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# PROCLAMATION

*by the*

*President of the Republic of South Africa*

No. R. 59, 2013

## **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 national Department of Public Works (hereinafter referred to as "the Department");

AND WHEREAS the allegations relate to a prestige project involving the security upgrading of the private residence of the President situated at Nkandla, KwaZulu-Natal (hereinafter referred to as "the Project");

AND WHEREAS the Department or the State may have suffered losses in connection with the Project that may be recovered;

AND WHEREAS I deem it necessary that the said allegations made in connection with the Project 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, and after consultation with the Minister of Public Works, 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 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 Department;
- (b) improper or unlawful conduct by officials and/or employees of the Department;
- (c) unlawful appropriation or expenditure of public money;
- (d) intentional or negligent loss of public money;
- (e) 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
- (f) 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 has taken place between 1 January 2008 and the date of publication of this Proclamation, or after the date of publication of this Proclamation, and which is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or which involves the same persons, entities, transactions or contracts investigated under the 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 damages or losses suffered by the Department or the State, in relation to the matters mentioned in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Nkandla this eighteenth day of December Two thousand and thirteen.

**J G Zuma**  
**President**

By Order of the President-in-Cabinet:

**J T Radebe**  
**Minister of the Cabinet**

**SCHEDULE**

1. The procurement of, and contracting for, goods, works or services by or on behalf of the Department in connection with the Project –
  - (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;
    - (iii) manuals, codes, policies, procedures, prescripts, guidelines, instructions or practices of, or applicable to the Department; or
    - (iv) delegations of authority;
  - (c) from contractors, suppliers or service providers (hereinafter collectively referred to as “the Department’s suppliers”) –
    - (i) owned, managed or operated by –
      - (aa) officials or employees of the Department (hereinafter collectively referred to as “the Department’s personnel”); or
      - (bb) the spouses, life partners, relatives, friends or associates of the the Department’s personnel; or
    - (ii) in which the Department’s personnel held undeclared or unauthorised interests;
  - (d) by the manipulation of the Department’s procurement processes by the Department’s personnel, including the employment of unlawful schemes and practices, such as -
    - (i) cover-quoting to secure –
      - (aa) unmerited advantage; or
      - (bb) the awarding of contracts by the Department to the actual or potential prejudice of the Department or the State, or any other potential contractors, suppliers or service providers; or
    - (ii) splitting, where works, goods or services are split into parts or into items of lesser value as a means of avoiding compliance with procurement prescripts or keeping procurement within the scope of the delegated authority of certain of the Department’s personnel; or
  - (e) by evading competitive bidding processes by the renewal, extension or amendment of the Department’s contracts with the Department’s suppliers, including the extension of the periods of duration of such contracts,

and related unauthorised, irregular, fruitless and wasteful expenditure incurred or losses suffered by the Department or the State.

2. Payments that were made by or on behalf of the Department in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

3. Any undisclosed or unauthorised interests which the Department's personnel may have had in the Department's suppliers bidding for work or doing business with the Department or to whom contracts were awarded by the Department, and the extent of any actual or potential benefits derived directly or indirectly by the Department's personnel from such undisclosed or unauthorised interests in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

4. Maladministration of the affairs of the Department and any losses or prejudice suffered by the Department or the State as a result of such maladministration in relation to –

- (a) payments that were made to the Department's suppliers despite their non-performance, incomplete performance or defective performance;
- (b) overpayments or duplicate payments that were made to the Department's suppliers;
- (c) unlawful conduct or irregular practices of the Department's personnel affecting the Department's funds; or
- (d) failure by the Department's personnel to exercise proper control over the expenditure of the Department's funds,

including the causes of such maladministration in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

5. Improper or unlawful conduct by the Department's suppliers or other third parties in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

**PROKLAMASIE***van die**President van die Republiek van Suid-Afrika***No. R. 59, 2013****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 Ondersoekeenheede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as "die Wet"), gemaak is in verband met die aangeleenthede van die nasionale Departement van Openbare Werke (hierna na verwys as "die Departement");

EN AANGESIEN die bewerings verband hou met 'n prestige projek wat verband hou met die sekuriteitsopgradering van die privaat woning van die President geleë te Nkandla, KwaZulu-Natal (hierna na verwys as "die Projek");

EN AANGESIEN die Departement of die Staat moontlik verliese gely het in verband met die Projek wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings wat in verband met die Projek gemaak is, ondersoek en siviele verrigtinge voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, en na oorlegpleging met die Minister van Openbare Werke, die aangeleenthede 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 daardie aangeleenthede, die opdrag van die Spesiale Ondersoekeenheid 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;
- (d) opsetlike of nalatige verlies van publieke geld;
- (e) 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), in verband met die sake van die Departement; of
- (f) 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 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, transaksies 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 Ondersoekkeenheid toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige skade of verliese wat deur die Departement of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Nkandla op hede die agtiende dag van Desember Twee duisend-en-dertien.

