

NATIONAL COUNCIL OF PROVINCES

QUESTION FOR WRITTEN REPLY

QUESTION NUMVER 460

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Mrs E C van Lingen (DA-EC) to ask the Minister of Finance:

- (1) Whether the Tender Default Register is the only system where government tender defaulters are recorded; if not, what is the position in this regard; if so, what are the criteria for such tender defaulters to be recorded;
- (2) whether all (a) government departments and (b) officials are compelled to verify all tenderees prior to the allocation of any tenders; if not, why not; if so, what procedures are to be followed in this regard;
- (3) whether there is a precondition for tenderees in any tender process to submit a type of Tender Default Certificate Clearance and/or a similar document before being able to qualify for a tender allocation; if not, what is the position in this regard; if so, what are the relevant details;
- (4) what are the procedures to reverse the appointments in a case where a tender has been allocated to a tenderee in writing who has not been verified against the Tender Default Register?

CW569E

REPLY:

- (1) The National Treasury is mandated to manage and maintain the following two databases of companies or persons prohibited from doing business with the public sector:
 - Register for Tender Defaulters
 - List of Restricted Suppliers

Register for Tender Defaulters

The Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004 prescribes that when a court of law convicts a person for offences relating to tenders or contracts, in addition to imposing any sentence, the court may also issue an order that the name of the convicted person, the conviction and sentence and any other order of the court consequent thereupon be endorsed in the Register for Tender Defaulters.

The Act further prescribes that the National Treasury must establish, maintain and manage a public Register for Tender Defaulters. The National Treasury is to determine the period (not less than five years or more than ten years) for which the convicted companies or persons must be prohibited from doing business with the public sector. During the period determined, the convicted company or person would be prohibited from doing business with the public sector. The Register must be made available to the public.

This Register has been established within the Specialist Functions branch of the National Treasury and can be perused on the National Treasury's website under www.treasury.gov.za.

Currently there are no names on the Register as to date no such order was issued by any court of law.

List of Restricted Suppliers

The National Treasury has also established a central List of Restricted Suppliers which contains details of companies or persons that have been restricted by accounting officers or authorities of institutions from doing business with the public sector.

To this end, government institutions have been empowered to restrict companies or persons from doing business with the public sector for a period not exceeding ten years if such companies or persons have obtained preferences fraudulently or failed to perform on a contract.

Should an institution opt to restrict a company or person from doing business with the public sector, the institution is required to:

- Inform the company or person of the intention to impose the restriction, provide the reasons for such decision and the envisaged period of restriction;
- Allow the company or person fourteen days to provide reasons why the envisaged restriction should not be imposed;
- Consider any reasons submitted by the company or person;
- Impose the restriction; and
- Inform the National Treasury of such imposition including the names, reasons for restriction, the period of restriction and the date of commencement of the restriction for loading onto the central List of Restricted Suppliers

Any restriction imposed on any company or person will, at the discretion of the institution concerned, also be applicable to any other company or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the company. Formal guidelines outlining the process to be followed when exercising the option to restrict companies or persons have been issued to institutions by the National Treasury.

The Supply Chain Management Regulations issued in terms of the Public Finance Management Act (PFMA), require of all institutions to ensure that no contracts are awarded to any bidder or any of its directors that are listed as companies or persons prohibited from doing business with the public sector. Confirmation of the prohibition status of recommended bidders is available to government institutions for purposes of their contract award processes. Currently the details of 25 companies and their directors appear on the List of Restricted Suppliers.

(2) Yes.

The Supply Chain Management Regulations issued in terms of the PFMA and the Municipal Finance Management Act (MFMA) require of all institutions to ensure that no contracts are awarded to any bidder or any of its directors that are listed as companies or persons prohibited from doing business with the public sector.

In order to deal with this efficiently, institutions are required to adhere to the following procedures prior to the award of any contract.

List of Restricted Suppliers

Institutions are required to forward requests to the National Treasury for confirmation on whether or not the names of the recommended bidders or its directors appear on the list. Such requests must be forwarded by e-mail to a designated e-mail address that was specifically developed by the National Treasury for this purpose. The National Treasury responds to such requests normally within a period of one (1) working day.

Register for Tender Defaulters

Institutions are required to confirm whether or not a company or person has been prohibited from doing business with the public sector by accessing the Register for Tender Defaulters on the website of the National Treasury.

The procedures to be followed regarding both the databases have been communicated to institutions through formal treasury instructions. The Auditor-General includes, as part of its audit function, confirmation that institutions are performing the checks required of the Register for Tender Defaulters and the List of Restricted Suppliers.

(3) Yes.

The Supply Chain Management Regulations issued in terms of the PFMA and MFMA require of institutions to take all reasonable steps to prevent abuse of the supply chain management system. It provides institutions with powers to disregard the bid of any bidder if that bidder or any of its directors have, among others, abused the supply chain management system.

To this end, the National Treasury has issued a standard bidding document "Declaration of bidder's past supply chain management practices" to institutions directing them to utilize the document as part of all bids invited. The document serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat fraud and corruption in the supply chain management system. Bidders are required to complete, sign and submit the declaration document with each bid. The declaration document includes questions on whether the bidder or any of its directors are listed on the National Treasury's database as companies or persons prohibited from doing

business with the public sector and whether the bidder or any of its directors are listed on the Register for Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

Institutions are required to use the information provided by the bidder to ensure that when goods and services are being procured all reasonable steps are taken to combat the abuse of the supply chain management system.

- (4) Where a contract is awarded to a bidder without the institution first checking whether or not such a company or person is prohibited from doing business with the public sector, such action is deemed to be irregular as the institution is guilty of transgressing a treasury regulation.

If the contractor concerned is not listed as a company or person that is prohibited from doing business with the public sector, the appointment cannot be reversed.

If the contractor concerned is listed as a company or person that is prohibited from doing business with the public sector, as part of its contractual remedies the institution must cancel the contract. The institution will be liable for any damages claimed by the contractor, unless the institution can exercise any remedies available including the possibility of the contractor furnishing false information required in the standard bidding document "*Declaration of bidder's past supply chain management practices*" referred to in question 3.