

# **CHAPTER 17**

## **PROCUREMENT & LOGISTICS**

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## CHAPTER 17

# PROCUREMENT AND LOGISTICS

### 1. INTRODUCTION

In its Terms of Reference the Commission is required to investigate and report on alleged incidents of corruption relating to the procurement of goods and services for the Department.

As the Department enters into literally thousands of contracts annually with suppliers at national, provincial and Area Management level, it soon became apparent to the Commission that procurement was a task of a magnitude far beyond the resource capabilities of the Commission. It was an area of the Department that clearly required its own separate inquiry by an outside agency with the necessary forensic investigative expertise.

The Commission therefore decided to concentrate its investigations only on certain selected areas of the Department's Logistics section of the Management Areas falling within the Commission's terms of reference in order to establish whether a wider and more comprehensive investigation by another agency was warranted and should be recommended. The auditing firm Manase & Associates was contracted to assist the Commission's investigation of the selected areas.

The selected sample areas of investigation the Commission chose were:

#### **The Procurement of Goods and Services**

This investigation focused on the procurement of goods and services at:

- Durban-Westville Management Area.
- Pollsmoor Management Area, as well as the Department's Head Office in Pretoria.
- The irregular award of tenders at the Provincial Office of the Western

Cape where the conduct of a senior member of the Department at that office was examined.

- The purchase of screws by the Logistics Department at Pollsmoor at a price three times higher than the average market price for such screws.

- **Stock Control at Kitchens & Hospitals**

This investigation entailed the Commission carrying out random stocktakes at prisons, kitchens and storerooms in the Pretoria Management Area to establish whether rules and regulations were being complied with.

- **Workshops in Prison**

In this matter, the Commission investigated allegations of corruption and maladministration in the prison workshops at the Pollsmoor and Pretoria Management Areas.

## **2. THE PROCUREMENT OF GOODS AND SERVICES**

### **2.1 Durban-Westville Management Area**

As stated, the first investigation carried out by the Commission into the procurement of goods and services focused on the Durban Westville Management Area, as well as the Department's head office in Pretoria.

#### **2.1.1 Objectives of Investigation**

The objectives of the procurement investigations at the Management Areas were the following:

- to determine the validity of the alleged incidences of corruption relating to the procurement of goods and services for the Department of Correctional Services.

- to determine the adherence or non-adherence to Departmental policy and deviation from national norms and standards.
- to determine the extent of the alleged irregularities, if any, that occurred.
- to identify all parties involved in the alleged irregularities.
- to determine the extent of implementation of the recommendations of past investigations relating to the procurement of goods and services.
- to assist with the recovery of any losses, as determined during investigation.
- to identify weaknesses in the control environment and to recommend and assist management with the implementation of corrective action.
- to recommend and assist with disciplinary, civil and criminal action where possible.

### **2.1.2 Investigations**

In order to fulfil this mandate, the Commission investigators took possession of various categories of documents, namely:

- order books
- provisioning advices
- contract files
- G3, G4, G5, G6 and G23 documents
- Z490 documents
- Payment documents sent to Pretoria for payment, etc.

The Commission investigators, who were mandated to investigate procurement and logistics at the Durban-Westville Management Area, went through a number

of documents to see whether there were any irregularities. The three (3) items, which caught their attention, were the tenders relating to “perishable products”, “funeral services” and “medicine supplies”.

Firstly, the “fresh cream” in perishable products caught the attention of the investigators because this item, by its very nature, would be a luxury item, which one would not associate with prison facilities. However, the explanation received was that there are certain prisoners for whom medical doctors had prescribed that they should have fresh cream. Notwithstanding that, the investigators went ahead to investigate the tenders relating to “fresh cream”.

Secondly, the funeral services caught the investigators’ attention because the number of deaths did not correspond with the limited number of the service providers who were being given the work.

Thirdly, the medical supplies caught the attention of the investigators because of the amount of drugs being ordered from a limited number of pharmacies. Furthermore, the drugs were fairly expensive. It was also apparent to the investigators that some of the drugs were supplied after hours, when in fact they could not be regarded as emergency drugs. In the circumstances, the tender procedures must have been relaxed. This then led the investigators to focus on these three (3) areas.

Some of the matters the Commission investigated were handed over to the Special Investigating Unit (SIU). The Commission is, however, not aware of the outcome of these investigations.

#### **(a) Perishable Products**

The investigation revealed that it is possible that two tenderers, namely Thandroyens Fruit Wholesalers and R & N Fresh Produce, who tendered in the financial year 2000/2001, are in fact one and the same person or business operating from the same address, namely 81 Flower Road, Clairwood. This possibility arises from a comparison of the handwriting on the documents in

question and the address.

Upon completion of the tender documents, L. Thandroyen created the impression that the company, being Thandroyens Fruit Wholesalers, is 100% owned by a woman. The invoices, however, contradict the tender.

Thandroyens Fruit Wholesalers tendered under different company and owner names, creating the impression of two separate companies, knowing that Thandroyens Fruit Wholesalers would be the supplier. The information provided on the tender document, such as the actual owners and the identification number 80016006080, is false and does not reflect the true and actual facts, as requested from tenderers L. Thandroyen and T. Claudette. The result was that the tender was fraudulently certified.

The Logistics Department should never have accepted invoices from Thandroyens Fruit Wholesalers, as the tender had not been awarded to the company.

Thandroyens, in fact, used four different companies and, as a result, the Logistics Department at Westville Prison did not obtain quotes from different companies for the provision of perishable projects but, in fact, obtained quotes from companies owned by the same entity, namely Thandroyens Fruit Wholesalers and R & N Fresh Produce (jointly referred to as the “Thandroyen’s Group”).

Two members, namely Mr Singh and Mr Khali, in the period 2001/2002, obtained quotes from the Thandroyens Group for the supply of fresh cream. The explanation supplied for not using the normal supplier, Vundla Management Services, was that the latter entity could not comply with its contractual obligations. However, there was no documentary proof that this was, in fact, the case. In addition, if it was the case, in view of the fact that a higher price had to be paid to the Thandroyens Group, there does not appear to have been any attempt by Mr Singh or Mr Khali to recover the price difference from Vundla Management Services based upon their inability to provide a service which they

were contractually bound to provide.

Commission investigators identified that, in terms of the Vundla Management Services contract, fresh cream was to be supplied at a unit tender price of:

- a) R6,70 for the period 1 April 2001 to 30 June 2001.
- b) R7,93 for the period 1 July 2001 to 30 September 2001.
- c) R8,55 for the period 1 October 2001 to 31 December 2001.
- d) R9,70 for the period 1 January 2002 to 31 March 2002.

However, when the Logistics Department subsequently ordered cream from Thandroyens Fruit Wholesalers, the price quoted by Thandroyens was R1,99 per litre higher.

Upon an examination of payment documents relating to certain order numbers, it was revealed that the invoices attached to payments were in some instances:

- copied invoices.
- altered and/or completed by a different person than the person originally issuing the invoice.
- the green copy (carbonised copy) accompanied the order and not the original invoice as required.
- issued before actual delivery of products as recorded on the G6 and/or G3 as proof of delivery.
- not substantiated by a G3 as proof of an order placed with a supplier.
- not recorded or do not correspond with the information recorded on the G3 and/or the G6.
- incomplete with regard to dates, quantities delivered and amounts completed.
- manipulated as to the content.
- lack of G6 documents as proof of delivery.

At no stage did anyone at Logistics insist that they should supply on the amounts quoted by Vundla Management Services or attempt to recover the difference in price quoted by these suppliers. As a result the Department paid more.

**(b) Funeral Suppliers**

An investigation into funeral suppliers to the Westville Prison revealed that there were three suppliers for the period March 1999 to February 2002, namely:

- Avbob Funeral Services.
  - Central Funeral Services CC.
  - 21st Century Funeral Services.
  - Marianhill Funeral Services.
- (i) In the case of the supplier Avbob, it was established that, with respect to order number 840966, an order was faxed to Avbob, Ladysmith for an A1 service amounting to R4 300,00 for a Mr Khumalo on 5 August 2000. However, Mr Khali (the same person who was implicated in the fresh cream issue) approved the quote only on 20 April 2001, being some eight (8) months later.
- (ii) In the case of Central Funeral Services CC, double payments occurred with respect to two (2) order numbers, 840957 and 840960. In these circumstances, although there was one (1) order number with respect to each of these matters, Central Funeral Services CC generated two (2) invoice numbers for each of these order numbers, resulting in a situation where there appears to have been an overpayment of R3 000,00. Once again, the persons implicated in the authorisation of the payment are Mr J.D. Singh and Mr M.S. Khali.
- (iii) With respect to Central Funeral Services, it was established that many invoices, against which payment was made, were photocopied invoices and not the originals, as the policy requires.

(iv) An analysis of order numbers pertaining to 21st Century Funeral Services revealed numerous irregularities. The irregularities may be summarised as follows:

- The company registration does not appear on the invoices.
- The company claims Value Added Tax but a VAT registration number does not appear on the invoices.
- There are duplicated invoice numbers.
- The Logistics Department changed invoice numbers on faxed invoices.
- The unit price accepted on the G6 does not correspond with the unit price as paid per invoice.

(v) For example, 21st Century Funeral Brokers invoice number 79 is the invoice number that is attached to three (3) different orders, being order numbers 841289, 841736 and 841746. It is, therefore, difficult to understand how the same invoice number could legitimately be generated with respect to three (3) different deceased persons. Notwithstanding this fact, authorisations of payment to 21st Century Funeral Brokers are, in each instance, authorised for payment by the same person, namely Mr M.S. Khali.

In instances where an invoice number had been changed, it was once again Mr Khali who authorised the payment, notwithstanding the changes made to the invoice. Noticeably, the invoice numbers that were changed were all changed from 79 to other numbers. It is invoice number 79 that had previously been used for three (3) different order numbers and, accordingly, considerable suspicion must arise from this analysis.

(vi) An analysis relating to quotes tendered by 21st Century Funeral Brokers reveals that the quotes are based upon three aspects:

- A basic price.
- A fee per kilometre for transport outside a 25 km radius.

- A rands amount per case for after-hour collection and delivery of the deceased and execution of after-hour funeral services.

An analysis of order numbers 841813 and 841703 reveals that the faxed invoices that emanate from these quotes, which were apparently accepted by the Department, do not contain a breakdown of the per kilometre charge, only a total amount. It then seems as if the payment was authorised without obtaining a breakdown of the costs pursuant to these quotes. In these circumstances, the accuracy of the payment that was effected must be called into question. This may be indicative of either corruption or simply negligence. Whichever the situation is, it will be crucial to interview Messrs Khali and Singh with regard to these allegations. Their conduct must be properly assessed against their obligations in terms of Departmental policy and their job description.

- (vii) The analysis by Commission investigators further revealed that there is a disturbing similarity between quotes received from Mariannahill Funeral Services and Central Funeral Services. In many instances, the wording of the quotations is exactly the same from both entities and the same font and layout of the quotes is to be observed.

This may be indicative of an attempt to sidestep Departmental policy regarding obtaining quotes. Once again, Commission investigators observed that it was Mr Khali who authorised all placements of orders involving suspicious quotations from funeral parlours.

### **(c) Ordering of Medicines**

Original invoices, order books and proof of delivery with respect to the procurement system relating to the ordering of medicines were also investigated.

#### **(i) Circle Pharmacy - Rinex**

The investigation concerns an order, 841699, dated 19 September 2001, for

certain Rinex capsules from Circle Park Pharmacy. The G6 documentation referring to the order does not reflect any computerised unit price, although it appears from an analysis of the documents that the Circle Park Pharmacy under-quoted two other quotations from Sydenham Pharmacy and Meranti Medicine Depot. The invoice received from Circle Park Pharmacy was handwritten and did not correspond with any of the invoices submitted by that same pharmacy in the past. The Logistics Department transaction history with respect to Rinex suggests that the Logistics Department ordered Rinex for the first time on 3 October 2001, which was after the delivery of the goods ordered pursuant to order number 1841699. In these and other circumstances there is considerable suspicion that there may be another invoice relating to this amount and that this account may have been paid previously. The person identified in the approval of the payment is, once again, Mr Khali.

**(ii) Circle Pharmacy - Myprodol**

On the very same day, being 19 September 2001, Circle Park Pharmacy issued an invoice, number 1967, for the amount of R11 100.00 for the delivery of certain Myprodol capsules, which had been ordered together with Rinex on 19 September 2001. Mr Singh approved the order number and Mr Khali authorised the payments. This payment was split, it seems, in order to authorise it within the delegated authority.

**(iii) Springmed Pharmacy - Rinex**

The analysis of the respective invoice and documentation pertaining to payment of the product received from Springmed Pharmacy would suggest that the original quantity ordered was changed on the instruction of Mr Singh and increased, despite the fact that stock on hand on the date of delivery was fairly substantial. In addition, the product history obtained from the system revealed that there was no increase in the consumption of Rinex capsules that could have justified the notation "an increase in consumption" on the order, which was apparently at the instance of Mr Singh.

### **2.1.3 Findings**

The following observations and recommendations were made by the Commission at the time of its investigation into Westville:

- a) There is a possibility of gross negligence and misconduct within the Durban-Westville Management Area Logistics Department.
- b) The control environment within procurement is weak or non-existent, enhancing the opportunity for fraudulent behaviour.
- c) The system used by the Logistics Department is outdated and lends itself to misuse and thus the possibility of corruption.
- d) The system is not user friendly and no development has taken place to upgrade the system over the past fifteen (15) years. The integrity of the data is therefore questionable.
- e) There is a lack of linkage between documentation and transactions in the system, increasing the possibility that fraudulent transactions can be processed without detection.
- f) It is easy for any person with a good knowledge of the system to bypass manual controls in order to process fraudulent transactions for personal enrichment.
- g) There is no linkage between the procurement and payment systems in order to detect fraudulent transactions before payment.

### **2.1.4 Recommendations**

In light of these findings at the Durban-Westville Management Area, the

Commission makes the following recommendations:

- a) A manual reconciliation should be performed between the quantities, as stated on paid invoices, and the actual deliveries to chief users. This would be a manual reconciliation of the G5, G6 and G23 documents.
- b) The G23 obtained from the chief user should be reconciled with the information obtained and from the Logistics Department. This would enable the investigators to substantiate and quantify the extent of the irregularities.
- c) There should be an audit or investigation on the purchases of other products and services by the Logistics Department by a follow-up of:
  - (i) addresses.
  - (ii) employee links.
  - (iii) over-expenditure.
  - (iv) lack of written contracts.
  - (v) purchases outside contractual conditions.
  - (vi) purchases from unauthorised suppliers, for example computer equipment.
- d) There must be an audit and investigation into the adherence to policies and procedures by members, especially those employed at Logistics.
- e) There must be an audit of the adequacy and effectiveness of the procurement process, in order to recommend corrective action.
- f) Messrs Singh and Khali should be charged internally for the transgressions highlighted in this report.
- g) The veracity of the statement regarding the need for “fresh cream” to be ordered at a prison should be investigated further to establish whether there is a need for fresh cream in this facility or any other facility.

#### **2.1.4.1 Recommendation: Drugs**

The Department should seriously consider the use of generic drugs to save costs, where possible, instead of using the expensive drugs sometimes being ordered by the Logistics Department, unless a medical practitioner has specifically prescribed the expensive drugs.

