



AUDITOR - GENERAL  
SOUTH AFRICA

# **Report of the Auditor-General of South Africa on an investigation at the Westonaria Local Municipality**

June 2015

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## LIST OF ABBREVIATIONS

List of abbreviations	
Abbreviations	Description
AGSA	Auditor-General of South Africa
BAC	Bid adjudication committee
BEC	Bid evaluation committee
CBCs	Community-based contractors
CIPC	Company Intellectual and Property Commission
CLO	Community Liaising Officer
CoGTA	Co-operative Governance and Traditional Affairs
EMM	Ekurhuleni Metropolitan Municipality
GWCRA	Greater Westonaria Concerned Residents Association
GDHS	Gauteng Department of Human Settlement
MCLM	Mogale City Local Municipality
MEC	Member of the executive council
MFMA	Municipal Finance Management Act
MM	Municipal manager
MunSoft	Municipal Financial Software System
PRISA	Private Security Industry Regulatory Authority
SCM	Supply chain management
SGHC	South Gauteng High Court
SLA	Service level agreement
TCC	Tax clearance certificate
WLM	Westonaria Local Municipality

# REPORT OF THE AUDITOR-GENERAL OF SOUTH AFRICA ON AN INVESTIGATION AT THE WESTONARIA LOCAL MUNICIPALITY

## 1. EXECUTIVE SUMMARY

### 1.1. Background

1.1.1 The Auditor-General of South Africa (AGSA) was requested by the former Member of Executive Council (MEC) for Co-operative Governance and Traditional Affairs (CoGTA), in a letter dated 13 November 2013 to conduct an investigation at the Westonaria Local Municipality (WLM) relating to various allegations/concerns raised by the Greater Westonaria Concerned Residents Association (GWCRA).

1.1.2 A meeting was held between the AGSA, GWCRA, Gauteng CoGTA and the Director-General: CoGTA, on 12 March 2014. During the meeting, GWCRA members requested the AGSA to conduct an investigation into allegations of fraud/corruption at the WLM. The GWCRA members also raised concerns relating to the Bekkersdal Renewal Project, and requested the AGSA to conduct an investigation into the matters raised.

1.1.3 During the said meeting, it was agreed that the GWCRA would submit their allegations to the AGSA in writing in order for the AGSA to assess the matter and decide on the way forward. In this regard, a formal request for investigation from the GWCRA was received on 19 March 2014. The request for investigation submitted by the GWCRA included supporting documentation to substantiate their allegations.

1.1.4 A follow-up meeting was held between the AGSA and the GWCRA representative on 7 April 2014, in order to obtain further clarity on the allegations. Further supporting documentation were also provided by GWCRA representative during the said meeting.

1.1.5 The allegations can be summarised as follows:

- Proper procurement processes were not followed with regards to the appointment of a Waste Management service provider for the Waste Management tender. Furthermore, it was alleged that there was a relationship between one of the appointed CBCs and the mayor of WLM.
- Proper procurement processes were not followed for the procurement of a service provider for the construction of houses at extension 11.

- The WLM procured a lie detector for an amount of R218 367. However, this lie detector does not appear on the WLM's fixed asset register and could also not be found on the municipal premises.
- The WLM paid for the mayor's private trip to her home in the Eastern Cape on 22 to 25 September 2011. The payments for travel and accommodation made in relation to this trip were not in line with the prevailing municipal policies.
- That payments made to a service provider at the municipality were fictitious and fraudulent.
- The council resolutions recommending investigations into wasteful expenditure for the traffic vehicle contract, were not actioned by municipal staff. Furthermore, municipal staff did not implement recommendations and remedial steps relating to the AGSA audit findings.
- In relation to the Bekkersdal renewal project, the allegations were that the allocated budget had been exhausted; however, project deliverables were incomplete.
- The procurement process followed to secure the service provider for the township "clean-up" on 8 February 2014, was allegedly irregular and the municipality had allegedly incurred fruitless and wasteful expenditure relating to these services.
- The municipality cannot account for the R30 million that the mining company provided to relocate and build 150 houses in Bekkersdal for mining residents due to the failure of the housing project to Simunye extension 2.

1.1.6 The AGSA had several consultations with CoGTA and the GW CRA to discuss the proposed investigation, and consensus was reached on the scope of the investigation on 29 August 2014. In this regard, allegations which remained unclear, or were not supported by relevant documentation (such as the allegation about the R30 million paid by mining company to the municipality) were excluded from the scope. The agreed scope of the investigation was as follows:

- The procurement process followed prior to the appointment of a Waste Management service provider to provide Waste Management services.
- The procurement of a lie detector and asset verification.
- The procurement of service provider for the township "clean-up" on 8 February 2014.
- The procurement of a service provider for the construction of houses in Mohlakeng extension 11.

- Payments for the executive mayor's private trip to her home in the Eastern Cape from 22 to 25 September 2011. (The payments for travel and accommodation made for this trip were reviewed to assess whether they are in line with the prevailing prescripts).
- Payments made to a service provider for providing security services at the municipality were allegedly made to a fictitious entity. (The AGSA reviewed the payments made to assess whether they are regular and made in the normal course of business).

1.1.7 The investigation scope was discussed with the MEC: Gauteng CoGTA, (The MEC) on 8 October 2014, and furthermore, an agreement was reached that a performance audit review will be performed on the urban renewal projects (Urban renewal projects for Bekkersdal, Winterveld, Alexander and Evaton). The AGSA will consider the on-going work that is being conducted by other service providers that were appointed by the Department of Human Settlement, with regard to Urban Renewal Projects.

1.1.8 Accordingly, this report provides the AGSA's conclusions on the allegations investigated as per the engagement letter.

1.1.9 In line with the Auditor-General's Policy, Standards and Guidelines: Investigations due care was taken to confirm the factual accuracy of the findings in this report. This includes discussions with officials of the WLM and the AGSA, and an opportunity for the management of the WLM to formally respond to the findings. In this regard, the WLM provided comments to the draft report and the comments have been incorporated in this report.

## **1.2. Nature of the findings**

1.2.1 A number of the allegations investigated were found to be unsubstantiated. The details of such unsubstantiated allegations are dealt with individually below, save to mention that in some instances, the deviations identified related to the management of the procurement activities, and the contract management after the procurement processes were finalised.

1.2.2 The findings are predominantly due to the non-compliance with procurement legislation in the management of contracts.

1.2.3 The municipal manager (MM) and/or the municipal council, with the support of the senior management of the WLM, should address the findings in this report

decisively. However, corrective actions limited to the specific individual findings alone would likely address symptoms, but not the underlying causes. This approach carries the risk of deficiencies recurring in future. Therefore it is imperative that the underlying causes contributing to the deficiencies be properly understood and addressed as part of the corrective actions to be taken in response to this report.

1.2.4 Our findings are based on the interviews and consultations conducted with officials, service providers, CBCs and the GWCRA. Where necessary, affidavits were obtained. Furthermore, documents reviewed included municipal records of SCM processes, policies and the relevant prevailing prescripts. Verifications on the external databases such as the Company and Intellectual Property Commission (CIPC) and the Private Security Industry Regulatory Authority (PRISA) were also conducted. Payments records held by the affected entities were analysed and verified.

1.2.5 The findings of the investigation cover the financial periods 2008-09 until 2013-14, unless indicated otherwise. These findings are summarised below.

### **1.3. Findings**

#### **1.3.1 The procurement process followed prior to the appointment of the waste management development contractor**

1.3.1.1 The WLM complied with section 32 of the Municipal SCM Regulations for the appointment of the waste management development contractor (development contractor), to provide waste management services. In terms of section 32 of the Municipal SCM Regulations, the accounting officer may enter into a contract that was secured by another organ of state. Furthermore, the AGSA noted that the WLM complied with sections 76 and 78 of the Municipal Systems Act with regard to the outsourcing of the refuse removal services. Therefore, the allegations regarding the procurement process followed prior to the appointment of the waste management development contractor are unfounded.

1.3.1.2 Section 76 of the Municipal Systems Act provides amongst others, that a municipality may provide a municipal service in its area or part of its area through an external mechanism by entering into a service delivery agreement with a municipal entity, another municipality, an organ of state, a community based organisation and any other institution, entity or person legally competent to operate a business activity. Section 78 provides the criteria and process to assess before deciding on mechanism to provide municipal services. The assessment, amongst others, includes the direct and indirect cost and the municipal capacity.

1.3.1.3 The general responsibilities of a development contractor under clause 2.2 of the EMM agreement relating to the development of community-based contractors (CBCs) was not adhered to by the development contractor. Furthermore, it is the responsibility of the municipality to ensure such compliance, which it failed to do. The municipality did not ensure that the development contractor provided financial security for the CBCs to obtain finance from a registered financial institution in order to purchase suitable equipment and establish suitable premises in line with clause 2.2.

1.3.1.4 The AGSA does not have the mandate to report on the appointment of the CBCs as they were appointed by the development contractor and not by the municipality. Thus, the appointment process relating to the CBCs was not probed.

### **1.3.2 The procurement of a lie detector and asset verification**

1.3.2.1 The AGSA noted that the WLM did not procure a lie detector in the period under Investigation. Although it was alleged that an amount of R218 367 was paid for the procurement of a lie detector, the AGSA noted that this payment was made to a service provider which had developed a website for the municipality.

1.3.2.2 Furthermore, the AGSA noted that no lie detector was reflected in the WLM's asset register, and there was no evidence to indicate that a lie detector had been procured.

1.3.2.3 Therefore, the allegation that the WLM procured a lie detector which is not recorded on the assets register was unfounded.

### **1.3.3 The procurement of a service provider for township clean-up on 8 February 2014**

1.3.3.1 The appointment of a service provider for the township clean-up was concluded before WLM received consent in writing from both Mogale City Local Municipality (MCLM)) and the service provider, in contravention of section 32 (1)(d) of the Municipal SCM Regulations.

1.3.3.2 Payment of R209 999 made to the service provider should be regarded as irregular expenditure and be adequately disclosed in the financial statements of the municipality.



### **1.3.4 The procurement of a service provider for the construction of houses in Mohlakeng extension 11**

1.3.4.1 Although the GWCRA alleged that the WLM appointed a specified contractor, for a project in Mohlakeng extension 11 without following proper SCM process, no evidence could be provided to indicate that the specified service provider was appointed by the Gauteng Department of Human Settlement (GDHS) or the WLM. In this regard, the AGSA established that a different service provider was contracted to the GDHS for the project in Mohlakeng extension 11. The AGSA requested documentation relating to the construction of houses in Mohlakeng extension 11, and this information was never obtained from GDHS in West Rand region. Thus, we are unable to verify whether the procurement process was regular or not. The AGSA was only able to verify that the service provider that was allegedly irregularly appointed, was in fact not the appointed service provider.

1.3.4.2 Therefore, the allegation by the GWCRA could not be substantiated.

### **1.3.5 Payment for the executive mayor's private trip to her home in the Eastern Cape from 22 to 25 September 2011**

1.3.5.1 The AGSA noted that the executive mayor's personal trip was duly approved by the MM and that section 5.1.3.3 of the SALGA Mayoral Handbook makes provision for the executive mayor to make use of the municipal vehicle for private purposes.

1.3.5.2 The executive mayor was accompanied by the driver/bodyguard and they both stayed at the same guesthouse during the period 22 to 25 September 2011. According to documentation obtained from the WLM and the GWCRA, the accommodation cost paid to the guesthouse for the period under review related to one person. In this regard, the executive mayor indicated to the AGSA that the accommodation cost relating to her stay at the guesthouse was paid by her and not by the WLM and that the guesthouse incorrectly reflected her details instead of the driver/bodyguard's details on the invoice.

1.3.5.3 The guesthouse management could not provide the AGSA with information relating to the executive mayor's stay as they did not have the 2011 records.

1.3.5.4 The executive mayor's private trip to the Eastern Cape was approved and paid for by the WLM in line with the SALGA Mayoral Handbook.

1.3.5.5 The AGSA was not provided with evidence indicating that WLM paid for the executive mayor's accommodation during her stay at the guesthouse.

**1.3.6 The WLM has made payments to a fictitious company and the payments made are fraudulent**

1.3.6.1 The AGSA confirmed that the company mentioned is registered with the Company Intellectual and Property Commission (CIPC), and the entity is currently in business. Furthermore, the said company is registered with the Private Security Industry Regulatory Authority (PSIRA) and the entity submitted a tax clearance certificate (TCC).

1.3.6.2 On 11 June 2008, this company was appointed to render security services at WLM following an open tender process. The AGSA requested procurement documents relating to the procurement processes followed prior the appointment of this company. However, most of the procurement documents were not provided. Payments made by WLM to the company relate to security services rendered between the period of August 2008 to February 2010.

1.3.6.3 A payment of R361 076 was made to the security company subsequent to the termination of the contract. The AGSA confirmed that the payment related to disputed invoices which were not paid by the WLM. As the invoices were disputed, the final payment was made after the company had terminated its services to the municipality. However, the payment was actually a payment made in accordance with a contract and for services rendered.

1.3.6.4 The AGSA also noted that the WLM did not include an addendum to the service level agreement (SLA) for the additional security services required in terms of the deviation approved by the BAC on 4 February 2009, in contravention of paragraph 116(1)(a)(b) of the Municipal SCM Regulations.

1.3.6.5 The allegations that the company paid is a fictitious entity and payments made to the company were made in the absence of a valid TCC are unfounded.

**1.4. Recommendations**

1.4.1 The WLM and/or the MEC should implement effective measures to ensure compliance with procurement legislation and regulations in the awarding and/or management of contracts with service providers.

1.4.2 The WLM and/or the MEC should:

- a) ensure that proper oversight is exercised by the municipality over contracts;

- b) ensure that proper compliance with the applicable legislation is done by engaging relevant stakeholders in advance to avoid abuse of the deviation process;
- c) institute appropriate action against officials who contravened the procurement legislation and regulations in awarding the contract/s and also in contract management.

## **2. INTRODUCTION**

2.1 The functions of the AGSA in supporting constitutional democracy in South Africa are described in section 188 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), as well as the Public Audit Act, 2004 (Act No. 25 of 2004) (PAA). Section 5(1)(d) of the PAA specifically gives the AGSA the authority to carry out an appropriate investigation if the AGSA considers it to be in the public interest or upon the receipt of a complaint or request. In this context, the AGSA investigates allegations in order to facilitate public accountability by reporting the findings emanating from the investigation to management and those charged with governance. Ultimately, the findings and recommendations in this report are intended to enable management and those charged with governance to implement measures that will ensure effective governance.

2.2 The AGSA and the MEC: Gauteng CoGTA, held a meeting on 8 October 2014, to discuss the scope of the proposed investigation. In line with its mandate, the AGSA decided to investigate the allegations. The MEC accepted the engagement letter signed by both Gauteng: HoD CoGTA and Gauteng: HoD for Human Settlement, on 26 August 2014.

## **3 RESPONSIBILITIES OF MANAGEMENT AND THOSE CHARGED WITH GOVERNANCE**

3.1 Within the context of the public service and municipalities the primary responsibility for the prevention and detection of fraud and error rests with management of the entity and those charged with governance. Management needs to set the proper tone, create and maintain a culture of honesty and a high standard of professional ethics. Furthermore, management must establish a control environment and maintain policies and procedures to assist in achieving the objective of ensuring the orderly and efficient conduct of the entity's business.

