

PROCLAMATION NO. R. 19 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 Construction Industry Development Board (hereinafter referred to as "the Board");

AND WHEREAS the—

- (a) Board; and
 - (b) State institutions, as defined in section 1 of the Act, who acted on the purportedly lawful decisions of the Board (hereinafter referred to as "the State institutions"),
- 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 Board and 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 Board;
- (b) improper or unlawful conduct by officials or employees of the Board;
- (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 Board; 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 2006 and the date of publication of this Proclamation or which took place prior to 1 January 2006 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 Board or 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 Sixteenth day of March Two thousand and sixteen.

J G Zuma
President

By Order of the President-in-Cabinet:

T M Masutha
Minister of the Cabinet

SCHEDULE

1. Maladministration in the affairs of the Board in respect of—
 - (a) the receipt of, or the processing of, or granting of applications by contractors to the Board for registration as a contractor in the register of contractors contemplated in section 16 of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000); or
 - (b) contractor grading designations awarded by the Board to contractors, in a manner that was—
 - (i) contrary to—
 - (aa) applicable legislation;
 - (bb) applicable manuals, guidelines, practice notes or instructions issued by the National Treasury, the Department of Public Works, the Department of Trade and Industry or any other applicable regulatory authority; or
 - (cc) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Board;
 - (ii) conducted by or facilitated through the improper conduct of—
 - (aa) officials or employees of the Board with undeclared or unauthorized conflict of interests; or
 - (bb) contractors or any other third party, to corruptly or unduly benefit themselves or others; or
 - (iii) fraudulent.
2. Any—
 - (a) failure to implement appropriate measures to safeguard confidential or privileged information or records submitted to the Board; or

(b) irregular dissemination of confidential or privileged information or records by officials or employees of the Board to persons or entities who are not lawfully entitled to such information or records.

3. The appointment of a service provider by the Board, in terms of bid number RFB30026, to a panel of service providers to conduct investigations for the Board over a period of three years and any subsequent work awarded by the Board to the service provider, in a manner that was—

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

(b) contrary to—

(i) applicable legislation;

(ii) applicable manuals, guidelines, practice notes or instructions issued by the National Treasury; or

(iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Board,

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

4. The validity of construction work contracts awarded by the State institutions to contractors contemplated in paragraph 1 of this Schedule, where the State institutions relied on the unlawful or invalid—

(a) registration as contractors in the register of contractors; or

(b) contractor grading designations awarded by the Board to those contractors.

5. Any improper or unlawful conduct by officials or employees of the Board, contractors contemplated in paragraph 1 of the Schedule or any other person, in relation to allegations contemplated in paragraphs 1, 2 or 3 of this Schedule.