



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

PPPFA CIRCULAR 01 OF 2022/23
PREFERENTIAL PROCUREMENT POLICY
FRAMEWORK ACT
(ACT 5 OF 2000)

COMMUNICATION ON CONSTITUTIONAL COURT JUDGMENT REGARDING PREFERENTIAL PROCUREMENT REGULATIONS, 2017

TO ALL:	ACCOUNTING OFFICERS OF DEPARTMENTS
	ACCOUNTING OFFICERS OF CONSTITUTIONAL INSTITUTIONS
	ACCOUNTING AUTHORITIES OF SCHEDULE 2 AND 3 PUBLIC ENTITIES
	HEAD OFFICIALS OF PROVINCIAL TREASURIES
	ACCOUNTING OFFICERS OF MUNICIPALITIES AND MUNICIPAL ENTITIES

1. PURPOSE

- 1.1 To inform organs of state of the judgment of the Constitutional Court handed down on 30 May 2022 on the application of the Minister of Finance seeking clarity on its judgement of 16 February 2022; and
- 1.2 To advise organs of state of the impact of the judgment by the Constitutional Court.

2. INTRODUCTION

- 2.1. Following the Constitutional Court's judgment of 16 February 2022 on the matter between the Minister of Finance and Afribusiness NPC (now known as Sakeliga NPC) regarding the 2017 Preferential Procurement Regulations, 2017 (the 2017 Regulations), the Minister of Finance launched an application to the Constitutional Court seeking clarity on its judgement of 16 February 2022.
- 2.2. According to the Constitutional Court's judgment of 30 May 2022-
 - 2.2.1 section 18(1) of the Superior Courts Act suspended the operation of the Supreme Court of Appeal's 12-month suspension of the invalidation of the 2017 Regulations.

COMMUNICATION ON CONSTITUTIONAL COURT JUDGMENT REGARDING PREFERENTIAL PROCUREMENT REGULATIONS, 2017

- 2.2.2 in practical terms, the countdown on the 12-month period of suspension commenced immediately after the date of suspension. The countdown, however, was halted by the lodgement of the application for leave to appeal in the Constitutional Court; and
- 2.2.3 the countdown resumed on 16 February 2022, when the Constitutional Court dismissed the Minister's appeal against the Supreme Court of Appeal's order.

3. IMPACT OF THE CONSTITUTIONAL COURT JUDGMENT

The Constitutional Court confirmed that the suspension of the declaration of the order of invalidity of the 2017 Regulations is still valid for the remainder of the 12-month period, namely until 26 January 2023. This means that-

- 3.1 the 2017 Regulations in their entirety are still valid;
- 3.2 from 30 May 2022 all exemptions granted to deal with the period of uncertainty following the Court's judgment of 16 February 2022, lapsed (according to the condition in the letters of exemption).
- 3.3 from 30 May 2022 all new quotations must be requested, and tenders must be advertised, and dealt with, in accordance with the 2017 Regulations; and
- 3.4 a quotation requested, or tenders advertised before 30 May 2022 must be dealt with in terms of the exemption and the internal procurement policy in place for the duration of the exemption. An organ of state may however decide to withdraw such a request for a quotation or an advert for a tender and request a new quotation or advertise a new tender that will be subject to 2017 Regulations.
- 3.5 the 2017 Regulations will remain in place until 26 January 2023 unless new regulations are promulgated before that date.

4. STATUS UPDATE ON DRAFT PREFERENTIAL PROCUREMENT REGULATIONS

COMMUNICATION ON CONSTITUTIONAL COURT JUDGMENT REGARDING PREFERENTIAL PROCUREMENT REGULATIONS, 2017

National Treasury is currently considering the public comments on the draft Preferential Procurement Regulations published on 10 March 2022 and will prepare final regulations that accord with the Constitutional Court's judgment of 16 February 2022.

5. INSTITUTIONAL POLICIES

Organs of state should by, 27 January 2023, ensure that procurement policies in line with the Constitutional Court's judgment of 16 February 2022 are in place or, if new Preferential Procurement Regulations are promulgated, when these Regulations take effect.

6. CONTACT INFORMATION

Enquiries pertaining to the content of this instruction may be directed by email to:
cpo@treasury.gov.za

7. APPLICABILITY

This Circular applies to all national and provincial departments, constitutional institutions, public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999, as well as municipalities and municipal entities to which the Municipal Finance Management Act, 2003, applies.

8. DISSEMINATION OF INFORMATION CONTAINED IN THIS CIRCULAR

- 8.1 Heads of provincial treasuries are requested to bring the contents of this Circular to the attention of accounting officers and supply chain management officials of their respective provincial departments.
- 8.2 Accounting officers of national and provincial departments are requested to bring the contents of this Circular to the attention of accounting authorities and the supply chain management officials of Schedule 3A and 3C public entities reporting to their respective executive authorities.

COMMUNICATION ON CONSTITUTIONAL COURT JUDGMENT REGARDING PREFERENTIAL PROCUREMENT REGULATIONS, 2017

- 8.3 Accounting officers of municipalities and municipal entities are requested to bring the contents of this Circular to the attention of the supply chain management officials of their municipalities and municipal entities.
- 8.4 Accounting authorities of Schedule 2, 3B and 3D public entities are requested to bring the contents of this Circular to the attention of the supply chain management officials of their public entities.

9. NOTIFICATION TO THE AUDITOR-GENERAL

A copy of this Circular will be forwarded to the Auditor-General for notification.

10. AUTHORITY FOR THIS CIRCULAR

This Circular is issued in terms of regulation 15(a) of the Preferential Procurement Regulations, 2017.

MOLEFE-ISAAC FANI

ACTING CHIEF PROCUREMENT OFFICER

DATE: