



**POISED TO STRIKE**  
*against corruption*

Report to the

President of the Republic of South Africa

His Excellency, President MC Ramaphosa

regarding the

Investigation of the National Department of Health /

Digital Vibes (Pty) Ltd contracts

Proclamation No R. 23 of 2020

**30 JUNE 2021**

## DISTRIBUTION LIST

The Special Investigating Unit is honoured to present this report to His Excellency, President Matamela Cyril Ramaphosa, in terms of section 4(1)(g) of the *Special Investigating Units and Special Tribunals Act, 1996* (Act No 74 of 1996), pursuant to the publication of *Proclamation No. R. 23 of 2020*, published in *Government Gazette No. 43546 dated 23 July 2020*.

<b>ADDRESSEES:</b>	
Copy 1 of 2	Mr Matamela Cyril Ramaphosa: The Honourable President of the Republic of South Africa
Copy 2 of 2	Adv. J.L. Mothibi: Head of the Special Investigating Unit

## LIST OF ABBREVIATIONS

ABBREVIATIONS/ ACRONYMS	DESCRIPTION
AGSA	Auditor General of South Africa
ANC	African National Congress
BAC	Bid Adjudication Committee
BAC Code	Code of Conduct for Bid Adjudication Committees
BSC	Bid Specification Committee
Brandswell	Brandswell (Pty) Ltd
CFO	Chief Financial Officer of the NDOH, Mr van der Merwe
CoGTA	Department of Cooperative Governance and Traditional Affairs
CSD	Central Supplier Database
DBAC	Departmental Bid Adjudication Committee
DG	Director General
Digital Vibes	Digital Vibes (Pty) Ltd
DMA	<i>Disaster Management Act, 2002 (Act. 57 of 2002)</i>
Dr Buthelezi	Dr SSS Buthelezi
Dr Pillay	Dr Anban Pillay
GCIS	Government Communication Information System
ILAF	Ikusana Le Afrika Foundation
MISA	Municipal Infrastructure Support Agent
MISA Contract	Digital Vibes signed an Agreement with the MISA on 14 August 2018

ABBREVIATIONS/ ACRONYMS	DESCRIPTION
Mr Maja	Mr Joseph Thembe Popo Maja (NDOH: Head of Communications)
Mr Mthethwa	Mr Welcome Mduduzi Mthethwa
Mr Naidoo	Mr Reuben Naidoo
Mr Ngcobo	Mr Reginald Ngcobo
Mr Van der Merwe	Mr Ian van der Merwe
Mr Zondi	Mr Michael Bongumusa Zondi
Ms Mather	Ms Tahera Mather
Ms Mitha	Ms Naadhira Mitha
Ms Hariram	Ms Radha Hariram
Ms Matsoso	Ms Precious Matsoso
Ms Ngobese	Ms P Ngobese
Ms Ngubane	Ms Senzeni Ngubane
Ms Pardesi	Ms Shireen Pardesi
NDOH	National Department of Health
NHI	National Health Insurance
PaCoCAA	<i>Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)</i>
POCA	<i>Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)</i>
PPE	Personal Protective Equipment
PPPFA	<i>Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)</i>

ABBREVIATIONS/ ACRONYMS	DESCRIPTION
PFMA	<i>Public Finance Management Act, 1999 (Act No. 1 of 1999)</i>
Practice Note No. 08 of 2019/2020	<i>National Treasury Instruction No. 08 of 2019/2020: Emergency Procurement in response to National State of Disaster</i>
Practice Note No. 3 of 2020/21	<i>National Treasury Instruction 3 of 2020/2021, dated 15 April 2020: Covid-19 Disaster Management Central Emergency Procurement Strategy for PFMA Organs of State</i>
Practice Note No. 5 of 2020/21	<i>National Treasury Instruction No. 5 of 2020/21, dated 28 April 2020: Emergency Procurement in response to National State of Disaster</i>
RFP	Request for Proposal
TEC	Technical Evaluation Committee
ToR	Terms of Reference
TTN	Tammy Taylor Nails
SAPS	South African Police Service
SCM	Supply Chain Management
SLA	Service Level Agreement
SIU	Special Investigating Unit
SIU Act	<i>Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996)</i>
Suhaila Mather Consulting	Suhaila Mather Consulting (Pty) Ltd
the Constitution	<i>Constitution of the Republic of South Africa, 1996</i>
the Minister	The Minister of Health, Dr Zweli Mkhize

<b>ABBREVIATIONS/ ACRONYMS</b>	<b>DESCRIPTION</b>
the Minister's son	Mr Dedani Mkhize
VAT	Value Added Tax
WT Graphics	WT Graphics and Design (Pty) Ltd

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## **EXECUTIVE SUMMARY**

The SIU received allegations from a whistle-blower regarding potential irregularities in the award by the NDOH of the NHI media campaign and the subsequent extension and variation thereof to include services regarding the Covid-19 media campaign.

It was also alleged by the whistle-blower that the Minister had a vested interest in the appointment of Digital Vibes and that the appointment of Digital Vibes by the NDOH had been irregular.

This Report contains the outcomes of the investigation into the allegations received by the SIU.

### Findings

The obtained evidence indicates that the procurement processes in respect of the NHI – and Covid-19 media campaigns, were irregular and the subsequent contract(s)/SLA(s) was/were void. In this regard, irregular expenditure amounting to approximately R 150 million and fruitless and wasteful expenditure amounting to approximately between R 72 million and R 80 million was incurred by the NDOH.

Consequently, on 17 June 2021, the SIU obtained an Interim Preservation Order / Interdict from the Special Tribunal under Case No. KN 3/2021 for a total amount of R 22 001 884.54 that was being held in a number of accounts. On 17 June 2021, the Order was served via e-mail on the relevant bank and the financial institutions where the money was being held. Service of the papers on the 12 Respondents by e-mail has been completed. The SIU is now required to bring the Review Application in respect of the Digital Vibes contract(s) within 30 court days from 17 June 2021 (i.e. on or before 29 July 2021). The SIU has briefed Counsel in this regard.

The obtained evidence indicates that Dr Pillay, as the 'Acting' DG of the NDOH during the Covid-19 media campaign, should be criminally prosecuted for 'financial misconduct', as envisaged in section 86(1) of the PFMA, as read with section(s) 38(1)(a)(i) and (iii), 38(1)(b), 38(1)(c)(ii), 38(1)(c)(iii), 38(1)(g), 38(1)(h), 38(1)(l), 38(1)(n), 38(2), 39(1)(a) and (b), 39(2)(a), (b)(iii) and (c), 40(1)(a), 41, 43(2), 43(3), 43(4)(a) and/or 44(2)(d) of the PFMA. A Referral in this regard will be made in due course.

Furthermore, Dr Pillay, in a letter to the National Treasury dated 11 May 2020 where he requested approval to deviate from normal procurement procedures, made numerous material intentional misrepresentations to the National Treasury in an attempt to obtain belated approval to deviate from normal procurement procedures. The obtained evidence indicates that he committed fraud in this regard.

The obtained evidence further indicates the following:

- Ms Mather and Ms Mitha committed fraud in that they held out to the NDOH that Digital Vibes was tendering for the NHI media campaign contract, whereas in fact, Ms Mather and Ms Mitha used Digital Vibes as a front in order to hide the fact that they were tendering for the contract and “*disguised*” this, due to the fact that they were close associates of the Minister of Health (Dr Z Mkhize), who was the Executive Authority of the NDOH, which was awarding the NHI media campaign contract.
- Digital Vibes (“owned” by Ms Hariram) and Ms Hariram (in her personal capacity) committed fraud in that Digital Vibes and Ms Hariram held out to the NDOH that Digital Vibes was tendering for the NHI media campaign contract, whereas in fact, Digital Vibes and Ms Hariram were fronting for Ms Mather and Ms Mitha in this regard.
- Digital Vibes (“owned” by Ms Hariram), Ms Hariram (in her personal capacity), Ms Mather and Ms Mitha (at the instance of the Minister), direct family members of the Minister, former associates of the Minister and family members of former associates of the Minister, contravened the provisions of section 3 read with sections 24 and 26 of the PaCoCAA in that they paid and received gratifications resulting from the fact that the NDOH had irregularly and unlawfully awarded contract(s) to Digital Vibes in respect of the NHI - and the Covid-19 media campaigns, and had paid Digital Vibes in this regard. Furthermore, Digital Vibes (“owned” by Ms Hariram), Ms Hariram (in her personal capacity), Ms Mather and Ms Mitha (at the instance of the Minister), contravened the provisions of section 2 of the POCA (money laundering).

- Taking into account the amounts of money that were received from the NDOH, and taking into account an analysis of the bank account(s) of Digital Vibes, it appears that Digital Vibes failed to declare and pay company tax and failed to pay the required VAT to the South African Revenue Service.
- Further investigations to identify more potentially corrupt payments in this regard, are continuing.

The evidence obtained also supports the following findings:

- Ms Mather was, as early as 30 May 2019 or shortly thereafter involved with the Minister as his Strategic Communications Advisor. In this regard, the then DG of the NDOH, Ms Matsoso, stated that (at the swearing in of the Minister) the Minister's Chief of Staff introduced Ms Mather to her as the Minister's Strategic Communications Advisor.
- On 12 July 2019, the NDOH initially attempted to appoint Ms Mather as a communication expert consultant for the NDOH in respect of the envisaged NHI media campaign.
- On 15 July 2019 (i.e. 3 days after this attempt), the Minister sent the following WhatsApp message to Ms MP Matsoso, who was the then DG of NDOH: "*Hi DG. Kindly sort out contractual arrangements. Please ask for preliminary NHI implementation plan and draft communication plan by Friday from each individual, as discussed*" Emphasis added].
- It is apparent from the contents of the WhatsApp message that the Minister was giving instructions to the DG. At best, this conduct on the part of the Minister was improper and at worst, the conduct of the Minister was unlawful (as implied in paragraphs 27 and 41 of the written statement dated 21 June 2021 that was provided by the Minister to the SIU), as it constituted an interference by the Executive Authority in the affairs of the administrative authority of the NDOH.

- The then DG of the NDOH, Ms Matsoso, further stated that during this period she received repeated WhatsApp messages from the Minister to resolve the contractual issues of the NHI media campaign.
- According to the chronology of events, these occurrences took place approximately four and a half months before the SLA with Digital Vibes was signed on 29 November 2019. Digital Vibes thereafter “appointed” Ms Mather and Ms Mitha as purported contractors for purposes of the NHI media campaign.
- During the relevant period, Digital Vibes paid an amount of R 6 720 for repairs at a property belonging to the Minister.
- On 2 May 2020, Digital Vibes transferred R 300 000 (via a company belonging to Ms Mather) to a company belonging to the Minister’s son.
- On 4 May 2020, Digital Vibes paid an amount of R 160 000 to a Pietermaritzburg car dealership in respect of the purchase of a second-hand motor vehicle (i.e. a 2003 Toyota Land Cruiser) for the Minister’s son. This motor vehicle was registered in the name of the Minister’s son.
- At the time of the above-mentioned transactions, the NDOH had transferred approximately R 50 million to Digital Vibes for services related to the Covid-19 media campaign.
- Digital Vibes also, by way of having Electronic Fund Transfers converted to cash, caused significant amounts of cash to be paid to the Minister’s son.
- At a press briefing that was held on 26 May 2021 regarding the Digital Vibes contract, the Minister denied that he or his family had benefited from the deal. This denial was, objectively speaking, untrue, as the Minister’s son and the Minister himself (via property belonging to him) had directly benefitted from Digital Vibes, who in turn had benefitted from the NDOH contracts.

On 20 January 2020 and 16 June 2020 respectively, the Minister approved budgets amounting to approximately R 132 million in respect of the NHI – and Covid-19 media campaigns.

It should be noted that this budget of R 46 million for the NHI media campaign, was approved by the Minister 52 days after the SLA between the NDOH and Digital Vibes had already been signed

It should be noted that this budget of R 85 million for the NHI media campaign, was approved by the Minister more than six months after the SLA between the NDOH and Digital Vibes had already been signed.

In these circumstances, the Minister should at least have raised concerns regarding the belated budget approval request and the fact that the budget had already been allocated to a service provider (Digital Vibes), where budget allocations are normally aligned to a need being identified before a SCM process is launched.

A Cabinet Memorandum dated 13 June 2019 (the Minister formed part of the Cabinet at that stage) indicated that the GCIS would be responsible for the rollout of the NHI communication strategy (NHI media campaign). In the circumstances, it is astonishing that the Minister thereafter, contrary to the Cabinet Memorandum, allowed Digital Vibes to be appointed by the NDOH in respect of the NHI media campaign. In fact, it can be argued that the Minister deliberately ignored a Cabinet decision (of which he formed part of) in this regard. During the end of February/March 2020, the GCIS was again tasked by the NATJoint to do the Covid-19 awareness campaign for Government. Once again, it is inexplicable as to why the Minister would have allowed the “extension” of the Digital Vibes SLA with the NDOH in respect of the NHI media campaign to include the Covid-19 media campaign. It would have been far more cost-effective if the GCIS had rendered the required services.

The fact that:

- two contracts amounting to approximately R 176 million (i.e. R 141 million in respect of the NHI media campaign and the approximately R 35 million quotation that was accepted in respect of the Covid-19 media campaign), were entered into in highly irregular circumstances and in direct conflict with public procurement prescripts; and

- the NDOH spent approximately R 125 million in respect of the Covid-19 media campaign, in circumstances where a quotation of only approximately R 35 million for these services had been approved,

is indicative of a distinct lack of oversight on the part of the Minister in respect of the NDOH for which he is accountable.

The obtained evidence supports the referral thereof to the President for purposes of taking executive action against the Minister.

Evidence justifying the institution of disciplinary action against officials in the NDOH, i.e. Dr Pillay, Mr Maja, Ms Pardesi, Dr Buthelezi, Ms Ngubane, Ms Ngobese, Mr Ngcobo and Mr Van Der Merwe, has been obtained.

Evidence was obtained justifying the blacklisting of Digital Vibes from conducting business with the public sector.

## **1. SUMMARY OF OUTCOMES**

### **1.1 Value of Cash Recoveries**

None at this stage.

### **1.2 Evidence obtained for the purposes of the institution of Civil proceedings**

On 17 June 2021, the SIU obtained an Interim Preservation Order / Interdict from the Special Tribunal under Case No. KN 3/2021 for a total amount of R 22 001 884.54 that was being held in a number of accounts. On 17 June 2021, the Order was served via e-mail on the relevant bank and the financial institutions where the money was being held. Service of the papers on the 12 Respondents by e-mail has been completed. The SIU is now required to bring the Review Application in respect of the Digital Vibes contract(s) within 30 court days from 17 June 2021 (i.e. on or before 29 July 2021). The SIU has briefed Counsel in this regard.

### **1.3 Evidence obtained for purposes of the institution of Criminal prosecutions**

1.3.1 The obtained evidence indicates that Dr Pillay, as the 'Acting' DG of the NDOH during the Covid-19 media campaign, should be criminally prosecuted for 'financial misconduct', as envisaged in section 86(1) of the PFMA, as read with section(s) 38(1)(a)(i) and (iii), 38(1)(b), 38(1)(c)(ii), 38(1)(c)(iii), 38(1)(g), 38(1)(h), 38(1)(l), 38(1)(n), 38(2), 39(1)(a) and (b), 39(2)(a), (b)(iii) and (c), 40(1)(a), 41, 43(2), 43(3), 43(4)(a) and/or 44(2)(d) of the PFMA. A Referral in this regard will be made in due course.

1.3.2 Furthermore, Dr Pillay, in a letter to the National Treasury dated 11 May 2020 where he requested approval to deviate from normal procurement procedures, made numerous material intentional misrepresentations to the National Treasury in an attempt to obtain belated approval to deviate from normal procurement procedures. The obtained evidence indicates that he committed fraud in this regard.

1.3.3 The obtained evidence further indicates the following:

- 1.3.3.1 Ms Mather and Ms Mitha committed fraud in that they held out to the NDOH that Digital Vibes was tendering for the NHI media campaign contract, whereas in fact, Ms Mather and Ms Mitha used Digital Vibes as a front in order to hide the fact that they were tendering for the contract and “*disguised*” this, due to the fact that they were close associates of the Minister of Health (Dr Z Mkhize), who was the Executive Authority of the NDOH, in circumstances where the NDOH was awarding the NHI media campaign contract.
- 1.3.3.2 Digital Vibes (“owned” by Ms Hariram) and Ms Hariram (in her personal capacity) committed fraud in that Digital Vibes and Ms Hariram held out to the NDOH that Digital Vibes was tendering for the NHI media campaign contract, whereas in fact, Digital Vibes and Ms Hariram were fronting for Ms Mather and Ms Mitha in this regard.
- 1.3.3.3 Digital Vibes (“owned” by Ms Hariram), Ms Hariram (in her personal capacity), Ms Mather and Ms Mitha (at the instance of the Minister), direct family members of the Minister, former associates of the Minister and family members of former associates of the Minister, contravened the provisions of section 3 read with sections 24 and 26 of the PaCoCAA in that they paid and received gratifications resulting from the fact that the NDOH had irregularly and unlawfully awarded contract(s) to Digital Vibes in respect of the NHI - and the Covid-19 media campaigns, and had paid Digital Vibes in this regard. Furthermore, Digital Vibes (represented by Ms Hariram), Ms Hariram (in her personal capacity), Ms Mather and Ms Mitha (at the instance of Dr Z Mkhize), contravened the provisions of section 2 of the POCA (money laundering).

1.3.3.4 Further investigations to identify more potentially corrupt payments in this regard, are continuing.

#### 1.4 **Evidence obtained for purposes of the institution of Executive action**

1.4.1 The evidence obtained supports the following findings:

1.4.1.1 Ms Mather was, as early as 30 May 2019 or shortly thereafter involved with the Minister as his Strategic Communications Advisor. In this regard, the then DG of the NDOH, Ms Matsoso, stated that (at the swearing in of the Minister) the Minister's Chief of Staff introduced Ms Mather to her as the Minister's Strategic Communications Advisor.

1.4.1.2 On 12 July 2019, the NDOH initially attempted to appoint Ms Mather as a communication expert consultant for the NDOH in respect of the envisaged NHI media campaign.

1.4.1.3 On 15 July 2019 (i.e. 3 days after this attempt), the Minister sent the following WhatsApp message to Ms Matsoso, who was the then DG of NDOH: "*Hi DG. Kindly sort out contractual arrangements. Please ask for preliminary NHI implementation plan and draft communication plan by Friday from each individual, as discussed*" Emphasis added].

1.4.1.4 Although the Minister indicated to the SIU that the aforementioned WhatsApp message related to the NHI media campaign in general, and not to individuals, the only reasonable inference in the circumstances is that the communication of the Minister was referring to an envisaged contract with Ms Mather.

It is noteworthy that the Minister at that stage already referred to “contractual arrangements” regarding the “preliminary NHI implementation plan and draft communication plan by Friday from each individual”, notwithstanding the fact that no procurement processes in this regard had been initiated by the NDOH. The Minister was therefore at that stage already aware of the potential involvement of Ms Mather in the NHI media campaign.

1.4.1.5 It is apparent from the contents of the WhatsApp message that the Minister was giving instructions to the DG. At best, this conduct on the part of the Minister was improper and at worst, the conduct of the Minister was unlawful (as implied in paragraphs 27 and 41 of the written statement dated 21 June 2021 that was provided by the Minister to the SIU), as it constituted an interference by the Executive Authority in the affairs of the administrative authority of the NDOH.

1.4.1.6 The then DG of the NDOH, Ms Matsoso, further stated that during this period she received repeated WhatsApp messages from the Minister to resolve the contractual issues of the NHI media campaign.

1.4.1.7 According to the chronology of events, these occurrences took place approximately four and a half months before the SLA with Digital Vibes was signed on 29 November 2019. Digital Vibes thereafter “appointed” Ms Mather and Ms Mitha as purported contractors for purposes of the NHI media campaign.

1.4.2 The Minister approved the first budget allocation for the NHI media campaign, which approval specifically mentioned that the services would be rendered by Digital Vibes.

