

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