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PROCLAMATION

by the

President of the Republic of South Africa

No. R. 15, 2015

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): AMENDMENT OF PROCLAMATION NO. R. 53 OF 2014

Under section 2(4) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), I hereby amend Proclamation No. R. 53 of 2014, by—

(a) the substitution for the fourth paragraph of the Proclamation of the following paragraph:

“NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule, in respect of the SITA, 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 SITA;
- (b) improper or unlawful conduct by officials or employees of the SITA;
- (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 offence was committed in connection with the affairs of the SITA; 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 3 August 2012 and the date of publication of this Proclamation or which took place prior to 3 August 2012 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 SITA, in relation to the said matters in the Schedule.”; and

(b) the substitution for the Schedule to the Proclamation of the following Schedule:

“SCHEDULE

- 1. Any reference in the Schedule to—
 - (a) ‘contract’ means any—
 - (i) Integrated Supply Agreement;

- (ii) Strategic Relationship Document of Understanding;
- (iii) Enterprise Licence Agreement;
- (iv) Enterprise Software Solution Offering;
- (v) Enterprise Software and Services Option; or
- (vi) Service Level Agreement;
- (b) **'contracting'** includes but is not limited to any negotiation processes involving a contract, the conclusion and signing of a contract and any novation, renewal, variation, extension, amendment, cancellation or termination of a contract;
- (c) **'IBM'** means the International Business Machines Corporation and Subsidiary Companies, including IBM SA (Pty) Limited (Registration No: 1952/000308/07);
- (d) **'iFirm'** means iFirm Consulting (Pty) Limited (Registration No: 2012/226990/07);
- (e) **'iFirm contracts'** means the agreements between the SITA and iFirm dated 4 April 2014 and 21 May 2014;
- (f) **'personnel of a State institution'** includes any member of a board, director, official, officer, employee, member, agent, vendor, contractor or sub-contractor, supplier or service provider of a State institution;
- (g) **'personnel of IBM'** includes any member of the board, director, employee, member, agent, vendor, contractor, sub-contractor, supplier or service provider of IBM;
- (h) **'personnel of iFirm'** includes any member of the board, director, employee, member, agent, vendor, contractor, sub-contractor, supplier or service provider of iFirm;
- (i) **'personnel of the SITA'** includes any member of the board, director, official, officer, employee, member, agent, vendor, contractor, sub-contractor, supplier or service provider of the SITA;
- (j) **'solution'** means—
 - (i) the provision of any cloud infrastructure services solution;
 - (ii) the provision of any goods, works or services, as envisaged in Tender RFB 989/2012; or
 - (iii) any integrated procurement model for any Government Department or State institution; and
- (k) **'State institution'** means any—
 - (i) department for whose procurement the SITA is responsible, as envisaged in the State Information Technology Agency Act, 1998 (Act No. 88 of 1998); or
 - (ii) public body which requested the SITA to procure goods, works or services on behalf of the public body, as envisaged in the State Information Technology Agency Act, 1998.

2. Payments which were made by SITA to IBM SA (Pty) Ltd, in terms of an agreement dated 30 April 2013, concluded between IBM SA (Pty) Ltd and the SITA—

- (a) in a manner that was—
 - (i) not fair, competitive, transparent, equitable or cost-effective;
 - (ii) contrary to—
 - (aa) applicable legislation;
 - (bb) applicable manuals, guidelines, practice notes or instructions issued by the National Treasury; or

- (cc) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SITA, and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the SITA; or
 - (b) which were conducted or facilitated by or through the improper intervention of officials or employees of the SITA.
3. The procurement of and contracting for a solution or for any goods, works or services in respect of a solution by or on behalf of the SITA, for itself or for and on behalf of a State institution, and payments made in relation thereto—
- (a) in a manner that was—
 - (i) not fair, competitive, transparent, equitable or cost-effective;
 - (ii) contrary to—
 - (aa) applicable legislation;
 - (bb) applicable manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the applicable Provincial Treasuries; or
 - (cc) manuals, guidelines, codes, policies, procedures, instructions or practices of, or applicable to the SITA or the applicable State institutions;
 - (b) which has resulted or may result in unauthorised, irregular or fruitless and wasteful expenditure for the SITA or a State institution; or
 - (c) which was conducted or facilitated by the unlawful, irregular or improper intervention of—
 - (i) the personnel of the SITA;
 - (ii) the personnel of a State institution; or
 - (iii) the personnel of IBM.
4. The procurement or appointment of or contracting with IBM by or on behalf of the SITA, for itself or for and on behalf of a State institution, in relation to a contract and payments made in relation thereto or prior thereto—
- (a) in a manner that was—
 - (i) not fair, competitive, transparent, equitable or cost-effective; or
 - (ii) contrary to—
 - (aa) applicable legislation;
 - (bb) applicable manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the applicable Provincial Treasuries; or
 - (cc) manuals, guidelines, codes, policies, procedures, instructions or practices of, or applicable to the SITA or the applicable State institution;
 - (b) which has resulted or may result in unauthorised, irregular or fruitless and wasteful expenditure for the SITA or the applicable State institution; or
 - (c) which was conducted or facilitated by the unlawful, irregular or improper intervention of—
 - (i) the personnel of the SITA;
 - (ii) the personnel of a State institution; or
 - (iii) the personnel of IBM.

