PROCLAMATION 198 OF 2024

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

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 Eastern Cape Provincial Department of Health (hereinafter referred to as "the Department");

AND WHEREAS the Department 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 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 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 Department;
(b) improper or unlawful conduct by employees of the Department;
(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 Department; 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 August 2022 and the date of publication of this Proclamation or which took place prior to 01 August 2022 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 Department 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 10th day of September Two thousand and twenty-four.

CM Ramaphosa
President

By Order of the President-in-Cabinet:
T Simelane

Minister of the Cabinet

Schedule

1. The procurement of, or contracting for goods, works or services by or on behalf of the Department in relation to the following contracts:

No.	BID/ORDER NO.
1	SCMU3-21/22-0269-BCMHD
2	SCMU3-19/20-0364-BCM
3	SCMU3-21/22-0269-BCMHD
4	SCMU3-19/20-0364-BCM
5	SCMU3-21/22-0269-BCMHD
6	QA-004583
7	SCMU3-21/22-0269-BCMHD
8	HO-106760
9	FR-096383
10	QA-006336
11	SCMU3-21/22-0269-BCMHD
12	SCMU3-19/20-0364-BCM
13	RFQ-BCMHD-2023/2024-05
14	RFQ-BCMHD-2023/2024-05
15	SCMU3-21/22-0269-BCMHD
16	RFQ-BCMHD-2023/2024-05
17	RFQ-BCMHD-2023/2024-05
18	SCMU3-21/22-0269-BCMHD
19	SCMU3-21/22-0269-BCMHD

and payments made in relation thereto 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;

  (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Department;

(c) fraudulent;

(d) conducted or facilitated by the manipulation of the Department's supply chain management processes—

  (i) by the applicable service provider/supplier, employees of the Department or other third parties; and

(ii) in collusion with or through the intervention of employees of the Department,

to corruptly or unduly benefit themselves or others;

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Department or the State in relation thereto;

2. Any irregular, unlawful or improper conduct by—

(a) employees of the Department; or

(b) the applicable service provider/supplier of the Department; or

(c) any other person or entity,

in relation to the allegations as set out in paragraph 1 of this Schedule.

PROKLAMASIE 198 VAN 2024

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 EN SPESIALE TRIBUNAAL

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 Oos-Kaap Provinsiale Departement van Gesondheid (hierna na verwys as "die Departement");

EN AANGESIEN die Departement 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;

NOU, DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld, ten opsigte van die Departement, 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 Departement;
(b) onbehoorlike of onregmatige optrede deur werknemers van die Departement;
(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 Departement; 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 2022 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Augustus 2022 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 Departement of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te KaapStad op hede die 10de dag van September Tweeduisend vier-en-twintig.

CM Ramaphosa
President

Op las van die President-in-Kabinet:

T Simelane
Minister van die Kabinet

BYLAE

1. Die verkryging van, of kontraktering vir goedere, werke of dienste deur of namens die Departement ten opsigte van die volgende kontrakte:

No.	BID/ORDER NO.
1	SCMU3-21/22-0269-BCMHD
2	SCMU3-19/20-0364-BCM
3	SCMU3-21/22-0269-BCMHD
4	SCMU3-19/20-0364-BCM
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18	SCMU3-21/22-0269-BCMHD
19	SCMU3-21/22-0269-BCMHD

en betalings wat ten opsigte daarvan gemaak is op 'n wyse wat—
(a) nie regverdig, mededingend, deursigtig, gelykbaar of koste-effektief is nie;
(b) teenstrydig is met toepaslike—
(i) wetgewing;
(ii) handleidings, riglyne, praktyk notas, omsendskrywes en instruksies uitgereik deur die Nasionale Tesourie of die betrokke Provinsiale Tesourie; of

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(iii) handleidings, beleid, prosedures, voorskrifte, instruksies of gebruike van, of van toepassing op, die Departement;

(c) bedrieglik;

(d) verrig of gefasiliteer deur die manupilering van die Departement se verskaffingsbestuur prosesse—

(i) deur die toepaslike diesnverskaffer/verskaffer, werknemers van die Departement of ander derde partye; en

(ii) in samewerking met of deur die tussentrede van werknemers van die Departement,

om bedrieglik of onbehoorlik hulself of ander te bevoordeel;

en enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspulde uitgawes aangegaan deur die Departement of die Staat met betrekking daartoe;

2. Enige onreëlmatige, onwettige of onbehoorlike optrede deur—

(a) werknemers van die Departement;

(b) die betrokke diensverskaffer/verskaffer van die Departement; of

(c) enige ander persoon of entiteit,

ten opsigte van die bewerings uiteengesit in paragraaf 1 van hierdie Bylae.