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GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. 361

9 May 2012

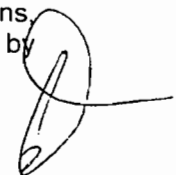
COMMISSION OF INQUIRY INTO ALLEGATIONS OF FRAUD, CORRUPTION, IMPROPRIETY OR IRREGULARITY IN THE STRATEGIC DEFENCE PROCUREMENT PACKAGE

CALL FOR SUBMISSIONS

1. The President of the Republic of South Africa has under s 84(2)(f) of the Constitution of the Republic of South Africa, 1996 and in terms of Government Notice R926 published in *Government Gazette* No 34731, 4 November 2011 appointed a Commission of Inquiry into the Allegations of Fraud, Corruption, Impropropriety or Irregularity in the Strategic Defence Procurement Package ("the SDPP").

The Terms of Reference of the Commission are to inquire into, make findings, report on and make recommendations concerning the following, taking into consideration the Constitution and relevant legislation, policies and guidelines:

- 1.1 The rationale for the SDPP.
 - 1.2 Whether the arms and equipment acquired in terms of the SDPP are underutilised or not utilised at all.
 - 1.3 Whether job opportunities anticipated to flow from the SDPP have materialised at all and:
 - 1.3.1 if they have, the extent to which they have materialised; and
 - 1.3.2 if they have not, the steps that ought to be taken to realise them.
 - 1.4 Whether off-sets anticipated to flow from the SDPP have materialised at all and:
 - 1.4.1 if they have, the extent to which they have materialised; and
 - 1.4.2 if they have not, the steps that ought to be taken to realise them.
 - 1.5 Whether any person/s, within and/or outside the Government of South Africa, improperly influenced the award or conclusion of any of the contracts awarded and concluded in the SDPP procurement process and, if so:
 - 1.5.1 Whether legal proceedings should be instituted against such persons, and the nature of such legal proceedings; and
 - 1.5.2 Whether, in particular, there is any basis to pursue such persons for the recovery of any losses that the State might have suffered as a result of their conduct.
 - 1.6 Whether any contract concluded pursuant to the SDPP process is tainted by any fraud or corruption capable of proof, such as to justify its cancellation, and the ramifications of such cancellation.
2. The Commission is to report to the President within a period of two years from date of proclamation.
 3. This serves to invite you to make written submissions to the Commission by way of an affidavit, in respect of all or specific items of the Terms of Reference, by no later than 30 July 2012, the latter being the cut-off date for the receiving of submissions. Such submissions shall identify confidential or other classified elements in the representations, which must be sealed and dispatched accordingly. The latter date may be extended by the Chairperson if there are sufficient reasons for doing so.



4. Upon receipt of written submissions the Commission may require, on notice, a deponent or any person to appear before it in order to make oral representations on specified aspects of the Terms of Reference and in such notice it may give directions with regard to such oral representations.
5. Regulations have been promulgated with reference to the Commission: Commission Regulations, GN R4, GG 35023, 8 February 2012.
6. The Commission has published Directives setting out the procedure and format to be followed and they should be read in conjunction with the Regulations and the Commissions Act 8 of 1947. The Directives have been published in the *Government Gazette* simultaneously with this notice.

Kindly direct your written representations to the address indicated hereunder, being the temporary seat of the Commission:

The Chairperson: Arms Procurement Commission
House A
Nzasm Court
3rd Street
Salvokop
Pretoria
0002


Private Bag X02
The Tramshed
0127

Email: admin@armscomm.org.za
Tel: to be provided at a later stage
Fax: to be provided at a later stage

Media queries of whatever nature should be addressed to:
Mr Baloyi
Senior Manager Communications
Cell: 078 095 9477

Legal queries should be addressed to:
Advocate Mdumbe
Head of Legal Research Division
Cell: 078 095 9452

BY ORDER



8/5/2012.

Honourable Judge W L Seriti
Chairperson of the Arms Procurement Commission

**A COMMISSION OF INQUIRY INTO ALLEGATIONS OF FRAUD, CORRUPTION, IMPROPRIETY OR
IRREGULARITY IN THE STRATEGIC DEFENCE PROCUREMENT PACKAGE ("THE SDPP")**

DIRECTIVES ISSUED BY THE CHAIRPERSON

DEFINITIONS

1. In this directive, unless the context indicates the contrary,

"Affected person" means any natural or juristic person implicated in the evidence to have improperly influenced the award or conclusion of any of the contracts awarded and concluded in the SDPP Procurement Process.