## **2.2. Pollsmoor Management Area**

### **2.2.1 The Investigation**

The second forensic investigation the Commission conducted was at the Pollsmoor Management Area, where the scope of the investigation covered alleged corruption relating to the procurement of goods and services in the Logistics section, with the focus being on the weaknesses and alleged financial and procedural irregularities that the Commission had uncovered at the Management Area. The investigation was conducted to assess whether transactions entered into by members of the Department indicated irregular and/or fraudulent conduct.

This procurement investigation focused on the supplier base at Pollsmoor with specific emphasis and reference on transactions related to three suppliers, namely:

- MCT Suppliers.
- Ja'Millo Suppliers.
- MNM Suppliers.<sup>1</sup>

The supplier database was evaluated with regard to the following inquiries, namely:

- Were expenses properly authorised?
- Were tender compliance procedures and controls properly observed, with particular regard to the Public Finance Management Act, Act No. 1 of 1999 and Departmental procedures?
- Was the procurement process transparent?
- Did the expenditure represent value for money or could the goods/services have been obtained cheaper?
- Was the work actually carried out and completed and the goods received before payment was made?
- Was the procurement and provisioning system fair, equitable, transparent, competitive and cost-effective?

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<sup>1</sup> See the section dealing with the purchase of screws below.

The Commission's investigators found a number of irregularities in its investigation into the procurement of goods and services at Pollsmoor. The specific matters are dealt with hereinafter.

#### **2.2.1.1 MCT Sales and Services**

With regard to the investigation of MCT Sales and Services, it was established that Mr Anthony, who works for the Provincial Commissioner's office in the Logistics Department, is married to one Ms Sharmaine Anthony, who trades under the name of MCT Sales and Services. This is an entity that has obtained business from the Department. When Mr Isaacs, the Head of Logistics in the Provincial Commissioner's office, was interviewed, he stated that on 3 November 2000, Mr Anthony informed the Provincial Commissioner's office of the fact that his wife had opened a business and would be trading as MCT Sales and Services. A copy of that letter, however, made no mention of the fact that his wife would be tendering to supply goods to the Department.

An interview conducted with Mr Anthony himself elicited the comment that he did not deny that he helped his wife with the delivery of supplies to the prison and that he collected prison tender documents for his wife's business and delivered these documents back to the prison once completed.

He also admitted that he phoned the Logistics Department for monies owed to MCT.

In the interim, however, Mr Anthony has been transferred from the Logistics Department at his own request, with effect from 3 February 2003.

#### **2.2.1.2 Ja'Millo Suppliers**

The Commission's investigation of Ja'Millo Suppliers revealed that the wife of Mr Manewil, who works in the Personnel Department of Pollsmoor, runs a business

called Ja'Millo Suppliers. There is no indication that Mr Manewil disclosed his wife's involvement as a supplier to the Department.

### **2.2.2 Findings**

The Commission also makes the following general findings on the procurement at Pollsmoor:

- (a) Maladministration and corruption were found to be rife in the Pollsmoor facility and serious systemic weaknesses were found to exist in the Department, which may well represent a microcosm of the general malaise that prevails in prisons in South Africa.
- (b) As regards the internal controls relating to the listing of suppliers on the database of the Department, it appears that companies are listed as general suppliers on the database, which, in turn, means that they are able to submit quotes on basically any item on the database. This may afford these companies an unfair advantage due to the fact that they supply all items.
- (c) There was non-compliance with acceptable procurement procedures, resulting in transactions that represent excessive and, in some instances, wasteful expenditure.
- (d) The process of obtaining quotations and invoices submitted by suppliers reflects serious instances of maladministration, which strongly suggest corrupt/fraudulent activities.
- (e) Officials issuing orders had no written delegation of authority and their actions were purportedly conducted with the full knowledge of the officials and management of Pollsmoor, suggesting a breach of the Public Finance Management Act.
- (f) Various officials at Pollsmoor would have had to collude to cause losses

to the Department and, accordingly, there are grounds to suspect financial misconduct in terms of the Public Finance Management Act.

- (g) There was actual financial prejudice suffered by the Department of Correctional Services at Pollsmoor, which appears to be substantial.
- (h) The best and/or competitive price for work done was not obtained in many instances and excessive payments were made for goods and services.
- (i) The accounting officer and officials at Pollsmoor have in many instances not complied with Sections 38, 39 and 40 of the Public Finance Management Act.<sup>2</sup>

### **2.2.3 Recommendations**

In light of the above-mentioned findings the Commission makes the following recommendations:

- a) There should be properly documented official criteria detailing procedures and policies for the evaluation of suppliers entered on the database.
- b) The accounting officer and/or officials of Pollsmoor should be requested to reply, in writing, on the apparent contraventions of the Public Finance Management Act.
- c) Consideration should be given to building internal capacity in the Department, which should involve the training of members of staff with regard to processes, procedures, policies as well as ethics, good governance and best practices.

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<sup>2</sup> The abovementioned sections deal with :  
Section 38 - The General Responsibilities of Accounting Officer  
Section 39 – The Accounting Officer’s responsibilities relating to Budgetary Control  
Section 40 - Accounting Officer’s reporting responsibilities.

- d) Consideration should be given to the introduction of continual internal audit procedures to address the gap between procedures and implementation.
- e) Messrs Manewill and Anthony should be charged, internally, for the transgressions referred to in this report. If they have already been disciplined they should be removed from any position which could have influence over the Logistic Department.

