



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

FURTHER COMMUNICATION ON CONSTITUTIONAL COURT JUDGMENT REGARDING PREFERENTIAL PROCUREMENT REGULATIONS, 2017

Following the Constitutional Court judgement issued on 16 February 2022 on the matter between the Minister of Finance and Afribusiness regarding the 2017 Preferential Procurement Regulations, the following steps have been taken by National Treasury to ensure that public procurement is not delayed and service delivery is uninterrupted.

National Treasury in communications dated 25 February 2022, and 3 and 11 March 2022 provided clarity on the implications of the Constitutional Court judgement. The advice was cautionary and not prohibitive and after considering all legal options and consultations organs of state were advised on 3 March 2022 to apply, in terms of section 3, for exemption from certain provisions of the Preferential Procurement Policy Framework Act.

National Treasury recognises the urgency of the requests for exemption in terms of section 3 of the Act and rapidly put internal processes in place to ensure that the requests are dealt with expeditiously. Once the Minister has made his decision on the exemption requests, the acting Chief Procurement Officer communicates the decision to the organ of state concerned. This process generally takes 72 hours from application to response. Organs of state that are granted exemptions may procure goods and services using their procurement policy. The exemption process will continue until new regulations are in place or the Constitutional Court has provided clarity on the matters put before them.

National Treasury has never prevented nor prohibited organs of state from procuring goods and services.

On 10 March 2022, the draft Preferential Procurement Regulations were published in the national and provincial *Gazettes* for public comment and the closing date was 11 April 2022. National Treasury is considering all the public comments received on the draft Preferential Procurement Regulations, 2022. After due process including seeking clarity where required, the department will publish the new regulations in the Gazette and on the department's website.

Concerning the Minister of Finance's application to the Constitutional Court seeking clarity on its judgement of 16 February 2022, the Registrar of the Court had advised that it is receiving the Court's attention and that the parties will be advised when the judgement will be handed down. As soon as the judgement is received from the Constitutional Court, it will be communicated accordingly.

Issued by National Treasury

Date: 13 May 2022

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