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PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 28 OF 2017

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 Department of Correctional Services (“the Department”) and the Independent Development Trust (“the Trust”) (hereinafter collectively referred to as “the State Institutions”);

AND WHEREAS the State Institutions 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 State Institutions, 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 State Institutions;
(*b*) improper or unlawful conduct by employees or officials of the State Institutions;
(*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 State Institutions; 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 November 2011 and the date of publication of this Proclamation or which took place prior to 1 November 2011 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 State Institutions, 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 Tenth day of August Two thousand and seventeen.

J G Zuma
President

By Order of the President-in-Cabinet:

T M Masutha
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for goods, works or services by or on behalf of the State Institutions in terms of Bid Number DCSSF02 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

(iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the State Institutions;

(*c*) conducted by or facilitated through the improper or unlawful conduct of—

(i) officials of the State Institutions; or

(ii) any other person or entity,

to corruptly or unduly benefit themselves or others; or

(*d*) fraudulent,

and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the State Institutions.

2. Malperformance or no performance by service providers and professional consultants appointed by the State institutions in terms of Bid Number DCSSF02.

3. Any improper or unlawful conduct by employees or officials of the State Institutions, service providers or professional consultants or any other person or entity, in relation to the allegations set out in paragraphs 1 and 2 of this Schedule.

4. The appointment of the Trust, by the Department, as agent for the implementation of Bid Number DCSSF02 and payments made in respect thereof in a manner that was—

(*a*) not fair, competitive, transparent, equitable 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, policies, procedures, prescripts, instructions or practices of or applicable to the Department,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Department.

5. The appointment of professional consultants by the Trust for Bid Number DCSSF02 and payments made in respect thereof in a manner that was—

(*a*) not fair, competitive, transparent, equitable 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, policies, procedures, prescripts, instructions or practices of or applicable to the State Institutions,

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

PROKLAMASIE NO. R. 28 VAN 2017

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 Departement van Korrektiewe Dienste ("die Departement") en die Onafhanklike Ontwikkelingstrust ("die Trust") (hierna gesamentlik na verwys as "die Staatsinstellings");

EN AANGESIEN die Staatsinstellings moontlike verliese gely het wat 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 Staatsinstellings, 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, dit 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 Staatsinstellings;

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

(*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 Staatsinstellings 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 November 2011 en die datum van publikasie van hierdie

Proklamasie of wat plaasgevind het voor 1 November 2011 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 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 Staatsinstellings gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad op hede die Tiende dag van Augustus Twee duisend-en-sewentien.

J G Zuma
President

Op las van die President-in-Kabinet:

T M Masutha
Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering vir goedere, werke of dienste deur of namens die Staatsinstellings ingevolge Bod Nommer DCSSF02 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, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Staatsinstellings van toepassing is,

(*c*) gedoen was of gefasiliteer was deur onbehoorlike of onregmatige optrede van—

  (i) beamptes van die Staatsinstellings; of

  (ii) enige ander persoon of entiteit,

  om hulself of andere op n korrupte of onbehoorlike wyse te bevoordeel; of

(*d*) bedrieglik was,

en verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Staatsinstellings opgeloop was.

2. Wanprestasie of geen prestasie deur diensverskaffers en professionele konsultante wat aangestel was deur die Staatsinstellings ingevolge Bod Nommer DCSSF02.

3. Enige onbehoorlike of onregmatige optrede deur werknemers of beamptes van die Staatsinstellings, diensverskaffers of professionele konsultante of enige ander persoon of entiteit, ten opsigte van die bewerings uiteengesit in paragrawe 1 en 2 van hierdie Bylae.

4. Die aanstelling van die Trust, deur die Departement, as agent vir die implementering van Bod Nommer DCSSF02 en betalings wat in verband daarmee gemaak is op ’n wyse wat—

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(*a*) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie; of
(*b*) strydig was met toepaslike—
(i) wetgewing;
(ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
(iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Departement van toepassing is,

en enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Departement opgeloop was.

5. Die aanstelling van professionele konsultante deur die Trust vir Bod Nommer DCSSF02 en betalings wat in verband daarmee gemaak is op 'n wyse wat—
(*a*) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie; of
(*b*) strydig was met toepaslike—
(i) wetgewing;
(ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
(iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Staatsinstellings van toepassing is,

en enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Staatsinstellings opgeloop was.

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