###### National Assembly

###### Question Number: 1770

**Mr C H H Hunsinger (DA) to ask the Minister of Transport:**

Has the SA National Roads Agency applied the preference points and prescribed formula system in the awarding of all contracts within supply chain and procurement as expressed in (a) paragraph 2 of the Preferential Procurement Policy Framework Act, Act 5 of 2000, and (b) section 51 of the Public Finance Management Act, Act 1 of 1999, as amended; if not, why not; if so, (i) which contracts and (ii) to what value? NW2078E

**REPLY**

1. Yes, SANRAL adheres to the applicable legislative prescripts including that of the PPPFA. However, the honourable member may recall an instance reported in the Annual Report under the Auditor General’s report that in the opinion of the AG it was not. This was reported and discussed in the Portfolio Committee in October 2015. The honourable member may recall that the difference of opinion related to the interpretation of the phrase “lowest acceptable price”. We make use of this opportunity to once again clarify the matter. It is brought to the attention of the honourable member that neither the PPPFA nor its Regulations define the phrase “lowest acceptable price”. The Regulations define the terms “comparative price, “firm price” and “non-firm price”.

The PPPFA Act (No. 5 of 2000) requires SANRAL to award contracts to the tenderer with the “lowest acceptable tender”. It has been SANRAL’s experience that when awarding a tender at the lowest price (at face value), where the objective is to promote the development of SMMEs, they either underprice with unviable tenders to get the job or the main contractors exploit the sub-contractors by pushing for unrealistic pricing. Moreover, this opens up opportunities for collusive practices.

SANRAL therefore developed and introduced a statistical method to establish the lowest acceptable price for each RRM contract. The tenderer with the price closest to this computed price was considered for award after giving due merit to other evaluation criteria such as preference points, including the price offered. Upon establishing the “price”, all tenders were further evaluated in accordance with the applicable regulations. Thus maintaining the requirements of the PPPFA. This discouraged collusion among contractors and ensured the sustainability of SMMEs. This method was in use for over 11 years – the AG was aware of the rationale and method of award and there were no findings from the AG and/or complaints from the contractors.

In 2013, for the first time, the AG raised the finding that the statistical methodology was not compliant with the requirements of the PPPFA Act. This is notwithstanding that the AG could not show in terms of which clause of the Act the statistical method was non-compliant. The AG also noted that that the method was used to protect SMMEs and recommended that SANRAL apply for an exemption from this applicable section of the PPPFA from the Minister of Finance which SANRAL did.

SANRAL applied for an exemption in terms of section 3(c) of the PPPFA. The rationale for the request was explained. The exemption was not granted. SANRAL requested for a condonation of the irregular expenditure subsequently, which was also not granted. Consequently, the AG’s report has included a note on irregular expenditure in this regard and will be noted till 2016.

Of importance is for the honourable member to note that:

* SANRAL has stopped awarding contracts on this basis, and has reverted to awarding contracts to the lowest price at face value, after due consideration of all other evaluation criteria; and
* the above has been explained to the Minister of Transport and to the Portfolio Committee on Transport as recent as October 2015 and other stakeholders who queried this.
* The honourable member is referred to the Annual Reports: Report of the auditor-general to Parliament on SANRAL.

(b) Yes, we have. (i) & (ii) Please see above.