



A U D I T O R - G E N E R A L

REPORT

OF THE

AUDITOR-GENERAL

ON THE

**FINDINGS IDENTIFIED DURING AN INVESTIGATION INTO PROCUREMENT AT
THE COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE**

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ABBREVIATIONS

Detailed descriptions and explanations of terms and abbreviations relevant to this report are listed below. These descriptions and explanations, however, serve only to clarify the report and are not intended to be authoritative.

Abbreviation	Description
AG	Auditor-General
Board	CIPRO advisory board
CC Act	Close Corporation Act, 1984 (Act No. 69 of 1984)
CEO	Chief executive officer
CFO	Chief financial officer
Chairperson	Chairperson of the CIPRO management board
CIPRO	Companies and Intellectual Property Registration Office
DG	Director-General: the dti
FSCM	Framework for Supply Chain Management, 2003
ICT	Information and communications technology
IT	Information technology
NT	National Treasury
PAA	Public Audit Act, 2004 (Act No. 25 of 2004)
PFMA	Public Finance Management Act, 1999 (Act No. 1 of 1999)
PPMP	Procurement Procedural Manual and Policy, 2004
PPPFA	Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
PPR	Preferential Procurement Regulations, 2001 Pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
PROCOM	Procurement Operational Committee
PSA	Public Service Act, 1994 (Act No. 103 of 1994)
SCM	Supply chain management
SCM guide	Supply chain management – a guide for accounting officers/ Authorities, 2004
SITA/ Agency	State Information Technology Agency
SITA Act	State Information Technology Agency Act, 1998 (Act No. 88 of 1998)
ST37	State Tender Board: user manual: directives to the Departments in respect of procurement, 1998
The dti	Department of Trade and Industry
TR	Treasury Regulations, 2005 Issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
VAT	Value-Added Tax
VAT Act	Value-Added Tax Act, 1991 (Act No. 89 of 1991)

REPORT OF THE AUDITOR-GENERAL ON THE FINDINGS IDENTIFIED DURING AN INVESTIGATION INTO PROCUREMENT AT THE COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE

1. MANDATE OF THE AUDITOR-GENERAL

- 1.1 The functions of the Auditor-General (AG) in supporting constitutional democracy in South Africa are described in section 188 of the Constitution of the Republic of South Africa, 1996. Section 5(1)(d) of the Public Audit Act, 2004 (Act No. 25 of 2004)(PAA) provides that the AG may carry out an appropriate investigation of any institution referred to in section 4(1) or (3) of the PAA if the AG considers it to be in the public interest or upon the receipt of a complaint or request. Section 5(3) of the PAA provides that the AG may, in the public interest, report on any matter within the functions of the AG and submit such a report to the relevant legislature and to any other organ of state with a direct interest in the matter. The content of this report is primarily based on the requirements of section 20 of the PAA and the AG Directive 1 of 2005 issued in terms of section 13 of the PAA.
- 1.2 The primary responsibility for the prevention and detection of fraud, irregularities and error rests with both those charged with the governance and the management of an entity. Management, with the oversight of those charged with governance, needs to set the proper tone, create and maintain a culture of honesty and high ethics and establish appropriate controls to prevent and detect fraud and error within the entity.
- 1.3 It is the responsibility of those charged with the governance of an entity to ensure, through the oversight of management, the integrity of an entity's accounting and financial reporting systems and that appropriate controls are in place, including those for monitoring risk, financial control and compliance with the law.
- 1.4 It is the responsibility of the management of an entity to establish a control environment and maintain policies and procedures to assist in achieving the objective of ensuring, as far as possible, the orderly and efficient conduct of the entity's business. This responsibility includes implementing and ensuring the continued operation of accounting and internal control systems that are designed to prevent and detect fraud and error. Such systems reduce but do not eliminate the risk of misstatements. Accordingly, management assumes responsibility for any remaining risk.

