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**MINISTRY OF TOURISM**

**REPUBLIC OF SOUTH AFRICA**

Private Bag X424, Pretoria, 0001, South Africa. Tel. (+27 12) 444 6780, Fax (+27 12) 444 7027

Private Bag X9154, Cape Town, 8000, South Africa. Tel. (+27 21) 469 5800, Fax: (+27 21) 465 3216

**NATIONAL ASSEMBLY:**

**QUESTION FOR WRITTEN REPLY:**

**Question Number: 1398**

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**NA IQP Number: 14**

**Date of reply: 04 June 2021**

**Mr M S F de Freitas (DA) to ask the Minister of Tourism:**

(a) How are (i) service providers and (ii) suppliers who are **in breach of their contracts** with her department dealt with, (b) what number of service providers and suppliers have been in breach of contract in each month in the past three financial years and since 1 April 2021, (c) what are the reasons for the breach of the contracts, (d) what steps are taken to reduce the instances of breach of contract and (e) what financial losses have been incurred regarding the breach of a contract in each month in the past three financial years and since 1 April 2021? NW1592E

**REPLY:**

**Note: This response should be read in conjunction with the response to Question No: 1396.**

**Breach of contract** is when either of the parties did not comply with any or all the terms of conditions. Thus a notice of breach of contract is issued when the supplier defaulted on the terms and conditions. **Breach of contract is a pre -requirement for the contractor to be declared as a defaulter (Non-compliance of contract)** (PFMA Regulation 16A.9.2 and Treasury Guidelines – Government Procurement – General Conditions of Contract – Annexure A)

1. **How are (i) service providers and (ii) suppliers who are in breach of their contracts with the department dealt with.**

* Service Providers who are in breach of their contracts are informed immediately of such breach and remedy is usually sought from the service provider as per the signed Service Level Agreement (SLA).
* If the service provider does not cooperate in providing the required remedy, a notice of breach is then drafted to compel the service provider to rectify the breach
* Upon non-cooperation after a notice of breach , the Departments’ standard process in terms of the Agreements is to call for a meeting with the Service Provider chaired by a senior official to resolve any impasse.
* If the meeting with the Service Provider does not yield any resolution and the Department has suffered loss or rights and obligations have been undermined, the Office of the State Attroney is instructed to initiate court proceedings against the Service Provider.

1. **What number of service providers and suppliers have been in breach of contract in each month in the past three financial years and since 1 April 2021**

The Honourable member is referred to the letter and report submitted to the Chairperson of the Portfolio Committee on Tourism on 3 February 2021 by the Minister and subsequently distributed to members of the committee.

1. **What are the reasons for the breach of the contracts.**

* Failure to comply with the provisions contained in the signed Service Level Agreement/Contract between the Department and the Service Provider.
* Non adherence to the terms and conditions of the contract by the service Provider with regards to project reporting or fraudulent transactions and expenditure
* Collusion in obtaining the tender

1. **What steps are taken to reduce the instances of breach of contract.**

* Project and contract management principle are used to manage issues as they arise in order to make sure these projects are successful in the end. Issues are rectified the moment these are identified,
* Changes are implemented such as putting limits to advance payments to the service providers for EPWP contracts;
* Systems are put in place to support service providers adherence to Departmental supply chain management policies and guidelines as determine by the PFMA Act;
* Close monitoring of the service providers in order to detect potential issues before they materialise; and
* Putting management control mechanisms in place in terms of processes to be followed for approvals without and quality assurance of all evidence e.g. invoices before they get paid. The Department also pursues the following methods to deal with cases of alleged non-compliance:
  + Mediation,
  + Issuance of Notices of breach,
  + Issuance of Letters of demand
  + Recovery of funds

1. **What financial losses have been incurred regarding the breach of a contract in each month in the past three financial years and since 1 April 2021**

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| **Financial Year** | **Financial losses incurred** |
| Since 1 April 2021 | Information will only be audited in 2022/ not audited as yet. |
| 2020-2021 | Information in process to be audited |
| 2019-2020 | Information can be obtained from that tabled Annual Performance Report of 2019/20 as tabled on 22 October 2020 ( ATC no 151 – 2020) |
| 2018-2019 | Information can be obtained from the tabled Annual Performance Report of 2018/19 as tabled on 1 October 2019 (ATC no 72 -2019) |