

PROCLAMATION

by the

President of the Republic of South Africa

No. R. 16, 2012

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 former Department of Local Government and Housing of the Mpumalanga Province and its successor in title, the Department of Cooperative Governance and Traditional Affairs of the Mpumalanga Province (hereinafter referred to as the "Department");

AND WHEREAS the Department may have 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 April 2007 and the date of issue of this Proclamation, or which took place prior to 1 April 2007 or after the date of publication of this Proclamation, which are relevant to, connected with, incidental or ancillary to the matters set out in the Schedule, or involve the same persons, entities 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 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 Pretoria this Twenty-eight day of February Two thousand and twelve.

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 consulting or related services by or on behalf of the Department in relation to its Water for All Flagship Project and payments made in respect thereof -

- (a) in a manner that was -
 - (i) not fair, equitable, transparent, competitive or cost-effective; or
 - (ii) contrary to applicable -
 - (aa) legislation;
 - (bb) manuals, guidelines, practice notes or instructions issued by the National Treasury or the relevant Provincial Treasury; or
 - (cc) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Department;
 - (b) without any prior planning, including a cost estimation or a determination of available funding;
 - (c) without any prior determination of proper terms of reference, including a clearly defined task directive, project specifications, deliverables or performance indicators;
 - (d) without including such terms of reference in the relevant bidding documents or resultant contracts or purported amendments thereof with the chosen consultants or service providers; or
 - (e) without the submission of the prescribed tax clearance certificates by the successful bidders, consultants or service providers,
- and related unauthorised, irregular, fruitless and wasteful expenditure or loss of the Department's funds.

2. The procurement of and contracting for sewerage suctioning or related services (including the provision of drainage services and the application of chemicals in the hygienic maintenance of VIP toilets and septic tanks) by or on behalf of the Department and payments made in respect thereof -

- (a) in a manner that was -
 - (i) not fair, equitable, transparent, competitive or cost-effective; or
 - (ii) contrary to applicable -
 - (aa) legislation;
 - (bb) manuals, guidelines, practice notes or instructions issued by the National Treasury or the relevant Provincial Treasury; or
 - (cc) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Department;
 - (b) without any prior delineation or defining of the extent and scope of such services, the determination of costs and the availability of funding to meet those costs; or
 - (c) under circumstances where the provision of such services was the primary duty of the applicable municipalities,
- and related unauthorised, irregular, fruitless and wasteful expenditure or loss of the Department's funds.

3. Maladministration of the affairs of the Department and any losses or prejudice suffered by the Department as a result of such maladministration in relation to its Water for All Flagship Project, the provision of sewerage suctioning or related services (including the provision of drainage services and the application of chemicals in the hygienic maintenance of VIP toilets and septic tanks) or the engagement of service providers or contractors to repair or refurbish water pipelines.

4. Practices in terms of which officials or employees of the Department were promised, solicited or received benefits or other forms of unlawful gratification from anyone in connection with the execution of their duties or the failure to execute their duties, as the case may be, including for purposes of, among others, facilitating or adopting a more lenient stance on the certification of invoices rendered for goods, works or services allegedly provided or rendered to or on behalf of the Department in relation to the Department's Water for All Flagship Project.