2. PURPOSE AND LIMITATIONS OF THE REPORT

- 2.1 The purpose of the report is to make known the findings emanating from an independent investigation conducted at the request of the Companies and Intellectual Property Registration Office (CIPRO). The investigation was an objective evaluation to facilitate the investigation of concerns raised in the AG's 2004-05 regularity audit management letter.
- 2.2 The investigation was performed in terms of the internal guidelines for the planning, execution, reporting and follow-up of special investigations.
- 2.3 Although the work performed incorporates the AG's understanding of the law as it stands, the AG does not express an opinion on the legal effect of the facts or the guilt or innocence of any person(s) or party. The AG has merely stated the facts as they have come to its attention.

- 2.4 The team members involved in the investigation are not experts in the field of handwriting. The conclusions reached on signatures are therefore based on comparisons made of documents at CIPRO in which signatures are contained to facilitate the process of signature identification.
- 2.5 The report is based on the facts established from documentation provided and/or information obtained during the course of the investigation. If any further information was to be obtained, the conclusion may be influenced.
- 2.6 The figures have been rounded off where applicable.

3. BACKGROUND

In a meeting held on 6 September 2005 between representatives of CIPRO, Department of Trade and Industry (**the dti**) and representatives from the AG, the AG agreed to investigate specific concerns raised in the 2004-05 regularity audit management letter to CIPRO. The concerns related to the procurement of goods and services and the payment process. A formal agreement on the nature and scope of the investigation was entered into with CIPRO on 17 October 2005 and the investigation commenced thereafter. The draft management report was issued on 22 March 2006 and the final management report was issued on 11 July 2006 after management comments and planned actions were included, where applicable.

4. PURPOSE, OBJECTIVES AND APPROACH OF THE INVESTIGATION

The purpose and objectives of the investigation as set out in the engagement letter dated 17 October 2005 were as follows:

- 4.1 To investigate the concerns raised in the regularity audit management letter for the 2004-05 financial year and to report on the factual findings with regard to the following transactions:
- (a) four instances in respect of procurement of information technology (IT)-related goods and services of more than R100 000 without the necessary State Information Technology Agency (SITA/ Agency) approval
 - (b) two instances in respect of the procurement of goods and services exceeding R500 000 without public tenders being invited
 - (c) one instance in which the recommendation of the chairperson of the CIPRO management board (chairperson) was not obtained
 - (d) two instances relating to splitting of orders, one (1) case relating to storage and the other relating to the Employment Development Programme
 - (e) nine cases where the required number of quotes were not obtained
 - (f) three instances of overpayment for goods and services
 - (g) three instances where the services were rendered before the approval was obtained
 - (h) conflict of interest in the procurement process
 - (i) appointment of a service provider for the re-organisation of CIPRO.

5. SCOPE OF THE ASSIGNMENT

- 5.1 The scope of the AG's work is set out in the engagement letter. In conducting the investigation the AG relied on the documentation and other information provided by CIPRO as well as the information obtained during formal meetings.
- 5.2 The draft management report was submitted to CIPRO and **the dti** for confirmation of factual correctness and to afford them the opportunity for timely inputs. CIPRO management comments and planned actions have been received and included in the report where applicable. My investigative efforts were limited to the legal and legitimate acquisition and collection of evidence.
- 5.3 The period under review was from the commencement date of the process regarding the issues listed in point 4 above to the date of the engagement letter and the conclusions are based on the facts established from documentation provided and/or information obtained during the course of the investigation.

6. OVERVIEW OF THE ENTITY

According to the website and the annual report for 2004-05, CIPRO is part of the specialist services offered by **the dti** and forms part of **the dti**. CIPRO is established as a trading entity within **the dti**. CIPRO is the result of the merger of two former directorates of **the dti**, South African Companies Registration Office and South African Patents and Trademark Office as from 1 March 2002 into a single efficient and customer-driven business agency called CIPRO. CIPRO's purpose is: "To register businesses and intellectual property rights, maintain related registries and develop information for disclosure to stakeholders".

