No.0427 - 2023: Fifth Session, Sixth Legislature

**GAUTENG PROVINCIAL LEGISLATURE**

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**ANNOUNCEMENTS,**

**TABLINGS AND**

**COMMITTEE REPORTS**

**========================**

Friday, 01 December 2023

# **ANNOUNCEMENTS**

none

# **TABLINGS**

none

**COMMITTEE REPORTS**

**1. The Chairperson of the Standing Committee on Public Accounts, Hon. S Khanyile, tabled the Committee’s Oversight Report on the Report of the Auditor-General of South Africa to the Gauteng Provincial Legislature on Financial Statements of the Department of Agriculture, Rural Development and Environment for year ended 31 March 2023, as attached:**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS OVERSIGHT REPORT ON THE REPORT OF THE AUDITOR-GENERAL OF SOUTH AFRICA TO THE GAUTENG PROVINCIAL LEGISLATURE ON THE FINANCIAL STATEMENTS OF GAUTENG DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND ENVIRONMENT (GDARDE) (VOTE: 11) FOR THE YEAR ENDED 31 MARCH 2023**

**30 NOVEMBER 2023**

**Table of Contents Page No**

1. Introduction 5
2. Process Followed 4 - 5
3. Findings by the Auditor-General of South Africa in the report 5 - 6
4. Committee findings and conclusions 6 -13
5. Committee concern 13
6. Committee recommendations 13-14
7. Conclusion 14
8. Acknowledgements 14-15
9. Adoption of the report 15

**Acronyms**

AFS Annual Financial Statements

AGSA Auditor-General of South Africa

APP Annual Performance Plan

BMC Budget Management Committee

CFO Chief Financial Officer

CSD Central Supplier Database

GDARDE Gauteng Department of Agriculture, Rural Development and Environment

GAS Gauteng Audit Services

GPT Gauteng Provincial Treasury

GDF Gauteng Department of Finance

HOD Head of Department

IT Information Technology

MEC Member of the Executive Council

MPL Member of the Provincial Legislature

OOP Office of the Premier

PAA Public Audit Act

PFMA Public Finance Management Act

PPR Preferred Procurement Regulations

RFQ Request for Quotations

SCM Supply Chain Management

TR Treasury Regulations

1. **INTRODUCTION**

The Standing Committee on Public Accounts (SCOPA) has examined the Report of the Auditor-General of South Africa (AGSA) to the Gauteng Provincial Legislature (GPL) on the financial statements of Gauteng Department of Agriculture, Rural Development and Environment (GDARDE) for the year ended 31 March 2023. This was done as per GPL Rule 178 (2).

The function of SCOPA is to examine the financial statements of the Legislature, all executive organs of the province and other provincial organs of state, including any reports issued by the AGSA on the affairs of GPL, Office of Premier (OoP) and the Departments & Entities of Gauteng Provincial Government (GPG). SCOPA is required to do this on behalf of the Legislature, to ensure accountable utilization of resources and prudent financial management, and to make recommendations to the Legislature.

In the process of examining the financial statements and reports of an organ of state, SCOPA must ensure that they comply with of the Constitution of RSA, the Public Financial Management Act (PFMA), and the requirements of the Public Audit Act No 5 of 2018. SCOPA must also consider the previous statements and reports of such an organ and report on the degree to which shortcomings have been rectified as required by GPL Rule 178 (3).

1. **PROCESS FOLLOWED**

The Report of the AGSA on the financial statements of Gauteng Department of Agriculture, Rural Development and Environment (GDARDE) for the year ended 31 March 2023, was tabled together with its 2022/23 Annual Report on 31 August 2023. This was done in terms of Sections 188(1) and (2) of the Constitution of the Republic of South Africa, (Act No. 108 of 1996), read with Sections 4, 20, and 21 of the Public Audit Act No 5 of 2018.

The report was referred by the Speaker to SCOPA on 31 August 2023 for consideration, as per Rule 149 read with Rule 233 of the Standing Rules of the GPL.

On Thursday, 19 October 2023, the Committee was briefed by the Auditor-General of South Africa (AGSA) on the audit outcome of Gauteng Department of Agriculture, Rural Development and Environment (GDARDE).

In the process of SCOPA considering the reports of the AGSA, the following reports were received from the Stakeholders of the Committee on 19 October 2023:

* The report by the Office of the Premier on Gauteng Forensic Unit report on progress made on special focus cases and investigations referred by Departments;
* The report by the MEC for Finance on the Assessment of consolidated AFS and consolidated Audit Outcomes;
* The report by the Office of the Public Service Commission in Gauteng on GPG Departments Public Administration Practices; and
* The report by Gauteng Office of the Public Protector on Investigations related to Gauteng for the period 2022/23 and outstanding for prior years.

