PROCLAMATION NO. R. 18 OF 2019

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

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 National Health Laboratory Service (hereinafter referred to as "the NHLS");

AND WHEREAS the NHLS or the State 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 NHLS, 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 NHLS;

(*b*) improper or unlawful conduct by employees or officials of the NHLS;

(*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;

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(*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 NHLS; 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 July 2015 and the date of publication of this Proclamation or which took place prior to 1 July 2015 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 NHLS or the State, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this 6. day of March Two thousand and nineteen.

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 NHLS and payments which were made in respect thereof in a manner that was—

(*a*) not fair, equitable, transparent, competitive or cost-effective; or

(*b*) contrary to applicable—

   (i) legislation;

   (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or

   (iii) manuals, codes, guidelines, policies, procedures, prescripts, instructions or practices of, or applicable to, the NHLS,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the NHLS or the State in relation to –

(*aa*) the provision of end user computer hardware and related maintenance and support services for a period of three years in terms of Tender RFB 027/15-16;

(*bb*) the provision of multi-protocol label switching wide area network (MPLS WAN) service to the NHLS for a period of three years in terms of Tender RFB 030/15-16;

(*cc*) the leasing of motor vehicles for the NHLS for a period of five years in terms of Tender RFP 001/15-16;

(*dd*) the replacement of water, sewer and drainage pipes in terms of Tender RFP1455602;

(*ee*) the renovation of the library at the National Institute of Occupational Health in Braamfontein in terms of Tender RFQ 1438906;

(*ff*) the renovation of the virology laboratory at Charlotte Maxeke Academic Hospital in terms of Tender RFQ 1481824;

(*gg*) the renovation of toilets at the National Institute for Communicable Diseases in terms of Tender RFQ 0695750;

(*hh*) professional services for the construction of a refectory at the National Institute for Communicable Diseases in terms of Tender RFQ 1409815;

(*ii*) professional services for the design, project management and the certification of renovations and structural changes to the Ermelo Laboratory in terms of Tender RFQ 706002;

(*jj*) the replacement of the waterproofing at the Centre for Enteric Diseases in terms of Tender RFQ 0961241;

(*kk*) the renovation of the Centre for Respiratory Diseases and Meningitis in terms of Tender RFQ 1486702;

(*ll*) professional services for the design, project management and the certification of renovations and structural changes to the Diagnostic Media Products Building in terms of Tender RFQ 1351823; and

(*mm*) the construction of a kitchen and function area in terms of Tender RFB031/16-17, which was re-advertised as Tender RFB062/15-16.

2. Any unlawful or improper conduct by the employees or officials of the NHLS or applicable service providers, or any other person or entity in relation to the allegations set out in paragraph 1 of this Schedule.

PROKLAMASIE NO. R. 18 VAN 2019

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 Nasionale Gesondheidslaboratorium (hierna na verwys as "die NG");

EN AANGESIEN die NG of die Staat verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele geskille 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 NG, vir ondersoek na die Spesiale Ondersoekeenheid ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleenthede, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

(*a*) ernstige wanadministrasie in verband met die aangeleenthede van die NG;

(*b*) onbehoorlike of onregmatige optrede deur werknemers of beamptes van die NG;

(*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 gepleeg is in verband met die sake van die NG; 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 Julie 2015 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Julie 2015 of na die datum van publikasie van hierdie Proklamasie, 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 Ondersoekeenheid 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 NG of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad op hede die 6 dag van Maart Twee duisend-en-negentien.

CM Ramaphosa
President

Op las van die President-in-Kabinet:

TM Masutha
Minister van die Kabinet

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BYLAE

1. Die verkryging van, of kontraktering vir goedere, werke of dienste deur of namens die NG, en betalings wat in verband daarmee gemaak is op 'n wyse wat—

(*a*) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie;

(*b*) strydig was met toepaslike —

(i) wetgewing;

(ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of

(iii) handleidings, kodes, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Munisipaliteit van toepassing is,

en enige ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die NG of die Staat aangegaan is ten opsigte van -

(*aa*) die voorsiening van eind-gebruiker rekenaar hardeware en verwante onderhoud- en ondersteuningsdienste vir 'n tydperk van drie jaar ingevolge Tender RFB 027/15-16;

(*bb*) die voorsiening van multi-protokol etiket skakel wye area netwerk (MPES WAN) dienste aan die NG vir 'n tydperk van drie jaar ingevolge Tender RFB 030/15-16;

(*cc*) die huur van motorvoertuie vir die NG vir 'n tydperk van vyf jaar ingevolge Tender RFP 001/15-16;

(*dd*) die vervanging van water-, riool- en dreineringspype ingevolge Tender RFP1455602;

(*ee*) die opknapping van die biblioteek by die Nasionale Instituut vir Bedryfsgesondheid in Braamfontein ingevolge Tender RFQ 1438906;

(*ff*) die opknapping van die virology laboratorium by Charlotte Maxeke Akademiese Hospitaal ingevolge Tender RFQ 1481824;

(*gg*) die opknapping van toilette by die Nasionale Instituut vir Oordraagbare Siektes ingevolge Tender RFQ 0695750;

(*hh*) professionele dienste vir die konstruksie van 'n eetsaal by die Nasionale Instituut vir Oordraagbare Siektes ingevolge Tender RFQ 1409815;

(*ii*) professionele dienste vir die ontwerp, projeksbestuur en die sertifisering van opknappings en strukturele veranderinge aan die Ermelo Laboratorium ingevolge Tender RFQ 706002;

(*jj*) die vervanging van die waterdigting by die Sentrum vir Enteriese Siektes ingevolge Tender RFQ 0961241;

(*kk*) die opkapping van die Sentrum vir Respiratoriese Siektes en Meningitis ingevolge Tender RFQ 1486702;

(*ll*) professionele dienste vir die ontwerp, projeksbestuur en die sertifisering van opknappings en strukturele veranderinge aan die Diagnostiese Media Produkte Gebou ingevolge Tender RFQ 1351823; en

(*mm*) die konstrusie van 'n kombuis en funksie area ingevolge Tender RFB031/16-17, wat as as Tender RFB062/15-16 her-adverteer is.

2. Enige onbehoorlike of onwettige gedrag deur die personeel of beamptes van die NG of betrokke diensverskaffers, of enige ander persoon of entiteit, ten opsigte van die bewerings uiteengesit in paragraaf 1 van hierdie Bylae.