

**BLA MEDIA STATEMENT ON THE PROCUREMENT REGULATIONS
PROMULGATED BY THE MINISTER OF FINANCE IN TERMS OF THE
PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000**

1. The Black Lawyers Association has noted the Procurement Regulations promulgated by the Minister of Finance (the Minister) and National Treasury in terms of the Preferential Procurement Policy Framework, 2000, which are to commence operation from the 16th of January 2023.
2. The Regulations are the response of the Minister of Finance to the decision of the Constitutional Court and Supreme Court of Appeal which declared invalid and of no force and effect, the Regulations promulgated by the Minister in 2017 which regulated partly the use of prequalification requirements by organ of state when they procure for goods and services.
3. The previous Regulations promulgated by the Minister as a response to the power granted by the Preferential Policy Framework Act, 2000, to promulgate regulations he deems expedient to fulfil the purpose of the Preferential Procurement Framework Act, 2000.
4. The Constitutional Court concluded that these regulations are *ultra vires* (fall beyond the power of the Minister) to enact regulations in terms of the Preferential Policy Procurement Framework Act, 2000.
5. In response to this judicial finding, the Minister has enacted the current regulations by removing the use of prequalification criterion by organs of state when they procure for goods and services. Thus, in one single decision the Minister has removed a national uniform norm in procurement of goods of goods and services to ensure that organs of state preselect their own targets suitable for the benefit of public procurement which has played such a critical role Black Economic Empowerment.
6. With these regulations, the State has abdicated its responsibility of directing the tempo of black economic empowerment through the use of public procurement.

It has abdicated its responsible of ensuring that public procurement develops a national character and a value system that supports and sustains the economic empowerment of the previously and currently disadvantaged individuals and entities.

7. In enacting these regulations, the Minister had to forget and ignore that many of the locally based measures for transformative procurement have either been ignored or misinterpreted by officials in these organs of state. The example is the localisation requirement in the procurement of goods of services which many officials have always seen the basis of the location of the entity procuring the goods or service as opposed to the location of the production of goods. This has promoted rent seeking measures by many entities and thus robbed the country of opportunities for industrialisation through public procurement.
8. The localisation of the procurement measures through these regulations is certain to create some measure of misinterpretation at the local level of procurement as it has done with the requirement of localisation.
9. These regulations come at a time when the Broad Based Economic Empowerment has attracted a great measure of criticism as a result of the revelations by the State Capture Commission.
10. Opponents of Board Based Black Economic Empowerment will rightly rejoice that the government has finally heard their cry and nipped in the bud a program that was always unique in its decided and deliberate effort to ensure the economic salvation of Africans.
11. There are many options that were available to the Minister in constructing a proper response to the decisions of the Constitutional Court in the case of *Afribusiness v Minister of Finance* other than throttling black empowerment in the manner he has done through these Regulations.
12. The Black Lawyers Association thus reject these regulations as they constitute a source of economic exclusion for many small black entrepreneurs.

Issued by the President of the Black Lawyers Association

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