The investigator's report with regard to the specific investigations of suppliers was filed as an Exhibit with the Commission.<sup>3</sup>

## **2.3 The Irregular Award of Accommodation Tender**

### **2.3.1 Background**

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<sup>3</sup> See Investigator's Report Pollsmoor Exhibit "KKK".

During the Commission's procurement investigation at Pollsmoor, Mr K. Hariparshad, a member of the Commission's auditing team, reported to the Commission Secretary in July 2003 that a staff member of the Provincial Commissioner's Office had made certain allegations indicating serious irregularities in the tendering and procurement process in the Provincial Commissioner's Office of the Western Cape.

Some of the allegations made were that a senior member of the Department, with dishonest intent, ensured that the proper tender system for the award of tenders for accommodation required for bosberaads were bypassed. Tenders that were called for were opened and processed irregularly and existing tenders, which had been submitted, were irregularly altered by means of "*Tippex*". There was an irregular award of a tender for rations valued at approximately R1 000 000.

### **2.3.2 The Investigation**

As the investigation into procurement covered accommodation for seminars, the Commission investigators were then ordered to conduct investigations at the Provincial Commissioner's Office.

Detailed affidavits and statements were obtained from:

- Ms Hanelie Lategan, the staff member who made the allegations and who was employed by the Department of Correctional Services as a Head User Clerk based at the Provincial Commissioner's Office in Goodwood in the Western Cape<sup>4</sup>.
- Ms Ellen Dorothy Kapp who was employed as Secretary to the Provincial Commissioner's Office: Corporate Services<sup>5</sup>.
- Ms Lubbe, who worked as a general office worker at the Piekenierskloof Mountain Lodge, where her duties included the completion of quotations

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<sup>4</sup> See the affidavit of Ms Lategan Pollsmoor Exhibit "LLL".

<sup>5</sup> See the affidavit of Ms Kapp Pollsmoor Exhibit "MMM".

and general administration and bookkeeping.<sup>6</sup>

### **2.3.3 The Allegations Against Mr Isaacs**

The affidavits referred to above implicate the Provincial Head of Logistics, Mr M.A. Isaacs, in fraud and corruption relating to the procurement of venues for seminars in the following regard:

- a) The affidavit of Ms Lategan alleges that:
  - (i) Mr Isaacs instructed one Mr Anthony to approve certain quotations, which had been faxed, Tippexed and altered.
  - (ii) Mr Isaacs received quotations after the closing date and time from the venue Piekenierskloof Mountain Lodge.
  - (iii) The tender documentation was completed in the Provincial Commissioner's office and not by the tenderer in many instances.
  - (iv) Mr Isaacs manipulated the system to ensure that the Piekenierskloof Mountain Lodge obtained the seminar business. In this regard he did not rotate the suppliers on the database and in some instances appeared to have approved Piekenierskloof Mountain Lodge notwithstanding that their charges were eventually higher than those of other tenderers.
  - (v) Piekenierskloof Mountain Lodge misrepresented that it was a company 50% owned by a woman whereas this is not borne out by information received from the Registrar of Companies.

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<sup>6</sup> See the affidavit of Ms Lubbe Pollsmoor Exhibit “NNN”.

- b) The affidavit of Mrs Kapp alleges that Mr Isaacs compelled one Ms Kapp, employed by the Department of Correctional Services as a secretary to the PCO: Corporate Services, to sign a document as a witness in circumstances in which she was not permitted to see the entire document.
- c) The affidavit of Ms Lubbe describes the collusion between Mr Spies and Mr Isaacs, which was aimed at ensuring that Piekenierskloof received the necessary bookings for accommodation and conference facilities for Correctional Services events.

#### **2.3.4 Disciplinary Proceedings Against Mr Isaacs**

After its investigation, the Commission was informed that Mr Isaacs was charged in a disciplinary inquiry and received only a warning. As the Commission's investigations and the contents of the affidavits obtained from the various persons listed suggested serious and dishonest conduct on the part of Mr Isaacs, the Commission was of the view that there were substantial grounds for questioning the nature of the charges laid against Mr Isaacs and perhaps even the nature of the evidence adduced at that hearing.

During November 2004, Advocate G. Barlow, an investigator employed by the Commission, received the Department's personnel file relating to Mr Isaacs to determine how Mr Isaacs could have escaped appropriate sanction for such serious allegations.

A perusal of the contents of this file reveals the following:

- a) On 16 July 2003 (and coincidentally just after the investigations by the Commission into the activities of Mr Isaacs had been carried out in June 2003), Mr J.C. Robberts, the PCO: Operational Support Services in the Western Cape, suspended Mr Isaacs. The basis for the suspension was for the purposes of conducting an investigation with regard to alleged

irregularities into the awarding of quotations to advance transport.

- b) The Department laid certain charges against Mr Isaacs in terms of a document headed "Amended Allegations" (undated)<sup>7</sup>.
- c) Mr Isaacs received a written notification to attend a disciplinary hearing, which was scheduled to take place on 27 October 2003. This notice is dated 9 October 2003 and refers to the "Amended Allegations" document<sup>8</sup>.
- d) The matter did not proceed on 27 October 2003 but apparently proceeded on 11 November 2003. The chairperson was Mr M.J. Maako. The initiators were Mr M. Jones and Ms van der Watt. Mr Ndarana, it appears, represented Mr Isaacs.
- e) The proceedings in the disciplinary inquiry appear to have been minuted and certain documents were handed in at that inquiry. The minutes of the disciplinary hearing and the documentation handed in at that inquiry were submitted as an Exhibit<sup>9</sup>.
- f) On or about 12 November 2003 an "Annexure C: Warning"<sup>10</sup> was issued by the chairperson of the disciplinary inquiry to Mr Isaacs. The

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<sup>7</sup> See document headed "Amended Allegations" re: Mr Isaacs Pollsmoor Exhibit "OOO".

