

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 1290 [NW1394E]
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1290. Mr. A D Beesley (ActionSA) to ask the Minister of Finance:

What (a) steps must the eThekweni Metropolitan Municipality undertake to ensure that (i) it complies with the Public Procurement Act, Act 28 of 2024 and (ii) businesses that were blacklisted by the municipality are included in the National Treasury Restricted Supplier and Tender Defaulter Report and (b) consequence management has been put in place for failure to comply? NW1394E

REPLY

(a) (i) The Public Procurement Act, 2024 (Act No. 28 of 2024) was approved by the President and published as an Act in the *Government Gazette* on 23 July 2024. It is important to note that the provisions of the Act are not in force yet. The current procurement framework provided for under the Public Finance Management Act, 1999, the Municipal Finance Management Act, 2003, the PPPFA and other applicable legislation remain in place until the relevant provisions of the Public Procurement Act, 2024, and accompanying regulations take effect.

(ii) To ensure that businesses blacklisted by eThekweni Metropolitan Municipality are included in National Treasury's Restricted Suppliers and Tender Defaulter Reports, the municipality must adhere to the requirements of the MFMA Section 112, subsection (l). This section states that:

*“The barring of persons from participating in tendering or other bidding processes, including persons—
(i) who were convicted for fraud or corruption during the past five years;
(ii) who wilfully neglected, reneged on or failed to comply with a government contract during the past five years.”*

To assist municipalities in complying with these requirements, National Treasury issued guidelines in MFMA Circular 43. When a decision is made by the Accounting Officer to restrict a contractor or its shareholders and directors from doing business with the public sector, the Accounting Officer must follow these steps prior to imposing such a restriction:

- Notify the contractor or persons involved by registered mail or hand-delivered notice of the intention to impose the restriction, including reasons and the envisaged period of restriction.
- Allow 14 calendar days for the contractor or persons to provide reasons why the restriction should not be imposed.

- Provide an opportunity for the contractor or persons to present evidence in person, if requested.
- Consider any reasons submitted by the contractor or persons.
- Impose the restriction or amend the initial decision, if necessary.
- Notify the contractor or persons of the final decision.
- Inform National Treasury within five working days of imposing the restriction, including all relevant details of the restricted persons (names, identity numbers, trade names, company registration numbers, income tax reference numbers, and VAT registration numbers), along with the reasons, period, and start date of the restriction.

Currently, National Treasury has no record of eThekweni Municipality implementing step 7. Since 2018, there are, no suppliers from the eThekweni municipality that are currently listed on the National Treasury's tender defaulters list.

- (b) The relationship between National Treasury (NT) and the municipality is governed by Chapter 3 of the Constitution and Chapter 5 of the Municipal Finance Management Act (MFMA). NT is not currently aware of any suppliers from eThekweni Metro that need to be restricted. However, NT provides ongoing guidance to the municipality in terms of procurement processes and regulations under the Supply Chain Management (SCM) framework.

The MFMA and related regulations enforce stringent consequence management for municipalities that fail to comply with legislative requirements, particularly procurement processes. The Municipality may implement the following consequence management measures:

- **Disciplinary actions:** Officials who fail to ensure compliance with SCM policies may face disciplinary measures as outlined in Section 171 of the MFMA. This includes actions against those who fail to enforce proper procurement procedures or manage blacklisted suppliers.
- **Investigations:** The Auditor-General (AG) or relevant provincial treasury may conduct investigations into non-compliance, providing recommendations for corrective actions where necessary.
- **Financial sanctions:** Municipalities that fail to comply with the MFMA could face financial penalties, including the withholding of certain funds or grants if non-compliance persists.
- **Reporting:** The municipality is required to report to the Council and NT on any actions taken against officials or suppliers involved in irregular activities as part of its regular audit and compliance reports.