3.2 On the other hand, those charged with governance of an entity must ensure, through the oversight of management, the integrity of an entity's accounting and

financial reporting systems and that appropriate controls are in place, including those for monitoring risk, financial control and compliance with the law.

- 3.3 The executive and legislative authority of the municipality is vested in its municipal council and executive committee established in terms of sections 18 and 42 of the Municipal Structures Act, 1998 (Act No. 117 of 1998). In terms of section 48 of the Municipal Structures Act, the municipal council must elect a member of the executive committee as the mayor. In terms of section 52 of the MFMA, the mayor of the municipality must provide general political guidance over the fiscal and financial affairs of the municipality and take reasonable steps to ensure that the municipality performs its constitutional and statutory functions within the limits of the municipality's approved budget.
- 3.4 The MM in his capacity as the accounting officer is responsible for managing the financial administration, including the management of the revenue of the municipality as per sections 62(1) and 64(1) of the MFMA.
- 3.5 It is intended that the findings and recommendations in this report will enable the management of the municipality to implement the necessary measures and steps to ensure effective accounting and internal control systems.

#### **4 SCOPE OF THE ASSIGNMENT**

- 4.1 The scope of the investigation as defined in the letter of engagement with the Head of Departments: Gauteng CoGTA and Human Settlements , was as follows:
- a) The procurement process followed prior to the appointment of a Waste Management service provider to provide Waste Management services.
  - b) The procurement of a lie detector and asset verification.
  - c) The procurement of service provider for the township "clean-upon" on 8 February 2014.
  - d) The procurement of a service provider for the construction of houses in Mohlakeng extension 11.
  - e) Payments for the executive mayor's private trip to her home in the Eastern Cape from 22 to 25 September 2011 (The payments for travel and accommodation made for this trip were reviewed to assess whether they are in line with the prevailing prescripts).
  - f) Payments made to a service provider for providing security services at the municipality were allegedly made to a fictitious entity. (The AGSA reviewed the

payments made to assess whether they are regular and made in the normal course of business).

4.2 The investigation covered the financial period 2008-09 to 2013-14, unless indicated otherwise.

## **5 PURPOSE, OBJECTIVES AND APPROACH OF THE INVESTIGATION**

5.1 The purpose of the investigation is to verify and pronounce the veracity of the allegations made. The report with findings and recommendations is aimed at enabling management to implement measures to strengthen governance.

5.2 The investigation was performed in terms of the Auditor-General's Policy, Standards and Guidelines: Investigations.

5.3 The AGSA conducted interviews with officials from the WLM and Mogale City Local Municipality to obtain clarity on the allegations. The investigation commenced with the collation of relevant documentation from the WLM. The documentation received was scrutinised and compared to the prevailing prescripts and policies mentioned herein.

5.4 The AGSA also conducted interviews and consultations with the CBCs and the GWCRA to gain clarity on the allegations. The AGSA also met with an official employed by the development contractor to gain more understanding of what transpired.

5.5 Once the scrutiny and analysis of documentation was done, the management report was finalised. Conclusions are therefore based on documentation and information provided by the WLM and the GWCRA. The provision of any additional documentation or information may influence the findings and conclusions made herein.

## **6 REGULATORY FRAMEWORK**

6.1 The documentation collated was compared to the prevailing prescripts such as:

- Municipal Finance Management Act, 2003 (Act No. 56 of 2003)
- Westonaria Local Municipality Supply Chain Management Policy dated 19 July 2013
- Municipal Structures Act, 1998 (Act No. 117 of 1998)

- Municipal SCM Regulations
- Municipal Systems Act (Act No.32 of 2000)
- The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)

6.2 The above list of the relevant prescripts is, however, by no means exhaustive.

## **7 LIMITATIONS OF THE REPORT**

7.1 Although the work performed incorporates our understanding of the relevant prescripts and the law as it stands, we do not express an opinion on the legal effect of the facts or the guilt or innocence of any person(s) or party, but merely state the facts as they have come to our attention. In the case of disciplinary hearings or civil and criminal litigation, this report may only be used as a reference document.

7.2 The report is based on the facts established from documentation and information provided and/or obtained during the course of the investigation. Should further documentation or information be obtained, this may influence the findings and conclusions made.

7.3 The AGSA has no mandate to investigate the appointment of the CBCs as they were not appointed by the WLM or any government entity. In this regard, the CBCs were appointed by the development contractor.

7.4 The AGSA requested procurement documents relating to the procurement processes followed prior to the appointment of a company to provide security services at the WLM and most of the documents were not provided, and as a result the AGSA was unable to determine if the appointment of the company was in line with prevailing prescripts or not.

7.5 The AGSA could not fully investigate allegations relating to the construction of Mohlakeng extension 11 as they were vague. The name of the service provider allegedly involved was not the service provider appointed for the construction of houses at Mohlakeng extension 11. There was no information provided as to what was irregular on the procurement process followed prior to the appointment of the service provider being awarded the contract.

7.6 We cannot confirm the validity or authenticity of the relevant records and information subjected to analysis. This information was accepted at face value unless stated otherwise.

## 8 DETAILED FINDINGS AND RECOMMENDATIONS

### 8.1 Allegation: The procurement process followed prior to the appointment of the Waste Management services development contractor

8.1.1 Investigations were conducted into the allegation that proper procurement processes were not followed prior to the procurement of the Waste management services development contractor (the development contractor).

8.1.2 Furthermore, the GW CRA alleged that one of the CBCs was irregularly appointed as a CBC because she is related to the executive mayor of WLM.

#### 8.1.3 Background

8.1.3.1 On 7 February 2012 the MM of WLM, wrote a letter to the Ekurhuleni Metropolitan Municipality (EMM) City Manager, and requested permission to use the services of EMM Waste Management service development contractor. The request was in line with section 32 of the municipal supply chain management policy, which allows the procurement under a contract by another organ of state.

8.1.3.2 In a letter dated 8 February 2011 (instead of 8 February 2012), making reference to WLM letter dated 7 February 2012, the chief financial officer at EMM, granted WLM permission to use the services of a Joint Venture service provider, providing waste management services at EMM (the Waste Management services development contractor was established through a Joint Venture agreement). Attached to the letter was the EMM Bid adjudication committee (BAC) minutes held on 17 May 2010 to appoint the Joint Venture service provider.

8.1.3.3 On 7 November 2012 the WLM council, resolved that the utilisation of the development contractor for development based contract under the Joint Venture service provider, be approved. This approval was recorded as council resolution number C/RES 183/12(11).

8.1.3.4 The AGSA noted that an internal memorandum dated 19 November 2012, providing an assessment in terms of section 78 of the Municipal Systems Act, approved by the acting MM, to outsource refuse removal services as an appropriate mechanism was drafted.

8.1.3.5 On 31 January 2013, an extraordinary council meeting was held in terms of which an assessment of the existing internal refuse removal mechanism was presented.