- 1.4.2.1 On 20 January 2020, the Minister signed the “*Request the Minister of Health to Approve Implementation Strategy and Budget for National Health Insurance (NHI) Communication Strategy which will be executed by Digital Vibes*” [Emphasis added] for an amount of R 46 939 550.
- 1.4.2.2 Thereafter, on 16 June 2020, the Minister signed the “*Request the Minister of Health to Approve Implementation Strategy and Budget from June to November 2020 for National Health Insurance (NHI) Communication Strategy which will be executed by Digital Vibes*” [Emphasis added] for an amount of R 85 502 500.
- 1.4.3 During the relevant period, Digital Vibes paid an amount of R 6 720 for repairs at a property belonging to the Minister. The required services had been identified by the Minister’s wife. The particulars on the two invoices reflected the requester of the services as being one “*Mkhize*” and a cellular phone number was also indicated in the invoices. The Minister indicated to the SIU that he had not requested these services nor did the indicated cellular number belong to him or to an account registered in his name. However, the indicated cellular number, in eNatis records, is linked to vehicles registered in the name of the Minister. The Minister indicated that, a Messenger also with the surname “*Mkhize*”, who was in his employ had subsequently confessed that the cash to pay for the maintenance services that had been provided by the Minister’s Housekeeper, had been stolen by him. When payment for the services became due, the Messenger had approached Ms Mitha who, according to the Messenger, paid the R 6 720 to the service provider (an affidavit in this regard was also provided by the Messenger). However, the obtained evidence indicates that Digital Vibes, and not Ms Mitha, paid for these services.

During the questioning of the Minister, he did not indicate whether he had dismissed the messenger or laid criminal charges against him for this alleged theft. Therefore, the veracity of the explanation of the messenger is, in the view of the SIU in doubt.

- 1.4.4 Obtained evidence indicates that on 2 May 2020, Digital Vibes transferred R 300 000 (via a company belonging to Ms Mather) to a company belonging to the Minister's son. The Minister indicated that his son had (only once this information had become known in the media) informed him that this money was a gift from Ms Mather, who had a close relationship with him (his son).
- 1.4.5 Obtained evidence also indicates that on 4 May 2020 Digital Vibes paid an amount of R 160 000 to a Pietermaritzburg car dealership in respect of the purchase of a second-hand motor vehicle (i.e. a 2003 Toyota Land Cruiser) for the Minister's son. This motor vehicle was registered in the name of the Minister's son.
- 1.4.6 The Minister also indicated that his son had (once this information had become known in the media) informed him that this second-hand motor vehicle was a gift from Ms Mather, who had a close relationship with him (his son). According to media reports, which referred to photographs posted on social media, the vehicle was put to use at a farm near Pietermaritzburg owned by the Minister's son.
- 1.4.7 Obtained evidence indicates that, at some stage, Ms Mather contacted a witness and inquired if he knew of anyone that could give her cash in return for an EFT transfer that she would do for the said cash value. This person made inquiries from a Cash & Carry Wholesaler and was informed that this Cash & Carry Wholesaler would be in a position to assist Ms Mather in this regard. He obtained bank account details for purposes of the EFT transfers. According to this witness, transfers amounting to R 3 400 000 were made into the account of the Cash & Carry Wholesaler.

The Cash & Carry Wholesaler would then arrange for this cash, which was contained either in boxes or plastic packets to be delivered to him (he had been informed by the Cash & Carry Wholesaler that the cash accorded with the value of the EFT payments that had been made by Ms Mather). The witness further stated that the cash (boxes or plastic packets) was fetched from him on different occasions by Ms Mather, Ms Mitha or Ms Hariram (the “owner” of Digital Vibes). Obtained evidence indicates that, after NDOH related payments amounting to approximately R 135 million had been received by Digital Vibes, Digital Vibes made six payments of which the SIU is aware amounting to R 1 750 000.00 to a company, JD Communication. Ms Hariram stated that Ms Mather had requested her to collect/receive boxes from a person. Ms Mather further informed her that the boxes contained cash and that the Minister’s son would collect the boxes (cash) from her. In this regard, Ms Hariram would collect the boxes (cash) from an identified person at his home in Stanger (Oceanview), alternatively this person would deliver the boxes (cash) to her at her home. Thereafter, the Minister’s son contacted Ms Hariram on several occasions prior to the collection of the boxes (cash), the Minister’s son would then collect the boxes/parcels (cash) at a petrol service station where Ms Hariram was employed as a Manager. These collections occurred approximately six times. Ms Hariram indicated that these collections appeared to be very “*clandestine*”.

- 1.4.8 At the time of the transactions as referred to in paragraphs 1.4.4 and 1.4.5 above, the NDOH had transferred roughly R 50 million to Digital Vibes for services related to the Covid-19 media campaign. Besides two relatively minor payments from the MISA, an entity of the CoGTA, Digital Vibes’ sole source of income during the period in which the R 300 000 was transferred to the Minister’s son’s company and the second-hand motor vehicle was purchased for R 160 000, was the money it had received from the NDOH.

1.4.9 Digital Vibes ultimately received a total of approximately R 150 million from the NDOH in respect of the NHI media campaign and the Covid-19 media campaign.

1.4.10 The Minister confirmed that the explanation that was obtained from his son, directly linked the Minister's family as having received benefits from Ms Mather. At a press briefing that was held on 26 May 2021 regarding the Digital Vibes contract, the Minister denied that he or his family had benefited from the deal. This denial is in conflict with the contents of paragraphs 1.4.3 to 1.4.8 above. This denial was untrue, as the Minister's son and the Minister himself (via property belonging to him) had directly benefitted from Digital Vibes, who in turn had benefitted from the NDOH contracts. In this regard, the Minister indicated that he was at that stage not aware that he himself (via his property) or his son had benefitted in this regard and had been telling the truth as he knew it to be. However, the fact remains that the Minister's denial was misleading to the public at large and the President. The Minister should have made further inquiries before making this misleading statement.

1.4.11 Lack of oversight by the Minister

1.4.11.1 On 20 January 2020 and 16 June 2020 respectively, the Minister approved budgets amounting to approximately R 132 million in respect of the NHI – and Covid-19 media campaigns, in circumstances where the NDOH had already informed the GCIS that the NDOH had no budget for the NHI media campaign.

1.4.11.1.1 It should be noted that this budget of R 46 million for the NHI media campaign, was approved by the Minister 52 days after the SLA between the NDOH and Digital Vibes had already been signed; and

1.4.11.1.2 It should be noted that this budget of R 85 million for the NHI media campaign, was approved by the Minister more than six months after the SLA between the NDOH and Digital Vibes had already been signed.

In these circumstances, the Minister should at least have raised concerns regarding the belated budget approval request and the fact that the budget had already been allocated to a service provider (Digital Vibes), where budget allocations are normally aligned to a need being identified before a SCM process is launched.

1.4.11.2 A Cabinet Memorandum dated 13 June 2019 (the Minister formed part of the Cabinet at that stage) indicated that the GCIS would be responsible for the rollout of the NHI communication strategy (NHI media campaign). In the circumstances, it is astonishing that the Minister thereafter, contrary to the Cabinet Memorandum, allowed Digital Vibes to be appointed by the NDOH in respect of the NHI media campaign. In fact, it can be argued that the Minister deliberately ignored a Cabinet decision (of which he formed part of) in this regard. During the end of February/March 2020, the GCIS was again tasked by the NATJoint to do the Covid-19 awareness campaign for Government. Once again, it is inexplicable as to why the Minister would have allowed the “extension” of the Digital Vibes SLA with the NDOH in respect of the NHI media campaign to include the Covid-19 media campaign. It would have been far more cost-effective if the GCIS had rendered the required services.

1.4.11.3 The Minister indicated that protracted discussions in this regard had taken place and he was satisfied that costing in this regard had been done.

However, the SIU could also find no evidence/documentation indicating the existence of such a costing exercise prior to the decision to outsource all the work in this regard. Furthermore, the Minister indicated that the GCIS could not be approached as according to him, the GCIS had indicated that all communication related work should be done by State departments themselves and that the State departments should set aside specific budget for this purpose.

1.4.11.4 The fact that:

1.4.11.4.1 two contracts amounting to approximately R 176 million (i.e. R 141 million in respect of the NHI media campaign and the approximately R 35 million quotation that was accepted in respect of the Covid-19 media campaign), were entered into in highly irregular circumstances and in direct conflict with public procurement prescripts; and

1.4.11.4.2 the NDOH spent approximately R 125 million in respect of the Covid-19 media campaign, in circumstances where a quotation of only approximately R 35 million for these services had been approved,

is indicative of a distinct lack of oversight on the part of the Minister in respect of the NDOH for which he is accountable.

1.4.12 The obtained evidence indicates that a conflict of interests existed on the part of the Minister in that:

1.4.12.1 his friends or associates under the guise of Digital Vibes were unlawfully and irregularly appointed by the NDOH in respect of the NHI- and Covid-19 media campaigns; and

1.4.12.2 his direct family members, his former associates and/or family members of such former associates (directly or indirectly) received undue benefits from persons linked to Digital Vibes,

in circumstances where the Minister failed to declare any such actual or potential conflicts of interest to the Presidency.

1.4.13 The obtained evidence supports the referral thereof to the President for purposes of taking executive action against the Minister.

## 1.5 **Evidence obtained for purposes of the institution of Disciplinary Action**

### 1.5.1 **Dr Pillay**

1.5.1.1 Evidence justifying the institution of disciplinary action against Dr Pillay has been obtained.

1.5.1.2 In this regard, in respect of the NHI media campaign in his capacity as Deputy DG: Health Regulation and Compliance at the NDOH, his conduct or omissions amounted to:

1.5.1.2.1 'financial misconduct', as envisaged in section 81(2) of the PFMA;

1.5.1.2.2 contraventions of the prescripts of section(s) 33, 195(1)(a), (b), (d) and/or (f) and/or 217 of the Constitution;

1.5.1.2.3 contraventions of the prescripts of section(s) 45(a), (b), (c) and/or (d) of the PFMA;

1.5.1.2.4 contraventions of the prescripts of the regulation(s) 11(a) to (d), 13(e) to (g) and/or 14(a), (b), (d), (e), (f), (j), (k) and/or (q) of the Public Service Regulations of 2016;

1.5.1.2.5 contravention of the provisions of section 45 of the PFMA, in that he as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60% for functionality;

1.5.1.2.6 gross misconduct;

1.5.1.2.7 gross dereliction of duty; and/or

1.5.1.2.8 gross negligence.

1.5.1.3 Furthermore, in respect of the Covid-19 media campaign in his capacity as 'Acting' DG of the NDOH, his conduct or omissions amounted to:

1.5.1.3.1 'financial misconduct', as envisaged in section 81(1)(a) and (b) and section 86(1) of the PFMA, as read with section(s) 38(1)(a)(i) and (iii), 38(1)(b), 38(1)(c)(ii), 38(1)(c)(iii), 38(1)(g), 38(1)(h), 38(1)(l), 38(1)(n), 38(2), 39(1)(a) and (b), 39(2)(a), (b)(iii) and (c), 40(1)(a), 41, 43(2), 43(3), 43(4)(a) and/or 44(2)(d) of the PFMA;

1.5.1.3.2 contraventions of the prescripts of section(s) 33, 195(1)(a), (b), (d) and/or (f) and/or 217 of the Constitution;

1.5.1.3.3 contraventions of the prescripts of the regulation(s) 11(a) to (d), 13(e) to (g) and/or 14(a), (b), (d), (e), (f), (j), (k) and/or (q) of the Public Service Regulations of 2016;

1.5.1.3.4 gross misconduct;

1.5.1.3.5 gross dereliction of duty;

1.5.1.3.6 gross negligence; and/or

1.5.1.3.7 fraud,

in the performance of his official duties as the then 'Acting' DG, 'Acting' Head of Department and 'Acting' Accounting Officer of the Department.

1.5.1.4 A Referral Letter in this regard is at present being drafted.

**1.5.2 Mr Maja (Head of Communications at the NDOH and TEC member)**

1.5.2.1 In terms of paragraph 15 of the NDOH Procurement Policy, the User will directly be responsible for the contract administration and project management. Contract administration will include payments, delivery period and extensions etc. Project management will include the management of the NDOH's responsibilities, and the contractor's responsibilities.

1.5.2.2 Evidence was obtained that he approved payments to Digital Vibes, which expenditure was not in line with National Treasury approved amounts as per the National Treasury Report dated 24 June 2020. In this regard, it is alleged that his conduct undermined the financial management of the NDOH as the NDOH continued to pay excessive amounts to Digital Vibes.

1.5.2.3 Evidence was obtained that he failed to take effective and appropriate steps to prevent fruitless and wasteful expenditure in terms of section 81(2) of the PFMA.

1.5.2.4 Evidence was obtained that he contravened the provisions of section 45 of the PFMA, in that he as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60% for functionality.

**1.5.3 Ms Pardesi (Chief Director and TEC member)**

1.5.3.1 Evidence was obtained that she contravened the provisions of section 81(2) of the PFMA, in that in that she approved a request memorandum for payment of R 35 906 450.00 to Digital Vibes on 24 March 2020, which expenditure was not in line with National Treasury approved amounts, resulting in unauthorised/irregular payments to Digital Vibes.

1.5.3.2 Evidence was obtained that she contravened the provisions of section 45 of the PFMA, in that she as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60% for functionality.

**1.5.4 Ms Ngubane (TEC member)**

Evidence was obtained that she contravened the provisions of section 45 of the PFMA, in that she as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60% for functionality.

**1.5.5 Mr Ngcobo (TEC member)**

Evidence was obtained that he contravened the provisions of section 45 of the PFMA, in that he as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60 % for functionality.

**1.5.6 Dr Buthelezi (current DG of the NDOH)**

Evidence was obtained that Dr Buthelezi, after assuming duties as the DG of the NDOH, instructed that all NHI- and Covid-19 media campaign related matters must be centralised in his office. Thereafter, he contravened of the provisions of section 81(1)(b) of the PFMA by allowing payments to Digital Vibes amounting to approximately R 60 million, in circumstances where such payments constituted irregular expenditure, as envisaged in the PFMA, and parts thereof also constituted fruitless and wasteful expenditure, as envisaged in the PFMA. In the circumstances, Dr Buthelezi should have conducted a comprehensive due diligence exercise before allowing such any payments.

**1.5.7 Ms P Ngobese (Administration Clerk at the NDOH and Personal Assistant to Ms Pardesi)**

1.5.7.1 Evidence was obtained that she contravened the provisions of section 81(2) of the PFMA, in that she approved payments to the value of R 69 428 952.00 to Digital Vibes without having the necessary authority to do so (due to her position as).

1.5.7.2 No evidence indicating that she had the necessary delegations of authority to approve amounts paid to Digital Vibes, was obtained.

### 1.5.8 **Mr Ian Van Der Merwe (CFO at the NDOH)**

Evidence was obtained that he contravened of the provisions of section 81(2) of the PFMA, in that he, as the CFO of the NDOH allowed payments to be made to Digital Vibes that were contrary to the National Treasury approved amount of R 25 909 884.00, and also for allowing payments to be made to Digital Vibes without a Purchase Order, as required in terms of the NDOH Procurement Policy.

### 1.6 **Evidence obtained for purposes of Blacklisting of Digital Vibes**

Evidence was obtained justifying the blacklisting of Digital Vibes from conducting business with the public sector.

## **2. INTRODUCTION**

### **2.1 Background**

2.1.1 The SIU received allegations from a whistle-blower regarding potential irregularities in the award by the NDOH of the NHI media campaign and the subsequent extension and variation thereof to include services regarding the Covid-19 media campaign.

2.1.2 It was also alleged by the whistle-blower that the Minister had a vested interest in the appointment of Digital Vibes and that the appointment of Digital Vibes by the NDOH had been irregular.

2.1.3 This Report contains the outcomes of the investigation into the allegations received by the SIU.

### **2.2 Mandate**

2.2.1 The SIU was mandated through the issuance of Proclamation No. R. 23 of 2020, to conduct an investigation into the affairs of all State institutions in respect of, *inter alia*, the procurement or contracting for goods, works and services, during, or in respect of the national state of disaster, (as declared by Government Notice No. 313 of 15 March 2020), by or on behalf of State institutions, which included matters concerning the NDOH.

2.2.2 The Proclamation enjoined the SIU to investigate any alleged-

- (a) serious maladministration in connection with the affairs of the NDOH;
- (b) improper or unlawful conduct by the officials or employees of the NDOH;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing on State property;
- (e) intentional or negligent loss of public money or damage to public property;
- (f) offences referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed with the affairs of the NDOH; or
- (g) unlawful or improper conduct by any person, which had caused or may have caused serious harm to the interests of the public or any category thereof, and

which took place between 1 January 2020 and the date of publication of the Proclamation (i.e. 23 July 2020), or which took place prior to 1 January 2020 or after the date of publication of the Proclamation (i.e. 23 July 2020), but was relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involved the same persons, entities or contracts investigated under authority of the Proclamation.

2.2.3 The Schedule to Proclamation No. R. 23 of 2020 stipulates as follows:

*“1. The procurement of, or contracting for, goods, works and services, including the construction, refurbishment, leasing, occupation and use of immovable property, during, or in respect of the national state of disaster, as declared by Government Notice No. 313 of 15 March 2020, by or on behalf of the State Institutions, and payments made in respect thereof in a manner that was-*

- (a) *not fair, competitive, transparent, equitable or cost-effective;*
- (b) *contrary to applicable-*
  - (i) *legislation;*
  - (ii) *manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or*
  - (iii) *manuals, policies, procedures, prescripts, instructions or practices of or applicable to the State institutions;*
- (c) *conducted or facilitated through the improper or unlawful conduct of-*
  - (i) *employees or officials of the State institutions; or*
  - (ii) *any other person or entity;*

*to corruptly or unduly benefit themselves or any other person; or*
- (d) *fraudulent,*

*and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the State institutions or the State*

2. *Any improper or unlawful conduct by the officials or employees of the State institutions or any other person of entity, in relation to the allegations set out in paragraph 1 of the this Schedule, including the causes of such improper or unlawful conduct and any loss, damage or actual prejudice suffered by the State institution or the State.”*

## 2.3 **Objectives of the investigation**

2.3.1 The key objectives of the investigation were as follows:

2.3.1.1 Review compliance with the prescribed legislation in respect of the procurement processes followed in respect of the NHI media campaign (and the resulting SLA) and the subsequent Covid-19 media campaign;

2.3.1.2 Identify irregular and/or unlawful conduct on the part of the NDOH, its officials, employees and/or third parties;

2.3.1.3 Identify and quantify losses suffered by the NDOH and to facilitate the recovery of such losses (where possible);

2.3.1.4 Collect admissible evidence in order to:

- Approach the Special Tribunal to review and set aside the appointment of Digital Vibes (in respect of both the NHI media campaign and the subsequent Covid-19 media campaign) and the resulting SLA entered into between the NDOH and the relevant service provider (i.e. Digital Vibes);
- Facilitate the institution of criminal, civil, disciplinary and/or executive proceedings against identified individuals/entities; and

2.3.1.5 Identify systemic weaknesses and provide recommendations to address such weaknesses in order to prevent similar irregularities occurring in the future, or to mitigate the effects thereof.

## 2.4 Key Deliverables

2.4.1 The key deliverables of the investigation were as follows:

2.4.1.1 Investigate all the received allegations (including the findings referred to in a Report prepared by Ngubane Tax Advisory and allegations in media reports) pertaining to:

- the procurement processes and resulting Agreement(s) concluded between the NDOH and Digital Vibes in respect of the NHI media campaign and the Covid-19 media campaign;
- potential unauthorised, irregular and fruitless and wasteful expenditure incurred by the NDOH in respect of the NHI media campaign and the Covid-19 media campaign;
- the alleged involvement of the Minister in the appointment of Digital Vibes.

- 2.4.1.2 Refer evidence for purposes of criminal, civil, disciplinary and/or executive proceedings against identified individuals/entities;
- 2.4.1.3 Make recommendations, where it is prudent to do so, to the NDOH regarding the improvement its internal control environment;
- 2.4.1.4 A completed investigation with Closure Memoranda in respect of each sub-investigation that was conducted; and
- 2.4.1.5 Interim reports as required by the Presidency, as well as the issuance of a final Presidential Report.

**2.5 Forensic procedures and methodology employed**

2.5.1 The investigation methodology included the following:

- 2.5.1.1 Conducting interviews with employees of the NDOH and other relevant role players;
- 2.5.1.2 Collecting relevant, available information and admissible evidence;
- 2.5.1.3 Performing a review and analysis of the information and evidence collected; and
- 2.5.1.4 Documenting the findings and arriving at conclusions.

