
PROCLAMATIONS • PROKLAMASIES

PROCLAMATION 138 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: TSHWANE METROPOLITAN MUNICIPALITY

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), (“the Act”), have been made in respect of the affairs of the Tshwane Metropolitan Municipality (hereinafter referred to as “the Municipality”);

AND WHEREAS the State or the Municipality 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—

- (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 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 (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 has taken 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, 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 twelfth day of September Two thousand and twenty three.

MC Ramaphosa
President

By Order of the President-in-Cabinet:

RO Lamola
Minister of the Cabinet

SCHEDULE

1. The procurement of and 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;
- (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, 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 or the State in respect of tender number USD WS 30-2017/18 for the construction of Phase 1 upgrades and urgent refurbishment at the Rooiwal Waste Water Treatment Works.

2. Any unlawful or irregular conduct by—

- (a) employees of the Municipality; or
- (b) any other person or entity,

relating to the allegations referred to in paragraph 1 of this Schedule.

PROKLAMASIE KENNISGEWING 138 VAN 2023

**van die
PRESIDENT van die REPUBLIEK van SUID-AFRIKA****WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996
(WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA
BESTAANDE SPESIALE ONDERSOEKEENHEID: TSHWANE
METROPOLITAANSE MUNISIPALITEIT**

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) ("die Wet"), gemaak is in verband met die aangeleentheid van die Tshwane Metropolitaanse Munisipaliteit (hierna na verwys as "die Munisipaliteit");

EN AANGESIEN die Staat of die Munisipaliteit verliese gely het wat moontlik 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 aangeleentheid 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 aangeleentheid, dit 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 aangeleentheid 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, van 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 in verband met die sake van die Munisipaliteit gepleeg is; 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 gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die twaalfde dag van September Twee duisend-en-drie- 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 produkte en dienste deur of namens die Munisipaliteit, en betalings wat in verband daarmee gemaak is op 'n wyse wat—
 - (a) nie regverdig, mededingend, deursigtig, billik, of koste-effektief was nie;
 - (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas, omsendbriewe of instruksies wat deur die Nasionale Tesourie of toepaslike Provinsiale Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Munisipaliteit van toepassing is,en enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawes wat deur Munisipaliteit, of die Staat opgedoen was, ten opsigte van tender nommer USD WS 30-2017/18 vir die konstruksie van Fase 1-opgraderings en dringende opknapping by die Rooiwal-afvalwatersuiweringswerke.
2. Enige onwettige of onbehoorlike gedrag deur—
 - (a) beamptes of werknemers van die Munisipaliteit; of
 - (b) enige ander persoon of entiteit,ten opsigte van die bewering uiteengesit in paragraaf 1 van hierdie Bylae.