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PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. 12 OF 2018

**by the
PRESIDENT of the REPUBLIC of SOUTH AFRICA**

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT AND SPECIAL TRIBUNAL

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as the "Act"), have been made in respect of the affairs of the Roads Agency Limpopo (SOC) Limited (hereinafter referred to as "the Agency");

AND WHEREAS the Agency may have suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule, in respect of the Agency, for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any alleged—

- (a) serious maladministration in connection with the affairs of the Agency;
- (b) improper or unlawful conduct by employees of the Agency;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- (e) intentional or negligent loss of public money or damage to public property;
- (f) offence 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 in connection with the affairs of the Agency; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 1 January 2009 and the date of publication of this Proclamation or which took place prior to 1 January 2009 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the Agency, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 14 day of March, Two thousand and eighteen.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

TM Masutha
Minister of the Cabinet

Schedule

1. The procurement of or contracting for goods, works or services by or on behalf of the Agency 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;
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Agency;
 - (c) conducted by or facilitated through the improper conduct of -
 - (i) officials or employees of the Agency; or
 - (ii) contractors, suppliers or service providers of the Agency or any other person or entity, to corruptly or unduly benefit themselves or any other person or entity;

and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Agency or the State in relation to the appointment of the following contractors, suppliers and service providers in respect of the following contract numbers:

- (aa) Mmashibe Construction & General Trading (Contract Number: RAL/T682/2015);
- (bb) Batlhagae Investment (Contract Number: RAL/T704/2015);
- (cc) TTR Building Construction (Contract Number: RAL/T694/2015);
- (dd) Batsekgadi Community Project (Contract Number: RAL/T695/2015);
- (ee) RCE Holdings (Contract Number: RAL/T687/2015);
- (ff) David Diva Construction (Contract Number: RAL/T699/2015);
- (gg) Thornburn Security (Contract Number: RAL/ACCESS CONTROL);
- (hh) Rethabile Marketing (Contract Number: RAL/PUBLIC RELATION);

- (ii) 4 Arrows/Ruwacon JV (Contract Number: RAL/ T652/2015);
 - (jj) Unity Construction CC (Contract Number: RAL/T653/2015);
 - (kk) Edwin Construction (Pty) Ltd (Contract Number: RAL/T349D/2015);
 - (ll) Exton Matrix Construction CC (Contract Number: RAL/T646/2015);
 - (mm) 4 Arrows/Rawucon JV (Contract Number: RAL/T657/2015);
 - (nn) Lonerock Construction (Contract Number: RAL/T535C/2015)
 - (oo) Sakela Xabisa;
 - (pp) Kago Consulting;
 - (qq) Sema Consulting;
 - (rr) Matla Consultants (Pty) Ltd (Contract Number: RAL/C824/2016);
 - (ss) Raamba Engineering Enterprises CC (Contract Number: RAL/C816/2016);
 - (tt) MGM Bluhray Engineers (Pty) Ltd (Contract Number: RAL/C539C/2016);
 - (uu) Mtema Mashao Consulting Engineers (Contract Number: RAL/C630B/2016);
 - (vv) SFC Engineers (Contract Number: RAL/C638/2016);
 - (ww) Calliper Consulting Engineers (Contract Number: RAL/C822/201);
 - (xx) Vharanani Properties (Contract Number: RAL/T757/2015);
 - (yy) King Civil Engineering (Contract Number: RAL/T758/2015);
 - (zz) Bathokwa Consolidated Projects (Contract Number: RAL/2016/PR/Communications).
2. Non-performance or malperformance of works or services or non-delivery of goods by the contractors, suppliers and service providers mentioned in paragraph 1 above.
3. Maladministration in the affairs of the Agency and any losses or prejudice suffered by the Agency, or the State as a result of such maladministration in relation to the increase of the fees of the Chairperson of the Agency's Board contrary to applicable-
- (a) legislation;
 - (b) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury;
 - (c) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Agency;
- including the causes of such maladministration and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Agency or the State.
4. Any unlawful or improper conduct by officials or employees of the Agency, the applicable contractors, suppliers or service providers or any other person or entity, in relation to the allegations set out in paragraphs 1 to 3 above.

PROKLAMASIE NO. 12 VAN 2018

van die
PRESIDENT van die REPUBLIEK van SUID-AFRIKA

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996 (WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van die Padagenskap Limpopo (SOC) Beperk (hierna na verwys as die "Agentskap");

EN AANGESIEN die Agentskap verliese gely het wat moontlik verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele verrigtinge voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld ten opsigte van die Agentskap, vir ondersoek na die Spesiale Ondersoekeenhede ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleenthede, dit die opdrag van die Spesiale Ondersoekeenhede is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Agentskap;
- (b) onbehoorlike of onregmatige optrede deur werknemers van die Agentskap;
- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
- (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe in verband met die sake van die Agentskap gepleeg is; of
- (g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak, wat plaasgevind het tussen 1 Januarie 2009 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2009 of na die datum van publikasie van hierdie Proklamasie, maar wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekeenhede toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige verliese wat deur die Agentskap gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die 14. dag van Maart Twee duisend-en-agtien.