2.5.2 In pursuance of its mandate, the SIU conducted the following interviews and, where indicated, obtained the interviewees’ versions of events by way of Affidavit:

<b>Table 1: Individuals Interviewed</b>		
<b>Individual interviewed</b>	<b>Position</b>	<b>Affidavit Obtained</b>
<b>NDOH</b>		
Ms Mondli Botha	NDOH Director: Supply Chain Management	Yes
Ms Dikelele Tshabalala	NDOH Chief Director: Supply Chain Management	Yes
Dr Anban Pillay	NDOH Deputy Director General: Health Regulation and Compliance (during the time of the events concerned he was the Acting Director General: NDOH)	Yes

<b>Table 1: Individuals Interviewed</b>		
<b>Individual interviewed</b>	<b>Position</b>	<b>Affidavit Obtained</b>
Mr Ian van der Merwe	NDOH: Chief Financial Officer	Yes
Ms Shireen Pardesi	NDOH: Chief Director	Yes
Mr Joseph Thembe Popo Maja	NDOH: Head of Communications	Yes
Ms Precious Matsoso	Former DG of the NDOH	Yes
Dr Zweli Mkhize	Minister of Health	No
<b>GCIS</b>		
Ms Phumla Williams	DG of the GCIS	Yes
Mr Michael Currin	Acting Deputy DG of the GCIS	Yes
<b>CoGTA/MISA</b>		
Mr Musa Zondi	CoGTA/MISA: Head of Communications	Yes
<b>Digital Vibes</b>		
Ms Radha Hariram	Director: Digital Vibes (Pty) Ltd	Yes
Mr Reuben Naidoo	Former Director: Digital Vibes (Pty) Ltd	Yes
<b>AGSA</b>		
Ms Thabelo Musisinyani	Senior Manager: Auditor-General of South Africa	No
Mr Andries Sekgetho	Business Executive: Auditor-General of South Africa	No
<b>Other</b>		
Mr Jon Chappe De Leonval	Director: Brandswell (Pty) Ltd	Yes
Ms Shireen Moolla	Wife of the owner of Dawnside Service Station, Stanger	Yes
Mr Kevin Morehen	Proprietor: 4Ways Maintenance	Yes
Mr Petrus Jacobus Viljoen	Chief Executive: Tammy Taylor Nails	Yes
Ms Sibahle Siphuthando Ngcobo	Director: Mkokwana Events Management (Pty) Ltd	No
Mr Shrimay Rajbally	Mr Car, Car Dealership	Yes
Ms Mapule Lebolang Sithole	Domestic Worker to the Minister of Health	Yes
Mr Zamokhwakhe T Mkhize	Driver and Messenger to the Minister of Health	Yes
Mr Welcome M Mthethwa	Director, Mateta Projects (Pty) Ltd	Yes

Ms Mather and Ms Mitha were in terms of sections 5(2)(b)&(c) of the SIU Act *subpoenaed* to be questioned regarding their involvement in the NHI- and Covid-19 media campaign related matters.

At the section 5(2)(b)&(c) inquiry, their legal representative indicated that they would refuse to answer any questions, based on their Constitutional right against self-incrimination. He further indicated that they intended approaching the High Court in respect of the constitutionality of the provisions of section 5(2)(b)&(c) of the SIU Act. Consequently, the inquiry was disbanded. Subsequent thereto, their legal representative approached the SIU and indicated that they would now be prepared to be questioned. This offer will be considered to potentially form part of the ongoing SIU support supplied in respect of civil proceedings and referrals made in terms of the SIU Act.

### **3. LEGISLATIVE FRAMEWORK**

#### **3.1 The *Constitution of the Republic of South Africa, 1996* (the Constitution)**

3.1.1 Section 217(1) of the Constitution stipulates that *“when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”*

#### **3.2 *Public Finance Management Act, 1999 (Act No 1 of 1999)* (PFMA)**

3.2.1 Irregular expenditure is defined by section 1 of the PFMA as: *“expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including ...”*.

3.2.2 Fruitless and wasteful expenditure is defined in section 1 of the PFMA as: *“expenditure which was made in vain and would have been avoided had reasonable care been exercised”*.

3.2.3 Unauthorised expenditure is defined in section 1 of the PFMA as: *“overspending of a vote or a main division within a vote or expenditure not in accordance with the purpose of a vote, or, in the case of a main division, not in accordance with the purpose of the main division”*.

- 3.2.4 Section 38(1) of the PFMA imposes several obligations on accounting officers. Section 38(1)(a)(i) requires the accounting officer of a department to ensure that the department *“has and maintains effective, efficient and transparent systems of financial and risk management and internal control”*.
- 3.2.5 Section 38(1)(a)(iii) stipulates that the accounting officer of a department must ensure that that department has and maintains *“an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective”*.
- 3.2.6 Section 38(1)(b) stipulates that the accounting officer of a department *“is responsible for the effective, efficient, economical and transparent use of the resources of the department...”*
- 3.2.7 Section 38(1)(c)(iii) stipulates that the accounting officer of a department must *“manage available working capital efficiently and economically”*.
- 3.2.8 Section 38(1)(g) stipulates that the accounting officer of a department, *“on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods and services, also to the relevant tender board”*.
- 3.2.9 Section 38(1)(h) stipulates that the accounting officer of a department must take effective and appropriate disciplinary steps against any official in the service of the department who contravenes or fails to comply with a provision of the PFMA, commits an act which undermines the financial management and internal control system of the department or makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure.
- 3.2.10 Section 38(1)(n) stipulates that the accounting officer of a department *“must comply, and ensure compliance by the department... to any liability for which money has not been appropriated”*.
- 3.2.11 Section 38(2) stipulates that *“An accounting officer may not commit a department...to any liability for which money has not been appropriated”*.

- 3.2.12 Section 39(1)(a) stipulates that *“The accounting officer for a department is responsible for ensuring that expenditure of that department is in accordance with the vote of the department and the main divisions within the vote”*.
- 3.2.13 Section 39(1)(b) stipulates that *“The accounting officer for a department is responsible for ensuring that effective and appropriate steps are taken to prevent unauthorised expenditure”*.
- 3.2.14 Section 39(2)(a) stipulates that *“An accounting officer, for the purposes of subsection (1) must take effective and appropriate steps to prevent any overspending of the vote of the department or a main division within the vote”*.
- 3.2.15 Section 39(2)(b)(iii) stipulates that *“An accounting officer, for the purposes of subsection (1) must report to the executive authority and the relevant treasury any impending overspending of the department’s vote or main division within the vote”*.
- 3.2.16 Section 39(c) stipulates that *“An accounting officer, for the purposes of subsection (1) must comply with all remedial measures imposed by the relevant treasury in terms of this Act to prevent overspending of the vote or a main division within the vote”*.
- 3.2.17 Section 40 of the PFMA imposes several obligations on the accounting officer of a department in respect of reporting on, amongst others, the expenditure incurred by a department. Section 40(1)(a) stipulates that *“The accounting officer for a department...must keep full and proper records of the financial affairs of the department... in accordance with any prescribed norms and standards”*.
- 3.2.18 Sections 40(3)(b)(i) and (ii) stipulate that the accounting officer of a department should include, in its annual report and financial statements, particulars of any material losses through criminal conduct, and any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year. The section further stipulates that an accounting officer must further include particulars of any criminal or disciplinary steps taken as a result of such losses, unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure.

- 3.2.19 Section 41 stipulates that *“An accounting officer for a department... must submit to the relevant treasury or the Auditor-General, such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require”*.
- 3.2.20 Section 43(2) stipulates that *“The amount of saving under a main division of a vote that may be utilised in terms of subsection (1), may not exceed eight per cent of the amount appropriated under that main division”*.
- 3.2.21 Section 43(3) stipulates that *“An accounting officer must within seven days submit a report containing the prescribed particulars concerning the utilisation of a saving in terms of subsection (1), to the executive authority responsible for the department and to the relevant treasury”*.
- 3.2.22 Section 43(4)(a) stipulates that *“This section does not authorise the utilisation of a saving in and amount specifically and exclusively appropriated for a purpose mentioned under a main division within a vote”*.
- 3.2.23 Section 44(2)(d) stipulates that *“A delegation or instruction to an official in terms of subsection (1) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty”*.
- 3.2.24 Section 45(a) compels an official in that *“An official in a department ...must ensure that the system of financial management and internal control established for that department... is carried out within the area of responsibility of that official”*.
- 3.2.25 Section 45 (b) and (c) of the PFMA compels an official in a department to use, within that official’s area of responsibility, financial and other resources effectively, efficiently, economically and transparently and to take effective and appropriate steps to prevent, within that official’s area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure.
- 3.2.26 Section 45(d) stipulates that *“An official in a department... must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44”*.

3.2.27 Insofar as financial misconduct and disciplinary proceedings are concerned, section 81 of the PFMA stipulates as follows:

- “(1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer wilfully or negligently -*
- (a) fails to comply with a requirement of section 38, 39, 40, 41 or 42; or*
  - (b) makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.*
- (2) An official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44<sup>1</sup> commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.”*

3.2.28 Section 86 of the PFMA stipulates for offences and penalties. Section 86(1) of the PFMA stipulates that *“An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 38, 39 and 40”*.

### **3.3 The Treasury Regulations, 2005**

3.3.1 The Treasury Regulations set out the regulatory framework in terms of the PFMA, prescribe norms and standards for SCM practices in State institutions where the PFMA finds application. The Treasury Regulations highlight, *inter alia*, the requirements that proper planning should be in place, a need should be identified, analysed and included in the strategic planning of a department and therefore budgeted for.

- 3.3.2 The Treasury Regulations emphasise the constitutional precepts relating to SCM processes. In effect, they require that a procurement system must be fair, equitable, transparent, competitive and cost-effective and that ordinarily a competitive bidding process must be followed.
- 3.3.3 The Treasury Regulations stipulate that when an accounting officer determines the appropriateness of disciplinary steps against an official in terms of section 38(1)(g) of the PFMA, the accounting officer must take into account the circumstances of the transgression, the extent of the expenditure involved and the nature and seriousness of the transgression.
- 3.3.4 The Treasury Regulations stipulate that the recovery of losses or damages resulting from fruitless and wasteful expenditure must be dealt with in accordance with regulation 12 of the Treasury Regulations. The aforementioned Treasury Regulation stipulates that losses or damages suffered by an institution because of an act committed or omitted by an official, must be recovered from such an official if that official is liable in law. The accounting officer must determine the amount of the loss or damage and, in writing request that official to pay the amount within 30 days or in reasonable instalments. If the official fails to comply with the request, the matter must be handed to the State Attorney for the recovery of the loss or damage. Regulation 12 specifically stipulates that a claim against an official must be waived if the conditions in paragraph 12.2.1(a) to (g) of the Treasury Regulation are not applicable.
- 3.3.5 The Treasury Regulations<sup>2</sup> stipulate that all irregular expenditure and fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements.
- 3.3.6 Regulation 16A6.2(a) stipulates that *“A supply chain management system must, in the case of procurement through a bidding process, provide for the adjudication of bids through a bid adjudication committee”*.

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<sup>2</sup> Regulation 9.1.5

- 3.3.7 Regulation 16A6.2(b) stipulates that *“A supply chain management system must, in the case of procurement through a bidding process provide for the establishment, composition and functioning of bid specification, evaluation and adjudication committees”*.
- 3.3.8 Regulation 16A6.2(e) stipulates that *“A supply chain management system must, in the case of procurement through a bidding process provide for the approval of bid evaluation and/or adjudication committee recommendations”*.
- 3.3.9 Regulation 16A6.3(b) stipulates that *“The accounting officer... must ensure that bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)”*.
- 3.3.10 Regulation 16A6.4 stipulates that *“If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority”*.
- 3.4 **The Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000) (PPPFA)**
- 3.4.1 The PPPFA in section 2(1)(f) stipulates that *“An organ of state must determine its preferential procurement policy and implement it within the following framework the contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in (d) and (e) justify the award to another tenderer”*.
- 3.5 **The Preferential Procurement Regulations, 2017**
- 3.5.1 Regulation 7(8) stipulates that *“Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points”*.

### 3.6 **Guidelines issued by the office of the Accountant-General**

- 3.6.1 During May 2014, the Office of the Accountant-General issued Guidelines regarding fruitless and wasteful expenditure and irregular expenditure.
- 3.6.2 The Guideline on fruitless and wasteful expenditure, provides guidance in respect of the interpretation of matters related to fruitless and wasteful expenditure. It indicates that fruitless and wasteful expenditure will always emanate from an action or lack of action instigated by an official which has resulted in a financial loss to the institution. According to the Guideline, an investigation must be conducted in order to determine whether any person could be liable in law for the fruitless and wasteful expenditure. The Guideline stipulates that if an investigation reveals that the employee is liable in law, then accountability for the fruitless and wasteful expenditure and any losses relating thereto, shall be vested in that official.
- 3.6.3 The Guideline on irregular expenditure stipulates further elucidation regarding the procedures to be followed when dealing with the identification and application of irregular expenditure. The Guideline does not prescribe any new principle or procedure relating to the identification and application of irregular expenditure, but is merely a consolidation of provisions contained in Practice Note 4 of 2008/2009. The Guideline stipulates that, when applying the test to determine whether irregular expenditure has been incurred, it must be clear that the contravention must relate to how the transaction, condition or event was entered into and by whom - as opposed to when the transaction, condition or event was entered into.

### 3.7 **National Treasury Instruction Notes**

- 3.7.1 **Practice Note 4 of 2003**<sup>3</sup> sets out the Code of Conduct to be adhered to by SCM practitioners. The Code sets out the obligations imposed on SCM practitioners. In effect, it stipulates as follows. Firstly, supply chain management practitioners should perform their duties efficiently, effectively and with integrity, in accordance with relevant legislation, regulations and practice notes.

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<sup>3</sup> Issued on 3 December 2003

Secondly, practitioners are accountable for their decisions and actions to the public, and that they should use public property scrupulously.<sup>4</sup> Thirdly, practitioners should record and account for all transactions in an appropriate accounting system, and should not make any false or misleading entries into such system.<sup>5</sup> Fourthly, no person should interfere with the SCM system of an institution.<sup>6</sup>

- 3.7.2 **Practice Note 6 of 2007/2008**<sup>7</sup> stipulates for the procurement of goods and services by means other than through the invitation of competitive bids. The practice note emphasises the provisions of regulation 16A6.4 of the Treasury Regulations and sets out the reporting to National Treasury of instances where goods and services were procured above the value of R 1 million were procured in terms of regulation 16A6.4 of the Treasury Regulations.
- 3.7.3 **Practice Note 4 of 2008/2009**<sup>8</sup> stipulates clarity to accounting officers regarding the procedure to be followed when dealing with irregular expenditure and the condonation of irregular expenditure. It stipulates certain examples of irregular expenditure and the competent official/authority empowered to condone such irregular expenditure.
- 3.7.4 **Practice Note 3 of 2016/2017**<sup>9</sup> stipulates guidelines and instructions to prevent and combat abuse of the SCM system. The Practice Note in paragraph 8.1 states that *“The Accounting Officer/Accounting Authority must only deviate from inviting competitive bids in cases of emergency and sole supplier status”*.
- 3.7.5 In paragraph 9.1, the Practice Note stipulates *“The Accounting Officer/Accounting Authority must ensure that contracts are not varied by more than 20 % or R 20 million (including VAT) for construction related goods, works and services and 15 % or R 15 million (including VAT) for all other goods and or services of the original contract price”*.

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<sup>4</sup> Page 2, par. 3.1 and 3.2

<sup>5</sup>Page 2, par. 3.4

<sup>6</sup>Page 3, par. 6.5.1

<sup>7</sup> Issued on 18 April 2007

<sup>8</sup> Issued on 28 April 2008

<sup>9</sup> Issued on 19 April 2016

3.7.6 The Practice Note, in paragraph 9.2 stipulates that *“Any deviation in excess of the prescribed thresholds will only be allowed in exceptional cases subject to prior written approval from the relevant treasury”*.

3.7.7 Furthermore, the Practice Note in paragraph 11 stipulates that *“The Accounting Officer/Accounting Authority must not advertise a bid for which no provision has been made in the budget”*.

### 3.8 **The Disaster Management Act, 2002 (Act No 57 of 2002) (DMA)**

3.8.1 In terms of section 27(1)(a) of the DMA, *“In the event of a national disaster, the Minister may, by notice in the Gazette, declare a national state of disaster if existing legislation and contingency arrangements do not adequately provide for the national executive to deal effectively with the disaster”*.

3.8.2 In terms of section 27(1)(b) of the DMA, *“In the event of a national disaster, the Minister may, by notice in the Gazette, declare a national state of disaster if other special circumstances warrant the declaration of a national state of disaster”*.

3.8.3 On 15 March 2020, the authorised minister declared a national state of disaster. Subsequent to this declaration, National Treasury issued Instructions regarding the measures to be implemented during the procurement of goods and services during the national state of disaster.

### 3.9 **National Treasury Instruction Notes issued in response to the Declaration of the National State of Disaster**

3.9.1 On 19 March 2020, Practice Note No. 08 of 2019/2020, which applied for the period 19 March 2020 to 14 April 2020, came into effect. In paragraph 3.5.1(ii) of the Practice Note concerned, National Treasury waived the prescripts of paragraph 9.2 of National Treasury Instruction SCM No. 3 of 2016/17 – as such, the State Institutions could vary/expand any pre-existing contracts or SLA(s) in respect of *“goods”* and *“for the procurement of items related to COVID-19”* to a contract value in excess of 15 % of the original contract value or R 15 million (whichever is the lesser amount), when purchasing any items related to Covid-19.

- 3.9.2 On 15 April 2020, Practice Note No. 3 of 2020/21, which applied for the period 15 April 2021 to 27 April 2020 came into operation. The Instruction Note repealed Practice Note No. 8 of 2020/21. In paragraph 5, it provided for the emergency procurement of items which was considered to be a specific requirement of an institution to combat Covid-19. The Practice Note authorised the use of a deviated emergency procurement process, as provided for in National Treasury Instruction 3 of 2016/2017, and required reporting of the deviation within 10 working days to the relevant Treasury and the AGSA in all cases where goods and services above the value of R 1 million (Value-Added Tax inclusive) had been procured in terms of regulation 16A6.4 of the Treasury Regulations.
- 3.9.3 On 28 April 2020, Practice Note No. 5 of 2020/21, which applied for the period 28 April 2020 to 31 May 2020, came into operation. In paragraph 3.6 of Practice Note No. 5 of 2020/21, National Treasury waived the prescripts of paragraph 9.2 of National Treasury Instruction SCM No. 3 of 2016/17.

### 3.10 Other National Treasury Measures

- 3.10.1 On 24 March 2006, National Treasury issued its Code of Conduct for Bid Adjudication Committees (the BAC Code). The BAC Code, which re-affirmed Practice Note 4, applies to all national and provincial departments. Its stated goal is *“to provide guidelines on the mandate, role, function, composition, duties, meeting procedures and conduct”* of a SCM BAC<sup>10</sup>. Firstly, BAC members must be familiar with and adhere to all relevant SCM legislation, regulations, policies, guidelines, practice notes, directives, and circulars.<sup>11</sup> Secondly, the integrity of SCM practitioners must never be compromised and the highest level of professional competence must be maintained.<sup>12</sup>

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<sup>10</sup>Page 1, par. 1.1

<sup>11</sup>Page 3, par. 2.10; page 5, par. 4.4.1

<sup>12</sup>Page 2, par. 2.11

3.10.2 On 24 October 2010, National Treasury issued a Circular which re-affirmed the provisions of section 38(1)(g) of the PFMA and re-affirmed the requirements of the PFMA as to what constitutes irregular expenditure and the requirement to report irregular expenditure.

#### **4. SUMMARY OF FACTS AND RESULTING FINDINGS**

##### **Digital Vibes' contract with MISA**

4.1 During the course of its investigation, the SIU ascertained that Digital Vibes signed an Agreement with the MISA on 14 August 2018 for an amount of R 3 947 000. MISA is an agency of the CoGTA.

4.1.1 The MISA Contract commencement date was 20 July 2018, irrespective of when the contract had been signed. The end date was 19 July 2019.

4.1.2 The MISA Contract was signed by Ms Hariram (the purported owner of Digital Vibes).

4.1.3 Ms Mather was the Minister's private spokesperson during this period.

4.1.4 Mr Zondi (CoGTA: Head of Communications/former spokesperson for the Minister) stated in an Affidavit that he had found it strange that, although he had been appointed as the Minister's spokesperson, Ms Mather was acting as the Minister's private spokesperson.

4.1.5 Mr Zondi stated that he found himself in a conflicted situation, but nonetheless performed his agreed-upon duties insofar as he was able to do so.