<sup>8</sup> See Notice dated 9 October 2003 re "Amended Allegations" - Mr Isaacs Pollsmoor Exhibit "PPP".

<sup>9</sup> See Minutes of Disciplinary Hearing and documents handed in at Inquiry Pollsmoor Exhibit "QQQ".

<sup>10</sup> Annexure "C" in terms of Disciplinary Code DBC Resolution 1/2001 (23 February 2001) and *Government Gazette* No 8023 dated 30 July 2004, as amended.

disciplinary measure involved a final warning, valid for six (6) months. The said warning refers to the "offence/complaint" as "see the attached document". However, there is no record in the file of a offence/complaint for which Mr Isaacs was found guilty. In other words, it is not apparent which of the "amended allegations" Mr Isaacs was found guilty of. The "Annexure C: Warning" was filed as an Exhibit.<sup>11</sup>

In passing, it appears from the personnel file that Mr Isaacs has been transferred to Gonubie within the Provincial Commissioner's Office for East London with effect from 1 June 2004. Mr Isaacs, then, may have been transferred to the Eastern Cape Province.

### **2.3.5 Findings**

Although the evidence in the Commission's possession suggests serious and dishonest conduct on the part of Mr Isaacs, an analysis of the charges preferred against Mr Isaacs in the disciplinary inquiry indicate that all of those charges were based upon alleged contraventions of clause B2.1 of the Department's Disciplinary Code. This clause of the Code is defined as the following:

*"Unsatisfactory work due to negligence, apathy, carelessness or a lack of interest (e.g. failure to meet return dates, non-compliance with directives, etc)."*

Furthermore, it is significant that the charges made were framed under "other transgressions" as these are defined in the Disciplinary Code and not under transgressions that could result in summary dismissal (Column "A").

It is the view of this Commission that the allegations made by the witnesses would more properly fall under clause 4 of the Disciplinary Code related to dishonesty and would, if Mr Isaacs was found guilty most probably result in

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<sup>11</sup> See document marked Annexure C:Warning re: Mr Isaacs-Pollsmoor Exhibit "RRR".

summary dismissal. More particularly clauses 4.3 and 4.4 would, in this Commission's view, have been appropriate charges to be brought.

It is, once again, a clear indication of the complaints that the Commission raised in its first Interim Report that officials within the Department are manipulating disciplinary inquiries. The manipulation is not only at the stage of the hearing but it also starts at the stage of investigation and the decision as to how to charge the person. Clearly, Mr Isaacs was charged with a lesser offence instead of the more serious offence, which would have led to his dismissal. This was an attempt to, once again, defeat the very purpose of the disciplinary inquiry. He transgressed the rules and regulations of the Department, awarding tenders unlawfully, and in some cases the tenders amounted to R1 000 000,00. It can never be more serious than that.<sup>12</sup>

## **2.3.6 Recommendations**

### **2.3.6.1 Mr Isaacs**

- a) In view of the fact that Mr Isaacs was not charged with dishonesty, it is recommended that charges of dishonesty, based upon the allegations made by the witnesses in the annexed affidavits, be brought against Mr Isaacs. Mr Isaacs might claim that he is placed in "double jeopardy" by a second disciplinary hearing. However, Mr Isaacs was never charged with dishonesty, merely with unsatisfactory work performance. The facts that go towards proving unsatisfactory work performance are wholly different from allegations of dishonesty, although there may be some overlap in terms of the evidence tendered in support of the charges.
- (b) It is similarly recommended that investigations be carried out to

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<sup>12</sup> For more details on the discussion regarding the manner in which disciplinary inquiries are being manipulated, see the First Interim Report on Durban-Westville Management Area, the Ninth and Eleventh Interim Reports on the Pretoria Management Area and lastly, also the chapter in this report dealing with disciplinary inquiries.

determine how the charges that were preferred against Mr Isaacs came to be drafted. It seems improbable that the allegations of dishonesty were not apparent to those who formulated the charge sheet at the time. It was already known at that stage that the Commission's auditors had seized certain documents from Mr Isaacs' office.

- (c) The Commission recommends that criminal charges be brought against Mr Isaacs.
- (d) The role played by Mr Roberts in this matter needs to be investigated further to see whether there were irregularities or abuse of power.

#### **2.3.6.2 General Recommendations**

In addition to the aforementioned, the Commission makes the following recommendations emerging from the forensic auditor's report dated 24 July 2003.

- (a) It appears that no proper internal audit function was carried out at the Provincial Commissioner's Office. A properly conducted internal audit function would have reported on non-compliance with procurement policies and procedures and corrective action could have been taken earlier.
- (b) Independent internal auditors should be appointed to ensure that the internal control system is operating as intended.
- (c) The internal control system for procurement should be upgraded so that:
  - (i) No member should be allowed to invite, compare and

approve quotations by himself.