"Chairperson" means Judge W L Seriti, appointed by the President.

"Confidential", "Secret" or "Classified" means any communication or document which by law is protected from public disclosure.

"Designated Person" means a person appointed by the Chairperson in terms of Regulation 4.

"Discovery" means the discovery of all relevant documents, records, tape recordings, electronic communications and data messages as are directed to be discovered by the Chairperson through the Secretary.

"Document" includes whether in electronic form or otherwise, any book, pamphlet, record, list, circular, plan, poster, publication, drawing, photograph, picture or data, and also any disc, hard drive recording or other device by means of which information or data is recorded or stored.

"Evidence Leader" means the person/s appointed by the Chairperson in terms of Regulation 4 and whose primary responsibility shall be to present evidence to the Commission at its hearings by way of leading witnesses and give assistance to the Commission as may be necessary.

"Hearing" means the taking of evidence only on matters as the Chairperson may direct.

"Investigation" means the investigation of issues referred to in the Terms of Reference or such issues as the Chairperson may direct.

"Issues" means the issues defined in the Terms of Reference.

"Regulations" means Regulations No. R. 4, 2012 published in Government Gazette No. 35023, 8 February 2012

"Secretary" means the Secretary of the inquiry appointed by the Chairperson.



“Terms of Reference” means the Terms of Reference for the inquiry, published on 4 November 2011 in the Government Notice No R 926.

“Third Parties” means those persons who have been invited by the Chairperson and/or those persons with a special interest and/or knowledge who have been invited to make representations and submissions to the inquiry.

“Witness” means a person contemplated in paragraphs 13 to 20.

Any reference to singular includes plural and *vice versa*.

Any reference to gender includes the other genders.

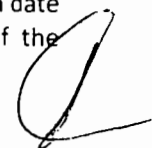
Any reference to a person includes natural and juristic persons.

GENERAL

2. These directives are subject to, and should be read in conjunction, with the Commissions Act 8 of 1947 (“the Commissions Act”) and the Commission Regulations, GN R4, GG 35023, 8 February 2012.
3. The conduct of and the procedure of this inquiry shall be under the control and discretion of the Chairperson.
4. The Commission shall determine whether the evidence presented to the inquiry or a representation to the inquiry is to be in writing or oral.
5. The Commission shall determine whether a person can participate in the inquiry and the manner and extent of their participation after considering:
 - (a) whether the person’s interest may be adversely affected by the findings of the Commission;
 - (b) whether the participation of the person would further the conduct of the inquiry; and
 - (c) whether the participation would contribute to the fairness and openness of the inquiry.
6. All parties shall be deemed to undertake to adhere to these directives. The Chairperson shall deal with the breach of these directives as he sees fit.
7. The directives outlined below are not intended to cover every eventuality or every procedural issue. Where interests of justice and fairness require it, the Commission may depart from these directives. Further, these directives may be amended by the Chairperson in keeping with his obligation to act fairly and avoid unnecessary costs. Should the directives be amended, the amended version will be published.

SUBMISSIONS

8. Any person who wishes to give evidence or make submissions to the Commission shall, by a date directed by the Chairperson, file with the Secretary and marked for the attention of the



Chairperson, a copy (and an electronic copy where possible) of his or her submissions, which shall include a statement on oath by a person who is able to verify any factual allegation pertaining to the issues described in the Terms of Reference and where applicable:

- (a) documents which are relevant and support the allegations pertaining to the issues described in the Terms of Reference;
- (b) identification of confidential, classified or secret elements in the representations and these shall be separate, sealed and dispatched accordingly;
- (c) legal submissions which address any of the Terms of Reference; and
- (d) any expert opinion on any relevant aspect of the Terms of Reference.

