

PROCLAMATION

by the

President of the Republic of South Africa

No. R. 43, 2010

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 Department of Public Works for the KwaZulu-Natal Province (hereinafter referred to as the "Department");

AND WHEREAS the Department suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and justiciable civil disputes 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 -

- (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 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 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
- (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 have taken place between 1 January 2005 and the date of publication of this Proclamation or which took place prior to 1 January 2005, but are connected with or incidental 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, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this Twentieth day of August Two thousand and ten.

J G ZUMA
President

By Order of the President-in-Cabinet:

S C CWELE
Minister of the Cabinet

SCHEDULE

1. The procurement of and contracting for goods, works or services by or on behalf of the Department or other provincial departments or institutions for whose procurement the Department is responsible and payments made in relation thereto -
 - (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 or the applicable Provincial Treasury; or
 - (iii) manuals, codes, policies, procedures, instructions or practices of or applicable to the Department;
 - (c) which was conducted or facilitated by or through the intervention of officials or employees of the Department (hereinafter collectively referred to as "the Department's personnel") with undeclared or unauthorised conflicts of interest; or
 - (d) which was conducted or facilitated by the manipulation of the Department's supply chain management or procurement processes -
 - (i) by contractors, suppliers or service providers of the Department (hereinafter collectively referred to as "the Department's suppliers and service providers"); or
 - (ii) by, in collusion with or through the intervention of the Department's personnel,
to corruptly or unduly benefit themselves or others.
2. The performance of remunerative work by the Department's personnel in conflict with the conditions of their employment.
3. The receipt of any remuneration, allowances or rewards by the Department's personnel otherwise than in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994).
4. Any undisclosed or unauthorised interests which the Department's personnel may have had in -
 - (a) contractors, suppliers or service providers bidding for work or doing business with the State, including the Department; or
 - (b) contracts awarded by the State, including the Department.
5. The premature or unjustified return by the Department of performance guarantees lodged by construction contractors.
6. The unlawful or irregular conduct by the Department's personnel, the Department's suppliers and service providers or third parties relating to any one or more of the aforementioned allegations.