PROCLAMATIONS • PROKLAMASIES

PROCLAMATION 144 OF 2023

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: GERT SIBANDE TECHNICAL AND VOCATIONAL EDUCATION AND TRAINING COLLEGE

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 Gert Sibande Technical and Vocational Education and Training College ("the College");

AND WHEREAS the College 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 College, 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 College;
(*b*) improper or unlawful conduct by employees of the College;
(*c*) unlawful appropriation or expenditure of public money;
(*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 College; 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 2019 and the date of publication of this Proclamation or which took place prior to 1 January 2019 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 College, 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 10th day of November Two thousand and twenty three.

MC Ramaphosa
President
By Order of the President-in-Cabinet:
RO Lamola
Minister of the Cabinet

SCHEDULE

1. Serious maladministration in connection with the affairs of the College, including the causes of such maladministration, arising from the procurement of, or contracting for goods, works or services in relation to—

(*a*) the development and implementation of an online learning and assessment system and a human resource management, recruitment and record keeping system in terms of a Memorandum of Agreement dated 1 July 2020;
(*b*) the rendering of programme and project management services aligned to innovation and special projects in terms of a Service Level Agreement dated 12 May 2021;
(*c*) the acquisition of fraud and risk management software and additional services in 2019;
(*d*) the acquisition of an encrypted communications solution in 2019;
(*e*) the acquisition of the Head Office main server in 2020; and
(*f*) the development of a business continuity process and an information technology strategy in 2020,

by or on behalf of the College and payments made in respect thereof in a manner that was—

(i) not fair, competitive, transparent, equitable or cost-effective; or
(ii) contrary to applicable—
(*aa*) legislation;
(*bb*) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or
(*cc*) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the College,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the College.

2. Any irregular, improper or unlawful conduct by—

(*a*) employees or officials of the College; or
(*b*) any other person or entity,

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

PROKLAMASIE KENNISGEWING 144 VAN 2023

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: GERT SIBANDE TEGNIESE EN PRAKTIESE OPVOEDING- EN OPLEIDINGSKOLLEGE

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 Gert Sibande Tegniese en Praktiese Opvoeding- en Opleidingskollege (hierna na verwys as “die Kollege”);

EN AANGESIEN die Kollege 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 Kollege, 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 Kollege;
(*b*) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die Kollege;
(*c*) onregmatige bewilliging of besteding van publieke geld;
(*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 Kollege; 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 2019 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2019 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 Kollege gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die tiende dag van November Twee duisend-en-drie-en-twintig.

MC Ramaphosa
President
Op las van die President-in-Kabinet:
RO Lamola
Minister van die Kabinet

BYLAE

1. Ernstige wanadministrasie in verband met die aangeleenthede van die Kollege, insluitend die oorsake van sodanige wanadministrasie, voortspruitend uit die verkryging van, of kontraktering vir, goedere, werke of dienste in verband met—

(*a*) die ontwikkeling en implementering van 'n aanlyn leer- en assesseringstelsel en 'n menslike hulpbronne bestuur-, werwing- en rekordbewaring stelsel ingevolge 'n Memorandum van Ooreenkoms gedateer 1 Julie 2020;

(*b*) die lewering van program- en projekbestuur dienste in lyn met innovasie en spesiale projekte ingevolge 'n Diensvlakooreenkoms gedateer 12 Mei 2021;

(*c*) die aanskaffing van bedrog- en risikobestuur sagteware en addisionele dienste in 2019;

(*d*) die aanskaffing van 'n enkripte kommunikasieoplossing in 2019;

(*e*) die aanskaffing van die Hoofkantoor hoof-bediener in 2020; en

(*f*) die ontwikkeling van 'n besigheids kontinuteitsproses en 'n inligtingstegnologie strategie in 2020,

deur of namens die Kollege en betalings in verband daarmee gemaak op 'n wyse wat—

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

(ii) strydig was met toepaslike—

(*aa*) wetgewing;

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

(*cc*) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Kollege van toepassing is,

en enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Kollege aangegaan is.

2. Enige onreëlmatige, onbehoorlike of onwettige optrede deur–

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

(*b*) enige ander persoon of entiteit,

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

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