

**NATIONAL COUNCIL OF PROVINCES
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 210 [CW298E]**

210. Ms B V Mncube (ANC-Gauteng) to ask the Minister Finance:

Whether his department has any plans in place to end corrupt actions by (a) contractors and (b) construction industries which are colluding with government officials for price hikes when doing business with the Government (details furnished); if not, why not; if so, what are the relevant details?

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REPLY:

a) Contractors

- 1) Treasury Regulation 16A9, in terms of the PFMA (Act No 1 of 1999) prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and it authorises accounting officers and accounting authorities to:
 - a) Disregard the bid of any bidder if that bidder or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b) Cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 2) To give effect to the requirement of this regulation, the National Treasury has further issued a practice note dated 21 July 2010 regarding the prohibition of restrictive practices to ensure that when bids are considered, all reasonable steps are taken to deter any form of bid rigging (or collusive bidding). The practice note is available on the Treasury website.
- 3) Regulation 11.(1) of the preferential procurement Regulation 2011 states that only a tenderer who has completed and signed the declaration part of the tender documentation may be considered.
- 4) Regulation 13 (1) (b) further stipulates that when an organ of state detects that any condition of the contract has not been fulfilled, it must act against the tender or person awarded the contract.

- 5) In addition to the above, the regulation makes provision for an organ of state to apply the following remedies
- a) Disqualify the person from the tendering process;
 - b) Recover all costs, losses or damages it has incurred or suffered as a result of having to make less favorable arrangements due to such cancellation;
 - c) Cancel the contract and claim any damages which it has suffered as a result of having to make less favorable arrangements due to such cancellation;
 - d) Restrict the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - e) Forward the matter for criminal prosecution.

b) Responsible Construction

The above prescripts are also applicable to the construction industries through the Construction Industry Development Board (CIDB) established to promote a regulatory and developmental framework for the construction industry. The CIDB has incorporated the Standard Bidding Document (SBD) including restriction mechanism in their process.