
*(English text signed by the President)
(Assented to 18 July 2024)*

ACT

To regulate public procurement; to prescribe a framework within which preferential procurement must be implemented; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 217(1) of the Constitution of the Republic of South Africa, 1996, stipulates that contracting of goods and services by organs of state in the national, provincial and local sphere of government, and other institutions identified in national legislation, must occur in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;

AND WHEREAS section 217(2) of the Constitution permits organs of state and the identified other institutions, to implement a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination;

AND WHEREAS section 217(3) of the Constitution requires that national legislation must prescribe a framework within which the policy referred to in section 217(2) of the Constitution must be implemented;

AND WHEREAS section 216(1) of the Constitution requires national legislation to prescribe measures to ensure both transparency and expenditure control in each sphere of government by introducing, among others, uniform treasury norms and standards;

AND WHEREAS section 195(1) and (3) of the Constitution provides that national legislation must among others ensure the promotion in public administration of the following principles:

- A high standard of professional ethics;
- efficient, economic and effective use of resources; and
- development-oriented, accountability and transparency;

AND WHILE RECOGNISING the need to increase the capacity of organs of state to provide goods and services they require, procurement of goods and services from persons outside the State, where necessary, must be regulated;

AND RECOGNISING that legislation regulating procurement by organs of state is fragmented and legislation regulating preferential procurement constrains justified advancement of persons or categories of persons;

AND RECOGNISING the need for promoting economic transformation within the ownership and management control of black people and advancing preferential procurement from enterprises that are owned and managed by black people in terms of the codes of good practice on black economic empowerment issued in terms of the

Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), in order to enable meaningful participation of black people in the economy;

AND IN ORDER TO create a single framework that regulates public procurement, including preferential procurement, by all organs of state, which among others—

- promotes the use of technology for efficiency and effectiveness; and
- enhances transparency and integrity, among others, to combat corruption,

BE IT THEREFORE ENACTED by Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1
DEFINITIONS, OBJECTS, APPLICATION AND ADMINISTRATION OF ACT

Definitions 35

- 1.** In this Act, unless the context indicates otherwise—
- “**accounting authority**” means an accounting authority as defined in section 1 of the Public Finance Management Act;
 - “**accounting officer**” means—
 - (a) in relation to a department or constitutional institution, the accounting officer as defined in section 1 of the Public Finance Management Act; 40
 - (b) in relation to a municipality, the municipal official referred to in section 60 of the Municipal Finance Management Act; or
 - (c) in relation to a municipal entity, the official of the entity referred to in section 93 of the Municipal Finance Management Act; 45
 - “**bid**” means a written offer, which is capable of acceptance and conversion into a contract, in the form determined by the procuring institution through any prescribed procurement method;
 - “**bid committee**” means persons appointed by the accounting officer or accounting authority to a committee to perform functions within the bid committee system; 50
 - “**bidder**” means any person or an association of two or more persons that submit a bid;
 - “**black people**” has the meaning assigned in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

- “**capital asset**” means an asset that is tangible or intangible which a procuring institution intends to use for more than 12 months;
- “**confidential information**” means any information which, on a request in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), must or may be refused in terms of that Act; 5
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**co-operative**” has the meaning assigned in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005);
- “**corruption**” means an offence envisaged in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); 10
- “**days**” means any days other than Saturdays, Sundays or public holidays as defined in the Public Holidays Act, 1994 (Act No. 36 of 1994);
- “**economically active population**” means all persons, within the population of the Republic, who contribute to economic activity or are available to contribute to economic activity; 15
- “**emergency**” means an event which is unexpected and usually dangerous situation that poses an immediate risk to health, life, human rights, property, financial loss, livestock, environment, cybersecurity or the ability of the procuring institution to maintain critical business functions and requires immediate action;
- “**geographical area**” means the geographical area of a municipality or province; 20
- “**immediate family member**” means a spouse, civil partner, life partner, child, stepchild, parent or sibling;
- “**income-generating contract**” means an agreement between the procuring institution and a third party that produces revenue for the procuring institution, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; 25
- “**infrastructure**” means the physical facilities or structures and systems, including digital or analogue communications systems that are required to provide services to the public directly or indirectly;
- “**instruction**” means an instruction issued by the Public Procurement Office in terms of section 5(2) or a provincial treasury in terms of section 6(2); 30
- “**member of the Tribunal**” means a member of the Tribunal referred to in section 37;
- “**military veteran**” means any South African citizen who rendered military service to any of the non-statutory military organisations which were involved in South Africa’s Liberation War from 1960 to 1994; 35
- “**Minister**” means the Cabinet member responsible for financial matters;
- “**municipal entity**” has the meaning assigned to it in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- “**Municipal Finance Management Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003); 40
- “**municipality**” when referred to as—
- (a) a corporate body, means a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000; or
 - (b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998); 45
- “**national security**” includes the protection of the people of the Republic and the territorial integrity of the Republic against—
- (a) the threat of use of force or the use of force;
 - (b) foreign acts directed at undermining the constitutional order of the Republic;
 - (c) terrorism or terrorist related activities; 50
 - (d) espionage;
 - (e) exposure of a state security matter with the intention of undermining the constitutional order of the Republic;
 - (f) exposure of economic, scientific or technological secrets vital to the Republic;
 - (g) sabotage; 55
 - (h) cyber-attack;
 - (i) serious violence directed at overthrowing the constitutional order of the Republic; and

- (j) acts directed at undermining the capacity of the Republic to respond to the use of, or the threat of the use of, force and carrying out of the Republic's responsibilities to any foreign country or international organisation in relation to any of the matters referred to in this definition, whether directed from, or committed within, the Republic or not, but does not include lawful political activity, advocacy, protest or dissent; 5
- “National Treasury”** means the National Treasury established by section 5 of the Public Finance Management Act;
- “official”** means an employee of a procuring institution;
- “open data”** means machine-readable data that is made available with the technical and legal characteristics necessary for it to be freely used, reused and redistributed without restrictions, based on a standard determined by an instruction; 10
- “organ of state”** has the meaning assigned to it in section 239 of the Constitution;
- “panel”** means a panel of the Tribunal constituted in terms of section 45;
- “people with disabilities”** has the meaning assigned in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998); 15
- “prescribed”** means prescribed by regulation in terms of section 63;
- “procurement”** means—
- (a) the acquisition of goods or services for construction, repair or maintenance of infrastructure or capital assets; 20
 - (b) the acquisition of goods or services, other than goods or services referred to in paragraph (a);
 - (c) the acquisition of infrastructure or capital assets; or
 - (d) the letting or disposal of assets;
- by a procuring institution; 25
- “procurement system”** means a procurement system envisaged in section 24(1);
- “procuring institution”** means an institution referred to in section 3(1);
- “Promotion of Administrative Justice Act”** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- “provincial treasury”** means a provincial treasury established by section 17 of the Public Finance Management Act; 30
- “Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “public office bearer”** means— 35
- (a) a member of Cabinet or a Deputy Minister;
 - (b) a member of the National Assembly;
 - (c) a permanent delegate to the National Council of Provinces;
 - (d) a member of an Executive Council;
 - (e) a member of a provincial legislature;
 - (f) a judicial officer envisaged in section 174 of the Constitution; 40
 - (g) a member of a Municipal Council;
 - (h) a member of the National House of Traditional and Khoi-San Leaders; or
 - (i) a member of a provincial house of Traditional and Khoi-San leaders;
- “public-private partnership”** means a contract between a procuring institution and a private party where the private party— 45
- (a) performs a function on behalf of the procuring institution or acquires the use of property of an organ of state for its own commercial purposes;
 - (b) assumes substantial financial, technical and operational risks in connection with the performance of that function or the use of that property; and
 - (c) receives a benefit for performing that function or from using that property, 50 either by way of—
 - (i) a consideration payable by the procuring institution;
 - (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or
 - (iii) a combination of such consideration and such charges or fees; 55
- “Public Procurement Office”** means the Public Procurement Office established by section 4;

- “**publish**” means publication in the *Gazette* or on an official website or on an easily accessible central online portal that is publicly available;
- “**regulation**” means a regulation made in terms of section 63;
- “**related persons**” means persons who are connected to one another in any manner envisaged in section 2(1)(a) to (c), read with section 2(2), of the Companies Act, 2008 (Act No. 71 of 2008); 5
- “**small enterprise**” has the meaning assigned in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
- “**strategic procurement**” means a comprehensive approach to procurement that aligns with the strategies and objectives of a procuring institution, thereby enhancing cost-effectiveness; 10
- “**supplier**” means a bidder awarded a bid in terms of this Act;
- “**this Act**” includes the regulations, codes of conduct, instructions and notices made or issued in terms of this Act;
- “**transformation**” in relation to public procurement, means the process of change that seeks to— 15
- (a) redress the unfair discrimination of the past;
 - (b) achieve representation of the economically active population of the Republic; and
 - (c) achieve socio-economic objectives; 20
- “**transversal term contract**” means a contract arranged by the relevant treasury or another procuring institution mandated in terms of legislation, for procurement that is required by two or more procuring institutions;
- “**treasury**” means the National Treasury or a provincial treasury;
- “**Tribunal**” means the Public Procurement Tribunal established by section 36; 25
- “**Tribunal rules**” means rules made in terms of section 46; and
- “**youth**” has the meaning assigned in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

Objects of Act

2. (1) The objects of this Act are, with due regard to sections 195, 216 and 217 of the Constitution, to— 30
- (a) introduce uniform treasury norms and standards for all procuring institutions to implement their procurement systems as envisaged in section 217(1), read with section 216(1), of the Constitution; and
 - (b) determine a preferential procurement framework for all procuring institutions within which to implement their procurement policies as envisaged in section 217(2) and (3) of the Constitution. 35
- (2) The objects referred to in subsection (1) must, among others—
- (a) ensure efficient, effective and economic use of public resources through, among others, the assessment of the costs, benefits and risks; 40
 - (b) advance ethical conduct and combat corruption through access to procurement information and other transparency measures and introducing enforcement and appropriate sanctions for transgressors;
 - (c) advance transformation, beneficiation and industrialisation;
 - (d) stimulate economic development by supporting— 45
 - (i) goods that are produced and services provided in the Republic;
 - (ii) procurement which is developmental in nature; and
 - (iii) investment;
 - (e) improve efficiency and effectiveness in procurement by streamlining procurement processes, amongst others, through the use of technology; 50
 - (f) provide for effective and expedited dispute resolution of procurement related decisions; and
 - (g) promote innovation, sustainable development and the environmental rights in section 24 of the Constitution.

Application and administration of Act

3. (1) This Act applies to—
- (a) a department as defined in section 1 of the Public Finance Management Act;
 - (b) a constitutional institution listed in Schedule 1 to the Public Finance Management Act; 5
 - (c) a municipality or a municipal entity; and
 - (d) a public entity listed in Schedule 2 or 3 to the Public Finance Management Act.
- (2) Section 1, Chapter 4, regulations made under section 63, including section 24(1)(d), applicable to Chapter 4, apply to Parliament and provincial legislatures. 10
- (3) This Act applies to—
- (a) all procurement carried out by a procuring institution, including procurement through donor or grant funding;
 - (b) any person who submits a bid or has been awarded a bid; and
 - (c) all procurement carried out by any person on behalf of a procuring institution. 15
- (4) In the event of a conflict between a provision of this Act and a provision of any other legislation, the provision of this Act prevails.
- (5) The Minister is responsible for the administration of this Act.

