PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 4 OF 2019

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 Umgeni Water (hereinafter referred to as “Umgeni”) a water board established in terms of section 108 of the Water Act, 1956 (Act No. 54 of 1956) operating within the KwaZulu-Natal Province;

AND WHEREAS Umgeni or the State 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 Umgeni, 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 Umgeni;

(*b*) improper or unlawful conduct by board members, officials or employees of

Umgeni;

(*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 Umgeni; 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 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 the recovery of any losses suffered by Umgeni 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 16 day of January Two thousand and nineteen.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

TM Masutha
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting, including subcontracting, for goods, works or services by or on behalf of Umgeni 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;

(iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to Umgeni;

(*c*) fraudulent;

(*d*) conducted by, or facilitated through the improper or illegal conduct of—

(i) board members, officials or employees of Umgeni;

(ii) contractors, suppliers or service providers of Umgeni or their sub-contractors; or

(iii) any other person or entity,

to corruptly or unduly benefit themselves or any other person or entity,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by Umgeni or the State or any resulting losses suffered by Umgeni or the State in relation to the—

(*aa*) Contract Participation Goal Programme of Umgeni;

(*bb*) provisioning or upgrading of emergency boreholes in the uMkhanyakude District;

(*cc*) repair or refurbishment of the Nagle Aqueducts;

(*dd*) replacement of filter slabs, pipelines and nozzles in terms of the Contract Participation Goal Programme of Umgeni;

(*ee*) provisioning or upgrading of chlorine distribution equipment, the distribution of chlorine and the upgrading of shaft pumps and lifts at the Durban Heights Plant;

(*ff*) provisioning of emergency pipelines in the area of the Ugu District Municipality;

(*gg*) purchase and installation of control valves in terms of the Contract Participation Goal Programme of Umgeni; and

(*hh*) installation of Nungwane pipelines in the area of Amanzimtoti.

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2. Maladministration in respect of the implementation of the Contract Participation Goal Programme by Umgeni and any losses, damage or actual or potential prejudice suffered by Umgeni, or the State, including the causes of such maladministration.

3. Any unlawful or improper conduct by—

(*a*) board members, officials or employees of Umgeni;

(*b*) contractors, supplier or service provider of Umgeni or their sub-contractors; or

(*c*) any other person or entity,

in relation to the allegations set out in paragraphs 1 and 2 of this Schedule.

PROKLAMASIE NO. R. 4 VAN 2019

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 Umgeni Water (hierna na verwys as “Umgeni”), ‘n waterraad wat ingevolge artikel 108 van die Waterwet, 1956 (Wet No. 54 van 1956) ingestel is en in die Provinsie van KwaZulu-Natal werksaam is;

EN AANGESIEN Umgeni of die Staat verliese kon 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 Umgeni, 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 Umgeni;

(*b*) onbehoorlike of onregmatige optrede deur raadslede, beamptes of

werknemers van Umgeni;

(*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 Umgeni; 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 Umgeni of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die 16dag van Januarie Twee duisend-en-negentien.

CM Ramaphosa
President

Op las van die President-in-Kabinet:

TM Masutha
Minister van die Kabinet

BYLAE

1. Die verkryging van, of kontraktering, insluitend subkontraktering, vir goedere, werke of dienste deur of namens Umgeni, 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, omsendskrywes of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of

  (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op Umgeni van toepassing is,

(*c*) bedrieglik was;

(*d*) wat gedoen of gefasiliteer was deur die onbehoorlike of onwettige optrede van—

  (i) raadslede, werknemers of beamptes van Umgeni;

  (ii) kontrakteurs, verskaffers of diensverskaffers of hulle subkontrakteurs; of

  (iii) enige ander persoon of entiteit,

om hulself of enige ander persoon of entiteit op 'n korrupte of onbehoorlike wyse te bevoordeel,

en enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur Umgeni of die Staat aangegaan is of enige verbandhoudende verliese wat deur Umgeni of die Staat gely is ten opsigte van die—

  (*aa*) "Contract Participation Goal Programme" van Umgeni;

  (*bb*) voorsiening of opgradering van nood-boorgate in die uMkhanyakude Distrik;

  (*cc*) herstel of opknapping van die Nagle Aqueducts;

  (*dd*) vervanging van filterplate, pyplyne en spuitpunte ingevolge die "Contract Participation Goal Programme" van Umgeni;

  (*ee*) voorsiening en opgradering van chloor verspreidingstoerusting, die verspreiding van chloor en die opgradering van aspompe en hysers by die "Durban Heights Plant";

  (*ff*) voorsiening van noodpyplyne in die gebied van Ugu Distriksmunisipaliteit;

(*gg*) aankoop en installering van beheerkleppe ingevolge die "Contract Participation Goal Programme" van Umgeni; en

(*hh*) installering van Nungwane pyplyne in die omgewing van Amanzimtoti.

2. Wanadministrasie ten opsigte van die implementering van die "Contract Participation Goal Programme" deur Umgeni en enige verliese, skade of werklike of potensiële nadeel wat deur Umgeni of die Staat gely is, met inbegrip van die oorsake van sodanige onbehoorlike of onwettige gedrag.

3. Enige onwettige of onbehoorlike gedrag deur—

(*a*) raadslede, beamptes of werknemers van Umgeni;

(*b*) kontrakteurs, verskaffers of diensverskaffers van Umgeni of dié se subkontrakteurs ; of

(*c*) enige ander persoon of entiteit,

ten opsigte van die bewerings uiteengesit in paragrawe 1 en 2 van hierdie Bylae.