The Committee analysed the report and produced preliminary questions which were sent to the Gauteng Department of Agriculture, Rural Development and Environment (GDARDE) for responses by 31 October 2023. The department submitted its responses to the preliminary questions on the 23 November 2023.

In examining the responses by Gauteng Department of Agriculture, Rural Development and Environment (GDARDE), the Committee resolved not to conduct a public hearing with the department.

On Thursday, 30 November 2023, the Standing Committee on Public Accounts (SCOPA) considered and adopted its Oversight Report on the report of the Auditor-General of South Africa for Gauteng Department of Agriculture, Rural Development and Environment (GDARDE) for the year ended 31 March 2023.

1. **FINDINGS BY THE AGSA ON THE REPORT**

**3.1. Audit opinion**

The AGSA issued an unqualified audit opinion on the financial statements of Gauteng Department of Agriculture, Rural Development and Environment (GDARDE) with findings on predetermined objectives and compliance.

This is an unchanged audit opinion when compared to that which it received in the previous financial year (2021/22).

**3.2. Emphasis of Matters**

Emphasis of matters were raised on the following:

* Material under-spending of the budget
* Significant uncertainties relating to litigations.

**3.3 Audit findings**

The AGSA did not identify any findings or significant deficiencies in the following areas of audit.

* Audit of annual performance report
* Audit of internal controls
* Other reports: investigations

However, there were findings or significant deficiencies raised on the following, which will be discussed in detail in this report:

* Audit of compliance with legislation

1. **COMMITTEE FINDINGS AND CONCLUSIONS ON THE FINDINGS BY AGSA**

As reported earlier, the Committee engaged the Gauteng Department of Agriculture, Rural Development and Environment (GDARDE) through preliminary questions which were generated during the analysis of the report of the Auditor-General of South Africa. The Committee has analyzed the responses by the Gauteng Department of Agriculture, Rural Development and Environment (GDARDE) and has determined as indicated in this section’s area of findings.

**4.1 MATERIAL UNCERTAINTIES RELATED TO CONTINGENT LIABILITIES**

**4.1.1 Finding by the AGSA**

The AGSA reported that the Department is the defendant in various lawsuits amounting to R118 357 000 (2021-2022 R146 946 000). The ultimate outcome of the matters could not be determined and no provision for any liability that may result was made in the financial statements.

**4.1.2 Committee findings**

The Department reported that it had eight (8) contingent liability matters amounting to R118 357 000.00. The breakdown of the said matters are as follows:

|  |  |  |
| --- | --- | --- |
| **NO.** | **Description of the matter** | **Amount the Department is sued for (R)** |
| 1. | PC Luthuli // GDARD | R 6 000 |
| 2. | Trevor Johnson// GDARD | R 14 000 |
| 3. | Shoprite Checkers// GDARD | R 400 000 |
| 4. | Tinyiko Chauke// GDARD | R 49 000 |
| 5. | PSA obo Mogoboya// GDARD | R 130 000 |
| 6. | ITEC Motlekar// GDARD | R 531 000 |
| 7. | Macrae Macrae// GDARD | R 5 250 000 |
| 8. | Suikerbosrand Fire (third party notice) | R 111 977 000 |
|  | **TOTAL** | **R 118 357 000** |

Also, the Department reported that it received five (5) matters for the period, 01 April to September 2022. The matters are Review Applications resulting from the decisions issued by the Department in relation to Permits, Environmental Authorizations and Compliance Notices. The following is a list of the said matters:

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Description of the matter** | **Nature of the matter** | **Date received** |
| 1. | Happy Valley Holiday and Pleasure Resort//Nakuseni and others | Review application | 20 April 2022 |
| 2. | Human Society International Trust// DFFE and others | Review Application | 18 July 2022 |
| 3. | Animal Law Reform// Johannesburg City Parks and Zoo and Others | Review Application | 01 August 2022 |
| 4. | Happy Valley Holiday and Pleasure Resort//Nakuseni and others | Interdict | 11 August 2022 |
| 5. | GDARD//Lakat Trading (PTY) LTD | Urgent Interdict | 7 September 2022 |

The Department reported that in order to minimise lawsuits, it’s Litigation Management Unit has developed a Standard Operating Procedure to ensure that it mitigates against the risk of judgement for lack of internal processes. The Department reiterated as the regulating authority, it was inherent to such matters due to the mandate it holds.

Over and above, the Constitution allows for any aggrieved party to approach the Court for a relief. Some of the litigations are commercial and opportunistic in nature. Having regard to the above, Litigation Management Unit conducts workshops to Directorates where legal risks have been identified to ensure that measures are put in place to mitigate the risks thus minimising litigation. Furthermore, the Litigation Management Unit provide presentations on legal risks during the induction of new employees.

