
PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 8 OF 2017

**by the
PRESIDENT of the REPUBLIC of SOUTH AFRICA**

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT

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 Mopani District Municipality (hereinafter referred to as "the District Municipality"), which is situated in the Limpopo Province;

AND WHEREAS the District Municipality, the relevant local municipalities that fall within the area of the District Municipality or the State 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 District Municipality, 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 District Municipality;
- (b) improper or unlawful conduct by councillors, officers or employees of the District Municipality;
- (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 offences were committed in connection with the affairs of the District Municipality; 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 2010 and the date of publication of this Proclamation or which took place prior to 1 January 2010 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 District Municipality, the relevant local municipalities that fall within the area of the District Municipality 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 Ninth day of December Two thousand and sixteen.

J G Zuma
President

By Order of the President-in-Cabinet:

T M Masutha
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for goods, works or services by or on behalf of the District Municipality and payments made in respect thereof in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective;
- (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury;
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the District Municipality; or
- (c) conducted by or facilitated through the improper conduct of—
 - (i) councillors, officials or employees of the District Municipality (hereinafter collectively referred to as “the personnel of the District Municipality”); or
 - (ii) contractors, suppliers or service providers of the District Municipality or any other person or entity,

to corruptly or unduly benefit themselves or any other person or entity, and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the District Municipality, the local municipalities that fall within the area of the District Municipality or the State in relation to the supply, construction or commissioning of Ventilated Improved Pit toilets (hereinafter referred to as “VIP toilets”), which goods, works or services were procured in terms of the Greater Giyani Municipality - MDM 2014-004 Tender and the Greater Tzaneen Municipality or the greater area of the Tzaneen Municipality - MDM 2014-005 Tender (hereinafter referred to as “the Tenders”).

2. Maladministration in the affairs of the District Municipality and any losses or prejudice suffered by the District Municipality, the local municipalities that fall within the area of the District Municipality or the State as a result of such maladministration in relation to—

- (a) the supply, construction or commissioning of VIP toilets, which goods, works or services were procured in terms of the Tenders;
- (b) the failure or refusal by the District Municipality to refund erroneous or premature payments amounting to R304 101 000, which were received by the District Municipality from the National Treasury or the national transferring officer (Department of Cooperative Governance and Traditional Affairs);
- (c) the establishment or regular maintenance of a vendor database or masterfile;
- (d) approximately R 210.4 million that the District Municipality was required to return to National Treasury, when the District Municipality did not spend the money during the 2012/2013 financial year in respect of the Municipal Infrastructure Grant and Water Services Operating Grant; and
- (e) the failure or refusal by the District Municipality to address issues raised by, or implement recommendations of the Auditor- General of South Africa as set out in the Annual Audit Report relating to the District Municipality for the 2013/2014 financial year,

including the causes of such maladministration and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the District Municipality, the local municipalities that fall within the area of the District Municipality or the State.

3. Any undisclosed or unauthorised interests which the personnel of the District Municipality or their family members may have had in contractors, suppliers or service providers bidding for work or doing business with the District Municipality or to whom contracts were awarded by the District Municipality, contrary to applicable—

- (a) legislation;
- (b) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or
- (c) manuals, codes, guidelines, policies, procedures, prescripts, instructions, contracts of employment, conditions of service or practices of or applicable to the District Municipality or the personnel of the District Municipality,

and the extent of any actual or potential benefits derived directly or indirectly by the personnel of the District Municipality or their family members from such undisclosed or unauthorised interests.

4. Losses or prejudice actually or potentially suffered by the District Municipality, the local municipalities that fall within the area of the District Municipality or the State as a result of payments made to the applicable contractors, suppliers or service providers—

- (a) despite non-performance, uncertified, incomplete or poor quality of performance or defective performance; or
 - (b) for goods not supplied or works or services not rendered,
- in relation to the allegations set out in paragraphs 1 to 3 of this Schedule.

5. Any improper or unlawful conduct by the personnel of the District Municipality or the applicable contractors, suppliers or service providers or any other person or entity, in relation to the allegations set out in paragraphs 1 to 4 of this Schedule.