PROCLAMATION NO. R. 42 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 Free State Province Department of Health (hereinafter referred to as "the FSDOH") and the North West Province Department of Health (hereinafter referred to as "the NWDOH");

AND WHEREAS the FSDOH, the NWDOH 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 FSDOH and the NWDOH, 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 FSDOH and the NWDOH;

(b) improper or unlawful conduct by employees or officials of the FSDOH and the NWDOH;

(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 FSDOH and the NWDOH ; 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 2013 and the date of publication of this Proclamation or which took place prior to 1 January 2013 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 FSDOH, the NWDOH 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 25 day of June 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—

(*a*) aero-medical services and patient transport services by or on behalf of the FSDOH in terms of bid numbers DOH(FS)67/2014/2015 and DOH(FS)20/2013/2014; and

(*b*) patient transport services by or on behalf of the NWDOH in terms of bid number NWDOH13/2015,

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

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

(ii) contrary to applicable—

(*aa*) legislation;

(*bb*) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or

(*cc*) manuals, codes, guidelines, policies, procedures, prescripts, instructions or practices of, or applicable to, the FSDOH and the NWDOH,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the FSDOH, the NWDOH or the State.

2. Maladministration in connection with the affairs of—

(*a*) the FSDOH in relation to the administration of the contracts for aero-medical services and patient transport services referred to in paragraph 1(*a*) of this Schedule; or

(*b*) the NWDOH in relation to the administration of the contract for patient transport services referred to in paragraph 1(*b*) of this Schedule,

including—

(i) the causes of such maladministration; and

(ii) any related losses or irregular or fruitless and wasteful expenditure incurred by the FSDOH, the NWDOH or the State as a result thereof.

3. Any unlawful or improper conduct by the employees or officials of the FSDOH and the NWDOH, respectively, or applicable service providers, or any other person or entity in relation to the allegations set out in paragraphs 1 or 2 of this Schedule.

PROKLAMASIE NO. R. 42 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 Vrystaatse Provinsiale Departement van Gesondheid (hierna na verwys as "die VDVG") en die Noord-Wes Provinsiale Departement of Gesondheid (hierna na verwys as "die NWDVG");

EN AANGESIEN die VDVG, die NWDVG 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 VDVG en die NWDVG, 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 die VDVG en die NWDVG;

(*b*) onbehoorlike of onregmatige optrede deur werknemers of beamptes van die die VDVG en die NWDVG;

(*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 VDVG en die NWDVG; 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 2013 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2013 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 VDVG en die NWDVG of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad op hede die 25 dag van Junie 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 —

(*a*) aero-mediese dienste en pasiënt vervoerdienste deur of namens die VDVG ingevolge bod nommers DOH(FS)67/2014/2015 en DOH(FS)20/2013/2014; en

(*b*) pasiënt vervoerdienste deur of namens die NWDOH ingevolge bod nommer NWDOH13/2015,

en betalings wat in verband daarmee gemaak is op 'n wyse wat—

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

(ii) strydig was met toepaslike—

(*aa*) wetgewing;

(*bb*) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of toepaslike Provinsiale Tesourie uitgevaardig is; of

(*cc*) handleidings, kodes, riglyne, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die VDVG en die NWDVG van toepassing is,

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die VDVG en die NWDVG of die Staat aangegaan was as gevolg daarvan.

2. Wanadministrasie in verband met die aangeleenthede van—

(*a*) die VDVG met betrekking tot die administrasie van die kontrakte vir aero-mediese dienste en pasiënt vervoerdienste na verwys in paragraaf 1(*a*) van hierdie Bylae; of

(*b*) die NWDVG met betrekking tot die administrasie van pasiënt vervoerdienste na verwys in paragraaf 1(*b*) van hierdie Bylae,

insluitend —

(i) die oorsake van sodanige wanadministrasie; en

(ii) enige verwante verliese of onreëlmatige of vrugtelose en verkwiste uitgawes wat deur die VDVG, die NWDVG of die Staat aangegaan is as gevolg daarvan.

3. Enige onwettige of onbehoorlike gedrag deur die werknemers of beamptes van onderskeidelik die VDVG en die NWDVG, of die betrokke diensverskaffers, of enige ander persoon of entiteit, ten opsigte van die bewerings uiteengesit in paragrawe 1 of 2 van hierdie Bylae.