Accounting officer function: Subsequent to the establishment of the trading entity in March 2002 the Minister: **the dti** requested the National Treasury (NT) in a letter dated 29 June 2004, to approve the Director-General: **the dti** (DG) as the designated accounting officer for CIPRO and to withdraw the accounting powers of the chief executive officer (CEO) of CIPRO. In a response from the NT, dated 15 March 2005, the NT designated the DG as the accounting officer of CIPRO and withdrew all accounting powers of the CEO of CIPRO. Therefore from 15 March 2005 the CEO of CIPRO reported directly to the DG.

7. EXECUTIVE SUMMARY

The investigation focused on the process followed in the procurement of goods and services from 24 different service providers. In general there was non-compliance with the Procurement Procedural Manual and Policy, 2004 (PPMP) and other procurement prescripts such as the State Tender Board: user manual and directives to the departments in respect of procurement, 1998 (ST37) and the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA).

- (a) A supply chain management (SCM) and preferential point system was not developed and implemented for the period under review.
- (b) In six procurements totalling R11 486 680, the prescribed role players did not consider and approve the procurement of goods and services as required.

- (c) For the procurement of goods and services of more than R1 000 three quotations were not always invited. In three cases totalling R381 293 no quotations were considered. In 36 cases totalling R15 405 704 only one quotation was considered and in two cases totalling R808 830 only two quotations were considered. During the review of the procurement documentation for a service provider, a risk of collusive quoting was identified as quotations from three service providers showed similarities. Furthermore, no departmental service provider database existed for the period under review and the filing system at CIPRO revealed a lack of internal controls as some of the requested procurement and payment documentation could not be provided.
- (d) In 18 cases the Procurement Operational Committee (PROCOM) evaluated and approved requests that did not comply with value-added tax (VAT) requirements.
- (e) In eight cases totalling R10 587 943 IT-related goods and services were procured without consulting or approval from SITA. Furthermore, a quotation was requested and received from a service provider for the rental or purchase of two servers. The purchase price quoted was R5 986 908 (including VAT) or a rental amount of R181 749 (including VAT) per month for three years totalling R6 542 992. No tender process through SITA was followed.
- (f) In six cases totalling R11 486 680 procurement requirements amounted to more than R500 000, the basic quotation process was followed instead of public tender invitations. Furthermore, tenders for the outsourcing of the filing system of CIPRO were only invited from three service providers thereby following a closed tender process. The tender was awarded to a service provider for the total value of R21 877 740.
- (g) The procurement documentation for a service provider indicated that the special project in the corporate information unit was extended seven times. The total amount for the seven extensions accumulated to R2 335 548, which required the tender process to be followed. Furthermore, the procurement documentation for another service provider was split into two phases. If the services were not split in two phases the tender process should have been followed and not the quotation process.
- (h) In the procurement documentation it was noted that service providers charged VAT without supplying VAT details on invoices. Further, in one case the VAT details supplied by a service provider was invalid.
- (i) Two members of the CIPRO management board (board) had interest in two service providers with which CIPRO contracted for services, which were not declared in declaration of interest forms. Officials at management level did not provide declaration of interest forms for the 2004-05 financial year.
- (j) A sponsorship in contradiction with Treasury Regulation 21.1.1, 2005 (TR) was made amounting to R233 746.

8. DETAILED FINDINGS, MANAGEMENT COMMENTS AND PLANNED ACTIONS

8.1 Compliance with the Framework for Supply Chain Management, the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations

(a) Background

In terms of section 3(1) of the Framework for Supply Chain Management, 2003 (FSCM) the accounting officer of an institution to which the regulations in the FSCM apply must develop and implement in that institution an effective and efficient SCM system for the procurement of goods and services.

In terms of section 2(2) of the Preferential Procurement Regulations, 2001 (PPR) an organ of state must apply a preferential procurement system, which is in accordance with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) and the PPR. Section 3 of the PPR sets out the preferential point system that must be used for procurement of goods and services up to a rand value of R500 000. Section 4 of the PPR sets out the preferential point system that must be used for procurement of goods and services with a rand value above R500 000.