- (ii) The chief user clerk should always invite the quotations by using the database.
  - (iii) After receiving such quotations and carefully evaluating the documents, these documents should be forwarded to a senior member who is delegated to approve such quotation documents. The tender/quotation documents should be disregarded if received by fax. The tender/quotation documents should be received in the same way as if it were a proper tender.
- (d) The procedure stipulated in the ST36/37 manual should be strictly adhered to.
  - (e) A proper tender committee should be elected and trained.
  - (f) All tender documents should be locked in a safe and the safe should have a double lock facility.
  - (g) Two separate keys should open the safe door and these two keys should be issued to two (2) members chosen from the tender committee.

## **2.4 Purchase of Screws at Inflated Prices**

### **2.4.1 Background to Investigations**

While the Commission was hearing evidence in Cape Town, the Commission received a complaint relating to an order that had been placed for 6 000 screws at a cost of R21 000 after two tenders had been obtained. It was averred that the amount paid was at least three (3) times more than the applicable, normal price of screws.

The Commission conducted an investigation and presented its findings during hearings that took place in the Pollsmoor Management Area. The Commission requested three (3) other suppliers to give quotes for 6 000 screws. The quotes received amounted to R9 000, R9 400 and R6 000 for exactly the same item. In addition, an investigator of the Commission, Mr Moloji, contacted two (2) other companies on the Department's database and received quotes from SCS Building and Renovations for an amount of R9 617,23 and Fastener Warehouse for R5 042,40.

Mr Moloji said that he was unable to get a quote from MNM even though he contacted them several times. He also tried going to the house where the business is supposed to operate from. Mr Moloji contrasted this experience with his visit to Fastener Warehouse, where he saw a book of about five or six pages which listed prices. Ozzies Engineering had taken about three or four hours to send Mr Moloji a fax with the quotation.

Mr Moloji confronted Mr Mohammed Suliman, the member who had chosen the two (2) companies to approach for prices. Mr Suliman acknowledged that there was a problem with the system and advised that he had raised the matter with Mr Anthony, who used to be the Provincial Head of Logistics. Mr Anthony had informed him that there was nothing that they could do because they were dealing with previously disadvantaged individuals and they were under obligation to award contracts to them.

According to the evidence led before the Commission, tenders are dealt with mainly by the Logistics Section at the prison. Once all the quotes have been received by Logistics and payment has been completed, the documentation is sent to the Finance Office where details are verified and the payment checked.

The Section Head of Finance at Pollsmoor, Mr Johannes Erasmus van Zyl Smit, stated to Mr Moloi that he was concerned about the transaction involving the screws and had phoned MNM Supplies to make some inquiries. At that stage, the payment had already been captured so he telephoned Mr Truter at Head Office and asked for the payment to be stopped but it could not be done timeously. In addition, the Commission's investigation revealed that the screws that were supplied by MNM Supplies were not the same as the ones that were described in the quote. In fact MNM Supplies did not supply screws of this size.

Mr Moloi said that Mr Lourens, the Head of Logistics, said they had no control over companies on the database acting as middlemen as there were no guidelines in the register of suppliers. Mr Lourens said this needed to be addressed. He also said that according to the policy of the department, the middleman is there to generate business and create jobs as well as alleviate poverty. Mr Moloi said he could not find such a reference in the guidelines, although they do state that there is a duty to determine a realistic value of the tender. Despite this, correct procedure is not being followed and it lends itself to possible abuse and certainly to maladministration.

#### **2.4.2 Department's Procedures**

The Provincial Head of Logistics for the Western Cape, Mr Martin Abraham Isaacs, said that there are Division Heads of Logistics at each Management Area and a self-accounting store, which consists of a transit section, a warehouse section and an accounting section. These stores are responsible for ordering, getting quotations, keeping records and issuing payments. The accounting section is responsible for ordering and obtaining quotations, keeping records and effecting payments and has a division head that is fully trained in procurement. Procurement personnel, such as ordering and tendering clerks, work under the

division head.

Section Heads, who are chief users, determine whether funds are available while chief user clerks do the administration, get quotations and do the necessary administration work.

The procedure for obtaining goods varies depending on the value of the goods to be bought.

- a) If the value is below R5 000, telephonic quotations may be obtained.
- b) However, from R5 000 to R30 000 only certain persons may obtain quotations and these must be in writing.
- c) Between the values of R30 000 and R100 000 only an Assistant Director can approve the quotations and certain forms must be attached.
- d) From R100 000 to R500 000 the AT/20 point system is applicable.

The Commission was advised that if the Department requires an item that has to be ordered, it invites two (2) quotes from entities that are on the database and the tender will go to the entity that has given the lowest quote. The two (2) persons elected to be approached are determined on a rotational basis.

Mr Isaacs advised that there are no means to check that the goods are worth the price that is quoted or whether the price is fair and reasonable. When it was demonstrated to Mr Isaacs that the description of the goods on the two quotes obtained was different, Mr Isaacs stated that if this had come to his notice, he would have called Mr Suliman to order and taken disciplinary steps against him. He would also have cancelled the quotations and ensured that the process was carried out correctly. Mr Isaacs was of the view that Mr Lourens did not follow correct procedure by approving an order for the amount of R21 000 because the procedure followed was for goods of R5 000 or less in value.

