PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NOTICE 137 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: AMAJUBA DISTRICT 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 Amajuba District Municipality (hereinafter referred to as "the Municipality");

AND WHEREAS the Municipality or the State 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 the employees or officials 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 August 2019 and the date of publication of this Proclamation or which took place prior to 1 August 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 Municipality or the State, in relation to the said matters in the Schedule.

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Given under my Hand and the Seal of the Republic of South Africa at Johannesburg this 4th day of August Two thousand and twenty three.

President

By Order of the President-in-Cabinet:

Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for the construction of a reinforced concrete reservoir and associated infrastructure in terms of Bid No. T2019/14 and payments made in respect thereof in a manner that was—

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

(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 Municipality or the State.

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

PROKLAMASIE 137 VAN 2023

van die
PRESIDENT van die REPUBLIEK van SUID AFRIKA

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996, (WET NO. 74 OF 1996): VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID: AMAJUBA DISTRIKSMUNISIPALITYD

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna verwys as "die Wet"), gemaak is in verband met die aangeleenthede van die Amajuba Distriksmunisipaliteit (hierna 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 terme van verwysing 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 openbare 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 openbare geld of skade aan openbare 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 Augustus 2019 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Augustus 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 Munisipaliteit of die Staat gely is.

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Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 4 dag van Augustus Twee duisend-en-drie-en-twintig.

President

Op las van die President-in-Kabinet

Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering vir die konstruksie van 'n versterkte beton reservoir en gepaardgaande infrastruktuur ten opsigte van kontrak nommer T2019/14 en betalings wat ten opsigte daarvan betaal is op 'n manier wat—

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

(b) strydig was met toepaslike—

(i) wetgewing;

(ii) handleidings, riglyne, omsendskrywes, praktyknotas, of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of

(iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke wat op die Munisipaliteit van toepassing is,

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat aangegaan is, deur die Munisipaliteit of die Staat.

2. Enige onwettige, onbehoorlike of onreëlmatige gedrag deur beamptes of werknemers van die Munisipaliteit, of die bevraagtekende diensverskaffers, of enige ander persoon of entiteit met betrekking tot die bewerings uiteengesit in paragraaf 1 van hierdie Bylae.