(b) Findings

The following non-compliance issues were confirmed during a formal meeting between representatives of the AG and management of CIPRO:

- An SCM system has not yet been developed and implemented for the procurement of goods and services.
- A preferential point system was not implemented and historically disadvantaged individual or black economic empowerment status was not considered when goods and services were procured.

(c) Management comments and planned actions

A new SCM policy in line with the legal framework PFMA, FSCM, PPPFA, PPR, State Information Technology Act, 1998 (Act No. 88 of 1998) (SITA Act) and Value-Added Tax Act, 1991 (Act No. 89 of 1991) (VAT Act), Close Corporation Act, 1984 (Act No. 69 of 1984) (CC Act) etc. has been developed and is in the process of being implemented. In future a full competitive process will be followed in line with SCM policy for the procurement of all goods and services from prospective service providers.

8.2 Compliance with the Public Finance Management Act and the Procurement Procedural Manual and Policy

(a) Background

Paragraph 6 of the PPMP requires the following role players to consider and approve the need for the procurement of goods and services:

Amount	Delegation of approval
Up to R20 000	Line manager with chief financial officer (CFO) approval
From R20 001 to R100 000	PROCOM with CFO approval
From R100 001 to R500 000	PROCOM + CEO involvement and approval
From R500 001 to R2 million	CEO + chairperson's recommendation
From R2 million to R4 million	CEO with board approval
Amount over R4 million	Approval of the DG

Section 1(a) to (b) of the PFMA states that irregular expenditure means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including this Act (PFMA) or the State Tender Board Act, 1968 (Act No. 86 of 1968) or any regulation made in terms of that Act (State Tender Board Act).

Section 38(1)(a)(iii) of the PFMA states that the accounting officer of a trading entity must ensure that that trading entity has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

Section 38(1)(b) of the PFMA states that the accounting officer of a trading entity is responsible for the effective, efficient, economical and transparent use of the resources of the trading entity.

Section 45(a) to (d) of the PFMA states that an official in a trading entity must ensure that the system of financial management and internal control established for that trading entity is carried out within the area of responsibility of that official; is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility; must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under-collection of revenue due; and must comply with the provisions of this Act (PFMA) to the extent applicable to that official, including any delegations and instructions in terms of section 44 of the PFMA.

Note: The above references to the PFMA should be considered throughout the report.

(b) Finding

In six cases totalling R11 486 680 the prescribed role players did not consider and approve the procurement of goods and services as required.

(c) Management comments and planned actions

In one case it was accepted that approval from the DG should have been sought, in four cases that the chairperson should have recommended the transaction and in another case that board approval should have been obtained through the chairperson on behalf of the board. In the case where DG approval had to be obtained, ratification will be sought. A new structure will be put in place as soon as possible with the CEO and top management.

8.3 Procurement of goods and services up to the value of R500 000 by means of quotations

(a) Background

Section 2.5.2 of ST37 states that to stimulate the participation of small, medium and micro enterprises within the public sector procurement, the State Tender Board has approved that all user departments must have a list of prospective service providers, which would include small, medium and micro enterprises for requirements that need not be advertised in the Government Tender Bulletin in accordance with general, delegated powers to departments. Price quotations must then be invited from these service providers by using this list of prospective service providers as an "approved list" of possible service providers. The list of prospective service providers must be updated continuously to incorporate newly established small businesses.

Paragraph 4 of the PPMP requires that quotations must be invited for acquisition of goods and services to a value greater than R1 000. Furthermore, section 6 of the PPMP requires that the functionary with the assistance of the Procurement Advisor should obtain at least three comparative quotations in writing from the service providers registered on the department's service provider database.

(b) Findings

- (i) There was no evidence that CIPRO obtained the prescribed number of quotations before a service provider was appointed to render a service or when goods were purchased. In three cases totalling R381 293 no quotations were obtained. In 36 cases totalling R15 405 704 only one quotation was considered and in two cases totalling R808 830 only two quotations were considered.
- (ii) It was established that no departmental service provider database existed and that quotations were requested without consulting any list of approved or prospective service providers.

