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# RESOLUTIONS OF THE PROVINCIAL PUBLIC ACCOUNTS COMMITTEE

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## THIRD REPORT, 2010

### RESOLUTION NO. 1

(As presented to the North West Legislature)

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#### REPORT OF THE AUDITOR-GENERAL ON PERFORMANCE AUDIT OF ENTITIES THAT ARE CONNECTED WITH GOVERNMENT AND DOING BUSINESS WITH PROVINCIAL DEPARTMENTS.

The North West Provincial Public Accounts Committee (PPAC) heard and considered evidence from the Heads of Departments of the following Provincial Departments:

- Education 9 October 2009
- Health 12 August 2009
- Local Government and Housing 18 August 2009
- Office of the Premier 9 October 2009
- Public Works 27 August 2009
- Transport, Roads and Community Safety 18 August 2009

#### Background

The Auditor General (AG) issued a report to Parliament in January 2006 which indicated that designated employees (senior managers) and certain ministers failed to declare their interests and that the majority of government employees did not have approval to perform remunerative work outside their employment in government, as prescribed by the relevant legislation and regulations.

Based on the above, a transversal performance audit was conducted on government employee-related entities doing business with national and provincial departments. A report on the audit was tabled in the North West Provincial Legislature in June 2009.

#### 1. Approval to perform remunerative work

- 1.1 With respect to obtaining approval to perform remunerative work it was found that 149 government officials had an interest in companies/Closed Corporations (CCs) that did business with provincial government departments;
- 1.2 In addition, 102 employees were identified who did business with other provincial departments than those that they were being employed by;
- 1.3 Although some of the departments were still determining whether employees who are directors and/or members of companies and/or CCs that did business with departments had approval to do so, departments confirmed that only 4 officials (2.6%) had approval to perform remunerative work outside their official employment at the departments; and
- 1.4 The business conducted with government by these employee-related entities for the 2005-2007 financial years amounted to R28,3 million.

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## **2. Declaration of interest by employees**

- 2.1 Of the 47 employees who were directors or members of companies or CCs that did business with the department where they were employed only 3 had declared their interest in the company or CC.
- 2.2 The total amount paid in this regard during the period under review was R 14 627 671.

## **3. Declaration of interest in standard bidding documents**

- 3.1 The Auditor General raised a concern that tenderers made misrepresentations by not declaring in the tender documentation that employees are related to the companies and Closed Corporations that are tendering.

## **4. Conflict of interest with regard to supply chain management**

- 4.1 Four instances were identified where provincial departments did apply the prescripts of the Preferential Procurement Policy Framework Act and its associated regulations for all procurement equal or above R 30 000 (VAT included);
- 4.2 One case was identified where the department awarded a tender to an employee related entity that did not score the highest points during the evaluation process;
- 4.3 Conflicts of interest concerning employees or their spouses with regard to specific contracts awarded were found in the following Departments: Education, Health and Public Works

### **The committee recommends that:**

#### **1. Approval to perform remunerative work**

- 1.1 Provincial departments who had employees performing remunerative work without approval, investigate these instances and that the relevant Accounting Officers take immediate and appropriate disciplinary actions against those who are found guilty of performing remunerative work without approval;
- 1.2 All departments must ensure that they develop effective monitoring and evaluation policies that will respond to any breaches in policy and deal with such cases immediately;
- 1.3 Provincial heads of departments take immediate remedial actions to ensure compliance with legislation by all employees;
- 1.4 Provincial departments should implement and actively monitor the systems of control to manage the performance of other remunerative work by employees. This could include the annual issuing of letters to employees, informing them of the requirement to obtain approval to perform other remunerative work. Copies of the letters of approval should either be kept centrally or placed on the employees' files;
- 1.5 The legal interpretation regarding what constitutes remunerative work be speedily concluded by the relevant bodies i.e. PSC and DPSA and be communicated widely to the public service so that consistent standards of prohibition can be applied to all public service entities;
- 1.6 PSC and DPSA expedite efforts to amend current legislation that employees of the state may not be granted permission to perform any remunerative work, or to engage in any activity for gain, if such work or activity is in any manner connected to a business or industry that had contracted with or submitted a tender to the State to render a service or to supply a product to the service; and
- 1.7 In the event that some employees be found guilty, the respective provincial accounting officers must ensure that they recover the money acquired through these fraudulent means in line with the provisions of the Public Service Act.

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## **2. Declaration of interest by employees**

- 2.1 The Accounting Officers of the relevant departments must take disciplinary action against designated employees who did not declare their interest in companies or CCs that did business with state departments; and
- 2.2 The Department of Public Service and Administration should consider the possibility of a similar disclosure form to be completed by non-designated employees.

## **3. Declaration of interest in standard bidding documents**

- 3.1 National Treasury should extend the declaration of interests on the Standard Bidding Document 4 form (SBD 4) form to include all relationship with the state, similar to the requirements of the previous ST 12 form;
- 3.2 All employees who failed to declare interest in the bidding documents according to the provisions of the law must be penalised accordingly;
- 3.3 The declaration by the employees' spouses and other close relatives which include close family members should be made compulsory if the bidding company or CC in which they have an interest in submits a tender;
- 3.4 National Treasury should facilitate the enactment of provisions related to declaration of interest to include all relationships with the State. The declaration form should also indicate the position occupied by the shareholder / director / member of a CC or company;
- 3.5 Spouses' directorship / membership / shareholding in companies that had transacted with the State in the 12 months of the previous financial year, should be declared; and
- 3.6 The Public Service Commission, CIPRO and National Treasury Defaulters Databases should be integrated for availability of information.

## **4. Conflict of interest with regard to supply chain management**

- 4.1 Departments must strengthen measures to ensure compliance with Supply Chain Management legislation;
- 4.2 When departments prepare lists of prospective suppliers they must require companies and CCs to disclose whether any of their directors, shareholders or members are employed in government, including the spouses and close relatives of employees;
- 4.3 Departments listed in the AG's report must investigate the possibility of preferential treatment or fraudulent action in the allocation of these tenders and action be taken.
- 4.4 All employees (designated or non-designated) who are in a position to influence the process whereby contracts or tenders are awarded must disclose details of their and their spouses directorships/CC memberships.
- 4.5 All departments *should ensure* supply chain management employees sign a code of conduct committing themselves to fair and ethical procurement practices. *Such a code must be effectively monitored;*
- 4.6 Departments must not award contracts to companies who are not registered for VAT and in cases when such regularities occur, the Accounting Officials must take disciplinary actions against officials who presided over such awards and report non-compliance to SARS legislation by companies and CCs doing business with government.

## **Further Recommendations**

5. The Committee further recommends that the Accounting Officers of all the Departments that are mentioned in the report should submit a progress report on all the recommendations to the National Assembly within **60 days (17 June 2010)** after the adoption of this report by the House.