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PROCLAMATION

by the

President of the Republic of South Africa

No. R. 7, 2014

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—

- (a) the Department of Rural Development and Land Reform (formerly known as the Department of Land Affairs), in its national department, its provincial departments, its trading entities and their respective agencies (hereinafter collectively referred to as "the DRDLR"); and
 - (b) the State Information Technology Agency (Pty) Ltd, (hereinafter referred to as "the SITA"),
- (hereinafter collectively referred to as "the Institutions");

AND WHEREAS the Institutions 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 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 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 Institutions;
- (b) improper or unlawful conduct by members of the board, directors, officials, employees, personnel or members of one or both of the Institutions (hereinafter collectively referred to as "the Institutions' personnel");
- (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) offences 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 Institutions; 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 which is relevant to, connected with, incidental to or ancillary to the matters mentioned in the Schedule or which involve the same persons, entities, procurement processes 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 recovery of any losses suffered by the Institutions 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 Sixth day of February Two thousand and fourteen.

J G Zuma
President

By Order of the President-in-Cabinet:

J T Radebe
Minister of the Cabinet

SCHEDULE

1. For purposes of this Schedule, any reference to—
 - (a) **“contracting”** includes, but is not limited to, any negotiation processes involving a contract, the conclusion and signing of a contract and any novation, renewal, extension or amendment of the contract;
 - (b) **“the ICT systems/projects”** means—
 - (i) the e-Cadastre project and the e-Cadastre system for the DRDLR;
 - (ii) the Deeds Registries System for the DRDLR;
 - (iii) the Enterprise Architecture product for the DRDLR;
 - (iv) the Regulatory Impact Assessment for the DRDLR;
 - (v) a BPR project for the DRDLR; and
 - (vi) the back scanning of records of the DRDLR into microfilm images for the DRDLR database,
individually or collectively, as the context may require or as may be applicable;
 - (c) **“the Institutions”** means the DRDLR and the SITA, individually or collectively, as the context may require or as may be applicable; and
 - (d) **“the Institutions’ suppliers and service providers”** includes any consultants, contractors, sub-contractors, suppliers or service providers of the Institutions.
2. Theft, fraud, corruption or maladministration in the affairs of the DRDLR in relation to the lodging and processing of deeds on the Deeds Registration System of the Pretoria, Cape Town and Bloemfontein Deeds Registries or in the processes of requesting for or the giving-out of deeds information, in a manner that was contrary to applicable—
 - (a) legislation; or
 - (b) manuals, guidelines, policies, procedures, practice notes, instructions, prescripts or practices of, or applicable to the DRDLR,
including the causes of such fraud, corruption or maladministration and any loss, damage or prejudice actually or potentially suffered by the DRDLR or the State.
3. The procurement of and contracting for the ICT systems/projects or any goods, works or services in respect of the ICT systems/projects by or on behalf of the Institutions and payments made in relation thereto, in a manner that was—
 - (a) not fair, equitable, transparent, competitive or cost-effective; or
 - (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury or the applicable Provincial Treasuries; or

- (iii) manuals, guidelines, codes, policies, procedures, instructions or practices of, or applicable to the Institutions.
- 4. Losses or prejudice actually or potentially suffered by the Institutions as a result of the mismanagement of the assets, finances or other resources in respect of the ICT systems/projects, including any —
 - (a) overspending, mismanagement, misspending or misappropriation of funds;
 - (b) payments which were made to agents of the Institutions or the Institutions' suppliers and service providers—
 - (i) prematurely;
 - (ii) despite non-performance, uncertified, incomplete or poor quality performance or defective performance;
 - (iii) despite late performance; or
 - (iv) in excess of amounts agreed or tendered or at rates disproportionate to the value, nature or scope of the goods, works or services supplied or rendered;
 - (c) payments made for goods not supplied or works or services not rendered; or
 - (d) duplication of payments.
- 5. Losses or prejudice actually or potentially suffered by the Institutions as a result of unlawful conduct or irregular practices of the personnel or agents of the Institutions, the Institutions' suppliers and service providers or third parties in respect of the ICT systems/projects, including any premature, false or inflated claims for payment.
- 6. The incurrence of unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure or expenditure not due, owing and payable, as a result of payments which were made by the Institutions to agents of the Institutions, the Institutions' suppliers and service providers or third parties for or in respect of the ICT systems/projects.
- 7. Fraud, corruption or maladministration regarding the affairs of the Institutions in respect of the ICT systems/projects in respect of —
 - (a) budget preparations, the allocation, implementation or use of the applicable budgets or budget items, including but not limited to any overspending or misappropriation of the applicable budgets or budgeted items;
 - (b) supply chain management policies;
 - (c) procurement processes;
 - (d) contract management, including but not limited to—
 - (i) contracting for the ICT systems/projects or any goods, works or services in respect of the ICT systems/projects;
 - (ii) the monitoring, management or verification of goods delivery, services rendered or works performed or any failure in this regard;
 - (iii) the monitoring, management or verification of the quality and/or quantity of goods delivered, services rendered or works performed or any failure in this regard;
 - (iv) any breach of contract, late performance, enforcement of contracts or cancellation of contracts; or
 - (e) logistics management, including the causes of such fraud, corruption or maladministration and any loss, damage or prejudice actually or potentially suffered by the Institutions or the State.
- 8. The failure of the Institutions to—
 - (a) recover premature or excessive payments made to agents of the Institutions