8.1.3.6 The minutes of the extraordinary council meeting held on 31 January 2013 reflect the following council resolutions:

- Approval be given by the council for the sub-contracting of refuse removal services as an alternative mechanism.
  - The provision of refuse removal services to Bekkersdal, Simunye, Hillshaven, Lebanon, Kloof Mine, Protea Park, Leeudoorn and Glenharvie be provided through an external mechanism by way of a service delivery agreement with an external service provider, selected in terms of the provisions of part 3 of chapter 8 of the Municipal Systems Act.
  - That refuse removal services in the remaining areas of the municipality be provided by the municipality by way of internal mechanism.
  - That council resolution: C/RES 183/12(11) Procurement of services under contract secured by another organ of state: ED (WMS) 12/2009: rendering of a comprehensive refuse removal services in specialised areas: Service Provider 1, be rescinded.
- 8.1.3.7 The WLM BAC minutes, dated 8 May 2013, requested approval for the appointment of development Contractor for the removal of refuse from EMM under section 32 of the Municipal SCM Regulations. The BAC recommended that a service provider be appointed, for an amount of R18 608 190, 48, to service 22 038 service points for three years.
- 8.1.3.8 In a letter dated 3 June 2013, the Joint Venture/development contractor was informed by the MM of their appointment to WLM in terms of section 32 of the supply chain management regulations.
- 8.1.3.9 On 13 June 2013, the board of directors of the Joint Venture/development contractor resolved that one of its directors, be authorised to sign on behalf of the company.
- 8.1.3.10 The letter dated 13 June 2013 from the Joint Venture/development contractor, accepted the appointment for the waste management contractor for the development of SMMEs. The letter was signed by the director of the Joint Venture/development contractor.
- 8.1.3.11 The SLA between WLM and the Joint Venture/development contractor was backdated to 26 September 2013, but it was provided to the MM for his signature on 22 August 2014. The MM confirmed that he signed the said SLA in August 2014.
- 8.1.3.12 The development contractor agreement with EMM indicated the following:
- In terms of the covering letter of the development contractor relating to the tender documents to EMM dated 6 February 2009, the tender was submitted by the development contractor on behalf of the Joint Venture/development contractor.



- The CBC shall be an independent subcontractor, shall be contracted for at least 7 500 service points per week, shall do litter picking, bulk container services and the removal of illegal dumping and shall provide suitable equipment to render the above services. The CBC should employ his/her labour force from the same work area.
- The development contractor shall be a legal entity that will, amongst others, be required to provide financial, human resources, legal, training and skill development support services to the CBC.

8.1.3.13 In terms of clause 2.2 on the general responsibilities of the development contractor, the development contractor shall be responsible for ensuring proper maintenance of the vehicle and equipment to be used, and must amongst others, also:

- provide financial security for the CBC to obtain finance from a registered financial institution in order to purchase suitable equipment
- establish suitable premises
- conduct staff recruitment
- co-ordinate and monitor contractor development about business development.

8.1.3.14 The service level agreement between WLM and the Joint Venture/development contractor

The SLA between WLM and the Joint Venture/development contractor provides, amongst others, the following:

- Appointment as a development contractor to appoint the CBCs to render comprehensive refuse removal services in specified areas within the boundaries of WLM, from 1 October 2013 to 30 September 2016.
- The municipality has elected to appoint the service provider, which has been appointed in 2010 by the EMM in terms of their tender no A-ED (WMS) 12/2009: The appointment of a development contractor to appoint CBCs to render comprehensive refuse removal services in specified areas of EMM on an as and when required basis for the period from 1 July 2009 until 30 June 2014, in terms of regulations 32 of the municipal supply chain regulations, for this purpose.
- In terms of clause 1.2.15 of the SLA, "Tender" means a tender number A-ED (WMS) 12/2009, of the EMM and it is attached to the SLA as annexure E.
- In terms of clause 1.2.4 of the SLA, CBCs or community contractors means independent sub-contractors, sourced by the service provider from within the boundaries of the municipality and contracted by the service provider to provide the service.

8.1.3.15 The manager for waste management, parks and cemeteries informed the AGSA that the development contractor was required to appoint and develop the CBCs by empowering them and furnishing them with the skills necessary to become entrepreneurs for a period of three years. After the development, the CBCs would run their businesses on their own.

8.1.3.16 The manager for waste management, parks and cemeteries also informed the AGSA that the development contractor was required to source funding for procurement of trucks on behalf of the CBCs. They were required to manage the financial affairs of the CBCs until their business loans for the trucks were paid in full. The development contractor was also required to make available the trucks to the CBCs at the end of the development process. Furthermore, he indicated that the CBCs can at the end of the development process decide to re-enter into another contract with the municipality or look for business opportunities elsewhere.

8.1.3.17 The appointment of CBCs for WLM

- In terms of the SLA between WLM and the Joint Venture/development contractor it was the responsibility of the development contractor to appoint the CBCs.
- The undated copy of a newspaper advertisement advertising two CBC positions provides that, “for the successful applicants to be appointed and developed within the waste industry for the period of three years to manage his/her own waste business. The development contractor is committed to the upliftment and development of male and female contractors within the waste industry”. The closing date was 19 July 2013.
- The requirements for the application according to the advertisement were, amongst others, the following:
  - i. A valid code C1+(old code 11) driver’s licence and PDP
  - ii. Previous driving experience in any industry will be added as an advantage
- Applications were all addressed to the development contractor.

8.1.3.18 The CBCs informed the AGSA that:

- They have three-year employment contract with the development contractor and after this term the development contractor will evaluate the trucks that they are utilising and will choose to buy the trucks from the development contractor or take the money.
- That they are renting the trucks from the development contractor and do not clearly understand how the relationship with the development contractor works.
- They also do not have an office or a place to work from. The trucks are parked at the municipality’s premises with other municipal trucks.

- The CBC who is alleged to be related to the executive mayor informed the AGSA that she is not related to the executive mayor as alleged. She further indicated that she is confused with the executive mayor's relative employed by WLM, as their names are the same.

8.1.3.19 The executive mayor informed the AGSA that she is not related to the CBC alleged to be related to, and that she believes the confusion is that the CBC has the same name as her relative, who is also working for the municipality.

#### 8.1.4 Findings

8.1.4.1 In terms of section 32(1) of the municipal SCM regulations of 2011, procurement of goods and services under contracts secured by other organs of state, states “ a *Supply Chain Management policy may allow the accounting officer to procure goods or services for the municipality or municipal entity under a contract secured by another organ of state, but only if –*

- (a) the contract has been secured by that organ of state by means of a competitive bidding process applicable to that organ of state;*
- (b) the municipality or entity has no reason to believe that such contract was not validly procured;*
- (c) there are demonstrable discounts or benefits for the municipality or entity to do so; and*
- (d) that other organ of state and the provider have consented to such procurement in writing.”*

8.1.4.2 The municipality was also required to comply with sections 76 and 78 of the Municipal Systems Act which provides for the assessment of the existing internal refuse removal mechanism before it can be outsourced.

8.1.4.3 The allegation that proper procurement processes were not followed prior to the appointment of the services of the development contractor is unsubstantiated as the WLM complied with section 32(1) of the municipal SCM regulations and sections 76 and 78 of the Municipal Systems Act.

8.1.4.4 In terms of the SLA it is the responsibility of the development Contractor to appoint the CBCs. The SLA, together with the agreement between development contractor and EMM does not provide a procedure to be followed by the development contractor when appointing the CBCs.

8.1.4.5 However in terms of the development contractor and EMM agreement and in particular, clause 2.2 under the general responsibilities of development contractor, the development contractor shall be responsible for ensuring proper maintenance of the vehicle and equipment to be used, and must, amongst others:

- provide financial security for the CBC to obtain finance from a registered financial institution in order to purchase suitable equipment
- establish suitable premises.

8.1.4.6 The WLM has not complied with the provisions of clause 2.2 of the development contractor and the EMM agreement, in that both the CBCs have never obtained any financial security to purchase suitable equipment. The CBCs leased the trucks from the development contractor, however, they are in the dark about the details of the lease. They also do not have an office or a place to work from. The trucks are parked at the municipality's premises with other municipal trucks.

8.1.4.7 The AGSA does not have the mandate to report on the appointment of the CBCs as they were not appointed by the municipality but by the development contractor in line with the SLA.

8.1.4.8 The AGSA performed CIPC searches on the CBC alleged to be related to the executive mayor and could not identify any relationship. No prima facie evidence was obtained or presented, to indicate that the two are related.

#### 8.1.5 **Recommendation**

The WLM and /or the MEC must, in consultation with their legal adviser, consider:

8.1.5.1 enforcing the provisions of clause 2.2 under the general responsibilities of development contractor as contained in the agreement between EMM and development contractor. The WLM and/or the MEC must consider using their internal audit unit to audit the relationship between development contractor and CBCs to establish whether development contractor adheres to the contractual requirement of empowering the CBCs.

