

**NATIONAL COUNCIL OF PROVINCES
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 221 [CW310E]
DATE OF PUBLICATION: 24 MAY 2013**

221. Mr K A Sinclair (COPE-NC) to ask the Minister of Finance:

Whether the National Treasury has measured the (a) advantages, (b) impact and/or (c) risk of preferential treatment built into the (i) National Treasury “practice note”, (ii) Preferential Procurement Policy Framework Act, Act 5 of 2000, and (iii) overall constitutionality of the black economic empowerment weighting for procurement purposes against Section 217 of the Constitution of the Republic of South Africa; if not, why not; if so, what are the relevant details?

CW310E

REPLY:

The Constitution of the Republic of South Africa, 1996, recognizes the injustices of our past which disenfranchised the majority of citizens from participating in the economic mainstream of the country. In attempting to readdress this unjust past, the Constitution makes provision for preferential procurement through section 217(2) (a) and (b). Given the size of government procurement (over R300 billion annually excluding state owned companies and municipalities), the state’s supply chain management system is deemed an important tool to facilitate the transformation of the structure of our economy and redress the economic disparities of the past. It needs to be understood that decades of economic isolation of some sections of our population cannot be eradicated overnight.

However, to address this economic imbalance, the Constitution is clear that government contracting for goods and services must be in accordance to a system that is fair, equitable, transparent, competitive and cost-effective. This means:

- that quality and cost effectiveness should not be compromised when localization, technological sharing, enterprise and small business development is promoted;
- a proper balance between value for money and the redistributive objectives of government need to be struck;
- there should be no fronting;
- The beneficiaries of government services should not be adversely affected; and
- A strong economic base of historically disadvantaged groups should emerge.

Government’s current procurement policies and practices are perfectly constitutional and consistent with the broader objectives of government and society.

National Treasury has developed a preferential procurement spend data system where all National and Provincial departments; Public Entities, Constitutional Entities and Municipalities report their procurement activities.

- a) A greater level of economic redistribution is becoming more evident in the gradual growth of participation of historically disadvantaged groups in the mainstream of the economy; and
- b) and c) (i) and (ii) There are a number of risks. First, there is a possibility that fronting and misrepresentation could arise and rules should be further tightened to avoid this. Second, poor quality and slow pace of service delivery suggest that government needs to implement this policy with supplier development measures. Third, without any mitigating strategy, costs could increase.
- (iii) The use of the BBBEE weighting regulations for public procurement, does not contradict the preferential principles of section 217 (2a&b) in the constitution.

The objective of remedying historical injustices and economic exclusion must not be lost sight of in this evolving process of transformation. This process will teach whether and which aspects work and make the necessary impact and which require adjustment or need to be replaced with more creative mechanisms. Changing the economic environment and creating equity will require many different policy tools – not only changes to state procurement policies.

Accordingly, the National Treasury, will constantly monitor developments and engage with all stakeholders to ensure that economic transformation is pursued with the appropriate urgency.