

PROCLAMATION NO. R. 26 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**

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 Ethekewini Metropolitan Municipality (hereinafter referred to as "the Municipality");

AND WHEREAS the 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 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 Municipality;
- (b) improper or unlawful conduct by employees or officials of the 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 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 2014 and the date of publication of this Proclamation or which took place prior to 1 January 2014 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 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 .Cape Town this 22 day of August 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 or services by or on behalf of the Municipality in terms of Tender No. WS-6656 and Tender No. WS-6749 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; or
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Municipality;
 - (c) conducted by or facilitated through the improper or unlawful conduct of—
 - (i) employees or officials of the Municipality; or
 - (ii) the service providers appointed in terms of Tender No. WS-6656 or Tender No. WS-6749 or any other person or entity, to corruptly or unduly benefit themselves or any other person or entity; or
 - (d) fraudulent,and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Municipality or the State.

2. Any non-performance, incomplete performance or defective performance by the service providers appointed in terms of Tender No. WS-6656 and Tender No. WS-6749.

3. Any unlawful or irregular conduct by employees or officials of the Municipality, the service providers or any other person, in relation to the allegations set out in paragraphs 1 to 2 above.

PROKLAMASIE NO. R. 26 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 Ethekwini Metropolitaanse Munisipaliteit (hierna na verwys as "die Munisipaliteit");

EN AANGESIEN die Munisipaliteit of die Staat verliese gely het wat moontlik 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 Munisipaliteit, vir ondersoek na die Spesiale Ondersoekeenhede ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleenthede, dit die opdrag van die Spesiale Ondersoekeenhede is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Munisipaliteit;
- (b) onbehoorlike of onregmatige optrede deur werknemers of beamptes van die Munisipaliteit;
- (c) onregmatige bewilliging of besteding van openbare 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 openbare geld of skade aan openbare 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 in verband met die sake van die Munisipaliteit gepleeg is; 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 2014 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2014 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 Munisipaliteit of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad op hede die 22 dag van Augustus Twee duisend-en-agtien

CM Ramaphosa

President

Op las van die President-in-Kabinet:

TM Masutha

Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering vir, goedere of dienste deur of namens die Munisipaliteit kragtens Tender Nommer WS-6656 en Tender Nommer WS-6749 en betalings wat in verband daarmee gemaak is op 'n wyse wat—

- (a) nie regverdig, mededingend, deursigtig, billik, of koste-effektief was nie;
 - (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas, omsendbriewe of instruksies wat deur die Nasionale Tesourie of die relevante Provinsiale Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Munisipaliteit van toepassing is;
 - (c) gedoen was of gefasiliteer was deur onbehoorlike of onwettige optrede van—
 - (i) werknemers of beamptes van die Munisipaliteit; of
 - (ii) die diensverskaffers wat aangestel was ingevolge Tender Nommer WS-6656 of Tender Nommer WS-6749 of enige ander persoon of entiteit, of
 - (d) bedrieglik was,
- en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat deur die Munisipaliteit of die Staat aangegaan is.

2. Enige wanprestasie, onvolledige prestasie of gebrekkige prestasie deur die diensverskaffers wat aangestel is kragtens Tender Nommer WS-6656 of Tender Nommer WS-6749.

3. Enige onwettige of onreëlmatige gedrag deur werknemers of beamptes van die, die Munisipaliteit, die diensverskaffers of enige ander persoon, ten opsigte van die bewerings uiteengesit in paragrawe 1 tot 2 van hierdie Bylae.