



**national treasury**

Department:  
National Treasury  
**REPUBLIC OF SOUTH AFRICA**

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## **MEDIA STATEMENT**

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### **PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

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The purpose of this statement is to provide clarity in light of some of the news reports that have, incorrectly, attributed the new regulations to a change in procurement as it relates to State Owned Entities, and as a wholesale scrapping of Black Economic Empowerment and local content development.

This is not the case.

Procurement is a complex and highly contested arena in South Africa. Much of it is steeped in legalese and technical language. It is no accident that the Zondo Commission published a dedicated report on public procurement and made significant findings.

The Minister of Finance, as well as the National Treasury and the Government, remain wholly committed to transformation and empowerment as envisioned in the Constitution. In fact, organs of state must comply with the BBBEE Act when developing their procurement policies.

On 4 November 2022, when the Minister of Finance gazetted new Preferential Procurement Regulations (2022 Regulations) under the Preferential Procurement Policy Framework Act, 2000 (PPPFA), this was aimed at aligning the regulations to the February 2022 Constitutional Court judgement.

That judgement ruled that the Minister exceeded his powers in prescribing the 2017 Regulations.

The purpose then of the 2022 Regulations is to:

- comply with Section 217 of the Constitution on procurement of goods and services by organs of state.
- comply with the PPPFA of 2000.
- comply with the Constitutional Court judgement of February 2022, on the 2017 Regulations.



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While we are finalizing the Public Procurement Bill, which will empower the Minister of Finance to set preferential procurement, the 2022 Regulations repeal the 2017 Regulations and take effect on 16 January 2023.

In essence the 2022 Regulations, are a placeholder while we finalise the Bill.

Among other things, in terms of the 2022 Regulations, an organ of state must, in the tender documents, stipulate:

- the applicable preference point system as envisaged in the regulations;
- the specific goals in the invitation to submit the tender for which points may be awarded.

In this instance, the specific goals are as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994.

The above, and other parts of the 2022 Regulations, are in line with the Constitutional Court judgement. Organs of state, must determine their own preferential procurement policies in accordance with section 2 of the PPPFA and the thresholds and formula prescribed in the 2022 Regulations.

Organs of state are currently applying the 2017 Regulations as per clarification of the Constitutional Court until the 2022 Regulations take effect on 16 January 2023. It should be noted that these Regulations deal with preferential procurement in terms of the PPPFA.

The new 2022 Regulations require organs of state in the development of their procurement policies to also consider specific the programmes stipulated in the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994 and provides for points to be awarded for specific goals.



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In addition to maximising value-for-money objectives, a further objective is to regulate preferential procurement anew in the draft Public Procurement Bill (among others repealing the PPPFA) and, as announced during the MTBPS, is to be introduced in Parliament by March 2023.

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