- (iii) In four cases the procurement documentation indicated that the prescribed number of quotations was obtained, but these quotations were not available on the procurement files.

(c) Management comments

It was accepted that the prescribed number of quotations was not obtained in procuring goods and services. A database existed at some point but it was not complete or updated regularly. The practice was to obtain quotations from outside the database. The unavailability of physical quotations on the procurement files could be attributed to filing problems.

8.4 Validity of quotations

(a) Background

Paragraph 6 of the PPMP requires that PROCOM, through the procurement advisor or functionary, must ensure that the quotations are still valid prior to approving the request and that VAT is included in the quotation. PROCOM must further ensure that funds are available and that all the quotations are comparable.

(b) Findings

- (i) In 18 cases PROCOM considered and approved requests that either excluded VAT or included VAT, but did not indicate a VAT registration number or did not include a VAT implication on the quotation although they charged VAT on the invoices or had a VAT registration number.
- (ii) During the review of the procurement documentation for a service provider it was noted that the same three service providers were considered in two different cases. From the inspection of quotes received it was found that the three service providers showed similarities. The following similarities were noted:
- Service provider A and service provider B had the same postal address.
 - Service provider A and service provider C had the same physical address.

The investigating team verified the physical addresses of the service providers but another business was situated at this address. There was a risk of collusive quoting and the prices paid by CIPRO for these services might not be competitive, as independent quotes were not obtained.

(c) Management comments and planned actions

- (i) The necessary validations and authentication were not always done with regard to VAT details. The validity should, however, have been addressed by confirmation of VAT status. The VAT status of the service providers will be validated in the future as part of the SCM processes.

- (ii) In the case where a risk of collusive quoting was identified it was indicated that CIPRO normally sourced the quotes and prepared the submissions without verifying the information. It might have been an oversight that addresses were not closely scrutinised and this might have raised concerns with any individual if addresses were the same. The case will be followed up to establish whether there is a link between the official who obtained the quotes and the service provider.

8.5 Procurement of Information Technology equipment

(a) Background

Paragraph 7 of the PPMP requires that all IT-related requests for items on general period contracts greater than R100 000 in value must be submitted to SITA, via the office of the CFO, for approval. Furthermore, procurement of IT-related items available on general period contracts must be approved by the CFO.

Section 20(1)(b) of the SITA Act requires that a public body must conclude a business agreement with the agency in respect of those services contemplated in section 7(1)(a) and (b) that it intends to use.

Section 1.7.1 of the Supply Chain Management – a guide for accounting officers/ authorities, 2004 (SCM guide) states that the SITA Act requires that SITA must act as the procurement agency for every department's IT requirements. The SITA Act prescribes that all departments are compelled to procure all IT goods and services through SITA.

(b) Findings

- (i) In eight cases totalling R10 587 943 IT-related goods and services were procured without consultations with or approval by SITA.
- (ii) A quotation was requested and received from a service provider for the rental of database servers for three years. The quotation received included a purchase and rental amount (per month) for the servers. The purchase amount was R5 986 908 and the rental amount was R181 749 per month for three years, totalling R6 542 992. Approval was requested and obtained from the CIPRO management and the chairperson in the request for approval document for the rental of the servers for three years on the condition that SITA do the tender. However, SITA approval was never obtained and no tender was invited for the purchase/rental of the said IT-related equipment for the three years.

(c) Management comments and planned actions

There was much ambiguity and confusion around procurement of information and communication technology (ICT) services through SITA. A number of meetings were held between the management of CIPRO and representatives from SITA but no decisions materialised. In the meantime, the urgency for the business became higher and action needed

to be taken to ensure service to customers. However, in all the cases the process through SITA clearly should have been followed. In future all ICT procurement should be done in consultation with SITA or possible term contracts should be concluded. CIPRO is also looking at getting permission to appoint their own ICT and development consultants through the normal bidding process or doing so through SITA. Standing IT-contracts should be reviewed in consultation with SITA to take a decision whether contracts need to be continued or to be replaced by alternatives.