During the hearing, Mr Isaacs was confronted with how the documentation was forwarded to the finance section for payment when there was an oral quotation rather than a written quotation and when it was apparent that the quotes were for different items. Mr Isaacs was of the view that this was negligence. He said, however, that small and medium enterprises and historically disadvantaged people were encouraged to register on the database and to do work with the Department of Correctional Services. However, these small companies, out of necessity, charged a higher price than bigger companies because they would “not have the infrastructure” that a big company would have to buy in bulk and therefore sell at a cheaper price.<sup>13</sup>

Mr Isaacs was further of the view that preferential procurement was concerned with transforming procurement in government and therefore gave preference to disadvantaged people rather than tenders being issued purely on the basis of price. When an example was put to Mr Isaacs of a white owned company tendering and asking R7 for an item by comparison with a company with a black, disabled woman asking R100 for the same item, Mr Isaacs stated that, on the points system, the black disabled woman would be awarded the tender. It was Mr Isaacs' view that this is what is meant by the Preferential Procurement Regulations of 2001. However, when Mr Isaacs was further challenged with regard to this aspect and was given time to recalculate the points according to the formula, he accepted that a historically disadvantaged individual should not be awarded tenders without regard to an excessively high amount being quoted.

Mr Isaacs did, however, maintain that he had been trained regularly by the Department of Correctional Services and a Mr Laubscher, who was a member of the State Tender Board.

When asked why the Department had not asked more companies to tender for the provision of the goods, Mr Isaacs testified that the names on the database were rotated. The regulations stated that more than one person should be asked to quote for a tender, but Mr Isaacs provided no satisfactory answer as to why

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<sup>13</sup> Pollsmoor Transcript pages 1 876 – 1 877.

only two people were asked to tender.

### **2.4.3 Concluding Remarks**

The Department has approximately two hundred and forty six (246) Management Areas in the whole of the Republic of South Africa. In almost each one of them there is an office which deals with the issue of procurement and logistics. Procuring goods for approximately one hundred and eighty five thousand (185 000) prisoners and approximately thirty five thousand three hundred (35 300) staff members in the Department of Correctional Services, makes the Department's procurement section a multi-billion rand industry.

It is apparent from this chapter that in the few Management Areas in which this Commission investigated workshops, procurement and logistics sections, there were clearly problems, which need to be addressed by the Department. As procurement and logistics are an area in which any person with a corrupt mind or even a slight propensity towards corruption will easily be tempted to do something illegal because of the amount of money involved, there is a need for greater scrutiny, security and checks and balances to be set in place.

The Commission found it extremely disturbing that programmes to address the economical imbalances of the past can be manipulated to blatantly enrich selected individuals. Nothing whatsoever can justify the use of taxpayers' money to purchase items at three (3) times the value merely because the purchaser is from previously disadvantaged communities of our country. This could never have been the intention of the Legislature in its drafting of the statutes to empower small contractors and to transform our society.

This was clearly a misinterpretation of the tender procedures by the individuals concerned. The price, notwithstanding the status of the individual, still has to be taken into consideration. It is once again an area where discretion is being abused because the employees ignore the intention of the Legislature.

Even though this was found to be the understanding of the officials at Pollsmoor, the Commission has compared this with a number of Management Areas and it looks like most officials employed in the Logistics Department believe this is the correct interpretation of these provisions of the Act. Accordingly, it is a great cause for concern since this could be regarded as wasteful expenditure as it could have been avoided with reasonable care.<sup>14</sup>

#### **2.4.4 Recommendations**

In light of the abovementioned, the Commission would like to make the following recommendations:

- (a) The Department should seriously consider appointing suitably qualified people to head the Department of Logistics. By “suitably qualified”, the Commission means people who have been properly trained and who have the necessary qualifications to understand the intricacies of doing what they are doing.
- (b) In the absence of suitably qualified people, the Department should train the current officials heading the various logistics departments so that they fully understand the provisions of all the applicable legislation<sup>15</sup> and apply them accordingly.

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<sup>14</sup> See Section 1 of Public Finance Management Act No. 1 of 1999.

<sup>15</sup> Procurement of goods and services is governed by, amongst others, the following Acts, policies and Regulations:

1. Public Finance Management Act (Act No. 1 of 1999);
2. Preferential Procurement Policy Frame Work Act (Act No. 5 of 2000);
3. Preferential Procurement Policy Regulation;
4. State Tender Board Act (Act of 1968);
5. State Tender Board, General Conditions and Procedures (ST 36);
6. User Manual: Directives to Department in respect of Procurement (ST 37);
7. Provisioning Administration System Manual (PASM).

The National State Tender Board delegated powers for the procurement of goods and services to the National Commissioner who is the Accounting Officer for the Department. The Accounting Officer further delegated the powers to provinces and the Management Areas for practical reasons.

- (c) It is also recommended that the Department should have a scheme in terms of which the logistics departments in the various Management Areas are checked so as to monitor that there is no corruption or abuse of State funds. The said system could include the setting up of an Audit Committee to attend to this. In the event of the Department not having suitably qualified people to sit on an audit committee, serious consideration should be given to employing outside people to be part of such a committee. It might even be better if an outside person chairs the committee.
  
- (d) The Audit Committee will have the responsibility of reporting to the Office of the Auditor General on issues relating to procurement.