**4.2 MATERIAL UNDERSPENDING OF THE BUDGET**

**4.2.1 Finding by the AGSA**

The AGSA reported that the Department materially under-spent its budget by   
R91 286 000 on Programme 2 - Agriculture and Rural Development.

**4.2.2 Committee findings**

The department reported the following details of the underspending as per the below table:



The Department reported that the main reason for the underspending of Programme 2 - Agriculture and Rural Development was attributed to the procurement process (RFQ) and tender processes that are still unfolding. The delay in the procurement process can be attributed to the issue of the Constitutional Court judgment regarding Preferential Procurement Regulations that the 2017 Regulations will remain in place until 26 January 2023. This was communicated on the 20th July 2022. National Treasury issued PPPFA Circular 01 OF 2022/23, communication on it. The CASP and Ilima/Letsema conditional grants first tranche payment was paid on the 22 of August 2022. Land Care Grant was only approved in November 2022. The department did submit a roll-over request and Gauteng Provincial Treasury (GPT) approved an amount of R42,392. The difference between the under expenditure (R91 million) and approved roll-over request (R42 million) amounts to R49 million under-spending.

The Department reported that it had put in place the following corrective measures for the effective monitoring of the budget to ensure that funds are spent as budgeted for:

* Initiated bilateral meetings between the Finance Chief Directorate and various Business Units to track performance and propose mitigation plans to improve on the financial performance.
* Established the Budget Management Committee (BMC) to monitor the overall performance of the department and immediately develop mitigation plans to address the areas of non-performance as identified.
* Give priority to all procurement functions and identifies tenders that can be implemented through RT Contracts.
* Completed the Re-structuring of Supply Chain Management (SCM) Directorate and review of the organizational structure to include all SCM functions to respond to the increased demand for SCM Directorate. However, the revised organizational structure has not yet been approved by the MEC. The Department was unable to implement the new structure due to budget constraints. However, it has since appointed six (6) Interns to assist with the procurement pressures in SCM Directorate.
* The recruitment process for the appointment of the vacant Director and Deputy Director Supply Chain Management positions is currently underway. It urgently needs to fill these critical positions.

**4.3 PROCUREMENT AND CONTRACT MANAGEMENT**

**4.3.1 Findings by AGSA**

The AGSA reported that some invitations to tender for procurement of commodities designated for local content and production, did not stipulated the minimum threshold for local production and content as required by the 2017 Procurement Regulation 8(2).

**4.3.2 Committee findings**

The D’epartment reported that the minimum threshold for local production and content as required by the 2017 Procurement Regulation 8(2) was not applicable anymore, it was replaced by the new Preferential Procurement Regulations of 2022. The framework, in section 2(1) of the Act, does not specifically refer to local production and content per se, but refers to implementing the programmes of the Reconstruction and Development Programme. It furthermore provides for points to be awarded for specific goals and not for local production and content to be used as a disqualification criterion as it was done in the 2017 Preferential Procurement Regulations.

Furthermore, the Department reported that the Organs of State may still promote local manufactured products as part of the goals of Reconstruction and Development Programme by allocating preference points if or until there is an Act which gives effect to it in a manner similar to the 2017 Regulations.

Finally, in its endeavour to address this matter, the Department has developed a compliance checklist to be utilised to monitor compliance with all applicable legislation.

**4.4 IRREGULAR EXPENDITURE**

**4.4.1 Findings by the AGSA**

The AGSA reported that the Department did not take effective and appropriate steps to prevent irregular expenditure, as required by section 38(1) (c) (ii) of the PFMA and treasury regulation 9.1.1.

**4.4.2 Committee finding**

The department reported that the R2 403 000 irregular expenditure was incurred as follows:

|  |  |  |
| --- | --- | --- |
| **No.** | **Description** | **Amount**  **(R)** |
| 1 | Irregular appointment of Agricultural Graduates by an official without the delegated authority | R     426 000 |
| 2 | Irregular award that was advertised without specific condition of local content | R 1 449 000 |
| 3 | Irregular award by official without delegated authority | R    197 000 |
| 4 | Irregular award of capital expenditure by official without delegated authority | R    331 000 |
|  | TOTAL | R 2 403 000 |

Furthermore, the Department reported that there was no progress regarding the R46 300 000 irregular expenditure. The irregular expenditure was not condoned by Gauteng Provincial Treasury (GPT) due to pending consequence management processes against officials that have left the employment of the Department. A meeting was held on 10 August 2023 with the Chairperson of GPT’s Irregular Expenditure Committee to discuss how the matter could be resolved. The Gauteng Provincial Treasury (GPT) invited a legal expert from the Office of the Premier who advised that if disciplinary actions were not instituted before the officials transferred to other Departments, then Department did not demonstrate evidence of having implemented recommendations emanating from forensic investigation reports. The fact that the Department formally referred the matters to the departments where implicated officials are currently employed was not sufficient to support an application for condonation. The Department committed to have follow-up engagements with the Chairperson of the GPT’s Irregular Expenditure Committee on the resolution of this matter.

