PROCLAMATIONS • PROKLAMASIES

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 16 **7 May 2021**

by the

PRESIDENT of the REPUBLIC of SOUTH AFRICA

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 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 KwaZulu-Natal Department of Transport (hereinafter referred to as "the Department");

AND WHEREAS the Department 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 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 alleged—

(*a*) serious maladministration in connection with the affairs of the Department;

(*b*) improper or unlawful conduct by officials or 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 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 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 took place between 13 July 2016 and the date of publication of the Proclamation or which took place prior to 13 July 2016 or after the date of publication of the 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 the 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 Department 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 Johannesburg this 22nd day of July Two thousand and twenty one.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

RO Lamola
Minister of the Cabinet

SCHEDULE

1. The procurement of and contracting for the construction of a concrete barrier wall in terms of tender number ZNT4128/16T: construction of a concrete barrier wall between uMkhanyakude and Mozambique Border Phase 1: KM0, 0 to KM8 (labour intensive construction) 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, o applicable to the Department,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred or lo suffered by the Department or the State.

2. Any unlawful or improper conduct by—

(*a*) officials or employees of the Department; or

(*b*) any other person or entity,

in relation to the allegations set out in paragraph 1 of this Schedule.

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DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

NO. R. 16 **7 May 2021**

van die

PRESIDENT van die REPUBLIEK van SUID AFRIKA

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 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 KwaZulu-Natal Departement van Vervoer (hierna na verwys as "die Departement");

EN AANGESIEN die Departement of die Staat 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 beamptes of 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 13 Julie 2016 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 13 Julie 2016 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 of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 22ste dag van Julie Tweeduisend-en-een-en-twintig.

CM Ramaphosa
President

Op las van die President-in-Kabinet

RO Lamola
Minister van die Kabinet

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BYLAE

1. Die verkryging van, en kontraktering vir, die bou van 'n beton versperringsmuur ingevolge tendernommer ZNT4128/16T: konstruksie van 'n beton versperringsmuur tussen uMkhanyakude en Mosambiek Grens Fase 1: KM0, 0 tot KM8 (arbeidsintensiewe konstruksie) en betalings wat ten opsigte daarvan gemaak is op ‘n wyse wat—

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

(*b*) strydig was met—

(i) wetgewing;

(ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of die betrokke Provinsiale Tesourie uitgevaardig is; of

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

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat aangegaan is, of verliese wat gely is deur die Departement of die Staat.

2. Enige onbehoorlike of onwettige optrede deur—

(*a*) beamptes of werknemers van die Departement; of

(*b*) enige ander persoon of entiteit,

ten opsigte van die bewerings uiteengesit in paragraaf 1 van hierdie Bylae.

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