PROCLAMATIONS • PROKLAMASIES

PROCLAMATION 122 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 AND SPECIAL TRIBUNAL: UMGENI WATER BOARD

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 Umgeni Water Board (hereinafter referred to as the "UBW");

AND WHEREAS the UWB 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 UWB, 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 UWB;

(*b*) improper or unlawful conduct by employees of the UWB;

(*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 UWB; 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 01 March 2018 and the date of publication of this Proclamation or which took place prior to 01 March 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 UWB 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 Cape Town this 15 day of May Two thousand and twenty three.

MC Ramaphosa
President

By Order of the President-in-Cabinet:

RO Lamola
Minister of the Cabinet

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SCHEDULE

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

(*a*) not fair, equitable, transparent, competitive or cost-effective;

(*b*) contrary to applicable–

(i) legislation;

(ii) manuals, guidelines, circulars, practice notes 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 UWB,

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

(*aa*) contracts concluded by the UWB for the provision of security and guarding services on 26 November 2018 and 25 January 2019; and

(*bb*) tender number 2020/030 for Social Facilitation and Community Engagement for the UWB Infrastructure Projects for a period of five years.

2. Any improper or unlawful conduct by officials or employees of the UWB or the State, the applicable service providers, or any other person or entity in relation to the allegations set out in paragraph 1 of this Schedule.

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PROKLAMASIE 122 VAN 2023

van die

PRESIDENT van die REPUBLIEK van SUID AFRIKA

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996: VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID: UMGENI WATERRAAD

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 Umgeni Waterraad (hierna na verwys as "UW");

EN AANGESIEN die UW 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 UW, 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 UW;

(*b*) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die UW;

(*c*) onregmatige bewilliging of besteding van publieke geld of eiendom;

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(*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 UW; 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 Maart 2018 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Maart 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 UW of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad op hede die 15 dag van Mei Tweeduisend-drie-en-twintig.

MC Ramaphosa
President

Op las van die President-in-Kabinet

RO Lamola
Minister van die Kabinet

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BYLAE

1. Die verkryging van, of kontraktering vir, goedere, werke of dienste, deur of namens die UW en betalings wat ten opsigte daarvan gemaak is 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 UW van toepassing is,

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat aangegaan is deur die UW ten opsigte van—

(*aa*) kontrakte deur die UW aangegaan vir die verskaffing van sekuriteit- en beskermingsdienste op 26 November 2018 en 25 Januarie 2019; en

(*bb*) tendernommer 2020/030 vir Maatskaplike Fasilitering en Gemeenskapsbetrokkenheid vir die UW Infrastruktuur Projekte vir ‘n tydperk van vyf jaar.

2. Enige onwettige of onbehoorlike optrede deur beamptes of werknemers van die UW of die Staat, die betrokke diensverskaffers of enige ander persoon of entiteit met betrekking tot die bewerings uiteengesit in paragraaf 1 van hierdie Bylae.

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