
PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 2 OF 2018**PROCLAMATION
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 North West Department of Public Works, Roads and Transport (hereinafter referred to as "the Department");

AND WHEREAS the Department or the State 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 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 alleged—

- (a) serious maladministration in connection with the affairs of the Department;
- (b) improper or unlawful conduct by employees or officials 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 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 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 took place between 1 January 2008 and the date of publication of this Proclamation or which took place prior to 1 January 2008 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 Department 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 Fourteenth day of December 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 Department 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 the relevant Provincial Treasury; or
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Department;
- (c) conducted by or facilitated through the improper or unlawful conduct of—
 - (i) officials or employees of the Department; or
 - (ii) contractors, suppliers or service providers of the Department or any other person or entity, to corruptly or unduly benefit themselves or any other person or entity; or

(d) fraudulent, and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Department or the State in relation to the following tenders—

- (aa) Scholar Transport tender number PWRT 029/10;
- (bb) Grass cutting tender number PWRT 02/11;
- (cc) Road D52 and Road D53 tender number NWRT 58/08A;
- (dd) Road D542 tender number NWRT 59/08C;
- (ee) Road D1169 tender number NWRT 61/08A; and
- (ff) Road D614 tender number NWRT 58/08B.

2. Non-performance or mal-performance by the contractors, suppliers and service providers that were appointed in terms of the tenders set out in paragraph 1, above, to render goods, works or services to the Department.

3. Maladministration in the affairs of the Department in relation to payments that were made by the Department to beneficiaries of the Expanded Public Works Programme.

4. Any unlawful or improper conduct by officials or employees of the Department, the applicable contractors, suppliers or service providers or any other person or entity, in relation to the allegations set out in paragraphs 1 to 3 above.

5. The failure of officials or employees of the Department to declare their interests in companies or close corporations.

PROKLAMASIE NO. R. 2 VAN 2018
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 aangeleentheid van die Noord-Wes Departement van Openbare Werke, Paaie en Vervoer (hierna na verwys as "die Departement");

EN AANGESIEN die Departement of die Staat verliese gely het wat moontlik 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 aangeleentheid in die Bylae vermeld, ten opsigte van die Departement, 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 aangeleentheid, 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 aangeleentheid van die Departement;
- (b) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die Departement;
- (c) onregmatige bewilliging of besteding van openbare 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 openbare geld of skade aan openbare 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 Departement 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 2008 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2008 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 Departement of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Veertiende dag van Desember 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 Departement 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, omsendbriewe 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 Departement van toepassing is;
- (c) gedoen was of gefasiliteer was deur onbehoorlike of onregmatige optrede van—
 - (i) beamptes of werknemers van die Departement; of
 - (ii) kontrakteurs, verskaffers of diensverskaffers van die Departement of enige ander persoon of entiteit, of
- (d) bedrieglik was, en verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat deur die Departement opgedoen was ten opsigte van die volgende tenders—
 - (aa) “Scholar Transport tender number PWRT 029/10”;
 - (bb) “Grass cutting tender number PWRT 02/11”;
 - (cc) “Road D52 and Road D53 tender number NWRT 58/08A”;
 - (dd) “Road D542 tender number NWRT 59/08C”;
 - (ee) “Road D1169 tender number NWRT 61/08A”; en
 - (ff) “Road D614 tender number NWRT 58/08B”.

2. Geen prestasie of wanprestasie deur kontrakteurs, verskaffers of diensverskaffers wat aangestel is kragtens die tenders uiteengesit in paragraaf 1, hierbo, om goedere, werke of dienste aan die Departement te verskaf.

3. Wanadministrasie in die sake van die Departement ten opsigte van betalings wat gemaak is deur die Departement aan bevoorreedes van die “Expanded Public Works Programme”.

4. Enige onwettige of onbehoorlike gedrag deur beamptes of werknemers van die Departement, die toepaslike kontrakteurs, verskaffers of diensverskaffers of enige ander persoon of entiteit, ten opsigte van die bewering uiteengesit in paragrawe 1 tot 3, hierbo.

5. Die versuim van beamptes of werknemers van die Departement om hul belange in maatskappye of beslote korporasies te verklaar.