9. Format of submissions

- (a) Any submission which is more than 15 pages shall be accompanied by a summary indicating the essence of the submission and the conclusion sought to be drawn from it and contain a table of contents with correct references.
- (b) Any person who makes submissions must lodge 5 copies of the submissions.
- (c) The submissions shall be clearly typed on stout A4 standard paper in double-spacing in black ink, on one side of the paper only.
- (d) Legible documents that were typed or printed in their original form such as cheques and the like shall not be retyped, clear photocopies shall be provided instead.
- (e) The pages shall be numbered clearly and consecutively.
- (f) A bulky submission shall be divided into separate conveniently-sized volumes of approximately 100 pages each.
- (g) At the top of each page containing evidence, the name of the witness, and at the top of each page containing exhibits the number of the exhibit, shall appear.
- (h) The submission shall be securely bound in suitable covers and shall bear the name of the party or his attorney, the postal and physical address, facsimile, telephone number and an email address, where available, and the original document shall be signed by the party or his or her attorney.
- (i) Each submission shall be securely bound in book format to withstand constant use and shall be so bound that upon being used will lie open without manual or other restraint.
- (j) Where documents are lodged and such documents are recorded on a computer disk, the party lodging the document shall where possible also make available to the Commission a disk containing the file in which the document is contained, or transmit an electronic copy of the document concerned by email in a format determined by the Commission which is compatible with software that is used by the Commission at the time of lodgment. Provided that the transmission of such a copy shall not relieve the party concerned from the obligation to lodge the prescribed number of hard copies under paragraph 9(b).



- (k) Every submission at its close shall bear the name of the person or his or her legal representative, the postal and physical address, fax email, telephone number, where available. And the original document shall be signed by the party or his or her attorney.
10. Any person who intends giving oral evidence before the Commission shall submit to the Chairperson, through the Secretary:
- (a) a brief summary of the evidence that he or she wishes to lead before the Commission; and
 - (b) a statement as to how he or she satisfies the criteria set out in paragraph 5.
11. On instruction of the Chairperson, the Secretary shall furnish to every affected person the submissions together with all relevant documents which implicate such person in the improper influencing of the award or conclusion of any of the contracts awarded and concluded in the SDPP Procurement Process.
12. Any affected person shall have the right to make submissions and produce documents in answer to the allegations made against him or her. No evidence regarding any fact or information that comes to light in consequence of any such submission, shall be admissible in any criminal proceedings, except in criminal proceedings in terms of section 6 of the Commissions Act or Regulation 14.

HEARINGS

13. The Commission may, after receipt of submissions, require by means of a notice or summons, any deponent or any person to appear before it to make oral representations on any aspect of the Terms of Reference.
14. The Commission may call upon any competent and compellable person to give evidence on any of the issues.
15. Any party may, through the Secretary and after approval from the Chairperson, call upon any competent and compellable person to give evidence on any relevant aspect of the Terms of Reference.
16. In making a determination whether to exercise the powers contemplated in the directives above, the Chairperson shall consider whether:
- (a) the person played or may have played, a direct and significant role in relation to the matters to which this inquiry relates;
 - (b) the person has significant interest in an important aspect of the matters to which the inquiry relates; or
 - (c) the person has been implicated in the evidence submitted to it or may be subject to explicit or significant criticism during the inquiry proceedings or in the report or in any interim report.



17. Where a witness gives oral evidence at the hearing, the Evidence Leader shall present information relevant to the Inquiry to the witness and the Commissioners may put questions to a witness if they deem this necessary.
18. Where a witness has been questioned orally the Chairperson may allow his or her legal representative to put questions to him or her to clarify certain aspects.
19. Where a witness has been questioned by the Evidence Leader, or by the Commissioners, and that witness's evidence directly relates to the evidence of another witness or implicates another person, the legal representative of the witness to whom the evidence relates or person implicated may apply to the Chairperson for permission to question the witness giving oral evidence. When making such application, the legal representative must state:
 - (a) the issues in respect of which the witness is to be questioned; and
 - (b) whether questioning will raise new issues and if not, why the questioning should be permitted.
20. It is in the discretion of the Chairperson to allow the cross-examination and re-examination of any witness called to give evidence.
21. The hearing shall be open to the public unless on good cause shown the Chairperson directs otherwise.
22. The Commission may by order or notice restrict or prohibit the publishing or broadcast of any of its proceedings if the Commission has reason to believe that the order or notice is necessary for the effective and efficient fulfillment of the Commission's Terms of Reference and would make available to the Commission evidence that would otherwise not be available.
23. The Commission shall sit at such premises and at such dates and times as the Chairperson may direct.
24. The Chairperson may invite any party to make legal submissions addressing any of the issues in the Terms of Reference.