5. The procurement or appointment of or contracting with iFirm by or on behalf of the SITA in relation to the iFirm contracts and payments made in relation thereto or prior thereto—
- (a) in a manner that was—
 - (i) not fair, equitable, transparent, competitive or cost-effective; or
 - (ii) contrary to—
 - (aa) applicable legislation;
 - (bb) applicable manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the applicable Provincial Treasuries; or
 - (cc) manuals, guidelines, codes, policies, procedures, instructions or practices of, or applicable to the SITA;
 - (b) which has resulted or may result in unauthorised, irregular or fruitless and wasteful expenditure for the SITA; or
 - (c) which was conducted or facilitated by the unlawful, irregular or improper intervention of—
 - (i) the personnel of the SITA; or
 - (ii) the personnel of iFirm.”.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Fourth day of February Two thousand and fifteen.

J G Zuma
President

By Order of the President-in-Cabinet:

T M Masutha
Minister of the Cabinet

PROKLAMASIE

van die

President van die Republiek van Suid-Afrika

No. R. 15, 2015

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996 (WET NO. 74 VAN 1996): WYSIGING VAN PROKLAMASIE NO. R. 53 VAN 2014

Kragtens artikel 2(4) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996), wysig ek hierby Proklamasie No. R. 53 van 2014, deur—

- (a) die vierde paragraaf van die Proklamasie deur die volgende paragraaf te vervang:

“DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld, ten opsigte van die SITA, 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 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 SITA;
- (b) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die SITA;
- (c) onregmatige bewilliging of besteding van publieke 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 publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdryf betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdryf gepleeg is in verband met die sake van die SITA; 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 3 Augustus 2012 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 3 Augustus 2012 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 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 SITA gely is.”; en

- (b) die Bylae tot die Proklamasie deur die volgende Bylae te vervang:

“BYLAE

1. Enige verwysing in die Bylae na—
 - (a) ‘IBM’ beteken die ‘International Business Machines Corporation and Subsidiary Companies’ insluitend IBM SA (Edms) Beperk (Registrasie No: 1952/000308/07);
 - (b) ‘iFirm’ beteken ‘iFirm Consulting (Pty) Limited’ (Registrasie No: 2012/226990/07);
 - (c) ‘iFirm kontrakte’ beteken die kontrakte tussen SITA en iFirm gedateer 4 April 2014 en 21 Mei 2014;
 - (d) ‘kontrak’ beteken enige—
 - (i) Geïntegreerde Voorsieningsooreenkoms;
 - (ii) Strategiese Verhoudingsdokument van Ooreenkoms;
 - (iii) Ondernemings Lisensie-ooreenkoms;
 - (iv) Ondernemings Sagteware Oplossing Aanbieding;
 - (v) Ondernemings Sagteware en Diensopsie; of
 - (vi) Diensvlakooreenkoms
 - (e) ‘kontraktering’ sluit in maar is nie beperk tot enige onderhandelingsprosesse verbandhoudend tot ’n kontrak, die sluiting

- en ondertekening van 'n kontrak en enige novasie, hernuwing, verandering, verlenging, wysiging, kansellasië of beëindiging van 'n kontrak nie;
- (f) **'oplossing'** beteken—
- (i) die voorsiening van enige wolk- infrastruktuur diensoplossing;
 - (ii) die voorsiening van enige goedere, werke of dienste, soos beoog in Tender RFB 989/2012; of
 - (iii) enige geïntegreerde aanskaffingsmodel vir enige Staatsdepartement of Staatsinstelling;
- (g) **'personeel van die SITA'** sluit in enige lid van die raad, direkteur, beampte, amptenaar, werknemer, lid, agent, verkoper, kontrakteur, sub-kontrakteur, verskaffer of diensverskaffer van die SITA;
- (h) **'personeel van IBM'** sluit in enige lid van die raad, direkteur, werknemer, lid, agent, verkoper, kontrakteur, sub-kontrakteur, verskaffer of diensverskaffer van IBM;
- (i) **'personeel van iFirm'** sluit in enige lid van die raad, direkteur, werknemer, lid, agent, verkoper, kontrakteur, sub-kontrakteur, verskaffer of diensverskaffer van iFirm;
- (j) **'personeel van 'n Staatsinstelling'** sluit in enige lid van 'n raad, direkteur, beampte, amptenaar, werknemer, lid, agent, verkoper, kontrakteur, sub-kontrakteur, verskaffer of diensverskaffer van 'n Staatsinstelling; en
- (k) **'Staatsinstelling'** beteken enige—
- (i) departement vir wie se aanskaffing die SITA verantwoordelik is, soos beoog in die Wet op die Staatsinligtingstegnologie-agentskap, 1998 (Wet No. 88 van 1998); of
 - (ii) openbare liggaam wat die SITA versoek het om goedere, werke of dienste namens die openbare liggaam aan te skaf, soos beoog in die Wet op die Staatsinligtingstegnologie-agentskap, 1998.