CHAPTER 2
PUBLIC PROCUREMENT OFFICE, PROVINCIAL TREASURIES AND 20
PROCURING INSTITUTIONS

Part 1
Public Procurement Office

Establishment of Public Procurement Office

4. (1) There is hereby established a Public Procurement Office within the National Treasury. 25
- (2) The Head and other officials of the Public Procurement Office must perform their functions in terms of this Act impartially and without fear, favour or prejudice.
- (3) The Head of the Public Procurement Office performs the duties and exercises the powers of the Public Procurement Office on behalf of that Office. 30

Functions of Public Procurement Office

5. (1) The Public Procurement Office must, in accordance with this Act—
- (a) promote compliance with this Act by procuring institutions;
 - (b) develop, and support the implementation of, necessary measures to maintain the integrity of procurement; 35
 - (c) guide and support officials and procuring institutions to ensure compliance with this Act and in doing so—
 - (i) provide advice and assistance to procuring institutions; and
 - (ii) ensure the professional development and training of officials involved in procurement; 40
 - (d) develop, and support the implementation of, measures to ensure transparency in procurement;
 - (e) promote standardisation in procurement;
 - (f) promote the use of technology and innovation and learning towards modernisation of the public procurement system; 45
 - (g) monitor and oversee the implementation of this Act;
 - (h) intervene by taking appropriate steps to address a material breach of this Act by a procuring institution as may be prescribed;
 - (i) create, maintain and publish one or more databases to facilitate the implementation of this Act; and 50
 - (j) perform any other duties imposed by this Act.

- (2) The Public Procurement Office may, in accordance with this Act—
 - (a) in relation to procuring institutions, except municipalities and municipal entities, issue, by notice in the *Gazette*, binding instructions as provided for in this Act and on any other procurement matter for the effective implementation of this Act; 5
 - (b) in relation to municipalities and municipal entities, issue non-binding circulars, on the subject of an instruction, provided for in this Act, and any other matter for the effective implementation of this Act;
 - (c) issue guidelines to assist procuring institutions with the implementation of this Act and any other procurement related matter; 10
 - (d) after consultation with the relevant category of procuring institutions, determine a model procurement policy for different categories of procuring institutions and different categories of procurement, which a procuring institution may adopt, with or without amendments, or not adopt; and
 - (e) exercise other powers conferred by this Act. 15
- (3) The Public Procurement Office may issue different instructions in terms of subsection (2) for—
 - (a) different categories of procuring institutions; and
 - (b) different categories of procurement.
- (4) A circular referred to in subsection (2)(b) will be binding on— 20
 - (a) a municipality, if adopted by its council; or
 - (b) a municipal entity, if adopted by the council of the entity's parent municipality.

Part 2
Provincial treasuries

Functions of provincial treasuries 25

- 6. (1) A provincial treasury must—
 - (a) within its province—
 - (i) monitor and oversee the implementation of the procurement function by a procuring institution;
 - (ii) promote effective management and transparency in respect of the procurement function of procuring institutions; and 30
 - (iii) enforce effective management and transparency in respect of the procurement function of procuring institutions except municipalities and municipal entities;
 - (b) intervene by taking appropriate steps to address a material breach of this Act by a procuring institution, except a municipality or municipal entity, within its province as may be prescribed; 35
 - (c) provide any information required by the Public Procurement Office in terms of this Act; and
 - (d) perform other duties imposed by this Act. 40
- (2)(a) A provincial treasury, within its province, may, in relation to—
 - (i) municipalities and municipal entities, issue non-binding circulars; and
 - (ii) other procuring institutions, issue, by notice in the *Provincial Gazette*, binding provincial instructions, on procurement matters for the effective implementation of this Act and not inconsistent with an instruction issued by the Public Procurement Office; 45
- (b) issue guidelines to assist procuring institutions with the implementation of this Act or any other procurement related matter;
- (c) assist procuring institutions in building their capacity for efficient, effective and transparent procurement management; and 50
- (d) exercise other powers conferred by this Act.
- (3) A provincial treasury may issue different instructions in terms of subsection (2)(a) for—
 - (a) different categories of procuring institutions; and
 - (b) different categories of procurement. 55
- (4) A circular referred to in subsection (2)(a)(i) will be binding on—
 - (a) a municipality, if adopted by its council; or

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(b) a municipal entity, if adopted by the council of the entity's parent municipality.

(5) The head of a provincial treasury performs the duties and exercise the powers of the provincial treasury on behalf of the provincial treasury.

Part 3

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Procuring institutions

Decision-making for procuring institution

7. The accounting officer or accounting authority of a procuring institution is responsible for making decisions on behalf of the procuring institution in terms of this Act.

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Duties of procuring institution

8. (1) A procuring institution must—

- (a) conduct procurement in accordance with this Act;
- (b) develop and implement an effective and efficient procurement system, including a procurement policy, as envisaged in section 24;
- (c) define procurement needs by compiling a statement of requirements and the statement must be included in the invitation documents, evaluation process and contracts;
- (d) provide procurement information as may be prescribed or as the Public Procurement Office or the relevant provincial treasury may require; and
- (e) comply with the measures to prevent abuse of its procurement system envisaged in section 26.

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(2) A procuring institution may, as prescribed, correct any action or omission purportedly made in terms of this Act, if the action or omission was based on an error of law or fact or fraud.

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CHAPTER 3

PROCUREMENT INTEGRITY AND DEBARMENT

Codes of conduct

9. (1) An accounting officer, an official, a member of an accounting authority, a bid committee or the Tribunal, a bidder or a supplier or any other person, involved in procurement in terms of this Act, must comply with the prescribed code of conduct.

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(2) Any contravention of the prescribed code of conduct by an accounting officer or other official, or a member of accounting authority, a bid committee or the Tribunal constitutes misconduct and steps must be taken in terms of the applicable procedure.

Conduct of persons involved in procurement

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10. An accounting officer or other official, or a member of an accounting authority, bid committee or the Tribunal, or any other person, involved in procurement in terms of this Act must—

- (a) exercise powers and perform duties impartially and with the degree of care and diligence that a reasonable person would exercise in similar circumstances;
- (b) not use their position, or information obtained because of their position, improperly to gain an advantage for themselves or someone else or cause prejudice to any other person;
- (c) not interfere with or exert undue influence on any person involved in procurement; and
- (d) if a conflict of interest exists in a procurement matter, disclose such conflict and recuse himself or herself from participating in the process of that procurement matter.

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Due diligence and declaration of interest regarding persons involved in procurement

- 11.** (1) A procuring institution must take steps in accordance with prescribed procedures to identify—
- (a) automatically excluded persons as envisaged in section 13 and their immediate family members; and 5
 - (b) related persons as envisaged in subsection (3).
- (2)(a) The steps envisaged in subsection (1) include the prescribed declaration of interest to be made by—
- (i) all bidders, in the case of bids; and 10
 - (ii) all applicants, in the case of applications for registration on a database created by the Public Procurement Office in terms of section 5(1)(i).
- (b) A failure to submit a declaration or submitting a false declaration renders a bid invalid.
- (3) If a person related to an accounting officer or other official or a member of an accounting authority, a bid committee or the Tribunal involved in procurement in terms of this Act, has, or intends to acquire, a direct or indirect personal interest in a procurement matter, the accounting officer or other official or a member of an accounting authority, a bid committee or the Tribunal— 15
- (a) must disclose such interest in writing, immediately after receiving the agenda of the meeting of a bid committee of the procuring institution regarding a procurement, or on notification of a matter being brought to the attention of the bid committee or at any time during the consideration of the bid when the official or other person becomes aware of the interest; and 20
 - (b) may not be present at or participate in the deliberations or decision-making process of the procuring institution in relation to the agenda item or the matter in question. 25
- (4) A disclosure of interest made in terms of subsection (3) must be recorded in the minutes of the meeting at which it is made, or it relates to or any document seeking a decision. 30

Undue influence

- 12.** (1) No person may—
- (a) interfere with, or influence, the procurement process of a procuring institution;
 - (b) impede an accounting officer, an accounting authority or an official of a procuring institution, the Public Procurement Office or a provincial treasury in fulfilling responsibilities in terms of this Act; or 35
 - (c) tamper with any bid after its submission or award.
- (2) Subsection (1) does not apply to an official or any other person exercising a power or performing a duty in terms of legislation. 40
- (3) Subsection (1) may not be construed to prohibit any person from disclosing an irregularity regarding a procurement process.

Automatic exclusion from submitting bid

- 13.** (1) The following persons may not submit a bid: 45
- (a) A public office bearer;
 - (b) an official or employee of Parliament or a provincial legislature;
 - (c) a person appointed in terms of section 9 or 12A of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
 - (d) an official or employee of a constitutional institution listed in Schedule 1 to the Public Finance Management Act; 50
 - (e) an official or employee of a public entity listed in Schedules 2 and 3 to the Public Finance Management Act;
 - (f) an official or employee of a municipality or municipal entity;

- (g) any entity in which a person mentioned in paragraphs (a) to (f) is a director or has a controlling or other substantial interest;
 - (h) a bidder or supplier debarred in terms of section 15;
 - (i) an entity in which a bidder or supplier debarred in terms of section 15—
 - (i) has a controlling interest; or 5
 - (ii) is a director or a member; and
 - (j) an executive member of a controlling body of a procuring institution.
- (2) A non-executive member of a controlling body of a procuring institution may not submit a bid in that institution.

Directions inconsistent with Act 10

14. (1) If an accounting officer, an accounting authority, a member of an accounting authority or an official of a procuring institution (herein called “the affected person”) is Directed, in writing or verbally, by any person with authority over the affected person (herein called “the person with authority”), to do or omit to do anything in respect of procurement, which the affected person believes he or she is not authorised to do in terms of this Act or is contrary to a provision of this Act, the affected person must not comply with the direction. 15

- (2) The affected person—
- (a) must inform the Public Procurement Office or relevant provincial treasury, in the prescribed manner, of the direction, the objection and the reason for the objection; 20
 - (b) may submit in writing to the person with authority, the objection, and the reason for the objection;
 - (c) may inform, in writing, the line manager of the person who must initiate an investigation into the allegation within a period determined in the procuring institution policies; and 25
 - (d) may report to the Public Service Commission or any other relevant body for investigation.

