

PROCLAMATION NO. R. 32 OF 2016

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 Independent Development Trust (hereinafter referred to as "the IDT"), the Department of Basic Education (hereinafter referred to as "the DBE") and the Department of Education for the Free State Province (hereinafter referred to as "the DEFS");

AND WHEREAS the IDT, DBE and DEFS 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 IDT, DBE and DEFS, 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 IDT, DBE and DEFS;
- (b) improper or unlawful conduct by officials or employees of the IDT, DBE or DEFS;
- (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 IDT, DBE and DEFS; 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 IDT, DBE or DEFS, 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 Twenty-third day of April Two thousand and sixteen.

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 the IDT, DBE or DEFS 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, circulars, practice notes or instructions issued by the National Treasury or the relevant Provincial Treasury; or
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to, the IDT, DBE or DEFS,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the IDT, DBE or DEFS in relation to the following projects:

No	Bid number	Description of project
1	FS ASIDI 12/14/1	Boshof Intermediate
2	FS ASIDI 12/14/2	Nampo Secondary
3	FS ASIDI 12/14/3	Caledon Park Intermediate
4	FS ASIDI 12/14/4	Diamanthoogte
5	FS ASIDI 12/14/5	Heide Primary
6	FS ASIDI 12/14/6	PT Sanders Intermediate
7	FS ASIDI 12/14/7	Sehlabeng Secondary
8	FS ASIDI 12/14/8	Tweespruit Primary
9	FS ASIDI 12/14/9	Itemoheng Primary
10	FS ASIDI 12/14/10	Luckhoff Combined

2. Maladministration and/or irregular, improper or unlawful conduct in respect of the affairs of the IDT, DBE or DEFS relating to—

- (a) the outsourcing of the bid evaluation functions performed in respect of the procurement or supply chain management processes; or

- (b) contract and performance management, including any failure to act timeously against contractors, suppliers or service providers for any non-performance, poor performance, defective performance or late performance in respect of goods, works or services delivered, performed or rendered,

in terms of the projects referred to in paragraph 1 of this Schedule, including the causes of such maladministration and/or irregular, improper or unlawful conduct.

3. Any non-performance, poor performance, defective performance or late performance by contractors, suppliers or service providers of goods, works or services delivered, performed or rendered in respect of the projects referred to in paragraph 1 of this Schedule and any losses or damages suffered by the IDT, DBE or DEFS as a result thereof.

4. Any unlawful, improper or irregular conduct on the part of—

(a) the IDT, DBE or DEFS, their officials or employees; or

(b) the contractors, suppliers or service providers, their directors, employees, contractors, sub-contractors or agents,

relating to any one or more of the allegations set out in paragraphs 1 to 3 of this Schedule.

PROKLAMASIE NO. R. 32 VAN 2016
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 EN SPESIALE TRIBUNAAL

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 Onafhanklike Ontwikkelingsraad (hierna na verwys as "die OO"), die Departement van Basiese Onderwys (hierna na verwys as "die DBO") en die Departement van Onderwys vir die Vrystaat Provinsie (hierna na verwys as "die DOVP");

EN AANGESIEN die OO, DBO en die DOVP moontlike 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 OO, DBO en die DOVP, 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 OO, DBO en die DOVP;
- (b) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die OO, DBO en die DOVP;
- (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 OO, DBO en die DOVP 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 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 OO, DBO en die DOVP gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Drie-en-twintigste dag van April Twee duisend-en-sestien.

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 OO, DBO of DOVP 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, omsendbriewe, praktyknotas of instruksies wat deur die Nasionale Tesourie of toepaslike Provinsiale Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die OO, DBO of DOVP van toepassing is,

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes deur die OO, DBO of DOVP opgedoen was ten opsigte van die volgende projekte:

No	Bod nommer	Beskrywing van projek
1	FS ASIDI 12/14/1	"Boshof Intermediate"
2	FS ASIDI 12/14/2	"Nampo Secondary"
3	FS ASIDI 12/14/3	"Caledon Park Intermediate"
4	FS ASIDI 12/14/4	Diamanthoogte
5	FS ASIDI 12/14/5	"Heide Primary"
6	FS ASIDI 12/14/6	"PT Sanders Intermediate"
7	FS ASIDI 12/14/7	"Sehlabeng Secondary"
8	FS ASIDI 12/14/8	"Tweespruit Primary"
9	FS ASIDI 12/14/9	"Itemoheng Primary"
10	FS ASIDI 12/14/10	"Luckhoff Combined"

2. Wanadministrasie en/of onreëlmatige, onbehoorlike of onwettige optrede ten opsigte van die aangeleenthede van die OO, DBO of DOVP ten opsigte van—
 - (a) die uitbesteding van die bod evalueringfunksies wat uitgevoer is ten opsigte van die aanskaffing of voorsieningskanaal bestuur prosesse; of

- (b) kontrak- en prestasiebestuur, insluitende enige versuim om tydig op te tree teen kontrakteurs, verskaffers of diensverskaffers ten opsigte van enige wanprestasie, onder-prestasie, defektiewe prestasie of laat prestasie ten opsigte van goedere, werke of dienste gelewer, uitgevoer of verrig,

ten opsigte van die projekte waarna verwys word in paragraaf 1 van hierdie Bylae, insluitende die oorsake vir sodanige wanadministrasie en/of onreëlmatige, onbehoorlike of onwettige optrede.

3. Enige wanprestasie, onder-prestasie, defektiewe prestasie of laat prestasie deur kontrakteurs, verskaffers of diensverskaffers van goedere, werke of dienste, gelewer, uitgevoer of verrig ten opsigte van die projekte waarna verwys word in paragraaf 1 van hierdie Bylae en enige verlies of skade wat deur die OO, DBO of DOVP gely is as gevolg daarvan.

4. Enige onwettige, onbehoorlike of onreëlmatige optrede deur—

- (a) die OO, DBO of DOVP, die se beamptes of werknemers; of
(b) die kontrakteurs, verskaffers of diensverskaffers, die se direkteure, werknemers, kontrakteurs, subkontrakteurs of agente,

verbandhoudend tot een of meer van die bewerings uiteengesit in paragrawe 1 tot 3 van hierdie Bylae.