2. Betalings wat gemaak is deur SITA aan IBM SA (Edms) Bpk, ingevolge 'n ooreenkoms gedateer 30 April 2013, wat aangegaan was tussen IBM SA (Edms) Bpk en die SITA –

- (a) op 'n wyse wat—
- (i) nie regverdig, mededingend, deursigtig, billik, of koste-effektief was nie;
 - (ii) strydig was met—
 - (aa) toepaslike wetgewing;
 - (bb) toepaslike handleidings, riglyne, praktyknotas of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
 - (cc) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die SITA van toepassing is,
- en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilte uitgawes deur die SITA opgehoop; of
- (b) wat gedoen of gefasiliteer was deur die onbehoorlike tussenkoms van beamptes of werknemers van die SITA.

3. Die aanskaffing van en kontraktering vir 'n oplossing of vir enige goedere, werke of dienste ten opsigte van 'n oplossing deur of namens die

SITA, vir dit self of vir en namens 'n Staatsinstelling, en betalings wat ten opsigte daarvan gemaak is—

- (a) op 'n wyse wat—
 - (i) nie regverdig, mededingend, deursigtig, billik, of koste-effektief was nie;
 - (ii) strydig was met—
 - (aa) toepaslike wetgewing;
 - (bb) toepaslike handleidings, riglyne, praktyknotas, omsendbriewe of instruksies wat deur die Nasionale Tesourie of betrokke Provinsiale Tesourië uitgevaardig is; of
 - (cc) handleidings, riglyne, kodes, beleid, prosedures, instruksies of praktyke van, of wat op die SITA of toepaslike Staatsinstellings van toepassing is,
- (b) wat ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes vir die SITA of 'n Staatsinstelling tot gevolg gehad het of tot gevolg mag hê; of
- (c) wat gedoen of gefasiliteer was deur die onwettige, onreëlmatige of onbehoorlike tussenkoms van—
 - (i) die personeel van die SITA;
 - (ii) die personeel van 'n Staatsinstelling; of
 - (iii) die personeel van IBM.

4. Die aanskaffing of aanstelling van of kontraktering met IBM deur of namens die SITA, vir dit self of vir en namens 'n Staatsinstelling, ten opsigte van 'n kontrak en betalings wat in verband daarmee gemaak is of voorafgaande daartoe gemaak is—

- (a) op 'n wyse wat—
 - (i) nie regverdig, mededingend, deursigtig, billik, of koste-effektief was nie; of
 - (ii) strydig was met—
 - (aa) toepaslike wetgewing;
 - (bb) toepaslike handleidings, riglyne, praktyknotas, omsendbriewe of instruksies wat deur die Nasionale Tesourie of toepaslike Provinsiale Tesourië uitgevaardig is; of
 - (cc) handleidings, riglyne, kodes, beleid, prosedures, instruksies of praktyke van, of wat op die SITA of toepaslike Staatsinstellings van toepassing is,
- (b) wat ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes vir die SITA of die toepaslike Staatsinstelling tot gevolg gehad het of tot gevolg mag hê; of
- (c) wat gedoen of gefasiliteer was deur die onwettige, onreëlmatige of onbehoorlike tussenkoms van—
 - (i) die personeel van die SITA;
 - (ii) die personeel van 'n Staatsinstelling; of
 - (iii) die personeel van IBM.

5. Die aanskaffing of aanstelling van of kontraktering met iFirm deur of namens die SITA, ten opsigte van die iFirm kontrakte en betalings wat in verband daarmee gemaak is of voorafgaande daartoe gemaak is—

- (a) op 'n wyse wat—
 - (i) nie regverdig, billik, deursigtig, mededingend of koste-effektief was nie; of
 - (ii) strydig was met—
 - (aa) toepaslike wetgewing;
 - (bb) toepaslike handleidings, riglyne, praktyknotas, omsendbriewe of instruksies wat deur die Nasionale Tesourie of toepaslike Provinsiale Tesourie uitgevaardig is; of
 - (cc) handleidings, riglyne, kodes, beleid, prosedures, instruksies of praktyke van, of wat op die SITA van toepassing is,
- (b) wat ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes vir die SITA tot gevolg gehad het of tot gevolg mag hê; of
- (c) wat gedoen of gefasiliteer was deur die onwettige, onreëlmatige of onbehoorlike tussenkoms van—
 - (i) die personeel van die SITA; of
 - (ii) die personeel van iFirm.”.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die vierde dag van Februarie Tweeduisend-en-vyftien.

J G Zuma
President

Op las van die President-in-Kabinet:

T M Masutha
Minister van die Kabinet

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