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PROCLAMATION

by the

President of the Republic of South Africa

No. R. 43, 2010

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 Department of Public Works for the KwaZulu-Natal Province (hereinafter referred to as the "Department");

AND WHEREAS the Department suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and justiciable civil disputes 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 Department 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 -

- (a) serious maladministration in connection with the affairs of the Department;
- (b) improper or unlawful conduct by officials and/or employees of the Department;
- (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 Part 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, and which offences were committed in connection with the affairs of the Department; 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 have taken place between 1 January 2005 and the date of publication of this Proclamation or which took place prior to 1 January 2005, but are connected with or incidental 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 Department, 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 Twentieth day of August Two thousand and ten.

J G ZUMA
President

By Order of the President-in-Cabinet:

S C CWELE
Minister of the Cabinet

SCHEDULE

1. The procurement of and contracting for goods, works or services by or on behalf of the Department or other provincial departments or institutions for whose procurement the Department is responsible and payments made in relation thereto -
 - (a) in a manner that was not fair, equitable, transparent, competitive or cost-effective;
 - (b) in a manner that was contrary to applicable -
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury or the applicable Provincial Treasury; or
 - (iii) manuals, codes, policies, procedures, instructions or practices of or applicable to the Department;
 - (c) which was conducted or facilitated by or through the intervention of officials or employees of the Department (hereinafter collectively referred to as "the Department's personnel") with undeclared or unauthorised conflicts of interest; or
 - (d) which was conducted or facilitated by the manipulation of the Department's supply chain management or procurement processes -
 - (i) by contractors, suppliers or service providers of the Department (hereinafter collectively referred to as "the Department's suppliers and service providers"); or
 - (ii) by, in collusion with or through the intervention of the Department's personnel,
to corruptly or unduly benefit themselves or others.
2. The performance of remunerative work by the Department's personnel in conflict with the conditions of their employment.
3. The receipt of any remuneration, allowances or rewards by the Department's personnel otherwise than in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994).
4. Any undisclosed or unauthorised interests which the Department's personnel may have had in -
 - (a) contractors, suppliers or service providers bidding for work or doing business with the State, including the Department; or
 - (b) contracts awarded by the State, including the Department.
5. The premature or unjustified return by the Department of performance guarantees lodged by construction contractors.
6. The unlawful or irregular conduct by the Department's personnel, the Department's suppliers and service providers or third parties relating to any one or more of the aforementioned allegations.

PROKLAMASIE

van die

President van die Republiek van Suid-Afrika

No. R. 43, 2010

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 Departement van Openbare Werke vir die KwaZulu-Natal Provinsie (hierna na verwys as die "Departement");

EN AANGESIEN die Departement verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en beregbare 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, ten opsigte van die Departement, 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 daardie aangeleenthede, die opdrag van die Spesiale Ondersoekeenhede is om soos beoog in gemelde Wet, ondersoek te doen na enige -

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Departement;
- (b) onbehoorlike of onregmatige optrede deur beamptes en/of werknemers, van die Departement;
- (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, in verband met die sake van die Departement; 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 2005 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2005, maar wat verband hou met, of insidenteel is tot, die aangeleenthede vermeld in die Bylae of dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om 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 Departement gely is.

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

die Twintigste dag van Augustus Tweeduisend-en-tien.

J G ZUMA
President

Op las van die President-in-Kabinet:

S C CWELE
Minister van die Kabinet

BYLAE

1. Die aanskaffing van, en kontraktering vir goedere, werke of dienste, deur of namens die Departement of ander provinsiale departemente of instellings vir wie se aanskaffing die Departement verantwoordelik is en betalings wat in verband daarmee gemaak is -
 - (a) op 'n wyse wat nie billik, regverdig, deursigtig, mededingend of koste-effektief was nie;
 - (b) op 'n wyse wat strydig was met toepaslike -
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas of instruksies deur die Nasionale Tesourie of die toepaslike Provinsiale Tesourie uitgevaardig; of
 - (iii) handleidings, kodes, beleid, prosedures, instruksies of praktyke van of wat op die Departement van toepassing is;
 - (c) wat gedoen of gefasiliteer was deur of met die tussenkoms van beamptes of werknemers van die Departement (hierna gesamentlik na verwys as "die Departement se personeel") met ongeopenbaarde of ongemagtigde botsings van belange; of
 - (d) wat gedoen of gefasiliteer was deur die manipulering van die Departement se voorsieningskanaal-bestuur of aanskaffingsprosesse -
 - (i) deur kontrakteurs, verskaffers of diensverskaffers van die Departement (hierna gesamentlik na verwys as die "Departement se verskaffers en diensverskaffers"); of
 - (ii) deur, in samespanning met of deur die tussenkoms van die Departement se personeel, om hulself of andere korrupt of onbehoorlik te bevoordeel.
2. Die verrigting van besoldigde werk deur die Departement se personeel strydig met hulle diensvoorwaardes.
3. Die ontvangs van enige besoldiging, toelaes of vergoeding deur die Departement se personeel anders as in ooreenstemming met die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).
4. Enige ongeopenbaarde of ongemagtigde belange wat die Departement se personeel kon gehad het in -
 - (a) kontrakteurs, verskaffers of diensverskaffers wat 'n aanbod vir werk gemaak het of besigheid gedoen het met die Staat, insluitende die Departement; of
 - (b) kontrakte wat toegeken was deur die Staat, insluitend die Departement.
5. Die voortydige of ongeregverdigde teruggawe deur die Departement van nakomingswaarborges deur konstruksiekontrakteurs verskaf.

6. Die onwettige of onreëlmatige optrede deur die Departement se personeel, die Departement se verskaffers en diensverskaffers of derde partye ten opsigte van enige een of meer van die voorafgaande bewerings.
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