##### **The NHI media campaign**

4.2 According to a whistle-blower, the NDOH initially attempted to appoint Ms Mather as a consultant/contractor for the NDOH as a communication expert. The name "*Tahera Mather*" was provided by Dr Pillay and Ms Matsoso (former DG of the NDOH).

This attempt was not successful, because the SCM Division of the NDOH informed them that an individual could not be appointed for the required communication campaign, and that a service provider had to be appointed by means of a compliant SCM process.

4.3 Allegedly, the NDOH then irregularly and unlawfully proceeded to appoint Digital Vibes, who then appointed Ms Mather and Ms Mitha as contractors/consultants.

4.4 On 12 July 2019, Ms Matsoso sent a letter to National Treasury, requesting approval to deviate from the normal bidding process to appoint Digital Vibes for the NHI communication campaign, as communication specialists.

4.5 The whistle-blower indicated that in his view, it was expected by the NDOH that Digital Vibes must be appointed.

4.6 It was also alleged that Ms Mather was the long-time:

4.6.1 Personal Spokesperson and/or acquaintance of the Minister. In this regard, the Minister denied in his replies regarding media reports that Ms Mather was a personal friend of his, but he admitted that he had worked with Ms Mather at Luthuli House when he was the ANC Treasurer-General and that Ms Mather had been his comrade in the ANC movement for many years. It is insightful in this regard that the Minister failed to mention that Ms Mather had also worked with him, when he was the Minister of CoGTA (see paragraph 4.1.4 above); and

4.6.2 Personal and close friend of the Minister's son.

4.7 In this regard, the Minister's son admitted in his replies to media reports that Ms Mather was a close and personal friend of his and that they had exchanged gifts for many years, under circumstances where "I promised her I'll keep this a secret coz she always says she's scared of comrade Khabazela [Zweli Mkhize]. ... I know nothing about this vibes company that you keep telling me about. I even hate tenders coz I grew up and ppl gossiping and making up stories that we get tenders coz of Mkhize," [Emphasis added].

- 4.8 The Minister, in his reply to media reports, also admitted that Ms Mitha had been his Personal Assistant and that they had been comrades in the ANC for many years.
- 4.9 In a letter sent to the SIU dated 31 May 2021, the Minister informed the SIU:
- 4.9.1 that he had been engaging with members of his family and staff in his office in an attempt to establish the truth regarding the allegations that had been made in the media;
  - 4.9.2 that his son had disclosed to him that he had been receiving gifts from Ms Mather;
  - 4.9.3 that he had learned about what appeared to be an abnormally close and personal relationship between his son on the one hand, and Ms Mather on the other hand, which had been ongoing on for many years; and
  - 4.9.4 that the aforementioned new developments had now directly linked his family and staff into having received benefits from people linked to Digital Vibes.
- 4.10 On 15 July 2019, the Minister sent the following WhatsApp message to Ms Matsoso, who was the then DG of the NDOH: *"Hi DG. Kindly sort out contractual arrangements. Please ask for preliminary NHI implementation plan and draft communication plan by Friday from each individual as discussed"* [Emphasis added].
- 4.11 This WhatsApp message appears to support the allegations that were raised by the whistle-blower that the Minister had a vested interest in ensuring that the contract was awarded to, or would end-up benefitting Ms Mather.

- 4.12 The obtained evidence indicates that on or about 12 July 2019 (as also alleged by the whistle-blower) Dr Pillay (then acting in his official capacity as the Deputy DG: Health Regulation and Compliance at the NDOH – i.e. not as ‘Acting’ DG), was one of, if not the main actor(s) within the NDOH who was/were attempting to irregularly appoint Ms Mather as a purported communication expert consultant to the NDOH, which attempt was unsuccessful, *inter alia* because:
- 4.12.1 National Treasury had started limiting and strictly regulating the use of consultants by State institutions; and/or
  - 4.12.2 the NDOH did not follow a fair, equitable, transparent, competitive and/or cost-effective procurement process, as prescribed *inter alia* by section 217(1) of the Constitution and section 38(1)(a)(iii) of the PFMA; and
- 4.13 The obtained evidence indicates that Dr Pillay was also one of, if not the main actor(s) within the NDOH who, by way of a SCM Deviation (as envisaged in regulation 16A6.4 of the Treasury Regulations), attempted to irregularly appoint Digital Vibes (who would use the services, *inter alia*, of Ms Mather) for the provision of goods and/or services relating to allegedly urgent strategic communication solutions in respect of the NHI media campaign.
- 4.14 On or about 26 July 2019, the NDOH approached National Treasury “*Requesting approval for Deviation from Normal Bidding Process in Accordance with Section 8.5 of NT SCM Instruction note 3 of 2016/2017 - Digital Vibes (Pty) Ltd*” for approximately R 133 million.
- 4.15 Attached to the above request, was the complete turnkey costing for twelve months, broken down to a deliverable level amounting to R 133 million.
- 4.16 As will be discussed later in this Report, Digital Vibes quoted approximately R 141 million for the tender. Therefore, it should be noted that this initial amount proposed by the NDOH to National Treasury, was close the final amount of approximately R 141 million for the contract that was ultimately awarded to Digital Vibes by the NDOH.

- 4.17 On 30 July 2019, National Treasury sent a letter to the NDOH, which stated that it had not approved the Request for an SCM Deviation, but requested the NDOH to advertise a tender for a shortened period of 14 days.
- 4.18 Subsequent to the above letter of 30 July 2019, the NDOH (represented by Dr Pillay and Ms Tshabalala) met with National Treasury where it was resolved that a minimum of ten suppliers should be chosen from the CSD system in this regard. Quotations should be requested from these suppliers and the process should be concluded within fourteen days.
- 4.19 The obtained evidence indicates that Dr Pillay was also one of, if not the main actor(s) within the NDOH, who:
- 4.19.1 was involved in the decision not to go out on a public tender process (with or without a shortened advertising period) as was recommended by National Treasury (see paragraph 4.17 above); and
  - 4.19.2 may have proposed to National Treasury that a minimum of ten suppliers should be chosen and invited to a closed bidding process.
- 4.20 On 5 September 2019, the NDOH sent National Treasury a list of ten suppliers that had been selected for the closed bidding process. This list contained the names of Digital Vibes and nine other suppliers that had been chosen from the CSD by the NDOH SCM division. It is apparent that the selection of at least the following suppliers from the CSD or otherwise in respect of the NHI media campaign, was irrational and irregular, due to the fact that:
- 4.20.1 Digital Vibes was registered on the CSD for telecommunications related services;
  - 4.20.2 Kalinjani was not a registered company and the name belongs to a Gmail address;
  - 4.20.3 Humaurtumsa was not a registered company and the name also belongs to an e-mail address (evidence was obtained that this e-mail address belongs to Ms Hariram, the “owner” of Digital Vibes);

- 4.20.4 Kadese PR and Marketing was registered on the CSD for accommodation and food activities, professional, scientific, and technical activities and management consultancy activities;
- 4.20.5 Backhousia Consulting Services was as registered recruitment services provider, but it never received or responded to any of the two RFPs, and went into voluntary liquidation on 6 November 2019;
- 4.20.6 Gayoyo Communications was registered on the CSD for accommodation, food and beverage services;
- 4.20.7 Change Agility was registered on the CSD for professional, scientific, technical activities, activities of head offices and management consultancy; and
- 4.20.8 Tangaza was registered on the CSD for professional, scientific and technical activities.
- 4.21 On 17 September 2019, National Treasury replied and stated that the reasons provided for the deviation were justifiable. However, it was not clear to it whether the ten selected suppliers were the only suppliers that had met the required criteria in the CSD.
- 4.22 On 18 September 2019, the TEC members were appointed. Dr Pillay, Mr Maja and Ms Pardesi were, *inter alia*, appointed as TEC members. Appointment letters were issued by the DG, Ms Matsoso, to the TEC members.
- 4.23 On 19 September 2019, the BSC members, which again included the same role players, namely Dr Pillay, Mr Maja and Ms Pardesi, attended a BSC meeting in order to discuss and agree on the ToR for the NHI media campaign.
- 4.24 On or about 23 September 2019, the RFP was sent to ten companies (one being Digital Vibes).
- 4.25 The closing date for the RFP was 14 October 2019 and two bid proposals were received, namely from Digital Vibes and from Brandswell.

- 4.26 However, after receipt of the bid proposals in terms of the RFP on 14 October 2019 (the RFP closing date), the NDOH purportedly realised that the BSC had negligently failed to provide for any evaluation criteria and a minimum threshold for functionality. Without a minimum threshold for functionality, the NDOH would have been obliged to award the contract to the bidder with the lowest bid price, irrespective of any perceived lack of experience of the bidders.
- 4.27 In this regard, the obtained evidence indicates that:
- 4.27.1 Dr Pillay, Mr Maja (NDOH Head of Communications) and Ms Pardesi (Acting Deputy Director-General) were members of the BSC of the NDOH which had prepared the ToR for the proposed RFP that had been sent out on 23 September 2019; and
- 4.27.2 Dr Pillay, Mr Maja, Ms Pardesi and the other members of the BSC had been grossly negligent in preparing, settling and/or approving of the ToR that was used in the first RFP of 23 September 2019, because they failed to provide for relevant functionality evaluation criteria and a fair minimum threshold for functionality, in circumstances where a need to have done so, existed.
- 4.28 Alternatively, they only purportedly identified the “need” for such functionality evaluation criteria and minimum threshold for functionality after the closing date of the first RFP and after the NDOH already received the bid proposals from the suppliers falling within the closed group of ten suppliers, who had been sent the first RFP (i.e. it appears as if Dr Pillay, the TEC of the NDOH and/or the NDOH may have realised that Digital Vibes would in all likelihood not be the successful bidder if the bid proposals received in respect of the first RFP, were evaluated).
- 4.29 The NDOH prepared a revised ToR, which now included evaluation criteria and also set a minimum threshold for functionality of 60 % (i.e. only bidders who achieved the minimum threshold of 60 % or more, would be put forward for further evaluation based on Price and Equity in terms of the PPPFA and the PPPFA Regulations of 2017.

- 4.30 On or about 24 October 2019 (i.e. after the closing date for the submission of the bid proposals in respect of the first RFP), a second RFP (with the revised ToR, as referred to in paragraph 4.29 above), was sent out to the same ten suppliers.
- 4.31 The NDOH invited the suppliers (namely Digital Vibes and Brandswell) that had already submitted bid proposals, to collect their bid documents and to resubmit their bid proposals.
- 4.32 In an interview with Brandswell, the SIU was informed that Brandswell had noticed with concern that its initial bid documents had already been opened when it collected them from the NDOH.
- 4.33 Clearly, the submission of the RFP(s) to a closed group of only ten potential suppliers:
- 4.33.1 did not qualify as a public tender process (which required an advert to be published in the Tender Bulletin);
  - 4.33.2 was not in line with the initial instructions that the NDOH had received from National Treasury (see paragraph 4.17 above);
  - 4.33.3 did not address the concern raised by National Treasury, when it stated that it was not clear whether the ten selected suppliers were the only suppliers that had met the criteria in the CSD (see paragraph 4.21 above);
  - 4.33.4 was not in line with the prescripts regulating public sector procurement (e.g. *National Treasury Practice Note No. 8 of 2007/2008 dated 29 November 2007*), which requires all contracts of a value of above R 500 000.00 to be put out on an open public tender process (i.e. written proposals/quotations are only allowed up to a contract value of R 500 000.00; and
  - 4.33.5 was not warranted in respect of any sole provider or emergency circumstances, as envisaged in regulation 16A6.4 of the Treasury Regulations (as read with the relevant Practice Notes issued by the National Treasury).

Furthermore, the National Treasury had initially informed the NDOH that a SCM Deviation in terms of regulation 16A6.4 of the Treasury Regulations, was not warranted (see paragraph 4.17 above).

4.34 In respect of the second RFP dated 24 October 2019, only two suppliers participated in the RFP process, namely:

4.34.1 Digital Vibes, who quoted approximately R 141 million ; and

4.34.2 Brandswell, who quoted approximately R 69 million

in their respective bid proposals.

4.35 The TEC of the NDOH disqualified Brandswell's tender as it purportedly only had achieved a score of 59.2 %, and not the minimum of score of 60 % functionality assessment. Digital Vibes received a 100 % score from all the TEC members with regard to the functionality assessment.

4.36 In this regard, the obtained evidence indicates that:

4.36.1 Dr Pillay, Mr Maja and Ms Pardesi were, *inter alia*, members of the TEC and the BSC of the NDOH, who had evaluated the bid proposals that had been received from Digital Vibes and Brandswell.

4.36.2 Dr Pillay, Mr Maja and Ms Pardesi and the other members of the TEC wilfully or at least grossly negligently, performed their functions as members of the TEC, because they failed to apply the evaluation criteria correctly, fairly and consistently in respect of both potential service providers, which effectively resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60 % for functionality. In this regard:

4.36.2.1 The ToR required the bidders to submit at least two Reference Letters to the NDOH, proving that the bidder itself had relevant previous experience, and the ToR then set out a sliding scale that had to be used by the members of the TEC in evaluating such previous relevant experience.

4.36.2.2 The scoring per the Functionality Evaluation Criteria in respect of “*Experience in providing services as per the scope of work*” (i.e. relevant previous experience) was *inter alia* as follows:

4.36.2.2.1.1 More than 5 years’ experience = score of 5

4.36.2.2.1.2 Between 3 and 5 years = score of 4

4.36.2.2.1.3 Between 1 and 3 years = score of 3.

4.36.2.2.1.4 Less than 1 year = 1

4.36.3 The members of the TEC failed to notice or appreciate that Digital Vibes effectively only submitted one Reference Letter that spoke to the previous relevant experience of the bidder itself (i.e. Digital Vibes), and that the other purported Reference Letters dealt with the experience of the manpower, staff and/or consultants that Digital Vibes intended to use in performing the work.

4.36.4 Clearly, the individual experience of the manpower, staff and/or consultants did not qualify for evaluation when considering the relevant previous experience of Digital Vibes itself. As such, the TEC should have disqualified Digital Vibes for having failed to submit two compliant Reference Letters. Alternatively, the TEC should only have awarded points for the period of approximately one year covered by the Reference Letter that spoke to the previous relevant experience of Digital Vibes itself, and should have ignored the individual experience of the manpower, staff and/or consultants to be used by Digital Vibes. In any event, the SIU investigation found that at least one of the consultants, whose *Curriculum Vitae* indicated approximately 30 years of experience, which formed part of the bid proposal of Digital Vibes, had merely been used by Digital Vibes to prepare the Business Proposal, where after this consultant was completely side-lined and was never used by Digital Vibes in rendering any services to the NDOH.

- 4.36.5 Dr Pillay, Mr Maja and Ms Pardesi and the other members of the TEC, irregularly and irrationally awarded full points to Digital Vibes (e.g. 5 points for purportedly having in excess of 5 years relevant previous experience), in circumstances where the only acceptable Reference Letter indicated relevant previous working experience since 2018. As such, Digital Vibes would at best only have had approximately one year relevant previous working experience, as at the date of the second RFP (i.e. 24 October 2019).
- 4.36.6 All the members of the TEC (except Mr Maja) irregularly and irrationally awarded 3 points to Brandswell (e.g. 3 points for allegedly having less than three years' relevant previous experience) and Mr Maja irregularly and irrationally awarded 4 points to Brandswell (e.g. 4 points for allegedly having up to five years' relevant previous experience – see paragraph 4.36.2.2 above), in circumstances where the Reference Letters submitted by Brandswell clearly indicated that Brandswell itself (and not its staff or consultants):
- 4.36.6.1 was a long-standing and reputable communication solution service provider; and
- 4.36.6.2 had in excess of 5 years relevant previous experience.
- 4.36.7 As such, the members of the TEC were compelled to award Brandswell the full 5 points for having showed that it had in excess of five years relevant previous experience, which would have ensured that Brandswell surpassed the 60 % minimum threshold set for functionality – i.e. if the TEC had evaluated and scored Brandswell fairly and correctly, then Brandswell would not have been disqualified and it would have been entitled to be awarded the contract. It is noteworthy that Mr Maja (a member of the TEC) crossed-out and changed his score in respect of Brandswell in relation to the aspect of its previous relevant experience.

4.36.8 If the TEC scoring is recalculated, based on the correct score of a “5” for Brandswell for the “*Experience in providing services as per the scope of work*” as explained above, then Brandswell would have achieved a 67.20 % score and would have qualified for further evaluation (as demonstrated per the table below):

Brandswell (Pty) Ltd TEC scoring							
Criterion	Ms Senzi Ngubane	Mr Reginald Ngcobo	Ms Shireen Pardesi	Dr Anban Pillay	Mr Popo Maja	TEC score	Correct score
Experience in providing services as per the scope of work	5	5	5	5	5	13	<b>20.00</b>
Expertise and capability	3	3	3	2	4	12	<b>12.00</b>
Skills matrix (team leader)	4	4	4	2	3	14	<b>13.60</b>
Past work samples	2	2	3	3	3	10	<b>10.40</b>
Implementation methodology	3	3	2	2	4	10	<b>11.20</b>
<b>Total</b>	<b>17</b>	<b>17</b>	<b>17</b>	<b>14</b>	<b>19</b>	<b>59</b>	<b>67.20</b>

4.36.9 The SIU submits that this change to the score corroborates its submission that the members of the TEC did not evaluate and score the bid proposals fairly and consistently, and that Mr Maja (most probably under influence of Dr Pillay – see paragraph 4.48 below) changed his evaluation score in order to ensure an outcome where Digital Vibes had to be awarded the contract, even if such an award would result in the NDOH concluding a contract for R 141 million with Digital Vibes, where Brandswell was willing to render substantially the same services at a total cost of only R 69 million.

4.36.10 The members of the TEC irregularly and incorrectly disqualified Brandswell from further evaluation based on Price and Equity, as prescribed by the PPPFA and the PPPFA Regulations of 2017 (i.e. 80/20 for any bid above R 30 000 up to R 50 million and 90/10 for bids above R 50 million).

4.36.11 This was done in circumstances where it was clear to all concerned that if Brandswell (with a total bid price of approximately R 69 million) and Digital Vibes (with a total bid price of approximately R 141 million) would have been fairly evaluated in terms of the PPPFA and the PPPFA Regulations of 2017:

4.36.11.1 Brandswell would have been the highest scoring bidder with the lowest bid price;

4.36.11.2 the NDOH would have been obliged to award the contract in respect of the NHI media campaign to Brandswell in terms of the prescripts of section 2(1)(f) of the PPPFA and regulation 7(8) of the PPPFA Regulations of 2017, which was seemingly not the outcome that Dr Pillay wanted to achieve, because Dr Pillay was clearly vested in appointing Ms Mather by all means possible; and

4.36.11.3 irregularly and incorrectly recommended that the contract in respect of the NHI media campaign should be awarded to Digital Vibes.

4.36.12 In addition to the above, Annexure A to the Technical Evaluation Report reflected the following scoring by the TEC for Brandswell:

Brandswell (Pty) Ltd TEC scoring							
Criterion	Ms Senzi Ngubane	Mr Reginald Ngcobo	Ms Shireen Pardesi	Dr Anban Pillay	Mr Popo Maja	Score	Correct Score
Experience in providing services as per the scope of work	3	3	3	3	4	13	12.8 %
Expertise and capability	3	3	3	2	4	12	12.0 %
Skills matrix (team leader)	4	4	4	2	3	14	13.6 %
Past work samples	2	2	3	3	3	10	10.4 %
Implementation methodology	2  (score was lowered from a "3")	3	2	2	4	10	11.2 %
<b>Total</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>12</b>	<b>18</b>	<b>59</b>	<b>60.0 %</b>

4.36.13 The SIU ascertained that the scoring per the TEC report for Ms Ngubane, differed from her individual Functionality Evaluation Sheet.

4.36.14 According to Ms Ngubane's individual Functionality Evaluation Sheet, she scored Brandswell a "3" for "*Implementation methodology*". However, this score was changed to a "2" on the TEC report when the scores for all the TEC members were consolidated into one table in order to quantify the overall score for the bidder.

4.36.15 The correct overall score for Brandswell was 60 % based on a score of "3" for the "*Implementation methodology*". However, since the score was changed to a "2", the overall score was 59.2 %, as per the TEC report.