8.1.5.2 monitoring the relationship between development contractor and the CBCs to ensure that the CBCs are empowered and/or capacitated to enable them to render waste management services to the municipality or any other place after the three-year period.

8.1.5.3 the municipality can also consider capacitating their supply chain management office with contract management personnel and/or skills.

#### 8.2 **Allegation: The procurement of a lie detector and asset verification**

8.2.1.1 The GWCRA alleged that the WLM procured a lie detector and that the lie detector could not be accounted for.

8.2.2 In support of this allegation, the GWCRA provided the AGSA with copies of WLM ABSA bank statement for the period 7 to 19 August 2013 reflecting, amongst others, the following entry which was identified to the AGSA as the lie detector purchase.

Date	Transaction description	Debit amount (EFT payment)
07-Aug-13	Debit transfer: Service Provider X	R218 367

### 8.2.3 Background

8.2.3.1 In order to follow up on the allegation the following was obtained and reviewed from the WLM:

8.2.3.2 An appointment letter dated 3 December 2012, signed by the MM, and addressed to service provider X confirming their appointment for the development and hosting of the website and intranet of the WLM for a period not exceeding two years. The contract was for an amount not exceeding R218 367 (vat included).

8.2.3.3 Service provider X tax invoice dated 25 April 2013 for an amount of R218 367 for the website development.

8.2.3.4 The WLM stock requisition number: 51173 dated 30 April 2013 for an amount of R218 367 for service provider X. The stock requisition description is for the *website and internet construction (T17/2012)*.

8.2.3.5 A copy of the remittance advice dated 7 August 2013 reflecting an amount of R218 367 that was paid to the service provider X.

8.2.3.6 An undated management representation letter from the CFO addressed to the AGSA confirming that the WLM had not procured a lie detector in the current or previous financial years.

8.2.3.7 The GWCRA referred the AGSA to a WLM union representative to obtain clarity and information regarding the allegation. The AGSA conducted an interview with the said WLM union representative on 4 November 2014. The union representative confirmed that the WLM did not procure a lie detector, however, the concern was that the WLM was unnecessarily procuring the services of an investigation company and subjecting union members to lie detector tests.

8.2.3.8 The WLM provided the AGSA with a copy of an investigation report conducted by an investigation company dated, 19 November 2013. According to the investigation report, three suspended employees were subjected to polygraph tests (lie detector).

8.2.3.9 The WLM also provided the AGSA with a copy of the municipal asset register for the 2013-14 and 2012-13 financial year. The AGSA noted that there was no entry in the asset register, relating to the lie detector.

#### 8.2.4 **Finding**

8.2.4.1 Based on the work performed, the payment made to the service provider X relates to the WLM website development and not for the procurement of a lie detector as alleged by the GWCRA.

8.2.4.2 No evidence was provided to indicate that any payment relating to the procurement of a lie detector was made by WLM. Thus, the allegation that the WLM procured a lie detector which is not recorded on the assets register is unsubstantiated.

#### 8.3 **Allegation: The procurement of a service provider for the township clean-up on 8 February 2014**

8.3.1.1 The GWCRA alleged that proper procurement processes were not followed relating to the appointment of a service provider used for the “township clean-up” on 8 February 2014.

#### 8.3.2 **Background**

8.3.2.1 The South Gauteng High Court (SGHC) issued a court order (case number 2014/01946) on 23 January 2014, relating to the matter between the WLM (Applicant) and the GWCRA (who were the respondent). The other respondents in the matter included unlawful occupiers of the land belonging to the Applicant.

8.3.2.2 The SGHC deemed the application to be urgent in terms of Rule 6(12) of the Rules of the Honourable Court. The SGHC highlighted that the respondents be finally interdicted from:

- illegal entering, occupying, and putting pegs or other means of dividing the land for purposes of arrogating sites or stands for themselves
- allocating sites or stands on the land belonging to the applicant
- illegally entering, occupying and/or taking possession of any house situated on the township known as Westonaria Borwa, more particularly any house situated on any erven and streets as indicated on General plan SG number 1579/2011.

8.3.2.3 It was further ordered by the SGHC that all and any persons, their family members, dependants, their acquaintances and all other persons illegally occupying the land and properties be evicted and for the South African Police Service (SAPS), to assist the sheriff of the court with the execution of the court order.

8.3.2.4 Subsequent to the court order issued on 23 January 2014, another order dated 30 January 2014 was issued by the SGHC in favour of WLM and a second applicant

in the matter. The court order indicated that pending the finalisation of this matter, the respondents were interdicted from illegal occupation of WLM land.

- 8.3.2.5 In view of the above court order, a memorandum for deviation was compiled requesting the approval of the MM for a deviation from normal SCM processes. In this regard, to appoint a service provider to clean up the aftermath of the service delivery protests in Bekkersdal. The memorandum further recommended the appointment of a service provider appointed by the Mogale City Local Municipality (MCLM), as proper procurement process was followed relating to the appointment of the service provider.
- 8.3.2.6 The memorandum for deviation was prepared by the senior manager for strategic services at WLM and recommended for approval by the CFO. The AGSA noted that the memorandum was approved by the MM, however, the memorandum did not specify the exact compilation and approval dates.
- 8.3.2.7 The memorandum stated, among other things, the following reasons/motivation for the deviation:
- In February 2014, the WLM had service delivery protest from the community of Bekkersdal which lead to properties being vandalised.
  - WLM had the responsibility of cleaning up the township as a result of the protest.
  - The area was not safe for municipal employees to enter and clean up the area.
  - An external service provider had to be appointed to clean up the aftermath of the service delivery protests and the time did not allow for proper SCM process to be followed.
  - The MCLM had a contract in place for similar services.
- 8.3.2.8 The senior manager strategic services, confirmed to the AGSA that prior to the Independent Electoral Commission (IEC) voter registration for 2014 elections, Bekkersdal had been experiencing violent protests and that two voting stations were destroyed. He also confirmed that it is the responsibility of the municipality to ensure that the residents access their constitutional rights and the WLM deemed it appropriate that they had to clear the roads and allow people to go and register.
- 8.3.2.9 The senior manager strategic services further confirmed that on 6 February 2014, the Municipal Managers of the MCLM and WLM agreed telephonically to initiate the section 32 procurement process and to make use of a service provider appointed by MCLM.
- 8.3.2.10 During February 2014, the MCLM SCM practitioner was seconded to WLM to assist with the SCM matters in the absence of WLM SCM manager, who was on leave. The MCLM SCM practitioner proposed to the senior manager strategic services that section 32 of the SCM regulation should be followed and a deviation from normal SCM processes be prepared.
- 8.3.2.11 The MM in a letter dated 7 February 2014 to the MM for MCLM, requested consent for the WLM to procure the services of the service provider appointed by MCLM for

the prevention of land invasions and vandalism of infrastructure, as and when required, for a period of three years. Based on documentation obtained from the WLM, it appears that the said letter had been faxed to the MCLM on 13 February 2014.

8.3.2.12 The MM for the WLM formally notified the service provider in a letter dated 7 February 2014 with regard to their appointment. The appointment letter specified that their appointment was concluded in terms of section 32 of the WLM SCM policy.

8.3.2.13 The service provider's appointment related to the provision of services for the removal of illegal structures, clearing and enforcement of the court interdict. The letter of appointment was addressed to the Deputy CEO of the service provider.

8.3.2.14 The service provider subsequently confirmed their acceptance of their appointment in a letter dated 12 February 2014 that was addressed to a WLM official.

8.3.2.15 The AGSA noted that the service provider had submitted a price quotation (ref no: RASRE/5038/02/2014) to the WLM for an amount of R192 774 on 12 February 2014.