(3) If the line manager was informed of the allegation in terms of subsection (2)(c) but does not initiate an investigation, the Public Procurement Office or the relevant provincial treasury must initiate an investigation in the prescribed manner unless reported in terms of subsection (2)(d). 30

(4) The affected person may not, despite any term of employment, be subjected to occupational detriment as defined in section 1 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), due to the non-compliance with the direction of the person with authority. 35

Debarment

15. (1) Before issuing a debarment order in terms of this section, a procuring institution must provide the bidder, supplier or any of the directors, members, trustees or partners of that bidder or supplier (herein called “the affected person”) with a notice of the intention to debar. 40

- (2) The notice must—
- (a) indicate the reason for the intended issuing of a debarment order; and
 - (b) invite the affected person to provide reasons, within 10 days, why the debarment order should not be issued. 45

(3) A procuring institution must issue a debarment order against a bidder or supplier and may issue a debarment order against any of the directors, members, trustees or partners of that bidder or supplier, if the bidder or supplier—

- (a) provided false information in a bid or any other document submitted to a procuring institution in connection with a procurement process or contract; 50
- (b) provided false information for purposes of registration in a database as envisaged in this Act;
- (c) connived to interfere with the participation of other bidders;

- (d) has been convicted of an offence involving corruption, fraud, collusion or coercion, price fixing or breach of confidentiality relating to procurement by a procuring institution;
- (e) has not performed a material contractual obligation not due to circumstances beyond the control of the supplier; 5
- (f) has been convicted of an offence relating to—
 - (i) obtaining or attempting to obtain a contract or subcontract; or
 - (ii) business or professional activities;
- (g) attempted, or conspired with, aided, abetted, induced or incited another person to contravene a provision of this Act; or 10
- (h) contravened a provision of this Act.
- (4)(a) The procuring institution must consider the reasons submitted in terms of subsection (2)(b) and decide whether to issue a debarment order.
- (b) The procuring institution must notify—
 - (i) the affected person; 15
 - (ii) the Public Procurement Office; and
 - (iii) the relevant provincial treasury, if applicable,
 within five days from the date of the decision.
- (5) The procuring institution may, on application by the affected person—
 - (a) reduce the period of the debarment order; or 20
 - (b) revoke the debarment order, if the order was made in error of fact, error of law or fraud.
- (6) The Public Procurement Office must—
 - (a) establish and maintain a debarment register of persons debarred in terms of this section; and 25
 - (b) make the register publicly available.
- (7) The Public Procurement Office must, subject to the outcome of an application for review of the decision in terms of section 48, immediately after being notified of the decision to debar in terms of subsection (4)(b) include the name of the affected person in the register referred to in subsection (6). 30
- (8) A debarment order takes effect on the date the name of the affected person appears in the register referred to in subsection (6).
- (9) A debarment order may not exceed the prescribed period and different periods may be prescribed for debarment in terms of subsection (3).
- (10) A debarment order prohibits the affected person, for the period specified in the debarment order, from participating in procurement by procuring institutions generally or in circumstances specified in the order. 35
- (11)(a) A person debarred in terms of this section may not engage in conduct that, directly or indirectly, contravenes the debarment order.
- (b) Without limiting paragraph (a), a person debarred contravenes that paragraph if the person enters into an arrangement with another person to engage in the conduct that directly or indirectly contravenes a debarment order in accordance with the written or verbal directions of the person debarred. 40

**CHAPTER 4
PREFERENTIAL PROCUREMENT** 45

Preferential framework, procurement policies and application of provisions

- 16.** (1) A procuring institution must develop and implement a procurement policy providing for—
 - (a) categories of preference in the allocation of contracts; and
 - (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination, 50
 envisaged in section 217(2) and (3) of the Constitution, in accordance with the objects of this Act, the framework in this Chapter and regulations made in terms of this Act.
- (2) The procurement policy of a procuring institution, referred to in subsection (1), must provide for— 55
 - (a) setting aside bids in accordance with section 17; and

- (b) if setting aside in accordance with section 17 is not possible, pre-qualification in accordance with section 18.
- (3) If procurement in accordance with section 17, 18 or 19 is not possible, the procuring institution must record and report the reasons to the Public Procurement Office and the relevant treasury in the prescribed manner. 5
- (4)(a) The threshold prescribed for section 18(1) must be higher than the threshold prescribed for section 17(1).
- (b) The threshold prescribed for section 19(1) must be higher than the threshold prescribed for section 18(1).
- (5) A bid subject to this Chapter must in addition to the applicable provisions of this Chapter, be evaluated in terms of the criteria envisaged in section 24(1)(d). 10
- (6) Any procurement in terms of this Act must comply with a designation for local production and content in terms of section 20, if applicable.

Set-asides for preferential procurement 15

- 17.** (1)(a) A procuring institution must set-aside a bid for a category of persons provided for in subsection (3) in accordance with the prescribed thresholds and conditions.
- (b) The prescribed conditions referred to in paragraph (a) must include a minimum of potentially qualifying suppliers. 20
 - (2)(a) The Minister must, subject to this subsection, prescribe targets for set-aside referred to in subsection (1).
 - (b) The Minister must, within 30 days after the commencement of this section, consult the relevant Ministers for which categories of persons targets for set-aside must be prescribed. 25
 - (c) When prescribing targets, the Minister must take into account the applicable codes of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
 - (d) The Minister must, at least every two years after prescribing any target for set-aside, consult as envisaged in paragraph (b), and take into account the codes of goods practice referred to in paragraph (c), on proposed amendments to any target so prescribed and prescribing new targets. 30
 - (e) If no target for set-aside for a category of persons is prescribed in terms of paragraph (a), a procuring institution is not precluded from setting aside a bid for that category. 35
 - (3) Persons referred to in subsection (1) are limited to—
 - (a) black people;
 - (b) black women;
 - (c) women;
 - (d) black people with disabilities; 40
 - (e) people with disabilities;
 - (f) military veterans;
 - (g) persons referred to any of the paragraphs (a) to (f) within a geographical area;
 - (h) small enterprises owned by—
 - (i) black people; 45
 - (ii) black women;
 - (iii) women;
 - (iv) black people with disabilities;
 - (v) people with disabilities;
 - (vi) military veterans; 50
 - (vii) black people who are youth; or
 - (viii) youth;
 - (ix) persons referred to in any of the subparagraphs (i) to (viii) within a particular geographical area;
 - (i) small enterprises within a particular geographical area; 55
 - (j) small enterprises;
 - (k) co-operatives which consist of members who are black people; or
 - (l) co-operatives;

(m) co-operatives referred to in paragraph (k) or (l) within a particular geographic area.

(4)(a) Persons referred to in subsection (3)(a) to (h) must be owned by the relevant category in accordance with the prescribed percentages.

(b) Persons referred to in subsection (3)(a) to (j) must be owned by citizens of the Republic in accordance with the prescribed percentages. 5

(c) Persons referred to in subsection (3)(k), (l) and (m) must have members of the relevant category and citizens of the Republic in accordance with the prescribed percentages.

(5) A bid set-aside in terms of subsection (1) must be evaluated in terms of the prescribed criteria. 10

(6) This section applies with the necessary changes and as prescribed to a bid for an income-generating contract.

Prequalification criteria for preferential procurement

18. (1) A procuring institution must, in accordance with the prescribed thresholds and conditions, apply the following prequalification criteria for a bid to promote preferences in the allocation of contracts: 15

(a) A bidder having a prescribed minimum percentage of preferential procurement from enterprises that are owned and managed by black people in terms of the applicable code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); 20

(b) a bidder subcontracting a prescribed minimum percentage to—

(i) a small enterprise which is owned by black people;

(ii) a small enterprise which is owned by black people who are youth; 25

(iii) a small enterprise which is owned by black people who are women;

(iv) a small enterprise which is owned by black people with disabilities;

(v) a small enterprise which is owned by black people who are military veterans;

(vi) a small enterprise; 30

(vii) a small enterprise referred to any of the subparagraphs (i) to (vi) within a particular geographical area;

(viii) a co-operative which consists of members who are black people;

(ix) a co-operative;

(x) a co-operative referred to in subparagraph (viii) or (ix) within a particular geographic area. 35

(2) The prescribed conditions referred to in subsection (1) must include a minimum of potentially qualifying suppliers.

(3)(a) Persons referred to in subsection (1) (b)(i) to (vii) must be owned by the relevant category in accordance with the prescribed percentages. 40

(b) Persons referred to in subsection (1)(b) (i) to (vii) must be owned by citizens of the Republic in accordance with the prescribed percentages.

(c) Persons referred to in subsection (1)(b)(viii) and (x) must have members of the relevant category and citizens of the Republic in accordance with the prescribed percentages. 45

(4) When procuring, procuring institutions must identify procurement opportunities, in a particular sector, industry or commodity, supply market, and the availability of small enterprises or co-operatives or both, that may be eligible to bid to support sectors or industries that are not sufficiently transformed where any prequalification criteria referred to in subsection (1) could be applied. 50

(5) A bidder that fails to meet any prequalification criteria stipulated in the bid documents is an unacceptable bid and must be disqualified.

(6) A procuring institution must, in addition to the measures stipulated in subsections (1) to (6), evaluate the bid, referred to in subsection (1), in terms of the prescribed criteria. 55

(7) This section applies with the necessary changes and as prescribed to a bid for an income-generating contract.

Subcontracting as condition of bid

19. (1)(a) Where feasible, a procuring institution must subcontract a contract above the prescribed threshold, to advance persons or categories of persons in subsection (2)(a) to (j) in accordance with the prescribed criteria.

(b) The prescribed conditions referred to in paragraph (a) must include a minimum of 5 potentially qualifying suppliers.

(2) If a procuring institution applies subcontracting as envisaged in subsection (1), the procuring institution must advertise the bid with a specific bidding condition that the successful bidder must subcontract a prescribed minimum percentage of the value of the contract to— 10

- (a) a small enterprise;
- (b) a small enterprise which is owned by black people;
- (c) a small enterprise which is owned by black people who are youth;
- (d) a small enterprise which is owned by black people who are women;
- (e) a small enterprise which is owned by black people with disabilities; 15
- (f) a small enterprise which is owned by black people who are military veterans;
- (g) a small enterprise referred to in any of the paragraphs (b) to (f) within a particular geographical area;
- (h) a co-operative which consists of members who are black people; or
- (i) a co-operative; 20
- (j) a co-operative referred to in paragraph (h) or (i) in a particular geographical area.

(3)(a) Persons referred to in subsection (2)(a) to (g) must be owned by the relevant category in accordance with the prescribed percentages.

(b) Persons referred to in subsection (2)(a) to (g) must be owned by citizens of the Republic in accordance with the prescribed percentages. 25

(c) Persons referred to in subsection (2)(h), (i) and (j) must have members of the relevant category and citizens of the Republic in accordance with the prescribed percentages.

(4) Bidders must identify and select subcontractors as prescribed. 30

(5) A bidder that fails to meet any mandatory subcontracting criteria stipulated in the bid documents is an unacceptable bid and must be disqualified.

(6) A procuring institution must, in addition to the measures stipulated in subsections (1) to (5), evaluate the bid in terms of the prescribed criteria.

(7) This section applies with the necessary changes and as prescribed to a bid for an income-generating contract. 35

Designation of sectors for local production and content

20. (1) The Minister responsible for trade, industry and competition (herein called “the responsible Minister”) must, by notice in the *Gazette*—

- (a) designate a sector, sub-sector or industry or product in accordance with 40 national development and industrial policies for local production and content, where only locally produced or manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors;
- (b) stipulate a minimum threshold for local production and content; and 45
- (c) stipulate the period of the designation.

