
PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 4 OF 2018

**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

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 Agriculture Sector Education and Training Authority (hereinafter referred to as "Authority");

AND WHEREAS the Authority 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 Authority, 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 Authority;
- (b) improper or unlawful conduct by board members, employees or officials of the Authority;
- (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 Authority; 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 April 2010 and the date of publication of this Proclamation or which took place prior to 1 April 2010 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 Authority 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 Pretoria this Fourteenth day of December Two thousand and seventeen.

J G Zuma
President

By Order of the President-in-Cabinet:

T M Masutha
Minister of the Cabinet

SCHEDULE

1. The expenditure of Discretionary Grant funding by or on behalf of the Authority in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective;
- (b) contrary to the applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
 - (iii) manuals, codes, policies, procedures, prescripts, instructions or practices of, or applicable to the Authority,

in relation to—

- (aa) Project Number NSFSP-064;
- (bb) a donation made to the Food and Allied Workers Union in respect of its 2016 National Congress;
- (cc) projects not included in the Annual Performance Plan of the Authority for the 2014/2015, 2015/2016 and 2016/2017 financial years; and
- (dd) the allocation or reallocation of surplus discretionary funds in respect of the 2015/2016 financial year,

and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Authority or the State.

2. The procurement of, or contracting for training related services, audit related services and legal services by or on behalf of the Authority and payments made in relation thereto, in a manner that was—

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

- (b) contrary to the applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
 - (iii) manuals, codes, policies, procedures, prescripts, guidelines, instructions or practices of, or applicable to, the Authority;and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Authority or the State.
- 3. Maladministration relating to—
 - (a) bursaries granted to officials or employees of the Authority; and
 - (b) the appointment of a firm of attorneys to represent the Chief Executive Officer of the Authority during grievance proceedings,and any losses or prejudice suffered by the Authority or the State as a result of such maladministration.
- 4. Any unlawful or improper conduct by board members, employees or officials of the Authority or any other person or entity, in relation to the allegations set out in paragraphs 1 to 3 of this Schedule.

PROKLAMASIE NO. R. 4 VAN 2018**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**

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 "Agriculture Sector Education and Training Authority" (hierna na verwys as "die Gesag");

EN AANGESIEN die Gesag of die Staat moontlike verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele verrigtinge 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 Gesag, vir ondersoek na die Spesiale Ondersoekeenhede ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleenthede, dit die opdrag van die Spesiale Ondersoekeenhede is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Gesag;
- (b) onbehoorlike of onregmatige optrede deur raadslede, werknemers of beamptes van die Gesag;
- (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 in verband met die sake van die Gesag 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 April 2010 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 April 2010 of na die datum van publikasie van hierdie Proklamasie, maar 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 Gesag of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Veertiende dag van Desember Twee duisend-en-sewentien.

J G Zuma
President

Op las van die President-in-Kabinet:

T M Masutha
Minister van die Kabinet

BYLAE

1. Die besteding van "Discretionary Grant" befondsing deur of namens die Gesag op 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 uitgevaardig is; of
 - (iii) handleidings, kodes, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Gesag van toepassing is,

ten opsigte van—

- (aa) Projeknommer NSFSP-064;
- (bb) 'n skenking wat gemaak is aan die "Food and Allied Workers Union" ten opsigte van dié se Nasionale Kongres;
- (cc) projekte wat nie in die Jaarlikse Prestasieplan van die Gesag vir die 2014/2015, 2015/2016 en 2016/2017 finansiële jare ingesluit was nie; en
- (dd) die toekenning of herverdeling van surplus diskresionêre fondse ten opsigte van die 2015/2016 finansiële jaar,

en verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Gesag of die Staat opgedoen was.

2. Die aanskaffing van, of kontraktering vir opleidingverwante dienste, auditverwante dienste en regsdiensde deur of namens die Gesag en betalings wat in verband daarmee 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 uitgevaardig is; of

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

en verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Gesag of die Staat opgedoen was.

3. Wanadministrasie in verband met—

(a) beurse wat toegeken is aan beamptes of werknemers van die Gesag; en

(b) die aanstelling van 'n prokureursfirma om die Hoof Uitvoerende Beampte van die Gesag te verteenwoordig tydens grieweprosedure,

en enige verliese of nadeel wat die Gesag of die Staat gely het as gevolg van sodanige wanadministrasie.

4. Enige onwettige of onbehoorlike gedrag deur raadslede, werknemers of beamptes van die Gesag of enige ander persoon of entiteit, wat in verband staan met die bewerings waarna in paragrafe 1 tot 3 van hierdie Bylae verwys word.