- 4.36.16 Hence, even if only the TEC's scoring of Brandswell is taken into consideration (even with the existing under-scoring as explained in the paragraphs above), Brandswell in any event scored 60 % and qualified in terms of the functionality evaluation criteria.
- 4.36.17 Therefore, Brandswell was again in this manner irregularly and incorrectly disqualified from the NHI tender evaluation process.
- 4.37 Clearly, the recommendation by the TEC to award the contract to Digital Vibes, was invalid in terms of the provisions of section 2 of the Constitution, because the procurement process was not fair, equitable, transparent, competitive and/or cost-effective, as prescribed by section 217(1) of the Constitution and section 38(1)(a)(iii) of the PFMA. Therefore, the SLA that was concluded with Digital Vibes was void.
- 4.38 The Minister appointed Dr Pillay as the 'Acting' DG of the NDOH with effect from 1 November 2019, which 'acting' position he held until 31 May 2020. It is insightful that the meeting of the TEC took place on 1 and 5 November 2020.
- 4.39 The 12 November 2019, the DBAC recommendation, reflected the Head Office Address of the Bidder (namely Digital Vibes) as being 13 North Street, EThekweni SP, KZN, 4450. However, this is a residential address. In an interview conducted with Ms Hariram on 21 May 2021, she stated that Digital Vibes ran the business from a cottage on her father's property (namely 13 North Street, KZN). Ms Hariram also stated that this property had been purchased by her father from Ms Mather's father.
- 4.40 On 15 November 2019, Dr Pillay compiled a letter (however, not signed by Dr Pillay, but instead signed by Y Pillay), where Digital Vibes was informed that it had been appointed as the Communication Service Provider for the NHI media campaign for a period of twelve months. It should be noted that the NDOH SCM Division also sent a letter to Digital Vibes informing it that it had been the successful bidder.

- 4.41 Brandswell stated that it never received a notification from the NDOH confirming that the NHI media campaign contract had been awarded.
- 4.42 On 29 November 2019, the NDOH, subsequent to following the limited bidding process as described above, entered into a SLA with Digital Vibes to render communication services in respect NHI.
- 4.42.1 The value of the award was R 141 million.
- 4.42.2 The front page of the SLA indicated that Dr Pillay was, or would be representing the NDOH.
- 4.42.3 The SLA was signed by Ms Pardesi (for the NDOH) and Ms Hariram (for Digital Vibes). In this regard, Ms Pardesi was not authorised or delegated to sign an SLA of this value for and on behalf of the NDOH, and she therefore acted *ultra vires* her powers.
- 4.42.4 Mr Mthethwa and Nzila Nondumiso Mzila signed as witnesses for Digital Vibes.
- 4.42.5 Mr Mthethwa is the director of Mateta Projects (Pty) Ltd, which received R 10 544 012.12 from Digital Vibes in circumstances where the SIU has to date not been placed in possession of an invoice/s justifying this/these payment/s to Mateta Projects (Pty) Ltd. He also used two companies of, i.e. Mkokwana Events (belonging to his cousin's sister) and Bevels Communications (belonging to his mother), who received approximately R 15 million from Digital Vibes relating to the NHI - and Covid-19 communication campaigns in circumstances where the SIU has to date not been placed in possession of an invoice/s justifying this/these payment/s to these companies. Therefore, these three companies related to Mr Mthethwa received a total of approximately R 25 million from Digital Vibes for the NHI - and Covid-19 communication campaigns, in circumstances where the SIU has to date not been place in possession of an invoice/s justifying this/these payment/s to these companies.

- 4.43 The SLA was effective on the date that the last person signed the SLA (i.e. 29 November 2019) and for a period of one year thereafter.
- 4.44 The SLA also provided for an option to renew the SLA for a period of up to three years. Since the second RFP and the relevant ToR had not provided for the option to renew and extend the contract for a further period of up to three years, the unilateral inclusion of this new provision or clause in the SLA, was invalid and unlawful (especially if such additional costs would potentially exceed the threshold set by the National Treasury for later extensions to the total value of the original contract – i.e. 15 % or R 15 million, whichever is the lesser amount). This irrational conduct of the part of the NDOH and Ms Pardesi (who signed the SLA and who was also a member of the TEC) again supports the submission that the relationship between the NDOH and Digital Vibes was not a normal professional relationship, and that the NDOH seemingly went out of its way to provide the best possible benefits for Digital Vibes, even if such benefits would be in contravention of the required SCM process and the prescripts regulating public sector procurement.
- 4.45 As such, and unless the option to renew and extend the SLA in terms of the option was brought into operation, the SLA was scheduled to expire on 28 November 2020.
- 4.46 Although the bid proposal of Digital Vibes was for a total of R 141 million, as per their Pricing Schedule, the SLA stipulated that a total amount of R 2.5 million should be paid for the services listed per Annexure B to the SLA.
- 4.46.1 The SLA (and Annexure B) does not stipulate whether this amount should be paid monthly, or if it was a once-off amount.
- 4.46.2 Furthermore, the SLA stated that “*An Activity Based Cost will apply as and when services relating to NHI communication and marketing are concerned*” [Emphasis added].

- 4.46.3 However, from the Digital Vibes invoices, the SIU confirmed that Digital Vibes invoiced the NDOH the R 2.5 million per month as a type of “retainer fee”, which invoices were accepted and paid by the NDOH. Since a retainer type fee is normally based on the billable hours spent by, or provided for the staff and consultants working on the project, it was clearly not based on “*An Activity Based Cost*” as envisaged in the SLA. As such, the invoicing was not in line with the SLA.
- 4.46.4 Furthermore, considering the fact that at least one of the more senior and costly consultants (i.e. with approximately 30 years’ experience) that should have worked on the project, informed the SIU that he was completely side-lined and was never used by Digital Vibes in rendering any services to the NDOH, the payment of the “retainer fee” was not fully warranted. Furthermore, since Digital Vibes failed and/or refused to disclose to the NDOH that such a senior and costly consultant was no longer working on the project, the invoicing by Digital Vibes may potentially even constitute intentional and unlawful misrepresentations that were made (by commission or omission where Digital Vibes had a legal duty to make such disclosures to the NDOH) to mislead the NDOH into paying the monthly R 2.5 million retainer type fees, in circumstances where all of such fees were not warranted.
- 4.47 The SLA also provided for the possibility that the NDOH could refer additional *ad hoc* services to Digital Vibes (as provided for in terms of Annexure D to the SLA), subject to:
- 4.47.1 the NDOH and Digital Vibes agreeing in advance to the price for such ad hoc services; and
- 4.47.2 authorisation from the NDOH.

- 4.48 Since the second RFP and its ToR did not provide for any additional *ad hoc* services to be rendered at additional cost in excess of the bid proposal received from Digital Vibes, the unilateral inclusion of this new provision or clause in the SLA was invalid and unlawful (especially if such additional costs would potentially exceed the threshold set by the National Treasury for later extensions to the total value of the original contract – i.e. 15 % or R 15 million, whichever was the lesser amount). This irrational conduct of the part of the NDOH and Ms Pardesi (who signed the SLA and who was also a member of the TEC) again supports the submission that the relationship between the NDOH and Digital Vibes was not a normal professional relationship, and that the NDOH seemingly went out of its way to provide the best possible benefits for Digital Vibes, even if such benefits would be in contravention of the underlying SCM process and the prescripts regulating public sector procurement.
- 4.49 In light of the fact that the NDOH awarded the contract in respect of the NHI media campaign to Digital Vibes for R 141 million, where Brandswell had been willing to render substantially the same services at a total cost of only R 69 million, the NDOH incurred the risk of potential ‘fruitless and wasteful expenditure’, as envisaged in the PFMA, for an amount of at least R 72 million in respect of the NHI media campaign.
- 4.50 On 18 December 2019, the NDOH sent a letter to the CFO to provide funding for the NHI media campaign in the amount of R 6 590 000. Mr. van der Merwe declined payment to Digital Vibes, based on the fact that no funds were available.
- 4.51 In a letter dated 18 December 2019, the CFO stated that *"When the bid was advertised the business unit indicated they have money under NHI budget..."*.
- 4.52 On 18 December 2019, various officials of the NDOH, through a NDOH order, NDOH Procurement Advice and an NDOH Request Memorandum, approved an amount of R 1 847 734 for payment to Digital Vibes.
- 4.53 On 23 December 2019, Digital Vibes submitted two invoices to the NDOH for payment:

<b>Date of payment</b>	<b>Digital Vibes invoice number</b>	<b>Approved by</b>	<b>Amount (Rand)</b>
29 January 2020	DV2002	Dr Pillay	7 477 300.00
31 January 2020	DV2003	T Chidarikire	1 847 734.00
	<b>Total</b>		<b>9 325 034.00</b>

4.54 On 14 January 2020, the CFO sent a letter to Dr Pillay raising the following concerns:

*“NDOH 24 2019/20: National Health Insurance Communications*

*Acting DG*

*I have been requested to identify funds for the above mentioned tender inn[sic] respect of National Health Insurance Communications*

*The following are some of the concerns with the SLA:*

- The SLA did not follow the normal approval route i.e. submission and then approval or delegation by the Accounting Officer and as such neither the CFO nor the DDG Corporate has seen the SLA before signing;*
- There seems to be no formal written delegation for Ms Pardesi to sign the SLA;*
- Ms. Pardesi was part of both the specification and evaluation committee;*
- The SLA was signed on 2019/11/29 and an ‘Invoice’ or intent to invoice was issued on 9 December 2019;*
- The award and appointment letter stated that the appointment should be on an activity based costing as opposed to a R 141 million bid;*

- *The R 2,5 [million] per month seems to be a ‘retaining’ fee and ignores this recommendation and appointment letter;*
- *Amounts agreed to should be confirmed by NDOH as reasonable and acceptable;*
- *There is no agreement on a work plan or instruction from NDOH;*
- *The question on how will it be monitored is not clear. Will Provinces need to indicate services were received? Will the supplier issue NDOH with time sheets? And other monitoring mechanisms;*
- *This project is huge and will need a dedicated project manager in NDOH with the requisite Communication background and skills – Ms. Pardesi is not a Communication Specialist and perhaps the Communication Head in the Ministry could manage the process;*
- *A Senior Project Manager has to sign off on invoices and confirm that work was done;*
- *No order was issued for the work to be invoiced;*
- *The letter also includes one liners on items to be invoiced which will need detail unpacking;*
- *It includes R 1.5 million for the ‘Event Nkanyakude’ – not sure if this is part of the specification and what the detailed breakdown of this is;*
- *Funding will have to be secured thru[sic] reprioritization;*
- *It can be agreed with the supplier that urgent matters that arise outside of the agreed work plan can be invoiced separately”.*

4.55 In a letter dated 14 January 2020, the CFO made the following recommendations:

**“Recommendations:**

- *The SLA be renegotiated and in particular the monthly payment of R 2,5 million;*
- *That activities in Annexure D e subject to approval by NDOH Project Manager and that progress be assessed before any payments are made;*
- *A suitable Project Manager be appointed to manage contract and certify invoices on a monthly basis;”.*

4.56 In this letter, the CFO further stated the following:

***“Meeting with Service Provider:***

- *The Acting DG as Accounting Officer lead the discussion;*
- *NDOH to caucus prior to the meeting to have a common position;*
- *That the SLA be renegotiated and signed off by a duly authorised official;*
- *That the Service Provider be advised on who to deal with as a Project Manager;*
- *Proper monitoring be done by Project Manager.”.*

4.57 On 14 January 2020, the CFO also raised the following additional concern in an e-mail to Dr Pillay:

*"If between Ms Pardesi and yourself you are happy to fulfill the Project Management role and ensure that all amounts quoted are reasonable and invoices are according to the service rendered and be signed off, most of the governance matters may be addressed. The seemingly flat rate of R 2.5 million should be subjected to activity based invoicing. I am worried that it may raise an unnecessary audit matter. I assume the volumes may fluctuate monthly hence there is a need for the end user to confirm services rendered. I have requested Andre to see where funding is available, but would most likely have to come from the HIV branch."*

## Approval by the Minister of Health of the Digital Vibes budget (R 46 million)

- 4.58 On 20 January 2020, the Minister signed a *“Request the Minister of Health to Approve Implementation Strategy and Budget for National Health Insurance (NHI) Communication Strategy which will be executed by Digital Vibes”* for an amount of R 46 939 550, which was approximately R 94 million less than the total value of the SLA (i.e. R 141 million).
- 4.59 It should be noted that this budget of R 46 million for the NHI media campaign, was approved by the Minister 52 days after the SLA between the NDOH and Digital Vibes had already been signed. In these circumstances, the Minister should at least have raised concerns regarding the belated budget approval request and the fact that the budget had already been allocated to a service provider (Digital Vibes), where budget allocations are normally aligned to a need being identified before a SCM process is launched.
- 4.60 In light of the contents of paragraphs 4.58 and 4.59 above, it appears that the award of the contract, the appointment of Digital Vibes and the resulting SLA may have exposed the NDOH to the potential risk of incurring unauthorised expenditure, as envisaged in the PFMA, in the amount of either:
- 4.60.1 R 141 million up to 19 January 2020 (i.e. before the Minister belatedly approved a partial budget of R 46 939 550 on 20 January 2021); or
- 4.60.2 R 94 060 450 as from 20 January 2021.

## The Covid-19 media campaign

- 4.61 On Friday, 6 March 2020 at 06h46, Dr Pillay (acting in his official capacity as the “Acting” DG of the NDOH) send an e-mail from his private e-mail address (i.e. pillayanban@yahoo.co.au) to Ms Mather, in which Dr Pillay:
- 4.61.1 stated that *“While this is not currently part of your scope we would request that you consider the urgency and produce the following...Please share with us the costs before finalisation so that there is adequate funding available for this communication”* [Emphasis added]; and

4.61.2 requested a quotation for the printing of 20 million pamphlets, airtime vouchers, 4 billboards, radio advertising and television slots over two weeks for the Covid-19 awareness communication.

4.62 It is noteworthy that Dr Pillay had decided to:

4.62.1 sent the e-mail from his private e-mail address instead of his official NDOH e-mail address, which indicates that Dr Pillay may have been trying to hide his conduct from the NDOH or public scrutiny; and

4.62.2 sent the e-mail to Ms Mather, who was at all relevant times purportedly only a consultant working at Digital Vibes, and that the request for a quotation was not sent to Digital Vibes or any of the Director(s) of Digital Vibes. This indicates either that Dr Pillay knew that Digital Vibes was merely a “front” that was being exploited by Ms Mather, or that Dr Pillay had an unusual and non-professional relationship with Ms Mather.

4.63 On the same day (i.e. 6 March 2020), Ms Mather responded with an outline of the services and a quotation from Digital Vibes in the amount of R 35 906 450. The quotation was for 15 million pamphlets, 18.75 million airtime vouchers, 4 billboards, radio advertising and 90 wall murals (10 wall murals in 9 provinces in prominent places for a period of three months including taxi ranks).

4.64 It should be noted that the items, as per the Digital Vibes quotation, were not aligned to the items that were requested by Dr Pillay in his email:

4.64.1 Digital Vibes quoted for 15 million pamphlets, instead of 20 million as requested by Dr Pillay.

4.64.2 Also, the amount (number) of airtime vouchers was not stipulated per Dr Pillay’s request. Digital Vibes quoted for 18.75 million airtime vouchers.

4.64.3 Digital Vibes also quoted for 90 wall murals (10 wall murals in 9 provinces), which was included in Dr Pillay’s request.

- 4.65 The SIU could not obtain any documentary evidence indicating that the revised items had been requested and communicated by Dr Pillay to Ms. Mather.
- 4.66 On the same day (i.e. 6 March 2020), Dr Pillay responded and confirmed as follows: *"Your proposal is approved. Please advise on the expected payment schedule for this plan and the timelines for implementation"* [Emphasis added].
- 4.67 The SIU was not be provided with any evidence indicating that the NDOH entered into a separate SLA or written Addendum to any SLA regarding the services to be rendered for the Covid-19 media campaign.
- 4.68 The SIU was not provided with any evidence that the NDOH had compiled proper specifications and tested the market, either through a process of limited bidding, obtaining quotations or an open tender process.
- 4.69 The NDOH further failed to conduct any evaluation and adjudication processes prior to the award of the Covid-19 media campaign contract to Digital Vibes.
- 4.70 The only documentation which underpins the procurement of the services of Digital Vibes in respect of the NDOH Covid-19 media campaign, is the e-mail exchanges between Dr Pillay and Ms Mather (acting on behalf of Digital Vibes).
- 4.71 The appointment of Digital Vibes was seemingly based on an arbitrary decision by Dr Pillay, which was seemingly made even before Digital Vibes had submitted its quotation.
- 4.72 From the e-mail exchanges, it is also evident that Dr Pillay was aware that the services to be rendered by Digital Vibes to the NDOH were not part of the scope of its current (NHI media campaign) contract with the NDOH. Yet, it is apparent that the NDOH aimed to vary or extend the scope to include the Covid-19 media campaign.
- 4.73 Furthermore, the NDOH utilised the approved budget that had been allocated for the NHI media campaign, to pay for the purported Covid-19 media campaign work performed by Digital Vibes.

- 4.74 Any later extension to the NHI media campaign SLA, which had resulted from a procurement process, should have been limited to the very same goods or services that had originally been procured and contracted for. Since the SLA provided a Communication Strategy for NHI, it is submitted that the NDOH could not lawfully have extended the SLA, if such an extension would have resulted in a change to the goods or services that were originally procured. Clearly, the NHI media campaign was substantially different from the Covid-19 media campaign.
- 4.75 It is evident that no proper procurement process was followed by the NDOH in appointing Digital Vibes in respect of the Covid-19 media campaign. As such, the NDOH also did not comply with the prescripts of:
- 4.75.1 *National Treasury Practice Note No. 8 of 2007/2008 dated 29 November 2007*, which required that all procurement for contracts of a value of above R 500 000 were to be put-out on an open public tender process, and which allowed the use of at least three written quotations only for contract values of up to R 500 000;
  - 4.75.2 Regulation 16A6.2(a), (b) and (e) of the Treasury Regulations, because competitive bids or written quotations were not evaluated by a TEC or Bid Evaluation Committee and were also not adjudicated upon by a BAC; and
  - 4.75.3 Regulation 16A6.3(b) of the Treasury Regulations, because there were no competitive bids or written quotations to evaluate in accordance with the prescripts of the PPPFA and the PPPFA Regulations of 2017 (i.e. 80/20 for any bid above R 30 000.00 up to R 50 million and 90/10 for bids above R 50 million).
- 4.76 At the time of the events (6 March 2020), the National State of Disaster had not yet been declared. As such, State institutions were obliged to follow an open tender process to procure their required goods or services.

The NDOH could thus only have deviated from following an open tender process by utilising the provisions of regulation 16A6.4 of the Treasury Regulations, which stipulates that where it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

Other communication service providers brought-in by the NDOH during the tenure of the contract between the NDOH and Digital Vibes

4.77 On 12 March 2020, the following NDOH document was submitted to the Acting Director-General (“*Enquiries: Mr Popo Maja*”):

*“Request for approval to deviate from Normal Procurement Procedures in order to drive a Public Awareness and Engagement on Coronavirus Campaign using Multiple Communication Platforms was sent to National Treasury.*

*To request the Acting Director-General to grant approval to deviate from normal procurement procedures of inviting competitive bids due the coronavirus pandemic that has been declared by WHO in order to drive an urgent public awareness and engagement on coronavirus campaign using multiple communication platforms”.*

4.78 In the 12 March 2020 request, the following quotations were reflected:

<b>Quotations for services for Covid-19 communication from other companies (not Digital Vibes)</b>		
<b>Item</b>	<b>Company</b>	<b>Amount</b>
Train Station TV	Umjanjimedia	1,494,871.89
Campus Radio	Equal Edge	450,000.00
Airport TV	Provantage	1,538,182.50

<b>Quotations for services for Covid-19 communication from other companies (not Digital Vibes)</b>		
<b>Item</b>	<b>Company</b>	<b>Amount</b>
Production and recording of Animation all languages including voice over – English sub-titles for other languages	Fresh Apple Media	546,250.00
Development and placement of content on Social media platforms (Facebook, Twitter, and Instagram) and boosting of messages for reach	Imamedia	753,250.00
Electronic Billboards	Fourthdoor	1,447,074.90
Webpage	Nebworks	339,250.00
Community radio	Tsalena	4,926,323.00
<b>Total</b>		<b>10,948,952.29</b>

4.79 It should be noted that the suppliers listed above, provided similar services to those of Digital Vibes.

4.80 The CFO made a hand-written note stating the following:

*“1) SCM process to be followed*

*2) Duplication with Digital Vibes responsibilities to be avoided*

*3) At least 3 quotations to be covered.”*

4.81 On 18 March 2020, the CFO reported the Digital Vibes appointment for the NHI media campaign as a deviation above R 1 million to the AGSA (Ms Hlatshawayo).