8.6 Procurement of goods and services to a value greater than R500 000 by means of tenders

(a) Background

Paragraph 8 of the PPMP states that PROCOM is responsible for administering the procurement of goods and services in excess of R500 000. It further requires that public tenders must be invited for the acquisition of goods and services exceeding R500 000 in value.

(b) Findings

- (i) In six cases totalling R11 486 680 procurement needs were above R500 000 and no public tenders were invited.
- (ii) The special project in the corporate information unit for the alignment and design of the companies division in view of the move to the new dti campus was extended seven times. The total amount for the seven extensions accumulated to R2 335 548, which indicated that a tender process should have been followed and not the quotation process.

(c) Management comments and planned actions

- (i) Clearly, the adherence to the limits of R500 000 should have been done and the tender process followed. In the new SCM environment deviation from normal competitive bidding is to be explicitly approved as per the delegations.
- (ii) The services from the service provider were needed given the lack of management skills in specific areas, backlogs, transfer of the responsibility to new persons, transfer of skills, unpredictable volume increases and settlement of new processes implemented when CIPRO relocated to the new campus. The service provider was assisting the division directly responsible for the public. The extension of the service provider contract is thus a case of CIPRO needing to maintain continuity in a critical public interface. CIPRO faced a situation where they had to rely on the service provider. However, had the extent been anticipated a tender process would have been followed. In future projects will be planned in detail and the resource requirement addressed for the full project through the normal SCM processes.

8.7 Outsourcing of filing system of CIPRO

(a) Background

According to CIPRO documentation, with the relocation of CIPRO to the new **dti** campus it emerged that the campus was not able to provide adequate storage for the active files of CIPRO. At that stage the process of examining alternative options for storage of active files commenced. The tender award value for the first year was R6 347 097 including VAT with a total ceiling escalated value of R21 877 740 including VAT over five years.

(b) Findings

- (i) Tenders were only invited from three service providers. The motivation for not inviting a public tender was that “they were the only organisations that National Archives could put forward as being suitable candidates”. However, the letter dated 13 January 2004 from the National Archives did state that they did not promote the services of any particular company. The motivation did not justify the issuing of a closed tender as no evidence was made available of the market being sufficiently analysed and researched and a subsequent conclusion that a closed tender should have been issued.
- (ii) There was no evidence in the procurement documentation submitted to the investigating team to indicate the administration or involvement of PROCOM in the tender process or the approval of the departmental tender committee of the tender specifications before it was distributed to prospective tenderers as required in terms of the PPMP.

(c) Management comments and planned actions

- (i) At the time of the issuing of the tender for the filing of CIPRO’s active files there were not many service providers in the field who were experienced enough to render a proper active file management service and had handled volumes of this magnitude. The fact that the National Archives did not promote the services of any of these companies was noted but considering the business need, volumes and critical nature of delivery to the business and customers a closed tender was none the less specifically recommended and approved as such.
- (ii) The tender process was administered by the procurement division overall and the core business divisions and the CEO did approve the specifications before publication.
- (iii) Outsourcing of the filing system tender is currently under review to finalise all outstanding issues with the intent of obtaining approval where needed. The service level agreement is also in the process of finalisation to ensure that the standards were agreed to and can be enforced.

8.8 Splitting of order

(a) *Finding*

Two orders totalling R808 830 were issued for the delivery of the employment development programme. The services were, however, split into two phases with the total value exceeding the threshold of R500 000. If the services were not split into two phases the tender process should have been followed and not the quotation process. It was further noted that order no. 2 totalling R438 900 for phase 1 was issued before order no. 1 totalling R369 930 for phase 2 and that both orders were on the same date.

(b) *Management comments and planned actions*

The approval processes in respect of the service provider were totally separate as the two phases were distinct. However, the two phases could have been combined. For future approval processes the unbundling of procurement issues will be guarded against specifically.

8.9 VAT charged on invoices, VAT registrations and searches

(a) *Background*

Section 20(4) of the VAT Act requires that a full tax invoice shall be in the currency of the Republic and shall contain the words "tax invoice" in a prominent place on the tax invoice as well as the name, address and VAT registration number of the service provider.