8.3.2.16 According to a letter dated 21 February 2014 from the MM of the MCLM, the necessary documentation required in terms of section 32 was provided to the WLM, and the MM for the MCLM consented for the WLM to appoint the service provider under the contract secured by the MCLM (contract no: SS (TS) 22/2013).

8.3.2.17 The AGSA noted that WLM obtained the necessary procurement documentation from the MCLM after the fact. The AGSA also noted that the service provider was procured through a competitive bidding process by MCLM and there was no reason noted to believe that the contract was not validly procured.

8.3.2.18 The WLM MM informed the AGSA that the WLM prepared the procurement documentation as required by section 32 of the municipal SCM regulations, after services had been rendered and no payment was made to the service provider for their services. The WLM MM further indicated that they should have followed the normal deviation process as this was an urgent matter. Instead, the WLM applied section 32 of the municipal SCM regulation which in turn was not properly complied with.

### 8.3.3 **Finding**

8.3.3.1 Section 32(1) of the municipal SCM regulations of 2011, procurement of goods and services under contracts secured by other organs of state, states “ *a Supply Chain Management policy may allow the accounting officer to procure goods or services for the municipality or municipal entity under a contract secured by another organ of state, but only if -*

*(a) the contract has been secured by that organ of state by means of a competitive bidding process applicable to that organ of state;*



- (b) the municipality or entity has no reason to believe that such contract was not validly procured;*
- (c) there are demonstrable discounts or benefits for the municipality or entity to do so; and*
- (d) that other organ of state and the provider have consented to such procurement in writing.”*

8.3.3.2 The AGSA established that the appointment of the service provider was done in contravention of section 32(1)(d) of the Municipal SCM regulations as the consent in writing was not provided by MCLM. The MCLM only gave written consent to the WLM to appoint the service provider on 21 February 2014 and the services were rendered on 8 February 2014.

8.3.3.3 As a result of the deployment of the service provider on the said date, the services were rendered without the WLM having concluded the necessary procurement processes as required by section 32 of the municipal SCM regulations.

8.3.3.4 The scrutiny of the procurement documentation, indicates that the appointment of the service provider was concluded before the WLM had compiled the necessary submissions/motivations for the deviation from the SCM processes, the following anomalies were noted:

- The AGSA noted that the service provider submitted a quotation on 12 February 2014, for an amount of R192 774 whereas the undated/unsigned memorandum requesting the approval of the MM to deviate from the SCM process had already stipulated that the cost of appointing the service provider in terms of section 32 should not exceed R192 774.
- The WLM formally notified the service provider with regard to their appointment on 7 February 2014, whereas their quotation of R192 774 was submitted to the WLM on 12 February 2014.
- The letter requesting the consent for the WLM to procure the services of the service provider appointed by the MCLM was faxed on 13 February 2014, based on the fax sent report, whereas the service provider was formally notified of their appointment on 7 February 2014.
- The senior manager strategic services stated that the service provider had to withdraw from rendering their services on 8 February 2014 due to violent confrontation by the community of Bekkersdal.

8.3.3.5 Thus the AGSA noted that the WLM has not received any invoice from the service provider. Furthermore, the AGSA inspected the WLM payments database and noted that no payments were made by the WLM to the service provider.

8.3.3.6 During management comments on the draft management report, the following information was subsequently provided:

- Service provider tax invoice dated 18 February 2014 for the amount of R209 999, and the said invoice was certified for payment by the MM on 23 January 2015.
- The payment relates to clean-up of Bekkersdal internal roads by removing rocks and debris.
- The remittance advice dated 16 February 2015 to the amount of R209 999.
- The MM confirmed that the service provider for township clean-up was paid.

8.3.3.7 The appointment of the service provider was concluded in contravention of section 32 (1 (d) of the Municipal SCM Regulations.

#### 8.3.4 **Recommendations**

The AGSA recommends that:

8.3.4.1 Payment of R209 999 made to the service provider should be regarded as irregular expenditure and adequately be disclosed in the financial statements of the municipality.

8.3.4.2 The municipality should put in place proper internal control measures to avoid recurrence and to ensure strict compliance with the requirements of 32(1) of the municipal SCM regulations.

8.3.4.3 The WLM and /or the MEC must, in consultation with their legal adviser, consider instituting corrective measure against the MM for contravention of section 32 (1 (d) of the Municipal SCM Regulations.

#### 8.4 **Allegation: The procurement of a service provider for the construction of houses in Mohlakeng extension 11**

8.4.1 It was alleged that the procurement process followed prior to the appointment of the service provider for the construction of houses in Mohlakeng extension 11 was irregular.

8.4.2 In support of the allegation, the GWCRA confirmed to the AGSA that the construction contract of the Mohlakeng extension 11 houses was awarded to a specified contractor. Furthermore, the GWCRA informed the AGSA that the owner of the specified contractor was close to the executive mayor.

#### 8.4.3 **Background**

8.4.3.1 The GWCRA did not provide the AGSA with any supporting documentation to substantiate this allegation. Furthermore, the GWCRA could not provide proper detailed information regarding the alleged irregularities during the SCM process.

8.4.3.2 In the absence of the above information, the AGSA performed the following procedures:

- On 18 November 2014 the AGSA held a meeting with Gauteng Department of Human Settlement (GDHS) as the GDHS was responsible for the appointment of service providers for the construction of houses in Mohlakeng extension 11.
- The GDHS Regional Head West Rand, confirmed the following to the AGSA:
  - i. The service provider that was appointed by the GDHS for Mohlakeng extension 11 housing projects was a service provider Z, which was not the service provider named by the GWCRA.
  - ii. The GDHS did not procure the services of the specified contractor as alleged by the GWCRA.

8.4.3.3 The CEO of the service provider Z, which was appointed for the construction of houses at Mohlakeng extension 11, confirmed on 5 December 2014 to the AGSA that he was not aware of the specified contractor. He further indicated that the AGSA should confirm this information with the Community Liaising Officer (CLO) between Mohlakeng and service provider.

8.4.3.4 The CLO was also present during the meeting held on 18 November 2014 and confirmed the following to the AGSA:

- Service provider Z appointed approximately six to eight subcontractors for the construction of houses in Mohlakeng extension 11, however, none of the subcontractors was the specified contractor as alleged by the GWCRA.

8.4.3.5 The executive mayor informed the AGSA that she does not know the service providers who were involved at the Mohlakeng extension 11 as she was not involved with the procurement. She also indicated that she knows a person of the surname provided by the GWCRA who is involved in construction projects but does not know if the person was involved with the Mohlakeng extension 11 project.

8.4.3.6 CIPC searches were conducted by the AGSA and confirmed that there was no registered entity by the name of the specified contractor as provided by the GWCRA. As stated above, the GDHS did not procure the services of the specified contractor, nor have they made any payments to such an entity. Furthermore, a review of the payment information for the GDHS for the period under review, indicated that the GDHS did not pay the specified service provider. The AGSA verified that no payment was made to the specified contractor for the period under review. No evidence could be obtained to indicate that the GDHS made any payments to a service provider of a similar name provided by the GWCRA.

8.4.3.7 The AGSA had requested procurement information on the appointment of service provider Z from GDHS, but it was never provided.

#### 8.4.4 Finding

8.4.4.1 Based on the work performed there is no evidence to suggest that the specified contractor as alleged by GWCRA was involved with the Mohlakeng extension 11 project. The service provider contracted to the GDHS was service provider Z.

8.4.4.2 The allegation by the GWCRA could not be substantiated.

#### 8.5 Allegation: Payment of the executive mayor's private trip to her home in the Eastern Cape on 22 to 25 September 2011

8.5.1 The GWCRA alleged that the WLM paid the accommodation costs for the executive mayor while she was on a private visit to her home in the Eastern Cape from 22 to 25 September 2011.

8.5.2 The GWCRA further alleged that the executive mayor utilised a municipal vehicle and paid the accommodation cost and overtime for the driver/bodyguard that accompanied her.