*“Reporting of deviation case above R 1 million in accordance with National Treasury Practice Note 6 of 2007/2008.*

*The award was made on the 15 November 2019, (see attached) for an appointment of Digital Vibes (Pty) Ltd for the provision of communication services in relation to the National Health Insurance (NHI) Bill as released by the Cabinet for parliament consideration.”*

4.82 On 30 March 2021, Dr Pillay sent an e-mail from his private Yahoo e-mail address (pillayanban@yahoo.com.au) to Ms Mather stating the following:

*“Since the outbreak of COVID-19, there has been no need to continue with the NHI communications as outlined in our [sic].*

*You were requested to direct communication strategies to the COVID 19 response based on requests from the Department.”*

4.83 On 10 April 2020, the CFO sent an internal memorandum to Dr Pillay raising a number of concerns. His memorandum is summarised below:

- The award to Digital Vibes was made on an *“as and when needed basis due to the fact the Department could not commit to the R 140 million that was submitted as part of their bid documents.”*
- The Digital Vibes work was not part of the NDOH budget.
- The work performed by Digital Vibes was to be assessed, based on the available budget and agreed-upon work plan.
- The SLA had been signed on 29 November 2019 and the first invoice of Digital Vibes had been received on 9 December 2019.
- The CFO had not had sight of the SLA, prior to it being signed.
- On 14 January 2020, the CFO had raised various concerns relating to the matter.
- Finance had been instructed to *“find the money”* and to identify funds.

- At the time, the earmarked funds for Health Promotions indicated under expenditure and the NDOH could settle the accounts by using these funds.
- This had put the NDOH budget under severe strain.
- One of the major concerns, was the monthly payment of R 2.5 million to Digital Vibes.
- Digital Vibes had been requested to perform work, based on verbal and e-mail instructions.
- It was not clear whether the work performed by Digital Vibes, was covered by the SLA or whether it was out of scope work or whether the work could be performed by the NDOH staff.
- The work performed by Digital Vibes should be verified.
- Up to 31 March 2020, an amount of R 43 million had been paid to Digital Vibes, which included R 18 million for Covid-19 (of the R 35 million Digital Vibes quotation approved by Dr Pillay).
- The CFO indicated that “This still has to be sent to Treasury for concurrent approval as this is a huge scope variation”. [Emphasis added]
- The money that had been paid to Digital Vibes, had been approved by Dr Pillay.
- The “amount seems to be exorbitant and excessive and the NDOH needs assurance that value for money was derived.” [Emphasis added]
- Currently there were a number of invoices waiting to be authorised that ran into several million rand.

- He concluded with *“The position in the current financial year is the same. This does not have specifically earmarked budget and any expenditure could lead to unauthorised expenditure and be subjected to Section 38(2) of the PFMA and the Public Audit Amendment Act. The file has been selected for audit by the Auditor-General.”*

4.84 The SIU found no evidence that the NDOH had complied with the prescripts of regulation 16A6.4 of the Treasury Regulations in respect of both the NHI- and Covid-19 media campaigns.

4.85 On 11 May 2020 (i.e. 66 days after Dr Pillay had already accepted the Digital Vibes Proposal), Dr Pillay sent a letter to the National Treasury (Ms Estelle Setan) (Acting Chief Procurement Officer) in respect of a *“Request for approval to deviate from Normal Procurement Procedures in order to drive a Public Awareness and Engagement on Coronavirus Campaign using Multiple Communication Platforms”*.

4.86 In the said letter, Dr Pillay stated the following:

*“To this date the department has spent R 32 864 534.00 related to NHI.*

*However, it needs to be mentioned that during March when COVID-19 pandemic was declared a national state of disaster, the contract of Digital Vibes was expanded to include information dissemination, education, public awareness and media communication on COVID-19.*

*This expansion was done using Practice no. 3 of 2016/2017 paragraph 8.1 and 8.2 which allows the Accounting Officer to deviate without sourcing concurrence approval of National Treasury in cases of emergency.*

*The expansion of the mentioned contract include COVID-19 communication related matters was also activity based and were reported to National Treasury within 10 days after their approval.*

*NDOH has incurred the expenditure to the value of R 25 909 884.00 relating to the expansion of NDOH 24/2019-2020 as a result of COVID-19.*

*More expenditure on this contract may be incurred and will be reported as and when it occurs.*

*It is therefore against paragraph 3.6 and 3.7 of Practice Note no. 5 of 2020/21 that we bring this to the attention of National Treasury as it is difficult to indicate if the expansion is within 25 % or R 25 million of the original contract more so the initial contract had no value but it was activity based cost contract.” [Emphasis added]*

4.87 The SIU investigation identified a number of material and potentially fraudulent misrepresentations that were made by Dr Pillay in the letter dated 11 May 2020 that was sent to National Treasury (see paragraphs 4.85 and 4.86 above):

4.87.1 No evidence was found that the NDOH had in fact reported the award of the Covid-19 media campaign by means of a SCM Deviation, as envisaged in regulation 16A6.4 of the Treasury Regulations, to the National Treasury and the relevant AGSA within 10 days from 6 March 2020. As such, the statement by Dr Pillay that “...*The expansion of the mentioned contract were reported to National Treasury within 10 days after their approval*” was in fact false, incorrect and misleading;

4.87.2 Since paragraph 9.2 of Practice Note no. 3 of 2016/2017, expressly requires prior written approval by the relevant Treasury in all cases where the contract value is to be increased by more than 15 % or R 15 million, the statement made by Dr Pillay that the said Practice Note “...*allows the Accounting Officer to deviate without sourcing concurrence approval of National Treasury in cases of emergency.*” [Emphasis added] was in fact false, incorrect and misleading;

4.87.3 Dr Pillay stated that R 25 909 884.00 had been spent on the Covid-19 media campaign, as at 11 May 2020.

However, if all Digital Vibes invoices dated after 6 March 2020 (i.e. the date of the award of the Covid-19 media campaign contract to Digital Vibes), are considered to be related to the Covid-19 media campaign, then the NDOH had in fact already spent R 60 458 952.00 on the Covid-19 media campaign as at 11 May 2020, and not R 25 million as had falsely or incorrectly been stated by Dr Pillay.

<b>Digital Vibes invoices</b>				
<b>Calculation of Covid-19 expenditure up to 11 May 2020</b>				
<b>#</b>	<b>Invoice date</b>	<b>Date paid</b>	<b>Amount (Rand)</b>	<b>Invoice number</b>
1	23-Dec-19	2020-01-29	7 477 300.00	DV2002
2	23-Dec-19	2020-01-31	1 847 734.00	DV2003
3	03-Feb-20	2020-03-04	7 877 500.00	DV2004
4	03-Mar-20	2020-03-13	7 820 000.00	DV2007
		<b>NHI</b>	<b><u>25 022 534.00</u></b>	
5	23-Mar-20	2020-03-31	18 032 384.00	DV0033
6	23-Mar-20	2020-04-15	7 843 000.00	DV20014
7	08-Apr-20	2020-05-11	7 877 500.00	DV0048
8	08-Apr-20	2020-05-13	17 874 068.00	DV0041
9	28-Apr-20	2020-05-15	2 104 500.00	DV20050
10	25-Apr-20	2020-06-18	6 727 500.00	DV20045
		<b>Covid-19 up to 11 May 2020</b>	<b>60 458 952.00</b>	
11	31-May-20	2020-07-20	2 875 000.00	DV20062
12	31-Jul-20	2020-09-01	7 973 333.00	DV20071
13	01-Sep-20	2020-10-05	11 452 083.00	DV20081
15	01-Oct-20	2020-10-21	11 753 086.00	DV20090

<b>Digital Vibes invoices</b>				
<b>Calculation of Covid-19 expenditure up to 11 May 2020</b>				
<b>#</b>	<b>Invoice date</b>	<b>Date paid</b>	<b>Amount (Rand)</b>	<b>Invoice number</b>
16	25-Jun-20	2020-10-29	4 710 688.00	DV20061
17	02-Nov-20	2020-11-13	11 113 598.80	DV0094
18	04-Dec-20	2020-12-23	6 344 166.00	DV20098
19	04-Jan-21	2021-02-08	8 529 167.00	DV20103
			<b>125 210 073.80</b>	
14		2020-10-05	(230 000.00)	DV20071
		<b>Total Covid-19</b>	<b>124 980 073.80</b>	
		<b>Total NHI + Covid-19</b>	<b>150 002 607.80</b>	

4.88 Since Dr Pillay had already accepted the quotation of R 35 906 450 in respect of the Covid-19 media campaign and approved the award to Digital Vibes on 6 March 2020 (see paragraph 4.66 above), the referral by Dr Pillay to Practice Note no. 5 of 2020/21 in the letter of 11 May 2020, was completely misplaced and misleading, in circumstances where Practice Note no. 5 of 2020/21 only came into operation on 28 April 2020 (i.e. 53 days after the Covid-19 media campaign contract had effectively already been awarded to Digital Vibes).

4.89 Since:

4.89.1 Dr Pillay failed to disclose to the National Treasury that on 6 March 2020, Digital Vibes had provided the NDOH with a written quotation amounting to R 35 906 450 in respect of the Covid-19 media campaign, which was already at least R 10 906 450 in excess of the threshold of R 25 million as set for later contract value extensions, as set out in Practice Note no. 5 of 2020/21;

4.89.2 as at 11 May 2020, the NDOH had in fact already spent R 60 458 952.00 on the Covid-19 media campaign; and

4.89.3 even on Dr Pillay's own version, as stated in the letter of 11 May 2020, the NDOH had already spent at least R 25 909 884.00 on the Covid-19 media campaign, as at 11 May 2020,

the statement made by Dr Pillay that "*...it is difficult to indicate if the expansion is within 25 % or R 25 million of the original contract...*" was clearly false, incorrect and in fact misleading and fraudulent in nature.

4.90 As such, the belated attempt by the NDOH to seek approval for a SCM Deviation from the National Treasury in respect of the Covid-19 media campaign contract, was ill-founded and invalid. Therefore, this purported extension of the NHI media campaign SLA was void.

4.91 Moreover, *National Treasury Instruction Note 3 of 2016/2017 dated 19 April 2016*, stipulates that accounting officers must only deviate from inviting competitive bids in cases of emergency and sole supplier status.

4.91.1 National Treasury, in this Instruction Note, regards an emergency procurement event as being "*where there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids*". The Instruction Note further states that "*Any other deviation will be allowed in exceptional circumstances subject to the prior written approval of the relevant treasury*".

4.91.2 The Instruction Note further stipulates that accounting officers must ensure that contracts are not varied by more than 15 % or R 15 million (including VAT) of the original contract price for goods and services. As such, the NDOH could only lawfully have requested Digital Vibes to do additional work in terms of the NHI media campaign SLA for a total value not exceeding R 15 million (keeping in mind that 15 % of R 141 783 500 is R 21 267 525).

4.92 On 19 March 2020, Practice Note No. 08 of 2019/2020, which applied for the period 19 March 2020 to 27 April 2020, came into operation. In paragraph 3.5.1(ii) of Practice Note No. 08 of 2019/2020, National Treasury waived the prescripts of paragraph 9.2 of the National Treasury Instruction SCM No. 3 of 2016/17 – as such, the NDOH could vary/expand any pre-existing contracts or SLA(s) in respect of “*goods*” and “*for the procurement of items related to COVID-19*” to a contract value in excess of 15 % of the original contract value or R 15 million, when purchasing any items related to Covid-19. It is submitted that Practice Note No. 08 of 2019/2020 did not allow the NDOH to extend the SLA with Digital Vibes with a total value of at least R 35 906 450.00, because:

4.92.1 Practice Note No. 08 of 2019/2020 only came into operation on 19 March 2020, where it is clear from the contents of paragraph 4.66 above, that the NDOH accepted the quotation from Digital Vibes as early as 6 March 2020 (i.e. 13 days before the commencement of Practice Note No. 08 of 2019/2020); and

4.92.2 The Covid-19 media campaign would not qualify as “*goods*” and/or “*items related to COVID-19*”, as envisaged in paragraph 3.5.1(ii) of Practice Note No. 08 of 2019/2020. It is submitted that National Treasury clearly intended that the contents of paragraph 3.5.1(ii) of Practice Note No. 08 of 2019/2020 were to be applied to the procurement of PPE, cloth masks and other goods related to the fight against the Covid-19 pandemic, and did not intend such an exception to also apply to the procurement of professional services or consultants.

- 4.93 On 28 April 2020, Practice Note No. 5 of 2020/21, which applied for the period 28 April 2020 to 31 May 2020, came into operation. In paragraph 3.6 of Practice Note No. 5 of 2020/21, National Treasury waived the prescripts of paragraph 9.2 of the National Treasury Instruction SCM No. 3 of 2016/17 – as such, the NDOH could vary/expand any pre-existing contracts or SLA(s) in respect of “*goods, works or services to prevent an escalation of the Disaster or to alleviate, contain or minimise the effects of the Disaster*” to a contract value in excess of 15 % of the original contract value or R 15 million (whichever is the lesser amount), and National Treasury prescribed a new interim threshold of R 25 million or 25 %.
- 4.94 It is submitted that Practice Note No. 5 of 2020/21 did not allow the NDOH to extend the SLA with Digital Vibes with a total value of at least R 35 906 450.00, because:
- 4.94.1 Practice Note No. 5 of 2020/21 only came into operation on 28 April 2020, where it is clear from the contents of paragraph 4.66 above, that the NDOH had accepted the quotation from Digital Vibes as early as 6 March 2020 (i.e. 53 days before the commencement of Practice Note No. 5 of 2020/21); and
- 4.94.2 The quotation amount of R 35 906 450.00, exceeded the new interim threshold of R 25 million as was set by Practice Note No. 5 of 2020/21 by R 10 906 450.00, which concern is increased if one considers that the NDOH ended-up paying an additional amount of approximately R 125 million to Digital Vibes in respect of the Covid-19 media campaign.

**Minister of Health (Dr Mkhize) approved a budget of R 85.5 million for Digital Vibes**

- 4.95 On 16 June 2020, the Minister approved a budget of R 85 502 500 for Digital Vibes after a submission: “*To Request the Minister of Health to Approve Implementation Strategy and Budget from June to November 2020 for National Health Insurance (NHI) Communication Strategy which will be executed by Digital Vibes.*”.

- 4.96 The 16 June 2020 submission was signed by the Minister, Dr Pillay (Acting DG), Ms Pardesi (Acting Deputy DG: NHI) and the CFO.
- 4.97 The following should be noted:
- 4.97.1 This budget of R 85 million was approved by the Minister of Health more than six months after the SLA between the NDOH and Digital Vibes had been signed.
  - 4.97.2 Furthermore, the Minister incorrectly approved the budget for the NHI media campaign due to the fact that, from 6 March 2020, Digital Vibes had only delivered Covid-19 related communication services (and no NHI related communication services).
- 4.98 On 2 July 2020, the newly appointed DG, Dr Buthelezi, sent a letter to the CFO stating that all Communications Contracts would, with immediate effect, be managed by the Office of the DG. The CFO was requested to hand over to the DG all documentation relating to the Digital Vibes contract(s).
- 4.99 In this regard, it should be noted that in excess of R 60 million was paid to Digital Vibes from 2 July 2020 (after the date of the above-mentioned letter).

#### **National Treasury approval of R 25 million for deviation on Digital Vibes contract**

- 4.100 On 24 June 2020, National Treasury sent a report to the DG of the NDOH (the position had been filled from 1 June 2020, the incumbent being Dr Buthelezi) informing him that the NDOH had reported an approved deviation in respect of the procurement of Digital Vibes to provide information dissemination, education, public awareness and media communication regarding Covid-19, at a total cost of R 25 909 884.
- 4.101 In light of the fact that the NDOH ultimately paid an amount of approximately R 125 million to Digital Vibes in respect of the Covid-19 media campaign, it is apparent that the NDOH paid an amount of approximately R 99 million in excess of the purportedly approved deviation amount, which made a mockery of the purported approved SCM deviation.

4.102 The amount of R 25 million, was approved by National Treasury 110 days (three and a half months) after the quotation of approximately R 35 million from Digital Vibes had been approved by Dr Pillay.

**NDOH request regarding the extension of the Digital Vibes contract**

4.103 On 28 October 2020, a request for approval to extend the Digital Vibes contract, was submitted: *“Request approval for the Extension of Contract for Strategic Communication with 3 months while the Process to Advertise the New Tender is underway”*.

4.104 The request dated 28 October 2020 was signed by Dr Buthelezi (DG: Health), Mr Maja (Cluster Communications), Ms V.M. Rennie (Head: Corporate Services) and the CFO.

4.105 The following day (on 29 October 2020), Dr Buthelezi sent a letter to Ms. Estelle Setan (National Treasury) in which he requested that the Digital Vibes contract be extended for a period not exceeding four months: *“Request for Approval to Expand or Extend Contract - NDHO 24/2019-2020 on a Month-to-Month basis for a period not exceeding Four (4) months. The Digital Vibes contract for the provision of strategic communication services is expiring at the end of November 2020. The contract was awarded to Digital Vibes on activity cost basis (unknown quantities) or with no ceiling total bid price. This then means when the department needs to expand or vary the contract the normal percentage variation calculation to determine the 15 % or R 25 million threshold is not applicable”*.

**NDOH staff members who approved the Digital Vibes invoices**

4.106 The following NDOH staff members approved the Digital Vibes invoices.

Approved by	Position	Sum of Amount (Rand)
P Ngobese	Senior Administrative Office Affordable Medicine	69,428,952.00

<b>Approved by</b>	<b>Position</b>	<b>Sum of Amount (Rand)</b>
	(PA of Ms. Pardesi)	
P Maja	Chief Director: Communication & Stakeholder Development	61,876,121.80
Dr A Pillay	Deputy Director General: Health Regulation & Compliance Management	10,352,300.00
T Chidarikire	Director: Prevention Strategies	1,847,734.00
	<b>Sub-total</b>	<b>143,505,107.80</b>
Not approved	No evidence could be found that this invoice was approved	6,727,500.00
	<b>Sub-total</b>	<b>150,232,607.80</b>
	Less credit note INV DV20071	(230,000.00)
	<b>Net total</b>	<b>150,002,607.80)</b>

**The expenditure incurred by the NDOH for the services rendered by Digital Vibes in respect of the NHI - and Covid-19 media campaigns**

- 4.107 Digital Vibes was paid R 2 500 000 a month as a retainer fee, which was not provided for in the SLA, which stated that “*An Activity Based Cost will apply as and when services relating to NHI communication and marketing are concerned*”. These payments constituted fruitless and wasteful expenditure, as envisaged in the PFMA, and the NDOH has in the interim initiated steps to attempt to recoup approximately R 37 million that was paid to Digital Vibes in this regard.
- 4.108 The NDOH paid a total amount of approximately R 150 002 607 to Digital Vibes, which amount is reflected as follows:

4.108.1 R 25 022 534 was paid in respect of the NHI media campaign; and

4.108.2 R 124 980 073 was paid in respect of the Covid-19 media campaign.

4.109 In light of the SCM irregularities, the NDOH:

4.109.1 incurred irregular expenditure, as envisaged in the PFMA, amounting to of approximately R 150 million; and

4.109.2 effectively incurred fruitless and wasteful expenditure, as envisaged in the PFMA, amounting to approximately between R 72 million (the difference between the amount that Brandswell had quoted (R 69 million) and the amount that Digital Vibes had quoted (R 141 million)), and R 80 million (the total amount allegedly stolen from Digital Vibes (as per the Affidavit of Ms Hariram), which was not used for media buying or related services).

### **Fronting**

4.110 Ms Hariram, who is allegedly the Managing Director of Digital Vibes, is based in Stanger in the KwaZulu-Natal Province.

4.111 However, it appears that Ms Hariram:

4.111.1 was formerly the manager of a petrol service station in Stanger;

4.111.2 was not actively involved in the business affairs of Digital Vibes, and effectively allowed Ms Mather and Ms Mitha, who were purportedly appointed by Digital Vibes as consultants/contractors, to run the business of Digital Vibes, especially in respect of the NHI contract that was awarded to Digital Vibes by the NDOH; and

4.111.3 did not receive any benefit close to the value:

4.111.3.1 of all payments that were made by the NDOH to Digital Vibes; and/or

4.111.3.2 of the benefits received and enjoyed by Ms Mather and Ms Mitha, and entities or individuals linked to them.