(2) The designation and stipulation, as envisaged in subsection (1)(a) and (b), may only occur after the responsible Minister has—

- (a) published the proposed designation, including the proposed minimum 50 thresholds, for public comment for thirty days in the *Gazette* and on the departmental website and has notified the Minister of such publication;

- (b) reviewed all comments received and provided responses to the comments in a schedule setting out the comments and responses;
- (c) updated the proposed designation after considering the comments and proposals made during the public comment stage; and
- (d) submitted the updated proposed designation to the Minister and considered any comments made by the Minister. 5
- (3) In determining the threshold referred to subsection (1)(b), the responsible Minister must, in addition to considering the public comments and responses envisaged in subsection (2), consider—
- (a) whether there are sufficient local manufacturers in the country who are capable to compete for the provision of goods designated for local production and content by determining— 10
- (i) the number of existing manufacturers available in the country;
- (ii) security of supply or capability to supply or the period that the designation is to be in effect; 15
- (iii) the contribution of other role-players in the supply chain of the commodity or product including distributors and product agents;
- (iv) the effect of local production and content on employment; and
- (b) the economic impact on imported goods.
- (4) The sufficient local manufacturers referred to in subsection (3)(a) must be determined by the responsible Minister but may not be less than three local manufacturers. 20
- (5)(a) A procuring institution must, in the case of a designation in terms of subsection (1), advertise the invitation to bid with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered. 25
- (b) A bid that fails to meet the minimum stipulated threshold for local production and content is an unacceptable bid and must be disqualified.
- (6)(a) If the required quantity of goods subject to a designation in terms of subsection (1), cannot be wholly sourced from local manufacturers or at the designated local content threshold for the period of the designation, or both, the procuring institution may submit a request for a waiver, in the form determined by the responsible Minister. 30
- (b) The responsible Minister must within 30 days respond to the request for a waiver giving reasons for the decision, failing which approval will be deemed to be granted to the procuring institution that made the request. 35
- (c) The responsible Minister may determine by notice in the *Gazette* and on its website that, until further notice, that procuring institutions are granted a waiver from procuring at the stipulated minimum thresholds for local production and content as envisaged in paragraph (a).
- (7) If the responsible Minister does not grant the waiver referred to in subsection (6), and the procuring institution has sufficient evidence that the quantity of goods required cannot be wholly sourced from local manufacturers or at the designated local content threshold for the period of the designation, or both, the procuring institution— 40
- (a) may advertise the invitation to bid without a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content will be considered; and 45
- (b) must within 14 days after the advertisement inform the responsible Minister accordingly and of the reasons.
- (8) A procuring institution must, in addition to the measures stipulated in subsection (1) to (7), evaluate the bid in terms of the prescribed criteria. 50
- (9) The responsible Minister—
- (a) must monitor the impact of a designation in terms of subsection (1) and three years after the designation publish a report on its impact on the website of the department of that Minister; and
- (b) may at least 12 months after that report is published, review the appropriateness of the designation and its threshold and period, and if outcome of the review so requires, amend or withdraw the designation and its threshold and period in terms of subsections (1) to (4). 55

Measures to advance sustainable development

21. A procuring institution may, in accordance with prescribed conditions, provide for measures to advance sustainable development in procurement.

Measures for beneficiation and innovation, advancing creation of jobs, intensification of labour absorption and development of small enterprises within particular geographical area 5

22. When procuring, a procuring institution may, in accordance with prescribed conditions, provide for measures to advance the creation of jobs, intensification of labour absorption, beneficiation, innovation and the development of small enterprises within a particular geographical area. 10

Contracting conditions

23. (1) A procuring institution may, as prescribed, provide for measures for preference as a condition of contract that the supplier must achieve at the end of the contract.
 (2) Future deliverables must form part of the contract with set milestones to be achieved together with penalties to be imposed if the supplier fails to achieve them in accordance with conditions stipulated in the contract. 15

**CHAPTER 5
 GENERAL PROCUREMENT REQUIREMENTS**

***Part 1
 Procurement system, methods and related matters*** 20

Procurement system and methods

24. (1) The Minister must prescribe a framework within which a procuring institution must develop and implement its procurement system, referred to in section 8(1)(b), which includes—

- (a) the promotion of strategic procurement— 25
 - (i) for procurement in other countries for use in those countries;
 - (ii) for infrastructure, capital assets and goods or services related to maintenance of infrastructure and capital assets;
 - (iii) for the disposal and letting of assets; and
 - (iv) to stimulate innovation; 30
- (b) types of procurement methods;
- (c) the requirements and procedure to be followed for each prescribed method; and
- (d) the criteria for evaluation of bids, which must include, but are not limited to, cost-effectiveness, capability, functionality and technical requirements, without limiting new entrants or emerging suppliers or both. 35

- (2) The Minister may determine—
 - (a) by notice in the *Gazette*, procurement thresholds; and
 - (b) different thresholds for— 40
 - (i) different categories of procuring institutions; and
 - (ii) different categories of procurement.

- (3) A procurement system referred to in subsection (1) must provide for the following matters in a manner consistent with this Act:
 - (a) Procurement policy;
 - (b) institutional and governance arrangements; 45
 - (c) demand management;
 - (d) procurement planning and budgeting;
 - (e) acquisition management;
 - (f) contract management, including assessment of projects against outcomes;
 - (g) risk management; 50

- (h) logistics management;
 - (i) disposal management;
 - (j) monitoring and assessment of procurement performance; and
 - (k) reporting.
- (4) The Public Procurement Office may, by instruction, determine standard bid documents. 5
- (5) A procuring institution must stipulate in the bid documents, irrespective of the procurement method, that bidders may only quote in South African currency, inclusive of all applicable taxes.
- (6) The Public Procurement Office must create and maintain a database in terms of section 5(1)(i) for prospective suppliers. 10

Use of another organ of state

25. A procuring institution may, as prescribed—
- (a) acquire goods, services, infrastructure or capital assets from another organ of state; 15
 - (b) use another organ of state to construct, repair or maintain infrastructure or capital assets;
 - (c) let assets to another organ of state; or
 - (d) transfer, or otherwise dispose of assets, to another organ of state.

Measures to prevent abuse of procurement system 20

26. (1) The accounting officer or accounting authority of a procuring institution must—
- (a) take necessary steps to prevent non-compliance with this Act and abuse of its procurement system;
 - (b) take necessary steps to ensure that no person interferes with its procurement system or is able to amend or tamper with any bid or contract; 25
 - (c) investigate any allegation against an official or other role player of corruption, improper conduct or failure to comply with its procurement system, and—
 - (i) where necessary, take steps against that official or other role player, and inform the Public Procurement Office and the relevant provincial treasury of those steps; and 30
 - (ii) report to the South African Police Service any conduct that may constitute a criminal offence;
 - (d) verify that a bidder is not an affected person whose name appears in the register of persons debarred in terms of section 15; 35
 - (e) reject a recommendation for the award of a bid if the recommended bidder has—
 - (i) made a misrepresentation or submitted false documents in competing for a particular contract;
 - (ii) been convicted of any offence involving corruption, fraud, collusion or coercion in competing for any contract; or 40
 - (f) cancel a contract awarded to a supplier—
 - (i) if it becomes aware that the supplier has made a misrepresentation, submitted false documents or information or has been convicted of any offence involving corruption, fraud, collusion or coercion in competing for a particular bid or during the execution of the contract; or 45
 - (ii) if any official or other role player was convicted of any offence involving corruption, fraud, collusion or coercion act during the bidding process or during the execution of the contract.
- (2) If a provision of a contract concluded by a procuring institution and the successful bidder is contrary to a provision of this Act, that provision is null and void. 50

Bid committee system

27. (1) The Minister must prescribe a bid committee system for procuring institutions.
- (2) A procuring institution must ensure that persons who participate in bid committees have the relevant knowledge, skills and technical expertise to achieve the intended result required during the relevant committee process. 5
- (3) The following persons may not be members of a bid committee envisaged in subsection (1):
- (a) A public office bearer;
 - (b) a person appointed in terms of section 12A of the Public Service Act, 1994 (Proclamation No. 103 of 1994); and 10
 - (c) any person having a conflict of interest.

Part 2**Use of technology in procurement****Information and communication technology-based procurement system**

28. (1) The Public Procurement Office must develop an information and communication technology-based procurement system in order to enhance efficiency, effectiveness, transparency and integrity and to combat corruption. 15
- (2) After conducting an information and communication technology due diligence of the sector, to assist with the formulation of the design brief for the development of the procurement system, referred to in subsection (1), the system must, subject to the due diligence conducted, provide for the following components progressively: 20
- (a) A single platform that at least provides access for officials, bidders, suppliers and members of the public to all procurement related services;
 - (b) standardised and interoperable open data across the procurement cycle to be used by procuring institutions according to their readiness determined in accordance with an instruction; 25
 - (c) requirements and procedures for procurement methods prescribed in terms of section 24(1);
 - (d) reporting requirements on procurement;
 - (e) an electronic marketplace to enable efficient procurement of common goods and services; and 30
 - (f) a suitable hosting option for procurement data to enable easy reporting, analysis, research and oversight of procurement transactions.

Use of technology by procuring institutions

29. (1) Procuring institutions must— 35
- (a) to the extent possible, use technology in the implementation of this Act; and
 - (b) when available, use the different components of the procurement system, referred to in section 28(1).
- (2)(a) During the development of the procurement system, referred to in section 28(1), the Public Procurement Office must determine requirements for digitisation, automation, reporting and innovations that information and communication technology may enable, applicable to procurement processes by procuring institutions. 40
- (b) The requirements referred to in paragraph (a) must include the provision for—
 - (i) analysis and publication of data; and
 - (ii) readiness assessments for procurement technology. 45 - (c) The Public Procurement Office must—

- (i) ensure that the determination envisaged in paragraph (a), accords with the national e-strategy envisaged in section 5 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), and norms and standards for electronic government for the public service envisaged in section 3(1)(g) of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 5
- (ii) publish a notice in the *Gazette* where the determination envisaged in subsection (2)(a) may be obtained.

Part 3

Access to procurement processes and information

Access to procurement processes 10

- 30.** (1) The Minister must prescribe measures for the public, civil society and the media to access, scrutinise and monitor procurement processes.
- (2) The regulation envisaged in subsection (1)—
 - (a) may introduce measures to ensure candid deliberations and to protect officials from undue influence and threats and to provide for disallowing or terminating access by the public or a specific category of persons or a specific person if such access resulted in, or is likely to, inhibit candid deliberations or result in undue influence of, or threats to, officials; 15
 - (b) may be limited to certain categories of procurement or procurement above a specified threshold; and 20
 - (c) must exclude confidential information.

Disclosure of procurement information

- 31.** (1) The Minister must prescribe requirements to disclose information regarding procurement.
- (2) The regulation envisaged in subsection (1) must, among others, require— 25
 - (a) the categories of information to be disclosed to enable effective monitoring of procurement, which includes among others—
 - (i) the reasons for the decision, where a decision is made to not follow an open competitive bid process;
 - (ii) all information regarding a bid; 30
 - (iii) the identity of each entity which submits a bid, including information relevant to that entity contained in the companies register established under section 187(4) of the Companies Act, 2008 (Act No. 71 of 2008), if applicable;
 - (iv) the date, reasons for and value of an award to a bidder, including the record of the beneficial ownership of that bidder in the register maintained in terms of section 56(14) of the Companies Act, 2008; 35
 - (v) information regarding a bid above the prescribed value awarded to an immediate family member, or a related person, of a person automatically excluded by section 13 from submitting a bid; 40
 - (vi) contracts entered into with a supplier and invoices submitted by the supplier; and
 - (vii) information regarding bids cancelled and the reasons for the cancellation; and
 - (b) that the information referred to in paragraph (a) be published as quickly as possible— 45
 - (i) on an easily accessible central online portal that is publicly available free of charge; and
 - (ii) in a format that—
 - (aa) enables tracking of information relevant to the entire process of a specific procurement; 50
 - (bb) is electronic and interoperable; and
 - (cc) if it contains confidential information, only that information is severed.

Documents to be made available

32. The Public Procurement Office must ensure that copies of—

- (a) this Act and any regulations made thereunder; and
- (b) all instructions, guidelines and codes of conduct that are issued in terms of this Act,

are accessible at the offices of the Public Procurement Office and the website of National Treasury.