or the Institutions' suppliers and service providers; or
 (b) collect monies due, owing and payable to the Institutions,
 for or in respect of the ICT systems/projects.

9. Unlawful or irregular conduct by agents of the Institutions, the Institutions' personnel, suppliers and service providers or third parties relating to any one or more of the allegations set out in paragraphs 2 to 8, above, and any loss, damage or prejudice actually or potentially suffered by the State or Institutions as a result thereof.

PROKLAMASIE

van die

President van die Republiek van Suid-Afrika

No. R. 7, 2014

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—

- (a) Departement van Landelike Ontwikkeling en Grondhervorming (voorheen bekend as die Departement van Grondsake), in dié se nasionale departement, dié se provinsiale departemente, dié se handels entiteite en hulle onderskeie agentskappe (hierna gesamentlik na verwys as "die DLOG"); en
 (b) die Staatsinligtingstegnologie-agentskap (Edms) Beperk (hierna na verwys as "die SITA"),
 (hierna gesamentlik na verwys as "die Instellings");

EN AANGESIEN die Instellings of die Staat moontlik verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele verrigtinge 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 Instellings, 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 beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Instellings;
 (b) onbehoorlike of onregmatige optrede deur lede van die raad, direkteure, beampptes, werknemers, personeel, of lede van een of beide van die Instellings (hierna gesamentlik na verwys as "die Instellings se personeel");
 (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
 (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreeël of praktyk wat op Staatseiendom betrekking het;
 (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
 (f) misdrywe 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 Instellings; 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, maar wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite, aanskaffingsprosesse 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 Instellings of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Sesde dag van Februarie Twee duisend-en-veertien.

J G Zuma
President

Op las van die President-in-Kabinet:

J T Radebe
Minister van die Kabinet

BYLAE

1. Vir doeleindes van hierdie Bylae, enige verwysing na—
 - (a) "**die IKT stelsels/projekte**" beteken—
 - (i) die e-Cadastre projek en die e-Cadastre stelsel vir die DLOG;
 - (ii) die Aktesregistrasiestelsel vir die DLOG;
 - (iii) die Ondernemings Argitektuur produk vir die DLOG;
 - (iv) die Regulatoriese Impak Raming vir die DLOG;
 - (v) 'n BPR projek vir die DLOG; en
 - (vi) die terug skandering van rekords van die DLOG in mikrofilm afbeeldings vir die DLOG databasis,
 individueel of gesamentlik, soos die samehang mag verlang of wat van toepassing mag wees;
 - (b) "**die Instellings**" beteken die DLOG en die SITA, afsonderlik of gesamentlik, soos die samehang mag vereis of wat van toepassing mag wees;
 - (c) "**die Instellings se verskaffers en diensverskaffers**" sluit enige konsultante, kontrakteurs, sub-kontrakteurs, verskaffers of diensverskaffers van die Instellings in; en
 - (d) "**kontraktering**" sluit in, maar is nie beperk nie tot, enige onderhandelings prosesse wat 'n kontrak behels, die sluiting en ondertekening van 'n kontrak en enige vernuwing, hernuwing, uitbreiding of wysiging van die kontrak.
2. Diefstal, bedrog, korrupsie of wanadministrasie in verband met die aangeleenthede van die DLOG ten opsigte van die liassing en prosessering van aktes op die

Aktesregistrasiesetel van die Pretoria, Kaapstad en Bloemfontein Aktesregistrasiekantore of in die prosesse van aanvra van of uitgee van akte-inligting, op 'n wyse wat strydig is met toepaslike—

- (a) wetgewing; of
- (b) handleidings, riglyne, beleid, prosedures, praktyknotas, instruksies, voorskrifte of praktyke van, of wat op die DLOG van toepassing is, insluitende die oorsake van sodanige bedrog, korrupsie of wanadministrasie en enige verlies, skade of werklike of potensieële nadeel wat deur die DLOG of die Staat gely is.

