PROCLAMATION NO. 10 OF 2018

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 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 Correctional Services ("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 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 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 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 (Act No. 12 of 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 2012 and the date of publication of this Proclamation or which took place prior to 1 January 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 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 14. day of March, Two thousand and eighteen.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

TM Masutha
Minister of the Cabinet

Schedule

1. The procurement of, or contracting for goods, works or services by or on behalf of the Department in respect of perishable provisions, food, toiletries, catering, marquee hire and Coal in respect of the following tenders:

   1.1 KZN 6/2012: Coal Peas

   1.2 KZN 8/2012: Toilet soap and Toothpaste;

   1.3 KZN 9/2012: Maize Meal and Milk Powder;

   1.4 KZN 21/2013: Perishable Provisions – Stanger Correctional Centre;

   1.5 KZN 22/2013: Perishable Provisions – Port Shepstone Correctional Centre;

   1.6 KZN 5/2014: Bread – Empangeni, Glencoe and Ncome;

   1.7 KZN 6/2014: Bread – Kokstad and Pietermaritzburg;

   1.8 KZN 10/2014: Beef and poultry Halaal – Kokstad;

   1.9 KZN 15/2014: Perishable Provisions - Ncome;

   1.10 KZN16/2014: Perishable Provisions - Empangeni;

   1.11 KZN 17/2014: Perishable Provisions – Kokstad;

   1.12 KZN 19/2014: Perishable Provisions – Pietermaritzburg;

   1.13 KZN 25/2014: Dishwashing liquid and green soap;

   1.14 KZN 31/2014: Perishable provisions – Empangeni;

   1.15 KZN 32/2014: Perishable provisions;

   1.16 KZN 17/2015: Maize Meal – All management areas;

   1.17 KZN 19/2015: Bread – Empangeni;

   1.18 KZN 33/2015: Perishable Provisions – Kokstad; and

   1.19 KZN 38/2015: Perishable Provisions

   1.20 Catering and Marquee hire in respect of the following events:

      1.20.1 Regional Freedom Day and Farewell of AC Durban 29 April 2015;

      1.20.2 Launch of 2015/16 Operational Vala 27 November 2015;

      1.20.3 Long Service Recognition Ceremony 15 October 2015;

      1.20.4 4th Quarterly Security Operational Work Session 5-7 May 2015; and

      1.20.5 Catering for an event held on 23 June 2015,

   for correctional facilities located within Kwa-Zulu Natal and payments made in relation thereto, in a manner that was-

(a) not fair, equitable, transparent, competitive or cost-effective;

(b) contrary to applicable –

(i) legislation;

(ii) manuals, guidelines, practice notes or instructions issued by National Treasury or the applicable Provincial Treasury; or

(iii) manuals, codes, policies, procedure, instructions or practices applicable to the Department;

(c) fraudulent;

(d) conducted or facilitated by the manipulation of the Department's supply chain management processes-

(i) by service providers; and

(ii) in collusion with or through the intervention of employees of the Department,

to corruptly or unduly benefit themselves or others,

and any related irregular or fruitless and wasteful expenditure incurred by the Department in relation to the above.

PROKLAMASIE NO. 10 VAN 2018

van die
PRESIDENT van die REPUBLIEK van SUID-AFRIKA

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996 (WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van die Departement van Korrektiewe Dienste (hierna na verwys as “die Departement”);

EN AANGESIEN die Departement verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele geskille voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld, ten opsigte van die Departement, 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 Departement;
(*b*) onbehoorlike of onregmatige optrede deur werknemers van die Departement;
(*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 misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe gepleeg is in verband met die sake van die Departement; 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 1 Januarie 2012 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2012 of na die datum van publikasie van hierdie Proklamasie, 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 Departement gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die 14.dag van Maart,Twee duisend-en-agtien.

CM Ramaphosa
President

Op las van die President-in-Kabinet:

TM Masutha
Minister van die Kabinet

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BYLAE

1. Die aanskaffing van, of kontraktering vir goedere, werk of dienste deur of namens die Departement met betrekking tot onder andere, bederfbare produkte, kos, toiletware, spyseniering, huur van markiestent en antrasiet ten opsigte van die volgende tenders:

1.1 KZN 6/2012: Antrasiet

1.2 KZN 8/2012: Toilet seep en Tandepasta;

1.3 KZN 9/2012: Mieliemeel en Melkpoeier;

1.4 KZN 21/2013: Bederfbare Produkte – Stanger Korrektiewe Sentrum;

1.5 KZN 22/2013: Bederfbare Produkte – Port Shepstone Korrektiewe Sentrum;

1.6 KZN 5/2014: Brood – Empangeni, Glencoe en Ncome;

1.7 KZN 6/2014: Brood – Kokstad en Pietermaritzburg;

1.8 KZN 10/2014: Beesvleis en pluimvee Halaal – Kokstad;

1.9 KZN 15/2014: Bederfbare Produkte - Ncome;

1.10 KZN16/2014: Bederfbare Produkte - Empangeni;

1.11 KZN 17/2014: Bederfbare Produkte – Kokstad;

1.12 KZN 19/2014: Bederfbare Produkte – Pietermaritzburg;

1.13 KZN 25/2014: Skottelgoedwas seep en groen seep;

1.14 KZN 31/2014: Bederfbare Produkte – Empangeni;

1.15 KZN 32/2014: Bederfbare Produkte;

1.16 KZN 17/2015: Mieliemeel – Alle bestuursareas;

1.17 KZN 19/2015: Brood – Empangeni;

1.18 KZN 33/2015: Bederfbare Produkte – Kokstad; en

1.19 KZN 38/2015: Bederfbare Produkte

1.20 Spyseniering en huur van Markiestent ten opsigte van die volgende geleenthede:

1.20.1 Vryheidsdagstreek en Afskeidsfunksie van AC Durban 29 April 2015;

1.20.2 Bekendstelling van 2015/16 Operasie Vala 27 November 2015;

1.20.3 Langdienserkennings Seremonie 15 Oktober 2015;

1.20.4 4de Kwartaalikse Sekuriteits Operasionele Werksessie 5-7 Mei 2015; en

1.20.5 Spysenering vir ‘n geleentheid gehou op 23 Junie 2015,

ten opsigte van korrektiewe fasiliteite geleë in die gebied van Kwa-Zulu Natal en betalings wat in verband daarmee gemaak is op 'n wyse wat -

(a) nie regverdig, billik, deursigtig, mededingend of koste-effektief was nie;

(b) teenstrydig was met toepaslike –

(i) wetgewing;

(ii) handleidings, riglyne, praktyknotas of instruksies wat deur die Nasionale Tesourie of relevante Plaaslike Tesourie uitgevaardig is; of

(iii) handleidings, kodes, beleid, voorskrifte, instruksies of praktyke van, of wat die Departement van toepassing is;

(c) bedrieglik was;

(d) wat bedryf of gefasiliteer is deur die manipulasie van die Voorraadvoorsieningsbestuursprosesse van die Departement-

(i) deur diensverskaffers; en

(ii) in samespanning met of deur die tussenkoms van werknemers van die Departement,

om op 'n korrupte of onregverdige wyse voordeel vir hulself en ander te beding,

en enige verwante onreëlmatige of vrugtelose en verspillede uitgawes in verband met bogenoemde wat deur die Departement aangegaan is.

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