Access by certain authorities to information held by Public Procurement Office and provincial treasuries

33. (1) Subject to any applicable law, the Public Procurement Office or the provincial treasury may make information pertaining to this Act in its possession available to—

- (a) an investigating authority in the Republic;
- (b) the National Prosecuting Authority;
- (c) an intelligence division in an organ of state;
- (d) the Public Protector;
- (e) the Auditor-General;
- (f) the South African Revenue Service;
- (g) an investigating authority outside of the Republic subject to the approval of the Minister; or
- (h) a person who is entitled to receive such information in terms of an order of court or other national legislation.

(2) Information envisaged in subsection (1) may only be made available to an entity referred to in subsection (1)(a) to (e)—

- (a) at the initiative of the Public Procurement Office, the relevant provincial treasury or the request of an authorised official of the entity; and
- (b) if the Public Procurement Office or the relevant provincial treasury reasonably believes such information is required to investigate suspected unlawful activity or it is in the public interest to provide such information.

(3) A request for information envisaged in subsection (2)(a) must specify the required information and the purpose for which the information is required.

(4) The Public Procurement Office or the relevant provincial treasury may, as a condition to the provision of any information envisaged in subsection (1), make the procedural arrangements regarding the furnishing of such information that the Public Procurement Office or the relevant provincial treasury considers appropriate to maintain the confidentiality of the information before the information is provided.

(5) A person who obtains information from the Public Procurement Office or the relevant provincial treasury may use that information only—

- (a) within the scope of that person's power or duty in terms of any legislation; or
- (b) for the purpose specified in the request.

(6) The Public Procurement Office or the relevant provincial treasury must make information in its possession available to the National Intelligence Structure, as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), if the Public Procurement Office or the relevant provincial treasury reasonably believes that the information relates to any potential threat or threat to the national security.

Protection of information

34. (1) No person may disclose confidential information held by or obtained from the Public Procurement Office, a provincial treasury or a procuring institution for purposes of this Act, except—

- (a) for carrying out a provision of this Act or any other legislation;
- (b) with the permission of the Public Procurement Office, the relevant provincial treasury or the relevant procuring institution;
- (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (d) in terms of an order of court.

- (2) The Public Procurement Office, a provincial treasury or a procuring institution must take appropriate measures in respect of personal information in its possession or under its control to prevent—
- (a) loss of, damage to or unauthorised destruction of the information; and
 - (b) unlawful access to or processing of personal information,
- other than in accordance with this Act and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

**CHAPTER 6
DISPUTE RESOLUTION**

Part 1

Reconsideration of decision to award

Reconsideration by procuring institution

- 35.** (1) A bidder may submit an application for reconsideration to the procuring institution if that bidder is not satisfied with a decision to award a bid by that institution.
- (2)(a) Subject to paragraph (c), the Tribunal or a court may not review a decision to award a bid unless the bidder has exhausted the internal remedy envisaged in subsection (1).
- (b) Subject to paragraph (c), the Tribunal or a court must, if it is not satisfied that the internal remedy has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in the Tribunal for a review in terms of this Act or a court for judicial review.
- (c) The Tribunal or a court may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust the internal remedy if the Tribunal or the court considers it in the interest of justice.
- (3) An application referred to in subsection (1) must be submitted to the procuring institution within 10 days of the date the bidder is informed of the decision to award a bid.
- (4) A procuring institution may dismiss an application for reconsideration if the application was not submitted within 10 days of the date the bidder is informed of the decision to award a bid.
- (5) Despite the period stated in subsection (4), a bidder may request the procuring institution to consider an application for reconsideration filed after the expiry of the period mentioned in subsection (3), on the ground that the application raises public interest considerations.
- (6) Unless the application is dismissed as envisaged in subsection (4) or withdrawn by the bidder, the procuring institution must—
- (a) immediately institute an investigation; and
 - (b) make a decision and inform the bidder within 30 days.
- (7) A decision referred to in subsection (6)(b)—
- (a) must state whether the application is granted or dismissed, in whole or in part;
 - (b) must state the reasons for the decision; and
 - (c) may state any corrective measures to be taken.
- (8) If the decision of the procuring institution in terms of subsection (6)(b) results in the withdrawal of the original award, the awarded bidder if not satisfied with the decision of the procuring institution, may file an application for review with the Tribunal in terms of section 47(1).

Part 2

Public Procurement Tribunal

Establishment of Tribunal

- 36.** (1) The Public Procurement Tribunal is hereby established to review decisions taken by—
- (a) a procuring institution in terms of section 35; and

- (b) a procuring institution to debar a bidder or supplier in terms of section 15.
- (2) The Tribunal—
- (a) is independent;
 - (b) must be impartial and exercise its powers without fear, favour or prejudice;
 - (c) is a tribunal of record; and
 - (d) must perform its function in accordance with this Act and other relevant legislation.

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Composition of Tribunal

37. (1) The Tribunal consists of as many members as the Minister appoints with due regard to section 38. 10
- (2) The members of the Tribunal must include—
- (a) one person who is a retired judge who must be the Chairperson;
 - (b) a sufficient number of persons with 10 years' experience in law; and
 - (c) a sufficient number of persons with 10 years' experience in procurement.
- (3) The Minister must appoint the Chairperson with the concurrence of the Minister responsible for justice. 15
- (4) The Minister must appoint a member of the Tribunal referred to in subsection (2)(b) as the Deputy Chairperson.

Qualification of members of Tribunal

38. (1) A person may be appointed as a member of the Tribunal if that person— 20
- (a) possesses the necessary skills, expertise and knowledge; and
 - (b) is a citizen or permanent resident of the Republic.
- (2) The Minister must, by notice in the *Gazette* and at least two newspapers circulating widely in the Republic, invite any interested person within the Republic to nominate a person meeting the requirements for appointment to the Tribunal as a candidate for appointment. 25

Functions of Chairperson and Deputy Chairperson of Tribunal

39. (1) The Chairperson—
- (a) must preside at meetings of the Tribunal; and
 - (b) is responsible for managing the work of the Tribunal. 30
- (2) The Deputy Chairperson performs the functions of the Chairperson—
- (a) on delegation by the Chairperson;
 - (b) in the absence of the Chairperson; or
 - (c) if the office of the Chairperson is vacant.

Disclosure of interest by members of Tribunal 35

40. (1) Subject to subsection (2), a member of the Tribunal may not participate in the proceedings at any meeting of the Tribunal, if in relation to any matter before the Tribunal—
- (a) the member or a person related to that member is a director, member or partner of, or has controlling interest or any financial interest in the business of the bidder or any person who made representations in relation to the application by the bidder; or 40
 - (b) the member has any interest which precludes the performing the functions as a member in a fair, unbiased and proper manner.
- (2)(a) If at any stage during the proceedings before the Tribunal it appears that a member has or may have any interest envisaged in subsection (1), the member must immediately fully disclose the nature of the interest and leave the proceedings to enable the remaining members to determine whether the member must be precluded from participating in the proceedings by reason of a conflict of interest. 45

(b) The disclosure envisaged in paragraph (a) and the decision taken by the remaining members regarding the determination must be recorded in the minutes of the proceedings.

(c) If any member fails to disclose any interest envisaged in subsection (1) or if, having such interest, the member attends or in any manner contributes to the proceedings of the Tribunal, the contribution must be disregarded, but the decision of the Tribunal is not invalid. 5

Term of office, re-appointment, termination and conditions of service of members of Tribunal

41. (1) A member of the Tribunal holds office for a period of five years, or the shorter period that the Minister determines. 10

(2) A member of the Tribunal may be re-appointed at the expiry of a term for a further term not exceeding three years.

(3) A member of the Tribunal may resign by giving at least three-months' notice to the Minister, or the shorter period as the Minister approves. 15

(4) The Minister may terminate the appointment of a member of the Tribunal if—

(a) the member is unable to perform the functions of office due to ill health or other reasons accepted by the Minister;

(b) the member fails to disclose an interest in terms of section 40(2); or

(c) an independent inquiry by the Minister has found that the member has— 20

(i) failed in a material way to discharge responsibilities of the member; or

(ii) acted in a way that is inconsistent with continuing to hold office.

(5) Subject to the Promotion of Administrative Justice Act, if an independent inquiry has been undertaken in terms of subsection (4)(c), the Minister may suspend the affected member from office pending a decision. 25

(6) The Minister must determine the remuneration and other terms and conditions of service for members of the Tribunal.

Finances of Tribunal

42. The Tribunal is financed from—

(a) money that is appropriated by Parliament; and 30

(b) prescribed fees for the Tribunal.

Resources of Tribunal

43. The Chairperson may—

(a) for the effective functioning of the Tribunal—

(i) appoint persons as employees and determine their conditions of service in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994); 35

(ii) second persons in accordance with applicable law; or

(iii) engage persons on contract otherwise than as employees;

(b) enter into contracts; 40

(c) acquire and dispose of assets; and

(d) do anything else necessary for the effective functioning of the Tribunal.

Conduct of persons involved in work of Tribunal

44. A member of the Tribunal or a person referred to in section 43(a) may not use the work for the Tribunal to impede the Tribunal's ability to perform its functions. 45

Panels of Tribunal

45. (1) The Chairperson must constitute a panel for an application envisaged in section 47 or 48 regarding—

(a) a national department envisaged in section 3(1)(a), a constitutional institution referred to in section 3(1)(b) or a national public entity envisaged in section 3(1)(d), at the national sphere of government; or 50

- (b) a provincial department envisaged in section 3(1)(a), a municipality or municipal entity referred to in section 3(1)(c) or a provincial public entity envisaged in section 3(1)(d), in the relevant province.
- (2) Any reference in this Act to the Tribunal must be construed as including a reference, where appropriate in the case of an application envisaged in section 47 or 48, to a panel to whom a review is or was assigned. 5
- (3) The panel—
- (a) is the decision-making body for that particular application; and
- (b) performs the functions of the Tribunal when hearing the application.
- (4) A panel consists of— 10
- (a) a member of the Tribunal as Chairperson of the panel;
- (b) a member of the Tribunal referred to in section 37(2)(b);
- (c) a member of the Tribunal referred to in section 37(2)(c); and
- (d) such other members of the Tribunal as the Chairperson of the Tribunal decides. 15
- (5) If, for any reason, a member of the panel is unable to complete a hearing of an application, the Chairperson may—
- (a) replace the member;
- (b) direct that the proceedings continue before the remaining members of the panel; or 20
- (c) constitute a new panel and direct the new panel to either continue the proceedings or start proceedings afresh.

Tribunal rules

- 46.** (1) The Tribunal must make rules regarding proceedings for applications, envisaged in sections 47 and 48, including the finalisation thereof, and may amend or revoke such rules. 25
- (2) The Tribunal rules must further regulate the functioning of panels, referred to in section 45, including their functioning in the national or provincial sphere of government to facilitate ease of access for the applicant.
- (3) The Tribunal must give notice in the *Gazette* or its website where the Tribunal rules, and amendments and revocations of Tribunal rules, are available. 30

Part 3 **Review process**

Review of decision of procuring institution

- 47.** (1) If a bidder is not satisfied by a decision made by a procuring institution in terms of section 35, that bidder may, within 10 days of being informed of the procuring institution's decision, submit an application for review to the Tribunal. 35
- (2) Despite the period stated in subsection (1), a bidder may request the Tribunal to consider an application for review filed after the expiry of the period mentioned in subsection (1), but not later than 15 days of being informed of the procuring institution's decision, on the ground that the application raises public interest considerations. 40
- (3) The Tribunal must inform the bidder of its decision in terms of subsection (2) and the reasons within five days from the date of receipt of the request.