**4.5 FRUITLESS AND WASTEFUL EXPENDITURE**

**4.5.1 Finding by AGSA**

The AGSA reported that effective steps were not taken to prevent fruitless and wasteful expenditure, as required by Section 38(1) (c) (ii) of the PFMA and Treasury Regulation 9.1.1.

**4.5.2 Committee finding**

The Department reported the majority of the fruitless and wasteful expenditure related to a breach of contract court case for R3 547 822.60. The court awarded that the Department pay the amount plus 10.25% interested calculated from 6 June 2017. The total payable by the Department is R5 528 000. The Department has identified the fruitless and wasteful expenditure for investigation and committed that a service provider will be appointed through Request for Quotation (RFQ) process to investigate the matter by 31 March 2024.

**5. COMMITTEE CONCERN**

5.1 The Committee is concerned about the vacant posts within the Supply Chain Management Directorate of the department. This had a negative impact on the Department’s turnaround time in processing supply chain management related matters, leading to various instances of non-compliance with procurement regulations.

**6. COMMITTEE RECOMMENDATIONS**

6.1 That the Department must provide the Committee with a report detailing the effectiveness of measures put in place to minimise lawsuits by 30 April 2024.

6.2 The Department must provide the Committee with a report detailing the effectiveness of the of the measures put in place to monitor budget and expenditure performance by 30 April 2024.

6.3 That the Department must provide the Committee with a report by 30 April 2024 detailing the following:

* Approval of the new organizational structure.
* Filling of vacant posts of the Director and Deputy Director Supply Chain Management Directorate.

6.3 That the Department must provide the Committee with a report detailing the effectiveness of the compliance checklist utilised to monitor compliance with all applicable legislation especially the Preferential Procurement Regulations of 2022 by 30 April 2024.

6.4 That the Department must institute consequence management processes against implicated officials in the R2 403 000 irregular expenditure and provide the Committee with a report by 30 April 2024 and a quarterly progress report continuing up until finalisation thereof.

6.5 That the Department provide the Committee with a report detailing the status of the condonation of the R46 300 000 irregular expenditure and the outcome of the follow-up engagements with the GPT’s Irregular Expenditure Chairperson on the same matter by 30 April 2024 and a quarterly progress report continuing up until finalisation thereof.

6.6 That the Department must appoint a service provider to investigate the R3 547 822.60 fruitless and wasteful expenditure and provide the Committee with a report detailing the status of the investigation by 30 April 2024 and a quarterly progress report continuing up until finalisation thereof.

1. **CONCLUSION**

In conclusion, the Committee managed to establish the issues that contributed to the Auditor-General of South Africa issuing an unqualified audit opinion on the financial statements of Gauteng Department of Agriculture, Rural Development and Environment (GDARDE).

1. **ACKNOWLEDGEMENTS**

I would like to thank the following Members: MJ Kanyane; RJ Kekana; BP Mncube; MJ Modise; DP Malema; A De Lange; P Atkinson; AW Cilliers; and P Mdlankomo for their diligent deliberations during this process.

I would also like to express my appreciation to the MEC of Finance, J Mamabolo and officials of the Gauteng Provincial Treasury; the Gauteng Business Unit Leader of the Office of Auditor-General South Africa (AGSA), Mr. Dumisani Cebekhulu and his team; Group Committee Co-ordinator, Monica Vaas for tabling the report; Senior Committee Co-ordinators, Simon Magolego, and Mompati Gaonnwe; Committee Co-ordinator, Catherine Thobejane; Committee Researchers, Bongi Dlamini and Lerato Mofokeng; Administrative Assistants, Sizakele Mthembu Media Officer, Pfano Bulasigobo; Senior Information Officer, Jacky Letsoalo; Legal & Procedural Advisor, Winnie Ngubane; Service Officer, Lithemba Simon, PPP Lerato Bodman and the Hansard Operator, Sylvester Baloyi without whom this process would not have been successfully completed.

1. **ADOPTION OF THE REPORT**

After due deliberations, the Standing Committee on Public Accounts (SCOPA) unanimously adopted its report on the Report of the Auditor-General of South Africa to the Gauteng Provincial Legislature on the financial statements of Gauteng Department of Agriculture, Rural Development and Environment (GDARDE) for the year ended 31 March 2023.

In terms of Standing Rule 117 (2)(c) read together with 164, the Committee presents to this House the above-mentioned report for consideration and adoption.

**Mr. Sochayile Khanyile, MPL**

**Chairperson: Standing Committee on Public Accounts**