- 4.112 The finding of fronting is also supported by evidence which the SIU obtained from Mr Naidoo, who was a non-executive Director and 10 % shareholder of Digital Vibes for approximately four months from September 2019 to January 2020. According to Mr Naidoo:
- 4.112.1 he has known Ms Mather for almost 20 years, as they both come from Stanger in the KwaZulu-Natal Province;
  - 4.112.2 during September 2019, he was approached by Ms Mather to ascertain if he was interested in becoming a Director of Digital Vibes for purposes of seeking business opportunities in government;
  - 4.112.3 Ms Mather arranged for Mr Naidoo to become a Director of Digital Vibes and to receive a 10 % shareholding in this company, which he received free of charge (i.e. everything was arranged by Ms Mather and not by or through Ms Hariram);
  - 4.112.4 Ms Mather requested Roleguard (Pty) Ltd, which belongs to Mr Naidoo, to prepare and submit a complete National Media Plan, Implementation Plan and Budget Plan for the NHI media campaign, which Mr Naidoo did;
  - 4.112.5 despite the submission of the abovementioned Plans that had been drafted by Mr Naidoo and Roleguard (Pty) Ltd, no media purchasing work was allocated to Mr Naidoo and/or Roleguard (Pty) Ltd. However, on 1 March 2020, Ms Mather requested Mr Naidoo to submit an invoice for R 100 000 to Digital Vibes for media services that had purportedly been rendered by Roleguard (Pty) Ltd to Digital Vibes, which amount was paid by Digital Vibes to Roleguard (Pty) Ltd on 30 March 2020;
  - 4.112.6 during January 2020, Ms Mather informed Mr Naidoo that the contract with the NDOH in respect of the NHI media campaign had been terminated because of the Covid-19 pandemic, and that Digital Vibes would “...continue doing minor work...” for the NDOH for Covid-19.

At this stage, Mr Naidoo requested to be removed as a Director of Digital Vibes, and he confirmed that he never received any dividends as a Director and Shareholder of Digital Vibes;

4.112.7 he was surprised by the media reports regarding the NDOH and Digital Vibes, due to the fact that he was not aware that Digital Vibes had secured a subsequent contract with the NDOH in respect of the Covid-19 media campaign, and he was also not aware of the quantum of the original contract in respect of the NHI media campaign; and

4.112.8 in hindsight, he now believes that:

4.112.8.1 his name and company was, due to his experience and knowledge of media buying, used to secure the contract from the NDOH in respect of the NHI media campaign; and

4.112.8.2 Digital Vibes and Ms Mather never had the intention to use his skills during the execution of the contract, other than to use Mr Naidoo to compile the National Media Plan, Implementation Plan and Budget Plan for the NHI media campaign.

4.113 Furthermore, on or about 7 May 2021, Ms Hariram laid charges of fraud and embezzlement against Ms Mather and Ms Mitha with the SAPS. In this regard, she alleged that:

4.113.1 they had embezzled over R 80 million from Digital Vibes;

4.113.2 their *modus operandi* had been to make payments from Digital Vibes to third parties, as if these payments had been for services rendered and value obtained, when in fact this was not the case;

4.113.3 the transactions included:

4.113.3.1 R 23.1 million to Composit Trade and Investments 02 (Pty) Ltd linked to Ms Mather;

4.113.3.2 R 15 million to Strategeewhizz (Pty) Ltd linked to Ms Mitha;

- 4.113.3.3 R 7 million to WT Graphics – Ms Mather’s son;
  - 4.113.3.4 R 1.05 million to F Seedat – Ms Mather’s sister;
  - 4.113.3.5 R 1.2 million to Suhaila Mather Consulting that belongs to Ms Mather’s daughter; and
  - 4.113.3.6 R 10 million to Mateta Projects (Pty) Ltd (i.e. a company that belongs to Mr Mthethwa who is the husband of former ANC staffer - M. Mthethwa); and
  - 4.113.3.7 R 5 million to TTN, which was used to purchase face masks;
  - 4.113.4 a large amount of money was paid to family members and associates of both Ms Mather and Ms Mitha, without them having conducting any work or providing any services to Digital Vibes; and
  - 4.113.5 these transactions were done unlawfully and without her knowledge or consent, and constituted theft and fraud.
- 4.114 When Ms Hariram contacted Ms Mather and Ms Mitha in this regard, they retained the services of an attorney and, after numerous consultations, only R 9 million was paid back to Digital Vibes.

The obtained evidence indicates that even though *de iure* Digital Vibes belonged to Ms Hariram, *de facto* Ms Mather and Ms Mitha were in complete control of the activities of, and the bank accounts belonging to Digital Vibes.

**Contract performance by Digital Vibes (including sub-contractors)**

- 4.115 The SIU requested Digital Vibes to provide supplier invoices and supporting documentation regarding payments made by Digital Vibes.
- 4.116 The attorneys of Digital Vibes, namely Hajibey-Bhyat Inc, stated that their client, Digital Vibes, was not in possession of the requested supplier invoices and supporting documentation.

Digital Vibes therefore did not, and to date has not, supplied the requested supplier invoices and supporting documentation to the SIU.

4.117 The fact that no supplier invoices and supporting documentation could be, or was supplied by Digital Vibes, supports the inference that in these instances Digital Vibes “paid” suppliers in circumstances where no goods or services had been rendered to justify these payments.

4.118 The SIU analysed the Digital Vibes Nedbank bank account no. 1159701830 (this is the main bank account used by Digital Vibes). The following suspect payments were identified:

4.118.1 Ms Mather: R 20 million (paid to Ms Mather’s company);

4.118.2 Ms Mitha: R 16 million (paid to Ms Mitha and to her company);

4.118.3 Ms Hariram (who is the Director of Digital Vibes): R 2.5 million;

4.118.4 Family of Ms Mather: R 11.5 million was paid to family members and their respective businesses;

4.118.5 Individuals that had worked with or were linked to the Minister (staff members of the Minister): R 36.7 million; and

4.118.6 Suspect payments to other companies (SP Attorneys and Royal Bhaca Projects): R 3.1 million.

The total of the above payments equals approximately **R 90 million**.

4.119 According to the SIU bank account analysis, the following companies and individuals were paid:

<b>Nedbank bank account 1159701830</b>		
<b>Potential Implicated Entities</b>		
<b>Company name</b>	<b>Relationship</b>	<b>Amount (Rand)</b>
Composite trade	Ms Mather’s company	(20 517 668.64)
Strategeewhizz	Ms Mitha’s company	(14 216 139.07)
Mateta Projects	Mr Welcome M Mthethwa’s company	(10 636 575.82)

<b>Nedbank bank account 1159701830</b>		
<b>Potential Implicated Entities</b>		
<b>Company name</b>	<b>Relationship</b>	<b>Amount (Rand)</b>
Sotobe Media Pty Ltd	Director is Sithembiso Sikhumbuzo Sibiya (Mr. Ndabezinhle Sibiya was a previous spokesperson of the Minister. Therefore, this company is potentially related to the previous spokesperson)	(9 781 250.00)
Mkokwana Events	Mr Welcome M Mthethwa's cousin' sister's company	(8 983 305.00)
WT Graphics	Mr. Wasim Mather	(6 255 391.15)
Bevels communications	Mr Welcome M Mthethwa's mother's company	(6 017 831.00)
SP Attorneys	Attorneys of Ms Mather and Ms Mitha	(2 100 000.00)
Signet Pharmacy	Signet Hoosen's business (Brother-in-Law of Ms Mather)	(1 568 488.60)
Royal Bhaca Projects	Company linked to Mr Madzikane II Thandisizwe Diko, who is the husband of the Spokesperson to the President (Ms Diko)	(1 000 000.00)
<b>Potential Implicated Individuals</b>		
<b>Name and Surname</b>	<b>Relationship</b>	<b>Amount (Rand)</b>
Ms Radha Hariram	Director or "owner" of Digital Vibes	(2 508 041.20)
Ms Naadhira Mitha	Niece of Ms Mather	(1 967 622.00)
Ms Suhaila Mather	Daughter of Ms Mather	(1 496 539.00)
Ms Hasina Kathrada	Sister of Ms Mather	(1 094 546.91)
Mr Wasim Mather	Son of Ms Mather	(1 040 000.00)
Mr Welcome (Mdu) M Mthethwa	Husband of former ANC staffer (M. Mthethwa)	(874 610.02)
Ms Yenziwe Sokhela	Ms Yenziwe Sokhela (Former employee at the Minister's Ikusasa Le Afrika Foundation ("ILAF"))	(367 726.70)
Ms Makhosazana Mthethwa	Former ANC staffer (wife of Welcome (Mdu) M Mthethwa, referred to above)	(31 524.00)

Nedbank bank account 1159701830		
Potential Implicated Entities		
Company name	Relationship	Amount (Rand)
<b>Total</b>		<b>(90 457 259.11)</b>

### **The Auditor General of South Africa (AGSA)**

- 4.120 The SIU interviewed Ms Thabelo Musisinyani and Mr Andries Sekgetho, who are respectively a Senior Manager and Business Executive at the AGSA.
- 4.121 The AGSA had reported that Digital Vibes charged excessive fees and expenses in respect of the Covid-19 media campaign.
- 4.122 The AGSA report is seemingly corroborated by a Daily Maverick report dated 16 June 2021 that *“According to documents we’ve obtained, Digital Vibes paid a local animation studio roughly R 266,000 to create Pelo, a 3D Nguni cow character outfitted in a doctor’s coat and spectacles. ... The DoH ended up paying a grossly inflated price for the work. In an invoice submitted in February 2020, Digital Vibes first billed the DoH R 800,000 for ‘animation 3D development’. Another invoice from March 2020 included a further R 300,000 charge with the same description. In other words, Digital Vibes billed the department R 1.1 million for an outsourced animation project that cost only R 266,000. This translates to a massive 314 % mark-up and netted the firm R 834,000 in pure profit ... Along with the second bill of R 300,000 for Pelo’s animation work, the final NHI invoice included another R 1.5 -million charge for ‘data driven sentiment behavior’. The company also charged the DoH R 250,000 for ‘WordPress completion’ (WordPress is a free, open source website tool); R 200,000 for ‘raw video footage’ and R 150,000 for ‘placement of opinion pieces’, among other curious billings. Digital Vibes also charged the DoH R 155,500 for ‘stakeholder management’. Judging by an appendix included in the invoice, this entailed the department paying Digital Vibes for enjoying coffee with stakeholders from the medical industry.*

*In January 2020, for instance, someone from Digital Vibes met with a representative from the South African Dental Association ‘at Woolworths coffee, Rosebank Mall’, according to the invoice. The South African Dental Association representative ‘supports the theory & principals of a universal healthcare system’, the document tells us”.*

4.123 During the relevant period, the NDOH appointed four other suppliers that delivered similar services to the NDOH (the extract below was obtained from the AGSA Management letter regarding Digital Vibes).

No	Order No	Payment No	Amount (R)	Service provider	Description of services rendered
1	OR117831	PM184097	1 447 074,00	Fourth Door Holdings	Billboards
2	OR117854	PM184101	3 600 000,00	Equal Edge/Christopher Africa	Community radio campaign
3	OR117833	PM184091	491 500,00	Imamedia Pty Ltd	Social media
4	OR117832	PM184090	339 250,00	Networks media	Website design
	<b>Total</b>		<b>5 877 824.00</b>		

4.124 It is apparent that the amounts that were charged by the four suppliers, were significantly lower than the amounts charged by Digital Vibes in respect of similar services.

### **Forensic Investigation Report by Ngubane tax assurance advisory firm**

4.125 The SIU interviewed Mr Ngubane from Ngubane Tax Assurance Advisory, which was appointed by the NDOH to investigate the allegations raised in the media and by the AGSA in respect of Digital Vibes.

4.126 A forensic Report by Ngubane found that:

4.126.1 the contract, signed-off in 2019, was irregular and contravened National Treasury's Regulations, and that there had been a material non-disclosure of a conflict of interests;

4.126.2 during the period 29 January 2020 and February 2021, the NDOH had paid a total amount of approximately R 150 million to Digital Vibes, which was deemed to be irregular expenditure; and

4.126.3 the NDOH had incurred fruitless and wasteful expenditure of at least approximately R 37 million in respect of payments made to Digital Vibes.

4.127 As part of its investigation, the SIU verified the material findings in the Ngubane Report and the evidence upon which such findings was based.

#### **Legal advice received from Senior Counsel appointed by the NDOH**

4.128 Due to the fact that the Ngubane Report questioned the practice of the NDOH of submitting budgets for the approval of the Minister, the NDOH request an Opinion in this regard from Senior Counsel.

4.129 In this regard, Senior Counsel stated that the Legal Opinion was given in the abstract (i.e. that is that no opinion was expressed regarding the regularity of the relevant procurement processes or the validity of the resulting contracts/agreement), but focused solely on the question whether it is proper for the NDOH to submit Requests for Approval of Budgets to the Minister (in his official capacity as the Executive Authority of the NDOH).

4.130 Senior Counsel came to the conclusion that it was not improper for the NDOH to submit Requests for Approval of Budgets to the Minister, on condition that the DG of the NDOH (as the Accounting Officer of the NDOH) had approved the budget prior to his/her recommendation to the Minister for his approval. However, it is the view of the SIU that best practice dictates that the Minister cannot and should not approve budget related requests in respect of already appointed suppliers/service providers (i.e. in this case, he approved budgets regarding contract where Digital Vibes had already been appointed).

#### **Contract and further payment stopped**

4.131 During the course of the SIU investigation, it was ascertained that the NDOH has stopped further payments to Digital Vibes in terms of the two contracts, pending the outcome of the investigations.

4.132 However, merely stopping further payments in terms of the two contracts, is not sufficient. This is due to the fact that the SLA (as extended in respect of the Covid-19 media campaign), has not been formally cancelled, reviewed and/or set aside. Consequently, there is a significant risk to the NDOH and the public purse that Digital Vibes may potentially still try to enforce the SLA (as extended) to its natural expiry, which would entail that an additional amount of up to approximately R 116 million (i.e. R 141 million as set out in the SLA for the NHI media campaign plus the R 125 million that was thus far paid in respect of the Covid-19 media campaign, less the R 150 million already paid thus far) may potentially still have to be paid by the NDOH to Digital Vibes in respect of these highly irregular and invalid contracts.

### **Civil Litigation**

4.133 On 27 May 2021, the investigating team submitted a Memorandum to the Chief Legal Counsel of the SIU in which permission was sought to appoint the Office of the State Attorney to brief Senior and Junior Counsel to act for the SIU.

4.134 On 27 May 2021, approval was granted.

4.135 Evidence packs were prepared and submitted to counsel on 31 May 2021, and a first consultation with Senior Counsel was held on 3 June 2021.

4.136 Counsel advised that the prospects of success in a Review Application (including a prayer for just and equitable relief) in respect of both the NHI media campaign contract (with a total contract value of approximately R 141 million) and the Covid-19 media campaign contract (with a total expenditure thus far of approximately R 125 million), were good and that they would start work on preparing the required civil litigation papers.

4.137 Furthermore, Counsel were also satisfied that interim relief could be sought from the Special Tribunal to freeze any remaining proceeds of unlawful activity (including assets obtained by means of such proceeds). At present, the SIU is conducting investigations to obtain more detailed information regarding the identification of these further funds and assets.

4.138 On 17 June 2021, the SIU obtained an Interim Preservation Order / Interdict from the Special Tribunal under Case No. KN 3/2021 for a total amount of R 22 001 884.54 that was being held in a number of accounts. On 17 June 2021, the Order was served via e-mail on the relevant bank and the financial institutions where the money was being held. Service of the papers on the 12 Respondent by e-mail has been completed. The SIU is required to now bring the Review Application in respect of the Digital Vibes contract(s) within 30 court days from 17 June 2021 (i.e. on or before 29 July 2021). The SIU has briefed Counsel in this regard.

#### **Referral of evidence for Criminal prosecution**

4.139 The obtained evidence indicates that Dr Pillay, as the 'Acting' DG of the NDOH during the Covid-19 media campaign, should be criminally prosecuted for 'financial misconduct', as envisaged in section 86(1) of the PFMA, as read with section(s) 38(1)(a)(i) and (iii), 38(1)(b), 38(1)(c)(ii), 38(1)(c)(iii), 38(1)(g), 38(1)(h), 38(1)(l), 38(1)(n), 38(2), 39(1)(a) and (b), 39(2)(a), (b)(iii) and (c), 40(1)(a), 41, 43(2), 43(3), 43(4)(a) and/or 44(2)(d) of the PFMA.

4.140 Furthermore, Dr Pillay, in a letter to the National Treasury dated 11 May 2020 where he requested approval to deviate from normal procurement procedures, made numerous material intentional misrepresentations to the National Treasury in an attempt to obtain belated approval to deviate from normal procurement procedures. The obtained evidence indicates that he committed fraud in this regard.

4.141 The obtained evidence further indicates the following:

4.141.1 Ms Mather and Ms Mitha committed fraud in that they held out to the NDOH that Digital Vibes was tendering for the NHI media campaign contract, whereas in fact, Ms Mather and Ms Mitha used Digital Vibes as a front in order to hide the fact that they were tendering for the contract and “disguised” this fact due to the fact that they were close associates of the Minister, who was the Executive Authority of the NDOH, which was awarding the NHI media campaign contract.

4.141.2 Digital Vibes (“owned” by Ms Hariram) and Ms Hariram (in her personal capacity) committed fraud in that Digital Vibes and Ms Hariram held out to the NDOH that Digital Vibes was tendering for the NHI media campaign contract, whereas in fact, Digital Vibes and Ms Hariram were fronting for Ms Mather and Ms Mitha in this regard.

4.141.3 Digital Vibes (represented by Ms Hariram), Ms Hariram (in her personal capacity), Ms Mather and Ms Mitha (at the instance of the Minister), direct family members of the Minister, former associates of the Minister and family members of former associates of the Minister, contravened the provisions of section 3 read with sections 24 and 26 of the PaCoCAA in that they paid and received gratifications resulting from the fact that the NDOH had irregularly and unlawfully awarded contract(s) to Digital Vibes in respect of the NHI - and the Covid-19 media campaigns, and had paid Digital Vibes in this regard. Furthermore, Digital Vibes (represented by Ms Hariram), Ms Hariram (in her personal capacity), Ms Mather and Ms Mitha (at the instance of the Minister), contravened the provisions of section 2 of the POCA (money laundering).

4.141.4 Taking into account the amounts of money that were received from the NDOH, and taking into account an analysis of the bank account(s) of Digital Vibes, it appears that Digital Vibes failed to declare and pay company tax and failed to pay the required VAT to the South African Revenue Service.

4.141.5 The referrals referred to in paragraphs 4.139 to 4.141.4 will, in terms of the SIU Act, be made in due course.

4.141.6 Further investigations to identify more potentially corrupt payments in this regard are continuing.

### **Executive action proceedings**

4.142 The evidence obtained supports the following findings:

4.142.1 Ms Mather was, as early as 30 May 2019 or shortly thereafter involved with the Minister as his Strategic Communications Advisor. In this regard, the then DG of the NDOH, Ms Matsoso, stated that (at the swearing in of the Minister) the Minister's Chief of Staff introduced Ms Mather to her as the Minister's Strategic Communications Advisor.

4.142.1.1 On 12 July 2019, the NDOH initially attempted to appoint Ms Mather as a communication expert consultant for the NDOH in respect of the envisaged NHI media campaign.

4.142.1.2 On 15 July 2019 (i.e. 3 days after this attempt), the Minister sent the following WhatsApp message to Ms MP Matsoso, who was the then DG of NDOH: "*Hi DG. Kindly sort out contractual arrangements. Please ask for preliminary NHI implementation plan and draft communication plan by Friday from each individual, as discussed*" Emphasis added].

4.142.1.3 Although the Minister indicated to the SIU that the aforementioned WhatsApp message related to the NHI media campaign in general, and not to individuals, the only reasonable inference in the circumstances is that the communication of the Minister was referring to an envisaged contract with Ms Mather.

It is noteworthy that the Minister at that stage already referred to “contractual arrangements” regarding the “preliminary NHI implementation plan and draft communication plan by Friday from each individual”, notwithstanding the fact that no procurement processes in this regard had been initiated by the NDOH. The Minister was therefore at that stage already aware of the potential involvement of Ms Mather in the NHI media campaign.

4.142.1.4 It is apparent from the contents of the WhatsApp message that the Minister was giving instructions to the DG. At best, this conduct on the part of the Minister was improper and at worst, the conduct of the Minister was unlawful (as implied in paragraphs 27 and 41 of the written statement dated 21 June 2021 that was provided by the Minister to the SIU), as it constituted an interference by the Executive Authority in the affairs of the administrative authority of the NDOH.