Review of decision to debar

- 48.** (1) A person debarred in terms of section 15(3) may, within 10 days of being informed of the decision to debar, submit an application for review to the Tribunal. 45
- (2) Despite the period stated in subsection (1), a bidder may request the Tribunal to consider an application for review filed after the expiry of the period mentioned in subsection (1), but not later than 15 days of being informed of the procuring institution's decision, on the ground that the application raises public interest considerations. 50
- (3) The Tribunal must inform the bidder of its decision in terms of subsection (2) and the reasons within five days from the date of receipt of the request.

Fee

49. A bidder or a person debarred seeking a review of a decision in terms of this Part must pay the prescribed fee.

Review proceedings

50. (1) In review proceedings— 5
- (a) the Chairperson of the panel must determine the procedure for proceedings, subject to this Act and Tribunal rules;
 - (b) the panel must strive to ensure that proceedings are conducted with as little formality and technicality, and as expeditiously, as the requirements of this Act and a proper consideration of the matter permit; and 10
 - (c) any party may be represented by a legal representative during the proceedings.
- (2) The Chairperson of a panel may give directions to facilitate the conduct of proceedings subject to subsection (1) and the Tribunal rules.
- (3) A panel must conduct a hearing in public, but the Chairperson of the panel may direct that a person be excluded from a hearing on any ground on which it would be proper to exclude a person from civil proceedings before the High Court. 15
- (4)(a) The Chairperson of a panel—
- (i) may, on good cause shown, by order, subpoena a specified person to appear before the panel at a time and place specified in the order to give evidence, to be questioned or to produce any document; and 20
 - (ii) must administer an oath to, or accept an affirmation from, any person called to give evidence.
- (b) A person subpoenaed in terms of paragraph (a) may not—
- (i) without just cause, fail to appear before the panel at the time and place specified in the subpoena; 25
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) without just cause, fail to answer fully and satisfactorily to the best knowledge of the person all questions lawfully put to the person; or
 - (iv) fail to produce any object or information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which the person has been required to produce. 30
- (c) A person subpoenaed in terms of paragraph (a) must be reimbursed for incidental costs for providing information and appearing before the panel by the person who requested the subpoena. 35
- (5) A person giving evidence or information, or producing documents, has the protections and liabilities of a witness giving evidence in civil proceedings before the High Court.

Tribunal orders

51. (1) In review proceedings envisaged in section 47, the panel may, by order— 40
- (a) confirm a decision made in terms of section 35;
 - (b) set aside a decision made under section 35 and refer the matter back to the relevant procuring institution for further consideration;
 - (c) direct a procuring institution not to make an award or cancel an award made for the procurement under review; 45
 - (d) direct that the procurement proceedings be terminated;
 - (e) take such alternative action as is appropriate in the circumstances;
 - (f) require the payment of compensation for any reasonable costs incurred by the bidder submitting an application as a result of an act or decision of, or procedure followed by, the procuring institution in procurement that does not comply with this Act; or 50
 - (g) dismiss the application.
- (2) In review proceedings envisaged in section 48, the panel may, by order—
- (a) confirm the debarment order of the procuring institution;

- (b) substitute the debarment order for its own order;
 - (c) set aside the debarment order of the procuring institution; or
 - (d) dismiss the application.
- (3)(a) The panel for review proceedings, envisaged in section 47 or 48, must make an order in terms of subsection (1) within 30 days after the submission of the application for review. 5
- (b) On request by the chairperson of the panel, the Chairperson of the Tribunal may extend the 30-day period for not more than 30 days.
- (4)(a) The decision of the majority of the members of the panel constitutes a decision of the panel. 10
- (b) The chairperson of the panel has a casting vote in the event of an equality of votes.
- (5) The Tribunal may, in exceptional circumstances, make an order that a party to proceedings on an application for review of a decision pay some or all of the costs reasonably and properly incurred by the other party in connection with the proceedings.
- (6) The Tribunal may, by order, summarily dismiss an application for review of a decision if the application is frivolous, vexatious or trivial. 15
- (7) The decision of a panel in terms of subsection (1) is regarded as a decision of the Tribunal.

Judicial review and enforcement of Tribunal orders

52. (1) Any party that is dissatisfied with an order of the Tribunal may institute proceedings for judicial review in terms of the Promotion of Administrative Justice Act or any applicable law. 20
- (2) A party to proceedings may file with the registrar of a competent court a certified copy of an order made in terms of section 51(1) or (2) if—
- (a) no proceedings in relation to the making of the order have been commenced in a court by the end of the period for commencing such proceedings; or 25
 - (b) the proceedings have been finally disposed of.
- (3) The order, on being filed, has the effect of a judgment in civil proceedings, and may be enforced as if lawfully given in that court.

Part 4 30
Stand still process

Prohibition on concluding contract during reconsideration or review proceedings

53. (1) If a procurement process is subject to—
- (a) a reconsideration in accordance with section 35, a procuring institution may not conclude a contract with the successful bidder within 10 days after completion of the reconsideration; or 35
 - (b) review in accordance with section 47, a procuring institution may not conclude a contract with the successful bidder prior to completion of the review process.
- (2) If an emergency requires procurement for a matter that is the subject of a reconsideration or a review as envisaged in subsection (1), emergency procurement may take place as envisaged in section 63(1)(a)(xi). 40

CHAPTER 7
GENERAL PROVISIONS

Investigation by Public Procurement Office 45

- 54.(1) The Public Procurement Office may, if requested by the relevant treasury, a procuring institution, a member of the public or on its own initiative, investigate any alleged non-compliance with this Act, other than an alleged commission of an offence, referred to in section 60, if it has reasonable cause to suspect that non-compliance has occurred. 50
- (2) The Public Procurement Office must, if an investigation in terms of subsection (1) indicates—

- (a) non-compliance with this Act—
- (i) instruct the procuring institution to take steps to stop or prevent the non-compliance; and
 - (ii) direct that appropriate action be taken against the official responsible for the non-compliance; and
- (b) an alleged commission of an offence, referred to in section 60, refer the matter to the relevant law enforcement body.
- (3) Where a procuring institution is required to act in terms of subsection (2), the procuring institution must, as required by the Public Procurement Office, report on the progress made.

Power to enter and search premises

55. (1) The Public Procurement Office may, for purposes of section 54, authorise one or more suitably qualified persons (herein referred to as “the authorised person”) to enter and search any premises of—
- (a) a procuring institution without any prior consent or warrant;
 - (b) an official of a procuring institution in accordance with subsection (2); or
 - (c) a bidder, or supplier to whom a bid has been awarded in terms of this Act, in accordance with subsection (2).
- (2) The authorised person referred to in subsection (1) may enter premises of an official referred to subsection (1)(b) or a bidder or supplier referred to in subsection (1)(c)—
- (a) with the prior consent of—
 - (i) in the case of a private residence—
 - (aa) of an official, bidder or supplier, as the case may be; or
 - (bb) the person apparently in control of the business reasonably believed to be conducted at the private residence, and the occupant of the private residence or the part of the private residence to be entered; or
 - (ii) in the case of any other premises, the person apparently in control of the premises, after informing that person that—
 - (aa) granting consent will enable the authorised person to enter the premises and for the authorised person to subsequently search the premises and to do anything envisaged in subsection (8); and
 - (bb) he or she is under no obligation to admit the authorised person in the absence of a warrant; or
 - (b) without prior consent and without prior notice to any person if the entry is authorised by a warrant.
- (3)(a) The Public Procurement Office must issue the person authorised in terms of subsection (1) with a certificate stating that the person has been authorised in terms of subsection (1).
- (b) When exercising powers in terms of this section, the authorised person must—
 - (i) be in possession of a certificate of appointment; and
 - (ii) immediately show that certificate to any person who is affected by the authorised person’s actions in terms of this section or who requests to see the certificate.
- (4) The authorised person has the authority to search the premises and to do anything envisaged in subsection (8).
- (5) The authorised person exercising powers in terms of this section must do so with strict regard to—
- (a) an affected person’s right to—
 - (i) dignity;
 - (ii) freedom and security;
 - (iii) privacy; and
 - (iv) other constitutional rights; and

- (b) decency and good order as the circumstances require, in particular by—
- (i) entering and searching only such areas or objects as are reasonably required for the purposes of the investigation;
 - (ii) conducting the search discreetly and with due decorum;
 - (iii) causing as little disturbance as possible; and
 - (iv) concluding the search as soon as possible.

(6) An entry or search of premises in terms of this section may be done with or without the prior notification of the accounting officer or accounting authority of the relevant procuring institution.

(7) The authorised person may be accompanied and assisted during the entry and search of any premises for an investigation by a person designated by the Public Procurement Office.

(8)(a) While on the premises in terms of this section, the authorised person has access to any part of the premises and to any document or item on the premises, and may do any of the following—

- (i) open or cause to be opened any strongroom, safe, cabinet or other container in which the authorised person reasonably suspects there is a document or item that may afford evidence required for the investigation;
- (ii) examine, make extracts from and copy any document on the premises;
- (iii) question any person on the premises to find out information relevant to the investigation;
- (iv) require a person on the premises to produce to the authorised person any document or item that is relevant to the investigation and is in the possession or under the control of the person;
- (v) require a person on the premises to operate any computer or similar system on or available through the premises to—
 - (aa) search any information in or available through that system; and
 - (bb) produce a record of that information in any media that the authorised person reasonably requires;
- (vi) if it is not practicable or appropriate to meet a requirement in terms of subparagraph (v), operate any computer or similar system on or available through the premises for a purpose set out in that subparagraph;
- (vii) take possession of, and take from the premises, a document or item that may afford evidence required for the investigation; and
- (viii) take photographs and videos of equipment and documents.

(b) The authorised person must, on request, allow the person apparently in control of the premises a reasonable opportunity to make copies of any document or item before it is taken as mentioned in paragraph (a)(vii).

(c) The authorised person must give the person apparently in control of the premises a written receipt for documents or items taken as mentioned in paragraph (a)(vii).

(d) Subject to paragraph (e), the Public Procurement Office must ensure that any document or item taken by the authorised person as mentioned in paragraph (a)(vii) is returned to the procuring institution when—

- (i) retention of the document or item is no longer necessary to achieve the object of the investigation; or
- (ii) all proceedings arising out of the investigation have been finally disposed of.

(e) A document or item need not be returned to the procuring institution which produced it if it is not in the best interest of the public or any member or members of the public for the documents or items to be returned.

(f) A procuring institution from whose premises a document or item was taken as mentioned in paragraph (a)(vii), or its authorised representative, may, during normal office hours and under the supervision of the authorised person or another person designated by the Public Procurement Office, examine, copy and make extracts from the document or item.

(9) The authorised person or any person assisting that person as provided for in subsection (6), may use reasonable force to exercise any power in terms of this section.

(10) The law relating to privilege, as applicable to a witness subpoenaed to provide a book, document or object in a civil trial before a court applies, with the necessary changes, in relation to the production of any information, including but not limited to any working papers, statements, correspondence, books or other documents, to the Public Procurement Office acting in accordance with this section. 5

(11)(a) A person who is questioned or required to produce a document or information during an investigation in terms of this section, may object to answering the question or to producing the document or the information on the grounds that the answer, the contents of the document or the information may tend to incriminate the person.

(b) The authorised person must inform the person of the right to object in terms of this section at the commencement of the investigation. 10

(c) On such an objection, the authorised person may require the question to be answered or the document or information to be produced, in which case the person must answer the question or produce the document.

