

PROCLAMATION

by the

President of the Republic of South Africa

No. R. 59, 2013

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 the national Department of Public Works (hereinafter referred to as "the Department");

AND WHEREAS the allegations relate to a prestige project involving the security upgrading of the private residence of the President situated at Nkandla, KwaZulu-Natal (hereinafter referred to as "the Project");

AND WHEREAS the Department or the State may have suffered losses in connection with the Project that may be recovered;

AND WHEREAS I deem it necessary that the said allegations made in connection with the Project 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, and after consultation with the Minister of Public Works, 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 those matters, the terms of reference of the Special Investigating Unit are to investigate, as contemplated in the Act, any -

- (a) serious maladministration in connection with the affairs of the Department;
- (b) improper or unlawful conduct by officials and/or employees of the Department;
- (c) unlawful appropriation or expenditure of public money;
- (d) intentional or negligent loss of public money;
- (e) offence referred to in Part 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, and which offences were committed in connection with the affairs of the Department; or
- (f) 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 has taken place between 1 January 2008 and the date of publication of this Proclamation, or after the date of publication of this Proclamation, and which is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or which involves the same persons, entities, transactions or contracts investigated under the 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 damages or losses suffered by the Department or the State, in relation to the matters mentioned in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Nkandla this eighteenth day of December Two thousand and thirteen.

J G Zuma
President

By Order of the President-in-Cabinet:

J T Radebe
Minister of the Cabinet

SCHEDULE

1. The procurement of, and contracting for, goods, works or services by or on behalf of the Department in connection with the Project –
 - (a) in a manner that was not fair, equitable, transparent, competitive or cost-effective;
 - (b) in a manner that was contrary to applicable -
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury;
 - (iii) manuals, codes, policies, procedures, prescripts, guidelines, instructions or practices of, or applicable to the Department; or
 - (iv) delegations of authority;
 - (c) from contractors, suppliers or service providers (hereinafter collectively referred to as “the Department’s suppliers”) –
 - (i) owned, managed or operated by –
 - (aa) officials or employees of the Department (hereinafter collectively referred to as “the Department’s personnel”); or
 - (bb) the spouses, life partners, relatives, friends or associates of the the Department’s personnel; or
 - (ii) in which the Department’s personnel held undeclared or unauthorised interests;
 - (d) by the manipulation of the Department’s procurement processes by the Department’s personnel, including the employment of unlawful schemes and practices, such as -
 - (i) cover-quoting to secure –
 - (aa) unmerited advantage; or
 - (bb) the awarding of contracts by the Department to the actual or potential prejudice of the Department or the State, or any other potential contractors, suppliers or service providers; or
 - (ii) splitting, where works, goods or services are split into parts or into items of lesser value as a means of avoiding compliance with procurement prescripts or keeping procurement within the scope of the delegated authority of certain of the Department’s personnel; or
 - (e) by evading competitive bidding processes by the renewal, extension or amendment of the Department’s contracts with the Department’s suppliers, including the extension of the periods of duration of such contracts,

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

2. Payments that were made by or on behalf of the Department in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

3. Any undisclosed or unauthorised interests which the Department's personnel may have had in the Department's suppliers bidding for work or doing business with the Department or to whom contracts were awarded by the Department, and the extent of any actual or potential benefits derived directly or indirectly by the Department's personnel from such undisclosed or unauthorised interests in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

4. Maladministration of the affairs of the Department and any losses or prejudice suffered by the Department or the State as a result of such maladministration in relation to –

- (a) payments that were made to the Department's suppliers despite their non-performance, incomplete performance or defective performance;
- (b) overpayments or duplicate payments that were made to the Department's suppliers;
- (c) unlawful conduct or irregular practices of the Department's personnel affecting the Department's funds; or
- (d) failure by the Department's personnel to exercise proper control over the expenditure of the Department's funds,

including the causes of such maladministration in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

5. Improper or unlawful conduct by the Department's suppliers or other third parties in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.