4.142.1.5 The then DG of the NDOH, Ms Matsoso, further stated that during this period she received repeated WhatsApp messages from the Minister to resolve the contractual issues of the NHI media campaign.

4.142.1.6 According to the chronology of events, these occurrences too place approximately four and a half months before the SLA with Digital Vibes was signed on 29 November 2019. Digital Vibes thereafter “appointed” Ms Mather and Ms Mitha as purported contractors for purposes of the NHI media campaign.

4.142.2 The Minister approved the first budget allocation for the NHI media campaign, which approval specifically mentioned that the services would be rendered by Digital Vibes.

- 4.142.2.1 On 20 January 2020, the Minister signed the “*Request the Minister of Health to Approve Implementation Strategy and Budget for National Health Insurance (NHI) Communication Strategy which will be executed by Digital Vibes*” [Emphasis added] for an amount of R 46 939 550.
- 4.142.2.2 Thereafter, on 16 June 2020, the Minister signed the “*Request the Minister of Health to Approve Implementation Strategy and Budget from June to November 2020 for National Health Insurance (NHI) Communication Strategy which will be executed by Digital Vibes*” [Emphasis added] for an amount of R 85 502 500.
- 4.142.3 During the relevant period, Digital Vibes paid an amount of R 6 720 for repairs at a property belonging to the Minister. The required services had been identified by the Minister’s wife. The particulars on the two invoices reflected the requester of the services as being one “*Mkhize*” and a cellular phone number was also indicated in the invoices. The Minister indicated to the SIU that he had not requested these services nor did the indicated cellular number belong to him or to an account registered in his name. However, the indicated cellular number, in eNatis records, is linked to vehicles registered in the name of the Minister. The Minister indicated that, a Messenger also with the surname “*Mkhize*”, who was in his employ had subsequently confessed that the cash to pay for the maintenance services that had been provided by the Minister’s Housekeeper, had been stolen by him. When payment for the services became due, the Messenger had approached Ms Mitha who, according to the Messenger, paid the R 6 720 to the service provider (an affidavit in this regard was also provided by the Messenger). However, the obtained evidence indicates that Digital Vibes, and not Ms Mitha, paid for these services. During the questioning of the Minister, he did not indicate whether he had dismissed the messenger or laid criminal charges against him for this alleged theft.

Therefore, the veracity of the explanation of the messenger is, in the view of the SIU in doubt.

- 4.142.4 Obtained evidence indicates that on 2 May 2020, Digital Vibes transferred R 300 000 (via a company belonging to Ms Mather) to a company belonging to the Minister's son.

The Minister indicated that his son had (only once this information had become known in the media) informed him that this money was a gift from Ms Mather, who had a close relationship with him (his son).

- 4.142.5 Obtained evidence also indicates that on 4 May 2020 Digital Vibes paid an amount of R 160 000 to a Pietermaritzburg car dealership in respect of the purchase of a second-hand motor vehicle (i.e. a 2003 Toyota Land Cruiser) for the Minister's son. This motor vehicle was registered in the name of the Minister's son.

- 4.142.6 The Minister also indicated that his son had (once this information had become known in the media) informed him that this second-hand motor vehicle was a gift from Ms Mather, who had a close relationship with him (his son). According to media reports, which referred to photographs posted on social media, the vehicle was put to use at a farm near Pietermaritzburg owned by the Minister's son.

- 4.142.7 Obtained evidence indicates that, at some stage, Ms Mather contacted a witness and inquired if he knew of anyone that could give her cash in return for an EFT transfer that she would do for the said cash value. This person made inquiries from a Cash & Carry Wholesaler and was informed that this Cash & Carry Wholesaler would be in a position to assist Ms Mather in this regard. He obtained bank account details for purposes of the EFT transfers. According to this witness, transfers amounting to R 3 400 000 were made into the account of the Cash & Carry Wholesaler.

The Cash & Carry Wholesaler would then arrange for this cash, which was contained either in boxes or plastic packets to be delivered to him (he had been informed by the Cash & Carry Wholesaler that the cash accorded with the value of the EFT payments that had been made by Ms Mather). The witness further stated that the cash (boxes or plastic packets) was fetched from him on different occasions by Ms Mather, Ms Mitha or Ms Hariram (the “owner” of Digital Vibes). Obtained evidence indicates that, after NDOH related payments amounting to approximately R 135 million had been received by Digital Vibes, Digital Vibes made six payments of which the SIU is aware amounting to R 1 750 000.00 to a company, JD Communication. Ms Hariram stated that Ms Mather had requested her to collect/receive boxes from a person. Ms Mather further informed her that the boxes contained cash and that the Minister’s son would collect the boxes (cash) from her. In this regard, Ms Hariram would collect the boxes (cash) from an identified person at his home in Stanger (Oceanview), alternatively this person would deliver the boxes (cash) to her at her home. Thereafter, the Minister’s son contacted Ms Hariram on several occasions prior to the collection of the boxes (cash), the Minister’s son would then collect the boxes/parcels (cash) at a petrol service station where Ms Hariram was employed as a Manager. These collections occurred approximately six times. Ms Hariram indicated that these collections appeared to be very “clandestine”.

- 4.142.8 At the time of the transactions as referred to in paragraphs 4.142.4 and 4.142.5 above, the NDOH had transferred roughly R 50 million to Digital Vibes for services related to the Covid-19 media campaign. Besides two relatively minor payments from the MISA, an entity of the CoGTA, Digital Vibes’ sole source of income during the period in which the R 300 000 was transferred to the Minister’s son’s company and the second-hand motor vehicle was purchased for R 160 000, was the money it had received from the NDOH.

4.142.9 Digital Vibes ultimately received a total of approximately R 150 million from the NDOH in respect of the NHI media campaign and the Covid-19 media campaign.

4.142.10 The Minister confirmed that the explanation that was obtained from his son, directly linked the Minister's family as having received benefits from Ms Mather. At a press briefing that was held on 26 May 2021 regarding the Digital Vibes contract, the Minister denied that he or his family had benefited from the deal. This denial was in conflict with the contents of paragraphs 4.142.3 to 4.142.8 above. This denial was, objectively speaking, untrue, as the Minister's son and the Minister himself (via property belonging to him) had directly benefitted from Digital Vibes, who in turn had benefitted from the NDOH contracts. In this regard, the Minister indicated that he was at that stage not aware that he himself (via his property) or his son had benefitted in this regard and had been telling the truth as he knew it to be. However, the fact remains that the Minister's denial was misleading to the public at large and the President. The Minister should have made further inquiries before making this misleading statement.

#### 4.142.11 Lack of oversight by the Minister

4.142.11.1 On 20 January 2020 and 16 June 2020 respectively, the Minister approved budgets amounting to approximately R 132 million in respect of the NHI – and Covid-19 media campaigns, in circumstances where the NDOH had already informed the GCIS that the NDOH had no budget for the NHI media campaign.

4.142.11.2 It should be noted that this budget of R 46 million for the NHI media campaign, was approved by the Minister 52 days after the SLA between the NDOH and Digital Vibes had already been signed; and

- 4.142.11.3 It should be noted that this budget of R 85 million for the NHI media campaign, was approved by the Minister more than six months after the SLA between the NDOH and Digital Vibes had already been signed.
- 4.142.11.4 In these circumstances, the Minister should at least have raised concerns regarding the belated budget approval request and the fact that the budget had already been allocated to a service provider (Digital Vibes), where budget allocations are normally aligned to a need being identified before a SCM process is launched.
- 4.142.11.5 A Cabinet Memorandum dated 13 June 2019 (the Minister formed part of the Cabinet at that stage) indicated that the GCIS would be responsible for the rollout of the NHI communication strategy (NHI media campaign). In the circumstances, it is astonishing that the Minister thereafter, contrary to the Cabinet Memorandum, allowed Digital Vibes to be appointed by the NDOH in respect of the NHI media campaign. In fact, it can be argued that the Minister deliberately ignored a Cabinet decision (of which he formed part of) in this regard. During the end of February/March 2020, the GCIS was again tasked by the NATJoint to do the Covid-19 awareness campaign for Government. Once again, it is inexplicable as to why the Minister would have allowed the “extension” of the Digital Vibes SLA with the NDOH in respect of the NHI media campaign to include the Covid-19 media campaign. It would have been far more cost-effective if the GCIS had rendered the required services.

4.142.11.6 The Minister indicated that protracted discussions in this regard had taken place and he was satisfied that costing in this regard had been done. However, the SIU could also find no evidence/documentation indicating the existence of such a costing exercise prior to the decision to outsource all the work in this regard. Furthermore, the Minister indicated that the GCIS could not be approached as according to him, the GCIS had indicated that all communication related work should be done by State departments themselves and that the State departments should set aside specific budget for this purpose.

4.142.11.7 The fact that:

4.142.11.7.1 two contracts amounting to approximately R 176 million (i.e. R 141 million in respect of the NHI media campaign and the approximately R 35 million quotation that was accepted in respect of the Covid-19 media campaign), were entered into in highly irregular circumstances and in direct conflict with public procurement prescripts; and

4.142.11.7.2 the NDOH spent approximately R 125 million in respect of the Covid-19 media campaign, in circumstances where a quotation of only approximately R 35 million for these services had been approved,

is indicative of a distinct lack of oversight on the part of the Minister in respect of the NDOH for which he is accountable.

4.142.12 The obtained evidence indicates that a conflict of interests existed on the part of the Minister in that:

4.142.12.1 his friends or associates under the guise of Digital Vibes were unlawfully and irregularly appointed by the NDOH in respect of the NHI- and Covid-19 media campaigns; and

4.142.12.2 his direct family members, his former associates and/or family members of such former associates (directly or indirectly) received undue benefits from persons linked to Digital Vibes,

in circumstances where the Minister failed to declare any such actual or potential conflicts of interest to the Presidency. In this regard, the Minister alleged that:

(a) initially, he was not aware that he or direct members of his family had received benefits from Digital Vibes or persons linked to Digital Vibes; and

(b) he was not aware that former associates and family members of former associates had received benefits from Digital Vibes or persons linked to Digital Vibes

4.142.13 The obtained evidence supports the referral thereof to the President for purposes of taking executive action against the Minister.

#### **Evidence obtained for purposes of the institution of Disciplinary Action**

4.143 **Dr Pillay (Deputy DG: Health Regulation and Compliance at the NDOH, 'Acting' DG of the NDOH and TEC member)**

4.143.1 Evidence justifying the institution of disciplinary action against Dr Pillay has been obtained.

- 4.143.2 In this regard, in respect of the NHI media campaign in his capacity as Deputy DG: Health Regulation and Compliance at the NDOH, his conduct or omissions amounted to:
- 4.143.2.1 'financial misconduct', as envisaged in section 81(2) of the PFMA;
  - 4.143.2.2 contraventions of the prescripts of section(s) 33, 195(1)(a), (b), (d) and/or (f) and/or 217 of the Constitution;
  - 4.143.2.3 contraventions of the prescripts of section(s) 45(a), (b), (c) and/or (d) of the PFMA;
  - 4.143.2.4 contraventions of the prescripts of the regulation(s) 11(a) to (d), 13(e) to (g) and/or 14(a), (b), (d), (e), (f), (j), (k) and/or (q) of the Public Service Regulations of 2016;
  - 4.143.2.5 contravention of the provisions of section 45 of the PFMA, in that he as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60% for functionality;
  - 4.143.2.6 gross misconduct;
  - 4.143.2.7 gross dereliction of duty; and/or
  - 4.143.2.8 gross negligence.
- 4.143.3 Furthermore, in respect of the Covid-19 media campaign in his capacity as 'Acting' DG of the NDOH, his conduct or omissions amounted to:

4.143.3.1 'financial misconduct', as envisaged in section 81(1)(a) and (b) and section 86(1) of the PFMA, as read with section(s) 38(1)(a)(i) and(iii), 38(1)(b), 38(1)(c)(ii), 38(1)(c)(iii), 38(1)(g), 38(1)(h), 38(1)(l), 38(1)(n), 38(2), 39(1)(a) and (b), 39(2)(a), (b)(iii) and (c), 40(1)(a), 41, 43(2), 43(3), 43(4)(a) and/or 44(2)(d) of the PFMA;

4.143.3.2 contraventions of the prescripts of section(s) 33, 195(1)(a), (b), (d) and/or (f) and/or 217 of the Constitution;

4.143.3.3 contraventions of the prescripts of the regulation(s) 11(a) to (d), 13(e) to (g) and/or 14(a), (b), (d), (e), (f), (j), (k) and/or (q) of the Public Service Regulations of 2016;

4.143.3.4 gross misconduct;

4.143.3.5 gross dereliction of duty;

4.143.3.6 gross negligence; and/or

4.143.3.7 fraud,

in the performance of his official duties as the then 'Acting' DG, 'Acting' Head of Department and 'Acting' Accounting Officer of the Department.

4.143.4 A Referral Letter in this regard is at present being drafted.

4.144 **Mr Maja (Head of Communications at the NDOH and TEC member)**

4.144.1 In terms of paragraph 15 of the NDOH Procurement Policy, the User will directly be responsible for the contract administration and project management. Contract administration will include payments, delivery period and extensions etc. Project management will include the management of the NDOH's responsibilities, and the contractor's responsibilities.

- 4.144.2 Evidence was obtained that he approved payments to Digital Vibes, which expenditure was not in line with National Treasury approved amounts as per the National Treasury Report dated 24 June 2020. In this regard, it is alleged that his conduct undermined the financial management of the NDOH as the NDOH continued to pay excessive amounts to Digital Vibes.
- 4.144.3 Evidence was obtained that he failed to take effective and appropriate steps to prevent fruitless and wasteful expenditure in terms of section 81(2) of the PFMA.
- 4.144.4 Evidence was obtained that he contravened the provisions of section 45 of the PFMA, in that he as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60% for functionality.

4.145 **Ms Pardesi (Chief Director and TEC member)**

- 4.145.1 Evidence was obtained that she contravened the provisions of section 81(2) of the PFMA, in that in that she approved a request memorandum for payment of R 35 906 450.00 to Digital Vibes on 24 March 2020, which expenditure was not in line with National Treasury approved amounts, resulting in unauthorised/irregular payments to Digital Vibes.
- 4.145.2 Evidence was obtained that she contravened the provisions of section 45 of the PFMA, in that she as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60% for functionality.

**4.146 Ms Ngubane (TEC member)**

Evidence was obtained that she contravened the provisions of section 45 of the PFMA, in that she as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60% for functionality.

**4.147 Mr Ngcobo (TEC member)**

Evidence was obtained that he contravened the provisions of section 45 of the PFMA, in that he as a member of the TEC, grossly negligently failed to apply the required evaluation criteria correctly, fairly and consistently, which resulted in Brandswell being unfairly and incorrectly deemed to not have achieved the minimum threshold of 60 % for functionality.

**4.148 Ms P Ngobese (Administration Clerk at the NDOH and Personal Assistant to Ms Pardesi)**

4.148.1 Evidence was obtained that she contravened the provisions of section 81(2) of the PFMA, in that she approved payments to the value of R 69 428 952.00 to Digital Vibes without having the necessary authority to do so (due to her position as).

4.148.2 No evidence indicating that she had the necessary delegations of authority to approve amounts paid to Digital Vibes, was obtained.

**4.149 Mr Ian Van Der Merwe (CFO at the NDOH)**

Evidence was obtained that he contravened of the provisions of section 81(2) of the PFMA, in that he, as the CFO of the NDOH allowed payments to be made to Digital Vibes that were contrary to the National Treasury approved amount of R 25 909 884.00, and also for allowing payments to be made to Digital Vibes without a Purchase Order, as required in terms of the NDOH Procurement Policy.

#### 4.150 **Dr Buthelezi (current DG of the NDOH)**

Evidence was obtained that Dr Buthelezi, after assuming duties as the DG of the NDOH, instructed that all NHI- and Covid-19 media campaign related matters must be centralised in his office. Thereafter, he contravened of the provisions of section 81(1)(b) of the PFMA by allowed payments to Digital Vibes amounting to approximately R 60 million, in circumstances where such payments constituted irregular expenditure, as envisaged in the PFMA, and parts thereof also constituted fruitless and wasteful expenditure, as envisaged in the PFMA. In the circumstances, Dr Buthelezi should have conducted a comprehensive due diligence exercise before allowing such any payments.

#### **Evidence obtained for purposes of Blacklisting of Digital Vibes**

4.151 Evidence was obtained justifying the blacklisting of Digital Vibes from conducting business with the public sector. Referral of evidence for Disciplinary Action.

#### **Limitations**

4.152 This Report is based on facts established from documentation that was provided and/or information that was obtained during the course of the investigation. Although all reasonable attempts were made to obtain all relevant documentation and/or information, the SIU cannot guarantee that:

4.152.1 it has been provided with all relevant information and/or has had sights of all relevant documentation that may be in existence; and/or

4.152.2 any statements or information and/or the contents of any documentation at its disposal, is/are true and correct.

4.153 Should any further information come to light, or should the contents of received documents, statements or information not be true and correct, this may influence the findings and recommendations contained in this Report. The SIU reserves the right to amend the findings and recommendations contained in this Report, should additional information and/or documentation come into its possession, or be presented to the SIU after the date of this Report.

## 5. RECOMMENDATIONS

It is recommended that, in the future, the NDOH should:

- 5.1 Undertake timeous and proper needs identifications and align such needs identifications with relevant procurement plans.
- 5.2 Identify and approve relevant budgets before the relevant SCM processes commence.
- 5.3 Take appropriate steps to eliminate the need for consultants, and eliminate favouritism when considering the appointment of consultants.
- 5.4 Refrain from involving its Executive Authority in any internal administration related matters (which includes the appointment of consultants, SCM related matters falling outside the ambit of section 54(2) of the PFMA and/or contractual arrangements with service providers).
- 5.5 Only involve the Executive Authority in respect of the approval of budgets, as provided for in the PFMA and Treasury Regulations (e.g. section 64 of the PFMA).
- 5.6 Refrain from requesting budgetary approval from its Executive Authority after the relevant SCM processes have been completed and the subsequent Agreements have already been signed.
- 5.7 Ensure proper and timely planning, which in turn will ensure that irregular SCM deviation processes need not be implemented.
- 5.8 Abide by all National Treasury Directives regarding requested SCM deviations.
- 5.9 Refrain from making misrepresentations to National Treasury regarding competitive bidding processes for purposes of gaining permission to follow SCM deviations or closed bidding processes.
- 5.10 Refrain from identifying limited numbers of suppliers on the CSD when sending out RFPs.

- 5.11 Ensure that, when sourcing potential suppliers on the CSD, the needs of the NDOH are aligned regarding the specific commodities, goods or services in respect of which the suppliers are registered on the CSD, and that such suppliers actually exist and are still in business.
- 5.12 Refrain from extending contracts/SLAs where the now required goods, works or services differ from the goods, works or services, as set out in the existing contract/SLA. Furthermore, in instances where the identified goods, works or services are the same as provided for in the original contract/SLA, such extensions should not exceed the thresholds prescribed by National Treasury.
- 5.13 Ensure effective project and contract management in respect of all contracts/SLAs, including the implementation of checks and balances to ensure fair value for all payments made.
- 5.14 Together with the Minister, the Ministry and the officials of both the Ministry and the NDOH must ensure adherence to relevant Cabinet decisions, and must make use of the intergovernmental services that can reasonably be rendered by other State institutions (e.g. the GCIS), especially where such usage would result in cost savings for the State, before unnecessarily outsourcing such services to external supplier/service providers or consultants.

## **6. CHRONOLOGY OF EVENTS**

For ease of reference, an Annexure setting out a chronology of relevant events, is attached to this Report.

## **7. FINAL CONCLUSION AND SIGN OFF**

- 7.1 The investigation of all matters, excluding:
  - 7.1.1 ongoing processes to attempt to trace further assets for preservation purposes; and
  - 7.1.2 SIU support supplied in respect of civil proceedings and referrals made in terms of the SIU Act,

has been concluded.

- 7.2 The SIU reserves the right to amend the findings and recommendations contained in this Report, should additional information and/or documentation come into its possession, or be presented to the SIU after the date of this Report.

A handwritten signature in black ink, appearing to read 'Adv. J.L. Mothibi', is written over a light grey rectangular background.

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**ADV. J.L. MOTHIBI**  
**HEAD OF THE SPECIAL INVESTIGATING UNIT**

**Date: 30 June 2021**