(b) *Findings*

- (i) VAT was charged on an invoice without supplying the prescribed VAT compliance details on the invoice. Furthermore, in two cases the request memo and other procurement documentation for the service providers indicated that the amounts included VAT. However, the service providers did not have VAT registration numbers and did not charge VAT on the invoices submitted to CIPRO.
- (ii) The VAT number printed on the tax invoices for a service provider was not validated by the South African Revenue Service's database as the search results indicated that the VAT number was invalid.

(c) *Management comments and planned actions*

VAT requirements will be strictly checked for all future payments. Procurement staff will also use the relevant VAT vendor search website to confirm VAT status of service providers. The required checks will be built into the SCM processes to ensure that VAT is addressed consistently.

8.10 Conflict of interests and declaration of interests by CIPRO officials and board members

(a) *Background*

The Public Service Act, 1994 (Act No. 103 of 1994) (PSA), chapter VII, sections 30 to 31 stipulate that every government employee shall place the whole of his or her time at the disposal of the state. No officer or employee shall perform or engage himself or herself in performing remunerative work outside his or her employment in the public service, without permission granted by the relevant executing authority or an officer authorised by the said authority.

(b) *Findings*

Between 5 and 7 December 2005 searches were performed on the CIPRO website. The searches revealed the following:

- (i) Two board members had interests in two service providers with which CIPRO contracted for services, which were not declared in declaration of interest forms.
- (ii) Officials at management level had interests in businesses, which were not declared in the declaration of interest forms as required by the PSA for the 2004-05 financial year. It should be noted that the AG did issue a management letter during June 2005 in respect of an investigation on the declaration of interest by employees at CIPRO and the findings were communicated and discussed with the management of CIPRO. The declaration of interest forms for some of the members of management were for the 2003-04 financial year.

(c) *Management comments and planned actions*

- (i) Board members should complete declaration of interest forms as they are closely involved in the activities of CIPRO. All matters of possible conflict of interest relating to members were openly discussed during board meetings. When the board appointment has been finalised the declaration of interests will be addressed.
- (ii) All CIPRO managers are requested on an annual basis to declare their interest in registered businesses. This issue is revisited annually. If any specific case comes to light where these interests have not been declared action will be taken.

8.11 Sponsorship

(a) *Background*

Treasury Regulation 21.1.1 states the following: "The accounting officer may approve gifts, donations and sponsorships of state money and other movable property in the interest of the state. When such cash amounts exceed R100 000 per case, the approval of the relevant legislature must be sought by including the item separately in the appropriation bill."

(b) Finding

CIPRO was involved in the sponsoring of a yacht for participation in the VASCO race amounting to R233 746 with the aim of getting media exposure by placing a CIPRO advertisement on the yacht. No approval was obtained from the relevant legislature as required by Treasury Regulation 21.1.1.

(c) Management comments and planned actions

The NT was not consulted in the process. The NT will be approached for ratification and for any future sponsorship, all the necessary approvals will be sought from the relevant legislature.

9. RECOMMENDATIONS

- (a) It is recommended that the PPMP be complied with in all respects during the procurement and payment process until the FSCM is implemented. Further, it is recommended that the PFMA, TR, FSCM, ST37, PPR, PPPFA, SITA Act, SCM guide, VAT Act and CC Act should be complied with in all respects during the procurement and payment process.
- (b) Legal advice on action to be taken in view of section 81(2) of the PFMA relating to financial misconduct is recommended.
- (c) Disciplinary action is recommended against CIPRO officials and other relevant role players who did not ensure compliance with the prescripts in the procurement and payment process (after confirming whether these officials were still in service). Other action should be considered against ex-officials, if necessary.

10. APPRECIATION

The assistance rendered during the investigation by the officials of CIPRO and **the dti** is appreciated.

Shaiket Fakie
—

S A FAKIE
Auditor-General

Pretoria
18 September 2006