

PROCLAMATION

by the

President of the Republic of South Africa

No. R. 48, 2012

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 State Information Technology Agency (Pty) Ltd (hereinafter referred to as the "Agency");

AND WHEREAS the Agency 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 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 Agency 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 those 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 Agency;
- (b) improper or unlawful conduct by members of the board, directors, officials or employees of the Agency or officials or employees of the Departments or the public bodies for and on behalf of whom the Agency is acting, as envisaged in the State Information Technology Agency Act, 1998 (Act No. 88 of 1998);
- (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 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the Agency; 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 7 October 2003 and the date of publication of this Proclamation or which took place prior to 7 October 2003 or after the date of publication of this Proclamation, and which is relevant to, connected with or 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 Agency 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 Pretoria this Thirteenth day of August Two thousand and twelve.

J G Zuma
President

By Order of the President-in-Cabinet:

J T Radebe
Minister of the Cabinet

SCHEDULE

1. The procurement of works, goods or services by the Agency for itself or for and on behalf of Departments for whose procurement the Agency is responsible, as envisaged in the State Information Technology Agency Act, 1998, or on behalf of public bodies which so requested the Agency -
 - (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 relevant Provincial Treasuries; or
 - (iii) manuals, codes, policies, procedures, instructions or practices of or applicable to the Agency, the Departments or the public bodies concerned;
 - (c) which was conducted or facilitated by or through the intervention of -
 - (i) members of the board, directors, officials or employees of the Agency (hereinafter collectively referred to as “the Agency’s personnel”); or
 - (ii) officials or employees of the Departments or public bodies concerned (hereinafter collectively referred to as “the Clients’ personnel”),
 with undeclared or unauthorised conflicts of interest;
 - (d) which was conducted or facilitated by the manipulation of the Agency’s procurement processes –
 - (i) by suppliers or service providers of the Agency, the Departments or public bodies concerned; or
 - (ii) by, in collusion with or through the intervention of, the Agency’s personnel or the Clients’ personnel,
 to corruptly or unduly benefit themselves or others; and
 - (e) which was facilitated by, through or in return for payment or offers of payment to or receipt by the Agency’s personnel or the Clients’ personnel of gratification, contrary to applicable laws or the employment conditions of such personnel.
2. The binding of the Agency, the Departments or public bodies concerned to incur, irregular, unauthorised or fruitless and wasteful expenditure.
3. The failure to collect monies due, owing and payable to the Agency.

PROKLAMASIE*van die**President van die Republiek van Suid-Afrika***No. R. 48, 2012****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 aangeleentheid van die

Staatsinligtingstegnologie-agentskap (Edms) Bpk (hierna na verwys as "die Agentskap");

EN AANGESIEN die Agentskap of die Staat moontlik 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 vermeld, ten opsigte van die Agentskap, 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 daardie aangeleenthede, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in die Wet, ondersoek te doen na enige -

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Agentskap;
- (b) onbehoorlike of onregmatige optrede deur lede van die raad; direkteure, beamptes of werknemers van die Agentskap of beamptes of werknemers van die Departemente of openbare liggame vir en namens wie die Agentskap optree, soos beoog in die Wet op die Staatsinligtingstegnologie-agentskap, 1998 (Wet No. 88 van 1998);
- (c) onregmatige bewilling 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 die 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 Agentskap; 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 7 Oktober 2003 en die datum van publikasie van hierdie Proklamasie, of wat plaasgevind het voor 7 Oktober 2003 of na die datum van publikasie van hierdie Proklamasie, en wat relevant is tot, verband hou met, of 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 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 Agentskap of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Dertiende dag van Augustus Twee duisend-en-twaalf.

J G Zuma
President

Op las van die President-in-Kabinet:

J T Radebe
Minister van die Kabinet

BYLAE

1. Die aanskaffing van werke, goedere, of dienste deur die Agentskap vir homself of vir en namens Departemente vir wie se aanskaffing die Agentskap verantwoordelik is soos beoog in die Wet op die Staatsinligtingstegnologie-agentskap, 1998, of namens openbare liggame wat die Agentskap so versoek het -
 - (a) op 'n wyse wat nie regverdig, billik, 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 Agentskap, die betrokke Departemente of openbare liggame van toepassing was;
 - (c) wat gedoen of gefasiliteer was deur, of deur die tussenkoms van -
 - (i) lede van die raad, direkteure, beamptes of werknemers van die Agentskap (hierna gesamentlik na verwys as die "Agentskap se personeel"); of
 - (ii) beamptes of werknemers van die betrokke Departemente of openbare liggame (hierna gesamentlik na verwys as die "Kliënte se personeel"), met ongeopenbaarde of ongemagtigde konflikte van belange;
 - (d) wat gedoen of gefasiliteer was deur die manipulering van die Agentskap se aanskaffings prosesse -
 - (i) deur die verskaffers of diensverskaffers van die Agentskap, die betrokke Departemente of openbare liggame; of
 - (ii) deur, in samespanning met of deur die tussenkoms van die Agentskap se personeel of die Kliënte se personeel, om hulself of andere op 'n korrupte wyse of onbehoorlik te bevoordeel; en
 - (e) wat gefasiliteer was deur, deur tussenkoms van of in ruil vir betaling of aanbiedinge van betalings aan of ontvangs deur die Agentskap se personeel of die Kliënte se personeel van gratifikasie strydig met toepaslike wetgewing of die diensvoorwaardes van sodanige personeel.
2. Die verbintenis van die Agentskap, die betrokke Departemente of openbare liggame om onreëlmatige, ongemagtigde of vrugtelose uitgawes aan te gaan.
3. Die versuim om gelde wat verskuldig, opeisbaar en betaalbaar is, in te vorder.