



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

**PFMA SCM INSTRUCTION NO. 8 OF 2022/2023  
PUBLIC FINANCE MANAGEMENT ACT  
(ACT 1 OF 1999)**

**APPLICATION OF ASSIGNMENT AND CESSION OF CONTRACTS RESULTING FROM  
PROCUREMENT**

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
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**1. PURPOSE**

The purpose of this Instruction is to prescribe the requirements for the application of assignment and cession of contracts resulting from procurement to institutions to which the Public Finance Management Act, 1999 (Act No. 1 of 1999 – “the PFMA”), applies.

**2. BACKGROUND**

2.1 The application of cession and assignment by institutions to which the PFMA applies has been a source of a number of application and interpretation challenges. Chief among these, is the apparent blurring of the line between assignment of a contract and cession of a contract, many using them interchangeably. Furthermore, there has been policy uncertainty as to the permissibility of both cession and assignment within the public procurement regulatory framework.

2.2 Section 217 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) requires that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, transparent, equitable, competitive and cost-effective. Section 76(4) of the PFMA authorises the National Treasury to make regulations or issue instructions concerning matters mentioned in that section.

2.3 The application of cession and assignment presents challenges in that it may, in certain circumstances, be seen to contradict the constitutional requirements of fairness, transparency and competitiveness in that a contract may be executed by a person that

was not the appointed bidder in a competitive bidding process or a payment may be made to a person who is not the contracted supplier/service provider.

- 2.4 This Instruction is intended to provide clarity on the application of cession and assignment in contracts that result from procurement.

### 3. Assignment of contracts

3.1 Assignment refers to the transfer of rights and obligations in a contract from an assigner to an assignee. The effect of this is that the service provider appointed through a competitive bidding process transfers the contract in its entirety that is, the obligation (the responsibility of rendering the services) and the right (of receiving payment for service rendered) to a third party that did not participate in the bidding process or a bidder that participated in the bidding process but was not successful.

3.2 South African law of contract is based mainly on common law. However, the contracting process for commercial contracts entered into by organs of state is subject to section 217 of the Constitution and other applicable legislation. The effect of the above is that contracts that result from public procurement processes are required to comply with the requirements of all Supply Chain Management (SCM) legislative prescripts and consequently, assignment of contracts is not allowed as it will be contrary to principles of section 217 of the Constitution particularly, fairness, transparency and competitiveness.

3.3 Clause 19 of the General Conditions of Contract (GCC) makes provision for assignment of contract. Clause 19 of the GCC provides that “a supplier (or service provider) shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser’s prior written consent”. **However, as stated above, transfer of rights and obligation of the service provider with or without consent of an organ of state is against the principles of section 217 of the Constitution and is therefore not allowed.** National Treasury is currently in the process of reviewing the GCC.

### 4. Cession of contracts

4.1 Cession refers to the transfer of only the rights a service provider has in terms of a contract from it to a third party. In commercial contracts, the main right involved is the right to be paid for services rendered. While the appointed bidder remains the service

provider that continues to render the services, the service provider may cede (transfer) its right to be paid for the services it rendered in terms of the contract to a third party. This means that the service provider renders the services to an organ of state, while the organ of state pays for the services rendered to a third party instead, most commonly, a financial institution.

4.2 Cession is permissible within the SCM legal prescripts. However, it is important that the application of cession in public procurement is carefully regulated to limit possible instances of abuse through fronting arrangements and similar processes. It is for this reason that the application of cession be limited only to those cession agreements in favour of registered Financial Services Providers (FSP) and state institutions established for the express purpose of providing funding to businesses and entities (State Institution).

4.3 Therefore, cession shall only be applicable as follows:

4.3.1 Cession must only be applicable to the transfer of right to payment for services rendered by a service provider to an FSP or State Institutions;

4.3.2 The written request for cession must be by the service provider and not a third party; and

4.3.3 The written request by the service provider must be accompanied by the cession agreement.

## **5. APPLICABILITY**

This Instruction applies to all departments, constitutional institutions and public entities listed in Schedules 2 and 3 to the PFMA.

## **6. DISSEMINATION OF INFORMATION CONTAINED IN THIS INSTRUCTION**

6.1 Accounting officers of departments and constitutional institutions must bring the contents of this Instruction to the attention of all:

a) Chief Financial Officers and supply chain management officials of their respective departments and constitutional institutions;

b) Accounting authorities of public entities reporting to their executive authorities.

6.2 Heads of provincial treasuries are requested to bring the contents of this Instruction to the attention of all accounting officers, chief financial officers and supply chain management officials in their respective provincial departments.

- 6.3 Accounting authorities of Schedules 2 and 3 public entities must bring the contents of this Instruction to the attention of Chief Financial Officers and supply chain management officials of their respective public entities.

**7. AUTHORITY FOR THIS SCM INSTRUCTION**

This Instruction is issued in terms of section 76(4)(c) of the Public Finance Management Act, 1999.

**8. EFFECTIVE DATE**

This Instruction takes effect from 1 September 2022.

**9. CONTACT INFORMATION**

Enquiries related to this Instruction may be directed to:

Chief Director: SCM Policy, Norms & Standards

Email: [OCPO.SCMPolicy@treasury.gov.za](mailto:OCPO.SCMPolicy@treasury.gov.za)

and [cpo@treasury.gov.za](mailto:cpo@treasury.gov.za)

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**MS MENDOE NSTWAHLANA  
CHIEF PROCUREMENT OFFICER  
DATE:**