#### 8.5.3 Background

8.5.3.1 The manager: Office of the executive mayor drafted an internal memorandum requesting the approval of acting MM for the executive mayor's trip and also to be accompanied by a bodyguard/driver.

8.5.3.2 The said internal memorandum was approved by the acting MM on 21 September 2011.

8.5.3.3 The following invoice was obtained from the WLM relating to the accommodation cost for the executive mayor's trip:

Beneficiary	Invoice date	Date in	Date out	No of guests/ (Names)	Unit price	Total amount
Guest House	20-09-2011	22-09-2011	25-09-2011	01(Executive Mayor)	R585 (DB&B)	R1,755

8.5.3.4 According to the cheque payment advice, an amount of R1 755 was paid to the guesthouse on 22 September 2011.

8.5.3.5 The AGSA confirmed that the driver/bodyguard accompanied the executive mayor.

8.5.3.6 The SALGA Mayoral Handbook provided the following:

- Section 5.1.1.1 provides that municipal vehicles and drivers are allocated to the mayor and made available for official duties. Where the car is used only for

official purposes and does not stay overnight at the house of the mayor, no taxable value is attributed to this benefit.

- Section 5.1.3.3 of the SALGA Mayoral Handbook, on the use of official cars, provides that “within reason, official cars that form the basis of a taxable benefit may also be used for private purpose”.

8.5.3.7 The executive mayor informed the AGSA that:

- she requested authority to be provided a driver to the Eastern Cape as she was attending a family matter in Bizana. She is originally from Ntabankulu but she visited the family in Bizana.
- she paid accommodation for herself because she was on a personal trip, and the municipality does not pay accommodation while she is on a private visit. The driver’s accommodation was paid by the municipality.
- she is aware that there is an invoice that was sent to the municipality which misconstrued that payment was made on her behalf. The municipality paid for the driver only. She stayed at the same venue as the driver, but paid for herself.
- the account was in her name and the mistake made by the guesthouse was to send her invoice to the municipality.
- the only payment made by the municipality was for the driver. If the payment made by municipality was in her name, she would not know how that happened.

8.5.3.8 The bodyguard/driver confirmed that he travelled with the executive mayor to Bizana during September 2011, when she was visiting her family. He also indicated that he stayed at the same guesthouse in Bizana as the executive mayor but he did not know how much the municipality paid for him.

8.5.3.9 The MM informed the AGSA that the municipality is using the SALGA Mayoral Handbook as a guide when dealing with the mayor’s travelling and accommodation. That the mayoral handbook allows the mayor to use official vehicle on private trips and the allocation of a driver was done at his discretion.

#### 8.5.4 **Finding**

8.5.4.1 Section 5.1.1.1 of the SALGA Mayoral Handbook states that, *“municipal vehicle and drivers are allocated to Mayor and made available for official duties. Where the car is used only for official purposes and does not stay overnight at the house of the Mayor, no taxable value is attributed to this benefit.”*

8.5.4.2 Section 5.1.3.3 (use of official cars) of the SALGA Mayoral handbook states that *“within reason, official cars that form the basis of a taxable benefit may also be used for private purpose”.*

8.5.4.3 The AGSA notes that the executive mayor’s trip was duly approved by the MM and that section 5.1.3.3 of the SALGA Mayoral Handbook makes provision for the mayor

to make use of the municipal vehicle for private purposes. The SALGA Mayoral Handbook does not specifically mention the permissibility of the use of a driver by the executive mayor for private purposes, however, such approval was obtained from the accounting officer.

8.5.4.4 The executive mayor confirmed to the AGSA that the accommodation cost relating to her stay at the guesthouse was paid by herself and not by the WLM. The executive mayor further confirmed that she was aware that the invoice from guesthouse incorrectly reflected her details instead of those of the bodyguard.

8.5.4.5 The AGSA notes that the executive mayor's trip and use of the municipal vehicle was in compliance with SALGA Mayoral Handbook and pre-approval was obtained by the executive mayor.

8.5.4.6 The owner of guesthouse could not provide the AGSA with accommodation information. She indicated that she lost the information relating to the executive mayor's accommodation.

8.5.4.7 The allegation is thus unfounded.

## 8.6 **Allegation: The Westonaria Local Municipality made payments to a fictitious security company and payments made to the security company are fraudulent**

8.6.1 The GWRCA alleged that payments made to the security company are irregular.

8.6.2 The GWRCA further alleged that the security company is a fictitious entity and payments were made to the service provider in the absence of a valid TCC.

8.6.3 In support of the allegation, the GWRCA provided the AGSA with copies of the payment packs (including invoices) for the amount of R220 232 and R361 076 which were paid to the security company subsequent to the termination of the agreement or contract.

### 8.6.4 **Background**

8.6.4.1 Based on the limited SCM procurement documentation provided to the AGSA, it is clear that a bidding process was followed in the appointment of a company for security services and panic button/armed response. The company rendered security services from June 2008 to February 2010 at the WLM.

8.6.4.2 The AGSA noted that a meeting between the WLM and security company officials was held on 15 September 2008 during which the manager: Electrical identified various shortcomings with regard to the services rendered by the company at the electrical workshop.

- 8.6.4.3 In the said meeting, the company undertook to submit a needs analysis that would address the WLM security risks. It was further indicated by the company that based on the outcome of the needs analysis; there will be financial implications for the WLM. The company undertook to submit the needs analysis by 19 September 2008.
- 8.6.4.4 The company subsequently informed the WLM in a letter dated 24 November 2008, that the monthly cost for October 2008 had increased as the company had increased the number of security guards at the WLM offices. The company further indicated that the increase in the number of security guards was as a result of the needs analysis that was submitted to the WLM.
- 8.6.4.5 According to the WLM letter dated 11 December 2008 to the company concerning the outstanding security matters, it was indicated, amongst others, that additional security guards were appointed by the company at stations without the written consent of the WLM and submission of their needs analysis.
- 8.6.4.6 During the AGSA interviews with the Manager Administrations and the OHS safety officer, they both stated that:
- at a meeting held on 15 September 2008, the company indicated that there were shortcomings of security services and that a needs analysis would be submitted to highlight shortcomings on WLM's side.
  - neither of them were involved in the meetings where the needs analysis were discussed.
  - the company did not notify the WLM to inform them that guards would be increased and this was not communicated beforehand.
  - a dispute arose between the WLM and the company over increased invoice amounts.
  - the number of guards were increased with an additional 17 more guards which was approved by the BAC.
  - Subsequent to the letter dated 11 December 2008 issued to the company, the former MM for WLM convened a meeting to discuss excess payments claimed by the company amounting to R94 734 per month for the 17 additional guards and also present at the said meeting was the Manager Administration.
- 8.6.4.7 In the internal memorandum dated 19 December 2008, signed by the Manager Administration, she indicated that the former MM instructed that payments be made for the excess amounts claimed by the company from October 2008 for the additional security services rendered. Furthermore, a report for deviation of the tender should be submitted to the BAC in January 2009.
- 8.6.4.8 In the BAC meeting on 4 February 2009, it was highlighted that the needs analysis submitted during October 2008, had not been discussed nor finalised as a result of the WLM's budget constraints. A proposal was made by members of the BAC, to condone the deviation for the inclusion of 17 additional security guards at an excess

of R94 734 per month. The BAC approved the deviation and also discussed that an addendum to the SLA for 17 additional security guards be added.

8.6.4.9 The BAC also indicated that the operational budget be revised and savings on vote number 1044/10116 and 1044/12304 be transferred to vote number 1014/11901 to finance the additional security expenditure. The AGSA established that the relevant votes related to the following:

- 1044/10116 related to corporate services – labour relations
- 1044/12304 related to corporate services – water purchases.