APPLICATIONS FOR ANONYMITY AND OTHER PROTECTIVE MEASURES

25. Any person who believes that he or she has relevant evidence to submit to the inquiry but believes that there is a need to provide such evidence anonymously may apply to the Chairperson of the Commission for confidentiality.
26. The Chairperson will, in the first instance, discuss with any such person the nature of the evidence which that person can give to the Inquiry, the measures sought to protect anonymity and the reasons for seeking anonymity. If following this preliminary stage the Chairperson considers the evidence to be of sufficient relevance as to be of interest, and he accepts that there is a *prima facie* case for anonymity, then he will invite a formal application for protective measures to be submitted. If a witness statement has not been provided voluntarily already then he will request one in writing at this stage.



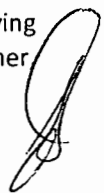
27. A formal application for anonymity or other protective measure shall be made in writing and shall contain a statement setting out the protective measures sought, reasons in support of the application for anonymity and other protective measures and any other factual material relied on. For the purposes of the inquiry, anonymity may include the right to have his or her identity disclosed only by way of non-identifying initials, and if the person so wishes, the right to testify before the Commission in private, together with any other privacy measures that the person may request from the Chairperson and which the Chairperson, in his discretion, grants. Subject further to the discretion of the Chairperson, specified persons may be present during testimony being heard in private.
28. A person who is granted confidentiality shall be identified in the records, transcripts of the hearing and any reports of the Commission by non-identifying initials.
29. The witness shall reveal his or her name to the Commissioners and to the Evidence Leaders for the purposes of preparation. The Commission and Evidence Leaders shall maintain the confidentiality of the names revealed to them.
30. Commission staff and other contracted service providers, and media representatives shall be deemed to undertake to adhere to the directives in respect of confidentiality.
31. Where the Chairperson refuses the application for protective measures either in whole or in part, then the Chairperson will not ordinarily be expected to compel the applicant to give evidence.

DISCOVERY

32. The Commission may, at any stage, call on any person to make discovery on oath to the inquiry within a time-frame directed by the Chairperson.
33. Any interested person may, with the approval of the Chairperson, call upon any person through the Secretary to make discovery of any document relevant to the inquiry. The request must state:
 - (a) the reasons the interested person believes that the holder of document possesses the document; and
 - (b) the reasons the interested person believes the document is relevant to a matter before the Commission
34. Documents which by law are protected from public disclosure will remain so protected.

CONTEMPT

35. Any person summoned to attend and give evidence or to produce any book, document, or object before the Commission who, without sufficient cause, fails to attend at the time and place specified in the summons or to remain in attendance until the conclusion of the inquiry or until he or she is excused by the Chairperson of the Commission from further attendance, or having attended, refuses to be sworn-in or to make affirmation as a witness after he or she has been required by the Chairperson of the Commission to do so or, having been sworn in or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her.

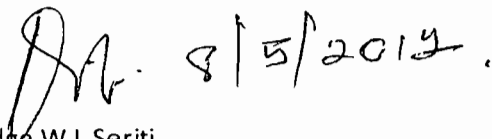


or fails to produce any book, document or object in his or her possession or custody, or under his or her control which she or he has been summoned to produce shall be dealt with in terms of section 1(2) and (3) of the Commissions Act read in conjunction with Regulations 8(1), 16(1)(b) and (2)(a).

REPORT

36. Pursuant to Regulation 15, the contents of the report, and any interim report or information regarding the consideration of evidence by the Commission will be treated as confidential unless the President has authorized the publication thereof.

IN COMPILING THIS DIRECTIVE WE BORROWED AND DISTILLED THE BEST PRACTICE FROM SOURCES IN THE REPUBLIC AND OTHER JURISDICTIONS



The Honourable Judge W L Seriti
Chairperson of the Arms Procurement Commission