CM Ramaphosa
President

Op las van die President-in-Kabinet:

TM Masutha
Minister van die Kabinet

BYLAE

1. Die verkryging van of kontraktering vir goedere of dienste deur of namens die Agentskap en betalings wat in verband daarmee gemaak is op wyse wat—
 - (a) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie;
 - (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, omsendbriewe, praktyknotas of instruksies wat deur die Nasionale Tesourie of die relevante Plaaslike Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van of wat op die Agentskap van toepassing is;
 - (c) gedoen of gefasiliteer was deur die onbehoorlike optrede van—
 - (i) beamptes of werknemers van die Agentskap; of
 - (ii) kontrakteurs, verskaffers of diensleweraars van die Agentskap of enige ander persoon of entiteit, om hulself of andere op 'n korrupte of onbehoorlike wyse te bevoordeel,

en verwante ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat deur die Agentskap of die Staat opgeloop was ten opsigte van die aanstelling van die volgende kontrakteurs, verskaffers en diensleweraars ten opsigte van die ondermelde kontraknommers:

- (aa) Mmashibe Construction & General Trading (Kontrak Nommer: RAL/T682/2015);
- (bb) Batlhagae Investment (Kontrak Nommer: RAL/T704/2015);
- (cc) TTR Building Construction (Kontrak Nommer: RAL/T694/2015);
- (dd) Batsekgadi Community Project (Kontrak Nommer: RAL/T695/2015);
- (ee) RCE Holdings (Kontrak Nommer: RAL/T687/2015);
- (ff) David Diva Construction (Kontrak Nommer: RAL/T699/2015);
- (gg) Thornburn Security (Kontrak Nommer: RAL/ACCESS CONTROL);
- (hh) Rethabile Marketing (Kontrak Nommer: RAL/PUBLIC RELATION);
- (ii) 4 Arrows/Ruwacon JV (Kontrak Nommer: RAL/ T652/2015);
- (jj) Unity Construction CC (Kontrak Nommer: RAL/T653/2015);
- (kk) Edwin Construction (Pty) Ltd (Kontrak Nommer: RAL/T349D/2015);

- (ll) Exton Matrix Construction CC (Kontrak Nommer: RAL/T646/2015);
 - (mm) 4 Arrows/Rawucon JV (Kontrak Nommer: RAL/T657/2015);
 - (nn) Lonerock Construction (Kontrak Nommer: RAL/T535C/2015)
 - (oo) Sakela Xabisa;
 - (pp) Kago Consulting;
 - (qq) Sema Consulting;
 - (rr) Matla Consultants (Pty) Ltd (Kontrak Nommer: RAL/C824/2016);
 - (ss) Raamba Engineering Enterprises CC (Kontrak Nommer: RAL/C816/2016);
 - (tt) MGM Bluhray Engineers (Pty) Ltd (Kontrak Nommer: RAL/C539C/2016);
 - (uu) Mtema Mashao Consulting Engineers (Kontrak Nommer: RAL/C630B/2016);
 - (vv) SFC Engineers (Kontrak Nommer: RAL/C638/2016);
 - (ww) Calliper Consulting Engineers (Kontrak Nommer: RAL/C822/201);
 - (xx) Vharanani Properties (Kontrak Nommer: RAL/T757/2015);
 - (yy) King Civil Engineering (Kontrak Nommer: RAL/T758/2015);
 - (zz) Bathokwa Consolidated Projects (Kontrak Nommer: RAL/2016/PR/Communications).
2. Nie-nakoming of wanprestasie van werk of dienste of nie lewering van goedere deur die kontrakteurs, verskaffers en diensleweraars genoem in paragraaf 1 hierbo.
 3. Wanadministrasie in die werksaamhede van die Agentskap en enige verliese of nadeel gelyk deur die Agentskap, of die Staat as gevolg van wanadministrasie met betrekking tot die verhoging van die fooie van die Voorsitter van die Agentskapsraad in stryd met voorgeskrewe-
 - (a) wetgewing;
 - (b) handleidings, riglyne, praktykvoorskrifte, omsendbriewe of instruksies wat deur die Nasionale Tesourie of die relevante Plaaslike Tesourie uitgevaardig is; of
 - (c) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Agentskap van toepassing is;
 insluitend die oorsake van sodanige wanadministrasie en verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Agentskap of die Staat opgeloop was.
 4. Enige onwettige of onbehoorlike gedrag deur beamptes of werknemers van die Agentskap toepaslike kontrakteurs, verskaffers en diensleweraars of enige ander persoon of entiteit in verband met die bewerings uiteengesit in paragrawe 1 tot 3 hierbo.