(d) Subject to paragraph (e), an answer given or a document or information produced, as required in terms of paragraph (c), may be used for the purposes of an investigation or other legal proceedings in terms of this Act. 15

(e) An incriminating answer given, and an incriminating document or information produced, as required in terms of paragraph (c), is not admissible in evidence against the person in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for a contravention of section 60(1)(a) based on the false or misleading nature of the answer. 20

Warrants

56. (1)(a) A judge or magistrate who has jurisdiction may issue a warrant for the purposes of section 55(2)(b) on application by a person authorised in terms of section 55(1). 25

(b) The judge or magistrate may issue a warrant in terms of this section—

(i) on written application by the person authorised in terms of section 55(1) setting out under oath or affirmation why it is necessary to enter and search the premises; and 30

(ii) if it appears to the judge or magistrate from the information under oath or affirmation that—

(aa) there are reasonable grounds for suspecting that non-compliance with this Act has occurred; and

(bb) entry and search of the premises are likely to yield information pertaining to the non-compliance with this Act. 35

(2) A warrant must be signed by the judge or magistrate issuing it.

(3) The person authorised in terms of section 55(1) who enters premises under the authority of a warrant must—

(a) if there is apparently no one in charge of the premises when the warrant is executed, fix a copy of the warrant on a prominent and accessible place on the premises; and 40

(b) on reasonable demand by any person on the premises, produce the warrant or a copy of the warrant.

(4) The warrant must identify the premises that may be entered and searched and specify the parameters within which the person authorised in terms of section 55(1) may perform an entry, search or seizure. 45

(5) A warrant is valid only until—

(a) the warrant is executed;

(b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority; 50

(c) the purpose of issuing it has lapsed; or

(d) the expiry of one month after the date it was issued,

whichever occurs first.

Delegation

57. (1)(a) The Minister may—
- (i) delegate to the Director-General: National Treasury any power conferred on the Minister by this Act, except the making of regulations and a decision by notice in the *Gazette*; or 5
 - (ii) authorise that Director-General to perform any duty imposed on the Minister by this Act.
- (b) The Director-General: National Treasury may—
- (i) delegate to any official of the National Treasury any power delegated to the Director-General in terms of paragraph (a); or 10
 - (ii) authorise that official to perform any duty he or she is authorised to perform in terms of paragraph (a).
- (2)(a) The Minister responsible for trade, industry and competition may—
- (i) delegate to the Director-General responsible for trade, industry and competition a power conferred in terms of section 20; or 15
 - (ii) authorise the Director-General responsible for trade, industry and competition to perform any duty imposed on the Minister by section 20, except a decision by notice in the *Gazette*;
- (b) The Director-General responsible for trade, industry and competition may—
- (i) delegate to any official of the department for trade, industry and competition any power delegated to the Director-General in terms of paragraph (a); or 20
 - (ii) authorise that official to perform any duty he or she is authorised to perform in terms of paragraph (a).
- (3) The accounting officer or accounting authority of a procuring institution may—
- (a) delegate to any official of the procuring institution any power conferred on the accounting officer or accounting authority by this Act; or 25
 - (b) authorise that official to perform any duty imposed on the accounting officer or accounting authority by this Act.
- (4) The Head of the Public Procurement Office may, except the issuance of instructions— 30
- (a) delegate to an official of the Public Procurement Office any power conferred on the Head Public Procurement Office by this Act;
 - (b) authorise an official of the Public Procurement Office to perform any duty imposed on the Head of the Public Procurement Office by this Act;
 - (c) delegate to a provincial treasury any power conferred on the Head of the Public Procurement Office by this Act; or 35
 - (d) authorise a provincial treasury to perform any duty imposed on the Head of the Public Procurement Office by this Act.
- (5) The Head of a provincial treasury may, except the issuance of instructions— 40
- (a) delegate to any of its officials any power conferred on the Head of the provincial treasury by this Act; or
 - (b) authorise any of its officials to perform any duty imposed on the Head of the provincial treasury by this Act.
- (6) Any person to whom a power has been delegated or who has been authorised to perform a duty under this section must exercise that power or perform that duty subject to the conditions imposed by the person who made the delegation or granted the authorisation. 45
- (7) Any delegation of a power or authorisation to perform a duty in terms of this section—
- (a) must be in writing; 50
 - (b) does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
 - (c) may at any time be withdrawn in writing by that person.

Limitation of liability

55

58. No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act.

Financial misconduct

59. (1) An accounting officer or accounting authority of a procuring institution commits financial misconduct if that officer or authority fails to take reasonable steps to implement this Act or the procurement system of the procuring institution in accordance with this Act. 5

(2) A charge of financial misconduct, referred to in subsection (1), must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority.

Offences

60. (1) A person who— 10

- (a) knowingly gives false or misleading information under this Act;
- (b) interferes with or exerts undue influence on any official of a procuring institution or member of the Tribunal in the performance of a duty or in the exercise of a power under this Act;
- (c) without authorisation opens a sealed bid, whether submitted electronically or otherwise, or discloses their contents prior to the official public opening of the bid; 15
- (d) conspires to commit extortion or a corrupt, fraudulent, collusive or coercive or obstructive act related to procurement under this Act;
- (e) contravenes section 10(b) or (c), 12 or 15(11)(a); or 20
- (f) causes loss of public assets or funds as a result of a wilful act or gross negligence in the implementation of this Act,

commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding 10 years or to both, and in addition to the penalty imposed in this section, the court may order that the amount of loss incurred by the complainant be compensated, failure of which the court may issue an order of confiscation of personal property of the person convicted in order to recover the loss. 25

(2) A person who—

- (a) without reasonable explanation fails or refuses to give information, produce any document, records or reports required in terms of this Act; 30
- (b) delays, without justifiable cause, the evaluation of a bid or the awarding of a bid;
- (c) fails to comply with a subpoena issued in terms of section 50(4),

commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding three years or both. 35

(3) A member of the Tribunal who fails to disclose an interest in terms of section 40(2) commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding three years or both.

Exemption

61. (1) The Minister may, with or without conditions, by notice in the *Gazette*, exempt a procuring institution from any provision of this Act, if— 40

- (a) national security could reasonably be expected to be compromised;
- (b) the procurement is to be funded partially or in full by donor or grant funding and such exemption will benefit the public in general or a section of the public; 45
- (c) a disaster is declared in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002);
- (d) a state of emergency as envisaged in section 37 of the Constitution is declared; or
- (e) it is uneconomical to comply with any provision of this Act. 50

- (2) If a request for an exemption is made in terms of subsection (1), the Minister must make a decision within 30 days after receipt of all the relevant documents.
- (3) An exemption referred to in subsection (1) may apply to any procuring institution to which this Act applies or a category of procuring institutions.
- (4) For purposes of this section, this Act excludes an instruction. 5

Departures

- 62.** (1) The Public Procurement Office may, with or without conditions, authorise a departure from a provision of an instruction, issued terms of section 5(2) if—
 - (a) it is impractical to comply with the instruction;
 - (b) market conditions or behaviour do not allow effective application of the instruction; or 10
 - (c) national security could reasonably be expected to be compromised.
- (2) The Public Procurement Office must, with or without conditions, authorise a departure from a provision of an instruction, issued terms of section 5(2) if it is impossible or uneconomical to comply with the instruction. 15
- (3) If a request for a departure is made in terms of subsection (1) or (2), the Public Procurement Office must make a decision within 30 days after receipt of all the relevant documents.
- (4) If a departure is authorised in terms of subsection (1), the Public Procurement Office must, within 14 days, inform the Auditor-General and publish the departure. 20
- (5) Subsections (1) to (4) apply with the necessary changes to an instruction issued by a provincial treasury in terms of section 6(2).

Regulations

- 63.** (1) The Minister, by notice in the *Gazette*—
 - (a) must make regulations regarding— 25
 - (i) any matter required by this Act to be prescribed;
 - (ii) competency requirements for officials involved in procurement;
 - (iii) the requirements for security vetting of—
 - (aa) members of the Tribunal; and
 - (bb) a bidder before the award of a bid; 30
 - (iv) the use of information and communications technology in procurement;
 - (v) procedures for bid specification, invitation, submission, opening, evaluation, adjudication and awarding of bids and cancellation of procurement processes;
 - (vi) procurement funded partially or in full by donor or grant funding; 35
 - (vii) measures for the participation of a manufacturer of goods in a bid to supply the goods it manufactures;
 - (viii) circumstances and procedures for pre-qualification of bidders;
 - (ix) the completion of the procurement process during the bid validity period and the extension of the period to prevent undue delays or unjustified cancellations; 40
 - (x) transversal term contracts and public private partnerships;
 - (xi) emergency procurement, which may include—
 - (aa) the different types of emergency procurement that may be used and the circumstances under which the different types may be used; 45
 - (bb) an outline of the planning efforts of the procuring institution to limit the need for emergency procurement and to improve responsiveness during an emergency;
 - (cc) the pre-requisites for awarding bids and administering contracts during emergencies; 50
 - (dd) options available to the procuring institution during an emergency and the preferred methods of procurement; and

- (ee) procedures to be followed in respect of emergency procurement processes, including the recording of deliberations and the making of recommendations and awards;
- (xii) percentages for contract variations or amendments;
- (xiii) complaints by a member of the public regarding procurement in terms of this Act; and 5
- (xiv) fees for a review by the Tribunal;
- (b) may make regulations—
 - (i) permitted by this Act to be prescribed;
 - (ii) regarding negotiations with a preferred bidder or bidders before the award of the bid; 10
 - (iii) regarding requirements for bidders to comply with specified legislation;
 - (iv) regarding lifestyle audits of persons automatically excluded in terms of section 13 and their immediate family members and related persons, if an immediate family member or a related person is awarded a bid or bids above a threshold stipulated in the regulations; 15
 - (v) regarding the retention of procurement data;
 - (vi) regarding contracting methods for any category of procurement; and
 - (vii) regarding any procedural or administrative matters that are necessary to implement this Act. 20
- (2) The Minister must, before complying with subsection (3), consult—
 - (a) the relevant Minister on a draft regulation affecting the portfolio of that Minister; and
 - (b) organised local government on a draft regulation affecting municipalities or municipal entities. 25
- (3) Before making a regulation, the Minister must publish—
 - (a) a draft of the regulation;
 - (b) a statement explaining the need for and the intended operation of the regulation;
 - (c) a statement of the expected impact of the regulation; and 30
 - (d) a notice inviting submissions in relation to the regulation and stating where, how and by when submissions are to be made.
- (4) The Minister must submit regulations to be made to Parliament for parliamentary scrutiny at least 30 days before their promulgation.
- (5) A regulation takes effect— 35
 - (a) on the date that it is published in the *Gazette*; or
 - (b) if the regulation provides that it takes effect on a later date, on the later date.
- (6)(a) With each regulation, the Minister must publish a consultation report.
- (b) A consultation report must include—
 - (i) a general account of the issues raised in the submissions made during the consultation; and 40
 - (ii) a response to the issues raised in the submissions.
- (7) The Minister—
 - (a) may make different regulations for—
 - (i) different categories of procuring institutions; and 45
 - (ii) different categories of procurement; and
 - (b) must make regulations regarding the procurement of—
 - (i) infrastructure and capital assets; and
 - (ii) goods or services related to infrastructure and capital assets.