8.6.4.10 During 10 March 2009, the HoD for Corporate Services, wrote a memo to the manager for legal, property and town planning section, indicating that the tender document MS0001/08 awarded to security company be used as SLA between WLM and the security company . It also indicated that an addendum be provided, pertaining to the additional security guards and that further attention was required to finalise the SLA.

8.6.4.11 On 23 March 2009, the company's procurement file was handed over to the HoD for community services and the following matters, amongst others, were raised:

- the tender document for the company was used as an SLA.
- an addendum to the SLA was still outstanding.

8.6.4.12 On 22 December 2009, the company wrote a letter addressed to HoD for community services, indicating that due to financial constraints, the company was unable to continue providing security services and therefore wished to terminate the agreement with immediate effect.

8.6.4.13 On 6 January 2010, the acting HoD for community services, wrote a letter addressed to the company, indicating that the WLM acknowledged receipt of the letter of termination and that the company should grant the WLM time to arrange an alternative system.

8.6.4.14 Finally, on 8 February 2010, the WLM accepted the termination of agreement effective from 22 February 2010. The letter was signed by then acting MM.

8.6.4.15 During May 2011, the legal representatives for the company issued a letter addressed to the MM of the WLM indicating, amongst others, the following issues regarding the January and February 2010 outstanding invoices:

- On or about January 2011, the company submitted invoice number MsW01/10 amounting to R214 486 and MsW02/10 amounting to R148 200 for payment which was queried by the WLM. The AGSA noted that the copies of the said invoices were also provided by the GWCRA prior to the commencement of investigation, as supporting documentation to substantiate the allegation.



- The company had rectified the invoices and re-submitted them for payment; however, those invoices were not paid.
- The company has instructed legal representatives to demand payment of outstanding invoices with interest and to proceed with further action for which the WLM will bear the costs.

8.6.4.16 Subsequent to the letter issued by the legal representatives, the manager for public safety at the WLM wrote a memo to the HoD community services dated 2 June 2011, indicating that the WLM was legally indebted to the company for services rendered in January and February 2010.

8.6.4.17 The manager for public safety further indicated in the memo, amongst many other issues, that the official responsible for handling the affairs of the company had resigned in December 2009 and therefore invoices for the months January and February 2010 were not submitted for payment, probably as a result of this resignation. The two invoices were only submitted 12 months after the fact only in March 2011.

8.6.4.18 According to the transaction inquiry report dated 17 November 2014, the WLM made payments to the company amounting to a total of R3 863 100 for the security services. The payments made cover the period 21 August 2008 to 13 June 2011.

8.6.4.19 Included in the total payments made to the company, were payments to the amount of R220 232 relating to the services rendered in December 2009 after acknowledgement of the letter of termination dated 6 January 2010 wherein the WLM requested the company to grant them the time to arrange an alternative system. Also included in the said total payments is the payment of R361 076 relating to the disputed invoices number MsW01/10 and MsW02/10. The copies of the said payment packs were provided by the GWCRA to the AGSA prior to commencement of the investigation.

8.6.4.20 The AGSA noted that the payment of R220 232 had been made on 2 February 2010 before the termination of the agreement or contract became effective on 22 February 2010. For the payment of R361 076, relating to the disputed invoices numbers MsW01/10 and MsW02/10 for the amounts of R214 486 and R148 200 respectively, the payment was made in June 2011 after the agreement or contract was terminated. The manager for public safety confirmed to the AGSA that the WLM had an obligation to pay for the services rendered by the company for the months January 2010 and February 2010.

## 8.6.5 **Finding**

8.6.5.1 Based on background searches and documentation inspected, the AGSA noted the following with regard to the company profile of the company :

- (a) On 14 November 2014, the company was still registered with the Company and Intellectual Property Commission (CIPC) with their nature of business defined as

*financial intermediation except insurance and pension funding.* Security company details as per the CIPC is as follows:

<b>Company name</b>	<b>Company registration</b>	<b>Enterprise status</b>
Security company	2003/016720/07	In business

- (b) According to the Private Security Industry Regulatory Authority (PSIRA) document provided by the company, their registration number with PSIRA was number 1484412.
- (c) Payment documentation inspected by the AGSA confirms that the company has a bank account with a registered financial institution.
- (d) A letter of good standing issued on 25 January 2008, from the Compensation Fund was attached to their bid proposal.
- (e) A copy of their TCC was also attached to their bid proposal.
- (f) The AGSA noted that payments for the amount of R220 232 and R361 076 made to the company were valid as services had been rendered in December 2009, January and February 2010. These payments were made on 2 February 2010 and 13 June 2011 after acknowledgement of the letter of termination dated 6 January 2010. Legally, the WLM had an obligation to pay for the services rendered in the said months.
- (g) The allegation that the company is a fictitious entity and that payments were made in the absence of a valid TCC could not be substantiated. The AGSA further noted that the payment in June 2011 related to services that were rendered prior to the termination of the contract.
- (h) The addendum relating to the inclusion of additional security guards was not agreed in writing with the company. -

**Lack of proper contract management**

- 8.6.5.2 In terms of section 116(1)(a)(b) of the MFMA no. 56 of 2003, under contracts and contract management, states that *“A contract or agreement procured through the supply chain management system of a municipality or municipal entity must –*
  - (a) be in writing;*
  - (b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for – (i) the termination of the contract or agreement in case of non or under performance*
- 8.6.5.3 Section 36(2) of the municipal SCM regulations, states that *“the accounting officer must record the reasons for any deviations in terms of sub-regulation (1)(a) and (b) and report them to the next meeting of the council, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.”*

8.6.5.4 The AGSA noted that the BAC approved a deviation on 4 February 2009 for the inclusion of an additional 17 security guards to the original bill of quantities at a cost of R94 734 per month with effect from October 2008. The deviation further condoned payments that were made prior to the deviation being approved by the BAC (i.e. October 2008 onwards). The approved deviation further stated “*that an addendum be added to the SLA for inclusion of this additional security services.*”

8.6.5.5 However, the AGSA could not find evidence to indicate that the deviation was approved by the former MM and reported to the council, and disclosed in the annual financial statements as required by section 36(2). Even though the AGSA noted a memorandum dated 19 December 2008, in which manager administrations indicated that the former MM instructed for payments to be made to the company for the excess amounts claimed from October 2008 onwards. The AGSA could not satisfy itself that the deviation endorsed by the BAC approval was subsequently approved by the former MM and whether the BAC had the delegation to approve.

8.6.5.6 The AGSA noted that the 17 additional guards were initially deployed without the WLM’s written consent or knowledge. The AGSA also noted that the WLM did not include an addendum to the SLA for the additional security services as required in terms of the deviation approved by the BAC in contravention of paragraph 116 (1) (a)(b) which states that “*a contract or agreement procured through the supply chain management system of a municipality or municipal entity must –*

*(a) be in writing;*

*(b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for – (i) the termination of the contract or agreement in case of non or under performance.*

8.6.5.7 It appears that a proper security needs analysis was not performed at the initial stages of the tender as this resulted in the deployment of 17 additional security guards to guard the WLM properties.

#### 8.6.6 **Recommendation**

The AGSA recommends that the WLM and/or MEC should ensure that a contract or agreement procured through the supply chain management system of a municipality must be in writing.

## **9 MANAGEMENT RESPONSE ON ALLEGATIONS RAISED IN THE DRAFT MANAGEMENT REPORT**

9.1 Management agreed with all the findings raised by the AGSA.

- 9.2 With regards to the development contractor, management indicated that the WLM has taken action by conducting a contract performance assessment which will assist the WLM to improve the management of its contracts including correcting findings relating to the security company.
- 9.3 With regards to service provider for township clean-up on 8 February 2014, the WLM has subsequently paid for the services that were rendered.

## **10 APPRECIATION**

- 10.1.1 The assistance rendered during the investigation by the officials of WLM, CoGTA, Human Settlements and the MEC is appreciated.

Auditor-General

Pretoria

June 2015