (MI) issued by the AGSA on overpayment for water tankering services rendered to the municipality by a service provider.

Details of material irregularity

The municipality appointed a service provider on 21 June 2018 to provide water tankering services as part of drought relief, for water and sanitation services to be rendered to various communities as and when required.

The initial contract term was for two years, effective from 1 July 2018 to 30 June 2020. However, on 29 May 2020, the municipality extended the contract for an additional three months from 1 July 2020 to 30 September 2020. On 25 August 2020, the contract was further extended for another three months, to 31 December 2020.

During the AGSA's 2018-19 audit cycle, the audit team selected a sample of daily tankering schedules completed by the service provider and compared them to the job cards completed. It was noted that the service provider overclaimed on kilometres and

hours for water tankering services, resulting in a financial loss for the 2018-19 financial year.

Further losses were anticipated if internal controls were not implemented to prevent overclaiming on kilometres and hours. The overclaiming on kilometres continued during the 2019-20 and 2020-21 financial years, causing further material financial losses to the municipality.

The MI was issued and communicated to the accounting officer as required by regulation 3(2) of the Material Irregularity Regulations, 2019. The accounting officer initially responded to the MI notification and made a number of commitments to address the MI, and the assessment of the audit team was that appropriate action was being taken in the first year. However, the commitments were not implemented, and recommendations for the recovery of the financial losses were included in the 2020-21 audit report. The accounting officer still failed to implement the recommendations, which led to the issuing of the remedial action in terms of section 5A(2) of the PAA, 2004, for the accounting officer to recover the financial losses. Notwithstanding the issuing of the remedial action, the accounting officer still failed to recover the financial losses.

The AG says her decision was primarily informed by the accounting officer's failure "to recover the material financial loss suffered by the municipality following the remedial action that I issued against him, despite ample opportunity provided to him to implement the remedial action".

"Furthermore, the accounting officer failed to provide justifiable reasons for his failure to implement the remedial action calling for him to recover the financial losses suffered. Having considered the written representation and the advice from the advisory committee following the oral representation proceedings, I have decided to proceed with issuing a CoD against the accounting officer to the amount of R4 616 074,66 (four million, six hundred and sixteen thousand and seventy-four rand and sixty-six cents)."

On issuing the CoD, AG Maluleke also reminded the executive mayor of the municipality that in terms of section 5B(2) of the PAA, it is the mayor's "responsibility as the executive authority to collect the amount specified in the CoD from the accounting officer".

"Section 5B(3) of the PAA, read with regulation 20 of the MI Regulations, which states that the executive authority (the mayor in this case) must, within a period stipulated by the auditor-general, and within regular intervals thereafter, submit progress reports on the recovery of the amount in the CoD. The certificate contains the period within which the mayor must provide feedback on the recovery process, and failure to comply will result in the matter being escalated to the relevant legislature", Maluleke cautioned.

The material irregularity process

When the PAA was amended in April 2019, it gave the AGSA the mandate to identify and report on MIs and to take action if accounting officers and authorities do not address them appropriately.

The overall aim of the amendments was to promote better accountability, improve the protection of resources, enhance public sector performance, encourage an ethical culture, enable effective oversight and, ultimately, strengthen public sector institutions to serve the people of South Africa better.

An MI is any non-compliance with, or contravention of, legislation, fraud, theft or a breach of a fiduciary duty identified during an audit performed under the PAA that resulted in or is likely to result in a material financial loss, the misuse or loss of a material public resource, or substantial harm to a public sector institution or the general public.

Through identifying and reporting on MIs, we highlight to accounting officers and authorities, executive authorities and oversight committees of Parliament and the legislatures the most significant irregularities to address – those that had a material

impact on the finances, performance and service delivery of an auditee or that caused harm to the general public.

When we identify an MI, we notify the accounting officer or authority and give them a reasonable time to respond to the notification by giving us a written submission and evidence of what they have done and plan to do to address the MI. If we determine that the actions and outcomes included in the response are appropriate, we give the accounting officer or authority space to implement further planned actions within an agreed timeframe, follow up on progress in implementing the planned actions at regular intervals, and assess whether the outcomes of the actions are appropriate.

Where accounting officers and authorities meet their legislated responsibilities to deal with irregularities, commit to taking swift action when we notify them of an MI and then implement these actions, we do not have to use our expanded powers.

However, if they do not address the MIs with the required seriousness, we include recommendations in the audit report on how a material irregularity should be addressed, before the stipulated date. If these recommendations have not been implemented by the stipulated date, the AG is required to issue binding remedial action. If the irregularity involves a financial loss, we issue a directive to the accounting officer or authority to quantify and recover the loss from the responsible person.

In the event the accounting officer or authority failing to implement the directive to quantify and recover a financial loss, the AG is required to issue a CoD in the name of the relevant accounting officer or authority. It is the responsibility of the relevant executive authority to recover the loss from the accounting officer or authority. The process up to issuing a CoD comes with many checks and balances, giving the accounting officer or authority concerned enough opportunity to fix the problem flagged before a CoD is issued.

The AG can also refer an MI to a public body for investigation, such as the Public Protector, the Special Investigating Unit and the police. The public body would deal with the matter within its own legal mandate and take appropriate action where necessary.

Conclusion

The AGSA has always maintained that the enhanced powers would further support other existing pieces of legislation aimed at ensuring good governance and clean administration in the public sector.

These legislative instruments include the Public Finance Management Act (PFMA) and the Municipal Finance Management Act (MFMA). Both contain extensive guidance on what the law requires accounting officers and authorities to do, and even outline the consequences that must be assigned in the event of financial misconduct. This includes the responsibility to quantify and recover money due to the state.

The primary responsibility for identifying and acting on MIs remains with the accounting officer or authority of the audited institution. No part of their statutory responsibilities is transferred to the office of the AG, which, through these amendments, provides a transparent and reliable source of evidence and monitors the proper restoration of an accountable system of financial management.

“While we are pleased with the impact the MI process is making, it is not yet at the desired level, largely due to instability in accounting officer positions; a slow response by accounting officers to our notifications, recommendations and remedial actions; prolonged investigations or delays in concluding criminal proceedings; and delays in disciplining officials. For example, when we escalate the non-responsiveness to mayors and provincial government leaders, it is rare for them to act or for their actions to have a significant impact. Where our recommendations have been implemented to resolve the identified MIs, we have noted improved internal governance systems, which, in turn, enable delivery to the citizenry.

“We are fully committed to implementing the enhanced powers given to our office – without fear, favour or prejudice. If accounting officers, supported by their political leadership, implement their legislated responsibilities and commit to taking swift action when we notify them of an MI, there is no need for the office of the AG to use remedial and referral powers. If, however, they do not deal with MIs with the required seriousness and speed, we will not hesitate to use these powers,” concluded the AG.

End.

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About the AGSA: The AGSA is the country's supreme audit institution. It is the only institution that, by law, has to audit and report on how government is spending taxpayers' money. This has been the focus of the AGSA since its inception in 1911 – the organisation celebrated its 100-year public sector auditing legacy in 2011.