**J G Zuma**

**President**

Op las van die President-in-Kabinet:

**J T Radebe**

**Minister van die Kabinet**



**BYLAE**

1. Die verkryging van, of kontraktering vir, goedere, werke of dienste deur of ten behoeve van die Departement in verband met die Projek -
  - (a) op 'n wyse wat nie billik, regverdig, deursigtig, mededingend of koste-effektief was nie;
  - (b) op 'n wyse wat strydig is met toepaslike -
    - (i) wetgewing;
    - (ii) handleidings, riglyne, praktyksnotas of instruksies deur die Nasionale Tesourie uitgereik;
    - (iii) handleidings, kodes, beleid, prosedures, voorskrifte, riglyne, instruksies of praktyke van, of toepaslik op die Departement; of
    - (iv) delegasies van gesag;
  - (c) van kontrakteurs, verskaffers of diensverskaffers (hierna gesamentlik na verwys as “die Departement se verskaffers”) –
    - (i) besit, bestuur of bedryf deur –
      - (aa) beamptes of werknemers van die Departement (hierna gesamentlik na verwys as “die Departement se personeel”); of
      - (bb) die gades, lewensmaats, familielede, vriende of vennote van die Departement se personeel; of
    - (ii) waarin die Departement se personeel onverklaarde of ongemagtigde belange gehou het;
  - (d) deur die manipulasie van die Departement se verkrygingsproses deur die Departement se personeel, insluitend die bedryf van onregmatige skemas en praktyke, soos –
    - (i) skyn-kwotering ten einde –
      - (aa) onverdiende voordeel; of
      - (bb) die toekenning van kontrakte deur die Departement tot die werklike of potensiele nadeel van die Departement of die Staat, of enige ander potensiele kontrakteur, verskaffer of diensverskaffer,  
te verseker; of
    - (ii) opdeling, waar werke, goedere of dienste in dele of in items van laer waarde opgedeel word as 'n metode om nakoming van

verkrygingsvoorskrifte te ontwyk of om verkryging binne die omvang van die gedelegeerde gesag van sekere van die Departement se personeel te hou; of

- (e) deur mededingende bodprosesse te ontduik deur die hernuwing, uitbreiding of wysiging van die Departement se kontrakte met die Departement se verskaffers, insluitend die verlenging van die tydsduur van sodanige kontrakte,
- en verbandhoudende ongemagtigde, onreëlmatige, vrugtelose en verspilte uitgawes opgehoop of verliese gely deur die Departement of die Staat.

2. Betalings wat deur of ten behoeve van die Departement gemaak is in verband met enige verkrygende handeling of transaksie beoog in paragraaf 1 van hierdie Bylae.

3. Enige onverklaarde of ongemagtigde belange wat die Departement se personeel mag gehad het in die Departement se verskaffers se bieëry vir werk of vir die doen van besigheid met die Departement of aan wie kontrakte deur die Departement toegeken is, en die omvang van enige werklike of potensiële voordele verkry, direk of indirek, deur die Departement se personeel uit sodanige onverklaarde of ongemagtigde verkrygende handeling of transaksie beoog in paragraaf 1 van hierdie Bylae.

4. Wanadministrasie van die aangeleenthede van die Departement en enige verliese of nadeel deur die Departement of die Staat gely as gevolg van sodanige wanadministrasie in verband met –

- (a) betalings wat aan die Departement se verskaffers gemaak is ten spyte van hul wanprestasie, onvoltooide prestasie of gebrekkige prestasie;
- (b) oorbetalings of duplikaat betalings wat aan die Departement se verskaffers gemaak is;
- (c) onregmatige gedrag of onreëlmatige praktyke van die Departement se personeel wat die Departement se fondse raak; of
- (d) versuim deur die Departement se personeel om behoorlike beheer uit te oefen oor die besteding van die Departement se fondse,

insluitend die oorsake van sodanige wanadministrasie in verband met enige verkrygende handeling of transaksie beoog in paragraaf 1 van hierdie Bylae.

5. Onbehoorlike of onregmatige optrede deur die Departement se verskaffers of ander derde partye in verband met enige verkrygende handeling of transaksie beoog in paragraaf 1 van hierdie Bylae.

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