3. Die aanskaffing van, of kontraktering vir die IKT stelsels/projekte of enige goedere, werke of dienste ten opsigte van die IKT stelsels/projekte deur of namens die Instellings en betalings wat in verband daarmee gemaak is op 'n wyse wat—
 - (a) nie regverdig, billik, deursigtig, mededingend of koste-effektief was nie; of
 - (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas of instruksies wat deur die Nasionale Tesourie of toepaslike Provinsiale Tesourië uitgevaardig is; of
 - (iii) handleidings, riglyne, kodes, beleid, prosedures, instruksies of praktyke van, of wat op die Instellings van toepassing is.
4. Verliese of nadeel wat daadwerklik of potensieel gely is deur die Instellings as gevolg van die wanbestuur van bates, finansies of ander hulpbronne ten opsigte van die IKT stelsels/projekte, insluitende enige —
 - (a) oorbesteding, wanbestuur, wanbesteding of wanaanwending van fondse;
 - (b) betalings wat gemaak is aan agente van die Instellings of die Instellings se verskaffers of diensverskaffers—
 - (i) voortydig;
 - (ii) ten spyte van nie-prestasie, ongesertifiseerde, onvolledige of swak gehalte prestasie of gebrekkige prestasie;
 - (iii) ten spyte van laat prestasie; of
 - (iv) in oorskryding van bedrae ooreengekom of getender of teen tariewe oneweredig tot die waarde, aard of omvang van die goedere, werke of dienste gelewer of verskaf;
 - (c) betalings wat gemaak is vir goedere wat nie verskaf is nie of werk of dienste wat nie gelewer is nie; of
 - (d) duplikasie van betalings.
5. Verliese of nadeel wat daadwerklik of potensieel gely is deur die Instellings as gevolg van die wederregtelike optrede of onreëlmatige praktyke van die personeel of agente van die Instellings, die Instellings se verskaffers en diensverskaffers of derde partye ten opsigte van die IKT stelsels/projekte, insluitend enige voortydige, vals of opgeblaaide eise vir betaling.
6. Die aangaan van ongemagtigde uitgawes, onreëlmatige uitgawes, vrugtelose en verkwiste uitgawes of uitgawes wat nie opeisbaar, verskuldig en betaalbaar is nie, as gevolg van die betalings wat gemaak is deur die Instellings aan agente van die Instellings, die Instellings se verskaffers en diensverskaffers of derde partye vir of in verband met die IKT stelsels/projekte.
7. Bedrog, korrupsie of wanadministrasie ten opsigte van die aangeleenthede van die Instellings ten opsigte van die IKT stelsels/projekte ten opsigte van—
 - (a) begrotingsvoorbereiding, die toedeling, implementering of gebruik van die toepaslike begrotings of begrotingsitems, insluitend, maar nie beperk nie tot, enige oorbesteding of wanaanwending van die toepaslike begrotings of begrotingsitems;

-
- (b) voorsieningskanaal-bestuursbeleid;
 - (c) aanskaffingsprosesse;
 - (d) die bestuur van kontrakte, insluitend, maar nie beperk nie tot—
 - (i) die kontraktering vir die IKT stelsels/projekte of enige goedere, werke of dienste ten opsigte van die IKT stelsels/projekte;
 - (ii) die monitering, bestuur of verifikasie van goedere aflewering, dienste gelewer of werke wat verrig is of enige versuim in hierdie verband;
 - (iii) die monitering, bestuur of verifikasie van die kwaliteit en/of kwantiteit van goedere wat gelewer is, dienste wat gelewer is, werke wat verrig is of enige versuim in hierdie verband;
 - (iv) enige kontrakbreuk, laat prestasie, afdwinging van kontrakte of kansellasie van kontrakte; of
 - (e) logistiekebestuur, insluitende die oorsake van sodanige bedrog, korrupsie of wanadministrasie en enige verlies, skade of daadwerklike of potensiele nadeel wat deur die Instellings of die Staat gely is.
8. Die versuim van die Instellings om—
- (a) voertydige of buitensporige betalings wat aan agente van die Instellings of die Instellings se verskaffers en diensverskaffers gemaak is, te verhaal; of
 - (b) gelde wat opeisbaar, verskuldig en betaalbaar is, in te vorder, vir of in verband met die IKT stelsels/projekte.
9. Onwettige of onreëlmatige optrede deur agente van die Instellings, die Instellings se personeel, verskaffers en diensverskaffers of derde partye in verband met een of meer van die bewerings in paragrawe 2 tot 8 hierbo uiteengesit, en enige verlies, skade, of daadwerklike of potensiele nadeel wat deur die Staat of Instellings gely is, as gevolg daarvan.
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