

PROCLAMATION NOTICE R. 75 OF 2022

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: NEWCASTLE MUNICIPALITY

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 Newcastle Municipality situated in Kwa-Zulu Natal Province (hereinafter referred to as "the Municipality");

AND WHEREAS the Municipality 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 Municipality, 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 Municipality;
- (b) improper or unlawful conduct by officials or employees of the Municipality;
- (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 Municipality; 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 2018 and the date of publication of this Proclamation or which took place prior to 1 January 2018 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 Municipality 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 twenty-ninth day of June Two thousand and twenty two.

MC Ramaphosa
President

By Order of the President-in-Cabinet:

RO Lamola
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for goods, works or services by or on behalf of the Municipality and payments made in respect thereof in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective; or
- (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, or applicable to the Municipality,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Municipality in relation to:

- (aa) The refurbishment of DN 700 PC Pipeline and 4No Cross Connections to Parallel DN 600 Steel Pipeline;
- (bb) Bid numbers B002-2018/19; B012-2018/19; B014-2018/19; B015-2018/19; B018-2018/19; B007-2018/19; B013-2018/19 and B010-2018/19;
- (cc) A Professional service provider for assistance with Revenue Management and Supply Chain Management Solutions (System) for the period of three financial years on or about 26 April 2019;
- (dd) Supply and delivery of batteries and battery chargers on or about 31 August 2018; and
- (ee) Bid number A015-2019-2020 for the construction of a 2km, 160mm diameter upvc pipeline connection to Soul City.

2. Maladministration in the affairs of the Municipality in relation to:

- (a) Contracts awarded to persons in the Service of the State, contrary to the provisions of Regulation 44 of the Municipal Supply Chain Management Regulations dated 30 May 2005;
- (b) Payments made to fictitious employees;
- (c) Fruitless and wasteful expenditure incurred as a result of late payments made to Eskom;
- (d) Fruitless and wasteful expenditure incurred as a result of late Value Added Tax and Pay As You Earn payments to the South African Revenue Service;
- (e) Salary payments made to former employees after they had left the employ of the Municipality; including the causes of such maladministration;

3. Any irregular, improper or unlawful conduct by—

- (a) employees or officials of the Municipality;
- (b) applicable suppliers or service providers; or
- (c) any other person or entity,

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

PROKLAMASIE KENNISGEWING R. 75 VAN 2022

**van die
PRESIDENT van die REPUBLIEK van SUID AFRIKA**

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996: VERWYSING VAN AANGELEENTHEDEN NA BESTAANDE SPESIALE ONDERSOEKEENHEID: NEWCASTLE MUNISIPALITEIT

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhedes en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as "die Wet"), gemaak is in verband met die aangeleenthede van die Newcastle Munisipaliteit, geleë in die Kwa-Zulu Natal Provinsie (hierna na verwys as "die Munisipaliteit");

EN AANGESIEN die Munisipaliteit 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 Munisipaliteit, 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 Munisipaliteit;
- (b) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die Munisipaliteit;
- (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 Munisipaliteit; 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 2018 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2018 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 Munisipaliteit of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die nege-en-twintigste dag van Junie Twee duisend-en- twee-en-twintig.

MC Ramaphosa
President

Op las van die President-in-Kabinet

RO Lamola
Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering vir goedere, werke of dienste deur of namens die Munisipaliteit en betalings ten opsigte daarvan gemaak op 'n wyse wat—
 - (a) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie; of
 - (b) strydig was met toepaslike—
 - (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 Munisipaliteit van toepassing is, en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat aangegaan is deur die Munisipaliteit, met betrekking tot—
 - (aa) die opknapping van DN 700 PC Pyplyn en 4No Kruiskonneksies tot Parallel DN 600 Staal Pyplyn;
 - (bb) bodnommers B002-2018/19; B012-2018/19; B014-2018/19; B015-2018/19; B018-2018/19; B007-2018/19; B013-2018/19 en B010-2018/19;
 - (cc) 'n professionele diensverskaffer vir hulp met inkomstebestuur en voorsieningskettingbestuur oplossings (stelsel) vir die tydperk van drie finansiële jare, op of ongeveer 26 April 2019;
 - (dd) verskaffing en aflewering van batterye en batterylaaiers, op of ongeveer 31 Augustus 2018; en
 - (ee) bodnommer A015-2019-2020 vir die oprigting van 'n twee kilometer, 160mm deursnit upvc pyplynverbinding met Soul City.
2. Wanadministrasie van die aangeleenthede van die Munisipaliteit in verband met—
 - (a) kontrakte toegeken aan persone in diens van die Staat, strydig met die bepalings van Regulasie 44 van die Munisipale Voorsieningskettingbestuur Regulasies, gedateer 30 Mei 2005;

- (b) betalings aan fiktiewe werknemers gemaak;
 - (c) vrugtelose en verkwiste uitgawes aangegaan as gevolg van laat betalings aan Eskom;
 - (d) vrugtelose en verkwiste uitgawes aangegaan as gevolg van laat Belasting op Toegevoegde Waarde en Betaal Soos Jy verdien betalings aan die Suid-Afrikaanse Inkomstediens; en
 - (e) salarisbetalings aan voormalige werknemers gemaak nadat hulle die diens van die Munisipaliteit verlaat het, insluitend die oorsake van sodanige wanadministrasie.
3. Enige onreëlmatige, onbehoorlike of onwettige optrede deur—
- (a) werknemers of beamptes van die Munisipaliteit;
 - (b) betrokke verskaffers of diensverskaffers; of
 - (b) enige ander persoon of entiteit,
- met betrekking tot die bewerings uiteengesit in paragrawe 1 en 2 van hierdie Bylae.