



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

ALLEGED ABUSE OF THE 30% SUBCONTRACTING REQUIREMENTS PROVIDED FOR IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017

National Treasury has received complaints¹ about the abuse in certain provinces and municipalities of the requirement that 30% of public procurement contracts be subcontracted to designated groups, as provided for in the Preferential Procurement Regulations, 2017. It is alleged that some people are now demanding that they, instead, be paid in cash 30% of the value of each contract awarded in these provinces or municipalities. If their demands are not met, they threaten contractors, interrupt or stop the implementation of projects.

Such practices are not only illegal, but defeat the government objective of transforming the South African economy through equal opportunities for all and the advancement of Historically Disadvantaged Individuals (HDIs) and Small, Medium and Micro Enterprises (SMMEs). Section 217 of the Constitution of the Republic of South Africa demands that when an organ of state in the national, provincial or local sphere of government procures goods and services it must do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. Demanding that one be paid in cash 30% of the value of every contract runs counter to this constitutional requirement.

Government has determined that public procurement can help to drive transformation, including the empowerment of designated groups and SMMEs through subcontracting and prequalification for preferential procurement. Public procurement can also be used to promote industrial development. However, these public policy objectives must be achieved in accordance with Section 217 of the Constitution.

National Treasury has also noted that some organs of state are using procurement preferences that are not provided for in the current regulatory framework. These include the ring-fencing of procurement for service providers and suppliers who live within certain geographical areas. State funds spent on tenders awarded in this manner will be classified as irregular expenditure since they do not comply with the Supply Chain Management and Preferential Procurement provisions and prescripts.

¹ National Treasury has also noted the allegations about these practices made on various radio programmes.





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National Treasury calls on provincial treasuries to ensure that organs of state in provincial and local government abide by the Preferential Procurement Regulations, 2017 and that any interruptions to public projects on the basis of the 30% subcontracting requirement are reported to law enforcement agencies.

The regulations can be accessed on:

http://ocpo.treasury.gov.za/Resource_Centre/Legislation/Preferential%20Procurement%20Regulations%202017%20as%20per%20Gazette%2010684.pdf

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