

PROCLAMATION*by the**President of the Republic of South Africa***No. R. 4, 2012****COMMISSION OF INQUIRY INTO ALLEGATIONS OF FRAUD, CORRUPTION, IMPROPRIETY OR IRREGULARITY IN THE STRATEGIC DEFENCE PROCUREMENT PACKAGE**

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I hereby –

- (a) declare that the provisions of the said Act shall be applicable to the Commission of Inquiry into Allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Package; and
- (b) make the regulations in the Schedule with reference to the said Commission.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this Sixth day of February Two thousand and twelve.

JG ZUMA**PRESIDENT**

By Order of the President-in-Cabinet:

**JT RADEBE
MINISTER OF THE CABINET**

SCHEDULE

REGULATIONS

1. In these regulations, unless the context otherwise indicates—

"Chairperson" means the Chairperson of the Commission;

"Commission" means the Commission of Inquiry into Allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Package referred to in *Government Gazette* No. R.926 of 4 November 2011;

"document" includes, whether in electronic form or otherwise, any book, pamphlet, record, list, circular, plan, poster, publication, drawing, photograph, picture or data, and also any disc, harddrive recording or other device by means of which information or data is recorded or stored;

"inquiry" means the inquiry conducted by the Commission;

"member" means a member of the Commission;

"Minister" means the Minister of Justice and Constitutional Development;

"officer" means a person in the full-time service of the State who has been appointed or designated to assist the Commission in the execution of its functions; and

"premises" includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft.

2. The proceedings of the Commission shall be recorded in the manner determined by the Chairperson.

3. (1) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical or electronic means or to transcribe such proceedings which have been so taken down or recorded shall at the outset take an oath or make an affirmation in the following form:

I, A.....B....., declare under oath/affirm and declare—

- (a) That I shall faithfully and to the best of my ability take down/record the proceedings of the Commission of Inquiry into Allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Package in shorthand/by mechanical/ by electronic means as ordered by the Chairperson of the Commission; and
- (b) that I shall transcribe fully and to the best of my ability any shorthand notes/mechanical record/ electronic record of the proceedings of the said Commission made by me or by any other person.

(2) No shorthand notes or mechanical or electronic record of the proceedings of the Commission shall be transcribed except by order of the Chairperson.

4. (1) The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of some of its functions, in a capacity other than that of a member.

(2) The Commission shall, where necessary be assisted by officers of any Department of State seconded to its service or persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the Commission.

5. Any person designated or seconded under regulation 4 who is not an employee in the public service, may be paid such fees or travelling and subsistence allowance, while engaged upon the business of the Commission, as the Minister may with the concurrence of the Minister of Finance, determine.

6. Any officer or person designated thereto by the Chairperson may be present at any stage of the inquiry or the gathering of information or the hearing of evidence at the inquiry.

7. Any person appearing before the Commission may be assisted by an advocate or an attorney, at own cost.

8. (1) No person appearing before the Commission may refuse to answer any question on any ground other than the privilege contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1947).

(2) No evidence regarding questions and answers contemplated in subregulation (1), and no evidence regarding any fact or information that comes to light in consequence of any such questions or answers, shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947), or regulation 14.

(3) Any witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination by such person because the Chairperson deems it necessary in the interest of the functions of the Commission.

(4) Any witness may be re-examined by his or her legal representative for the purpose of explaining the evidence given by the witness during his or her examination.

9. Where, at the time of any person presenting information to or giving evidence before the Commission, members of the general public are or have been excluded from attendance at the proceedings of the Commission, the Chairperson may, on the request of such a person, direct that no person shall disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.

10. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's inquiry may adversely affect any existing, instituted or pending legal proceedings or any inquiry instituted in terms of any law, evidence which is relevant to such legal proceedings or inquiry shall be dealt with by the Commission in such a manner as not to adversely affect such legal proceedings or inquiry.

11. (1) Any officer may, with a warrant, for the purposes of the inquiry, at any reasonable time and without prior notice, or with such notice as he or she may deem appropriate, enter and inspect any premises and demand and seize any document or article which is on such premises.

(2) Any entry upon or search of any premises or person thereon in terms of this regulation, shall be conducted with strict regard to decency and order, including—

- (a) a person's right to, respect for and the protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(3) The premises referred to in subregulation (1) may be entered only by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises is situated.

(4) A warrant referred to in subregulation (1) may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.

(5) A warrant referred to in subregulation (1) may be issued only if it appears to the magistrate, regional magistrate or judge from information revealed under oath or affirmation that there is a need for a warrant authorising a search and seizure and that there are reasonable grounds to believe that any document or article referred to in subregulation (1) is on or at such premises or suspected to be on or at such premises.

12. (1) No person shall communicate to any other person any matter or information which may have come to his or her knowledge in connection with the inquiry or allow or permit any other person to have access to any records of the Commission except in so far as it is necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.

(2) Every person in the service of the Commission and every officer, but not the Chairperson or a member, shall, before performing any duty in

connection with the Commission, take and subscribe before the Chairperson an oath in the following form:

“I, A.B., declare under oath/affirm and declare that, except in so far as it is necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into Allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Package or by order of a competent court, I shall not communicate to any person any matter or information which comes to my knowledge in connection with the inquiry, or allow or permit any person to have access to any records of the Commission, including any notes, record or transcription of the proceedings of the Commission in my possession or custody or in the possession or custody of the Commission or any officer.”.

13. No person shall insult, disparage or belittle the Chairperson or any member of the Commission or prejudice the inquiry or proceedings or findings of the Commission.

14. No person shall without the written permission of the Chairperson—

- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
- (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.

15. No person shall, except in so far as shall be necessary in the execution of the terms of reference of the Commission, publish or furnish any other person with the report or any interim report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission, unless the President has authorised the publication.

16. (1) Without derogating from the provisions of the Commissions Act, a person is guilty of an offence if he or she—

- (a) wilfully hinders, resists or obstructs any officer in the exercise of any power contemplated in regulation 11; or
- (b) contravenes regulation 8(1), 12(1), 14 or 15; or
- (c) contravenes regulation 13.

(2) A person convicted of an offence in terms of sub-regulation (1) is liable—

- (i) in the case of an offence referred to in paragraph (a) or (b), to a fine not exceeding two hundred rand, or to imprisonment for a period not exceeding six months; and
- (ii) in the case of an offence referred to in paragraph (c), to a fine not exceeding one thousand rand, or to imprisonment for a period not exceeding 12 months.

17. These regulations may be added to, varied or amended from time to time.