Instructions 50

- 64.** (1) The Public Procurement Office or a provincial treasury must, before making an instruction, publish—
 - (a) a draft of the instruction;
 - (b) a statement explaining the need for and the intended operation of the instruction; 55
 - (c) a statement of the expected impact of the instruction; and

- (d) a notice inviting submissions in relation to the instruction and stating the form and manner in which the submissions are to be made.
- (2)(a) With each instruction, the Public Procurement Office or a provincial treasury must publish a consultation report.
- (b) A consultation report referred to in paragraph (a) must include— 5
- (i) a general account of the issues raised in the submissions made during the consultation; and
- (ii) a response to the issues raised in the submissions.

In writing requirement

- 65.** Any request, decision, approval, authorisation, determination, direction or notification or report in terms of this Act must be in writing. 10

Transitional measures

- 66.** A bid awarded or advertised before the commencement of the applicable provision or provisions of this Act must be dealt with in terms of the law applicable at the time of the award or advertisement. 15

Amendment and repeal of legislation and saving

- 67.** (1) Subject to subsection (2), the legislation mentioned in the Schedule are hereby amended or repealed as set out in that Schedule.
- (2) Anything done under any law repealed by subsection (1) and which could be done under a provision of this Act must be regarded as having been done under that provision. 20

Review of Act

- 68.** The Minister must—
- (a) within 24 months after this Act is first published as an Act in the *Gazette*, review the implementation of this Act and the need for amendments to this Act; 25
- (b) consult stakeholders, including Nedlac, during the review; and
- (c) within 27 months after this Act is first published as an Act in the *Gazette*, make public a report on the review and submit it to Parliament.

Short title and commencement

- 69.** (1) This Act is called the Public Procurement Act, 2024, and takes effect on a date determined by the President by proclamation in the *Gazette*. 30
- (2) Different dates may be determined by the President in respect of the effective date of—
- (a) different provisions of this Act;
- (b) different provisions of this Act in respect of different categories of procuring institutions; and 35
- (c) the repeal or amendment of different provisions of a law repealed or amended by this Act.

SCHEDULE

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

AMENDMENTS AND REPEALS OF LEGISLATION

(Section 68)

Item No.	No. and year of law	Short title	Extent of repeal or amendment
1.	Act No. 86 of 1968	State Tender Board Act, 1968	1. The repeal of the whole.
2.	Act No. 89 of 1970	National Supplies Procurement Act, 1970	2. The repeal of the whole.
3.	Act No. 107 of 1997	Housing Act, 1997	3. The substitution in section 3(2) for paragraph (cA) of the following paragraph: “(cA) determine a procurement policy[, by no later than April 2002, which is consistent with section 217 of the Constitution] in relation to housing development subject to the <u>Public Procurement Act, 2024</u> .”.
4.	Act No. 36 of 1998	National Water Act, 1998	4. The substitution in section 26(1) for paragraph (n) of the following paragraph: “(n) prescribing procedures for the allocation of water by means of [public tender] a bid, as defined in section 1 of the <u>Public Procurement Act, 2024</u> , or an auction, subject to the <u>Public Procurement Act, 2024</u> .”. 5. The substitution in section 45(2) for paragraph (f) of the following paragraph: “(f) allocated to every other applicant by [public tender] means of a bid, as defined in section 1 of the <u>Public Procurement Act, 2024</u> , or an auction, subject to any regulation made under section 26(1)(n).”.
5.	Act No. 88 of 1998	State Information Technology Agency Act, 1998	6. The insertion after section 7(7) of the following subsection: “(7A) When <u>information technology goods or services are procured through the Agency in terms of this section, the Agency must comply with the <u>Public Procurement Act, 2024</u></u> .”. 7. The substitution in section 23(1) for paragraph (a) of the following paragraph: “must, subject to the <u>Public Procurement Act, 2024</u> , make regulations regarding the manner in which procurement in terms of section 7(3) to (7) must take place, [subject to the approval] with the <u>concurrence</u> of the Minister of Finance; and”.

Item No.	No. and year of law	Short title	Extent of repeal or amendment
6.	Act No. 111 of 1998	Correctional Services Act, 1998	8. The substitution in section 103 for subsection (1) of the following subsection: “(1) The Minister may, subject to [any law governing the award of contracts by the State] the Public Procurement Act, 2024 , with the concurrence of the Minister of Finance and the Minister of Public Works, enter into a contract with any party to design, construct, finance and operate any correctional centre or part of a correctional centre established or to be established in terms of section 5.”.
7.	Act No. 1 of 1999	Public Finance Management Act, 1999	9. The deletion of section 38(1)(a)(iii). 10. The substitution in section 38(1) for paragraph (g) of the following paragraph: “(g) on discovery of unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the [relevant tender board] Public Procurement Office established by section 4 of the Public Procurement Act, 2024 .”. 11. The deletion of section 51(1)(a)(iii). 12. The deletion of section 76(1)(k). 13. The deletion of section 76(4)(c).
8.	Act No. 20 of 1999	Road Traffic Management Corporation Act, 1999	14. The substitution for section 43 of the following section: “ Procurement 43. Any procurement under this Act must be undertaken in [terms of the prescribed procedures] accordance with the Public Procurement Act, 2024 .”.
9.	Act No. 5 of 2000	Preferential Procurement Policy Framework Act, 2000	15. The repeal of the whole.
10.	Act No. 32 of 2000	Local Government: Municipal Systems Act, 2000	16. The substitution in section 62 of subsection (6) for the following subsection: “(6)(a) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law. (b) This section does not apply to disputes provided for in Chapter 6 of the Public Procurement Act, 2024 .”. 17. The substitution in section 83 of— (a) paragraph (a) of subsection (1) for the following paragraph: “(a) comply with [Chapter 11 of the Municipal Management Act] the Public Procurement Act, 2024 .”; and (b) subsection (2) for the following subsection: “(2) Subject to the provisions of the [Preferential Procurement Policy Framework Act, (Act No. 5 of 2000)] Public Procurement Act, 2024 , a municipality may determine a preference for categories of service providers in order to advance the interest of persons disadvantaged by unfair discrimination, as long as the manner in which such preference is exercised does not compromise or limit the quality, coverage, cost and developmental impact of the services.”.

Item No.	No. and year of law	Short title	Extent of repeal or amendment
11.	Act No. 38 of 2000	Construction Industry Development Board Act, 2000	<p>18. The insertion in section 1 after the definition of “project” of the following definition: “Public Procurement Office’ means the Public Procurement Office, established by section 4 of the Public Procurement Act, 2024;”;</p> <p>19. The insertion after section 5(1) of the following subsection: “(1A) When acting in terms of subsection (1) on matters regulated by the Public Procurement Act, 2024, the Board must comply with that Act and consult the Public Procurement Office.”.</p> <p>20. The substitution in section 5(3) for paragraph (c) of the following paragraph: “(c) must, [within the framework of the procurement policy of Government] subject to the Public Procurement Act, 2024, and in consultation with the Public Procurement Office, promote the standardisation of the procurement process with regard to the construction industry”</p> <p>21. The substitution in section 5 for subsection (4) of the following subsection: “(4) To promote uniform and ethical standards within the construction industry, the Board (a) must, in consultation with the Public Procurement Office, publish a code of conduct for all public sector construction-related procurement and all participants involved in public sector procurement process; and (b) may, in consultation with the Public Procurement Office, initiate, promote and implement national programmes and projects aimed at the standardisation of procurement documentation, practices and procedures.”;</p> <p>22. The substitution in section 16 for subsection (3) of the following subsection: “(3) The Minister must, with the concurrence of the Minister of Finance, prescribe the manner in which public sector construction contracts may be invited, awarded and managed within the framework of the register and [within the framework of the policy on procurement] the Public Procurement Act, 2024.”.</p> <p>23. The substitution in section 33 for subsection (1) of the following subsection: “(1)(a) The Minister may, by notice in the <i>Gazette</i>, make regulations not inconsistent with this Act with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or function or duty imposed by this Act. (b) Regulations in terms of subsection (1) on matters regulated by the Public Procurement Act, 2024, must be made with the concurrence of the Minister of Finance.”.</p>
12.	Act No. 51 of 2003	Armaments Corporation of South Africa, Limited Act, 2003	<p>24. The substitution in section 2(4) for the words preceding paragraph (a) of the following words: “(4) Subject to this Act and the Public Procurement Act, 2024, the Corporation may—”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
13.	Act No. 53 of 2003	Broad-Based Black Economic Empowerment Act, 2003	<p>25. The insertion after section 9(1) of the following subsection (1):</p> <p>“(1A)(a) The Minister must review a code of good practice insofar as applicable to organs of state and public entities regarding qualification criteria for preferential purposes for procurement, envisaged in subsection (1)(b), to ensure alignment with the Public Procurement Act, 2024.</p> <p>(b) When issuing a new or revised code envisaged in paragraph (b), ensure alignment with the Public Procurement Act, 2024.”;</p> <p>25. The substitution in section 9 for subsection (5) of the following subsection:</p> <p>“(6) If requested to do so, the Minister may, with the concurrence of the Minister of Finance and by notice in the <i>Gazette</i>, permit organs of state or public entities to specify qualification criteria for procurement and other economic activities which exceed those set by the Minister in terms of subsection (1).”.</p> <p>26. The substitution in section 10(1) for paragraph (b) of the following paragraph:</p> <p>“(b) developing and implementing a preferential procurement policy aligned with the Public Procurement Act, 2024.”.</p> <p>27. The substitution in section 13P for subsection (1) of the following subsection:</p> <p>“(1) Any person convicted of an offence in terms of this Act may not, for a period of 10 years from the date of conviction, contract or transact any business with any organ of state or public institution and must for that purpose be entered into the [register of tender defaulters which the National Treasury may maintain for that purpose] Register for Tender Defaulters established in terms of section 29 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).”.</p>
14.	Act No. 56 of 2003	Local Government: Municipal Finance Management Act, 2003	<p>28. The substitution in section 1 for paragraph (d) of the definition of ‘irregular expenditure’ of the following paragraph:</p> <p>“(d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, the Public Procurement Act, 2024, a requirement of the [supply chain management policy] procurement system of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law.”.</p> <p>29. The deletion of section 2(f).</p> <p>30. The substitution in section 14 for subsection (5) of the following subsection:</p> <p>“(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the [supply chain management] procurement policy which the municipality must have and maintain in terms of [section 111] the Public Procurement Act, 2024.”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>31. The deletion of section 33(4).</p> <p>32. The substitution in section 65(2) for paragraph (i) of the following paragraph: “(i) that the municipality’s [supply chain management policy referred to in section 111] procurement system complies with the Public Procurement Act, 2024 [is implemented in a way that is fair, equitable, transparent, competitive and cost-effective] and”.</p> <p>33. The substitution in section 73 of paragraph (a) for the following paragraph: “(a) any failure by the council of the municipality to adopt or implement a budget- related policy [or a supply chain management policy referred to in section 111]; or”.</p> <p>34. The deletion of section 75(1)(g) and (j).</p> <p>35. The substitution in section 81(1) for paragraph (e) of the following paragraph: “(e) must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, [supply chain] procurement management, financial management, review and other duties as may in terms of section 79 or other legislation be delegated by the accounting officer to the chief financial officer.”.</p> <p>36. The substitution in section 90 for subsection (5) of the following subsection: “(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent and competitive and consistent with the [supply chain management] procurement policy which the municipal entity must have and maintain in terms of [section 111] the Public Procurement Act, 2024.”.</p> <p>37. The deletion of section 99(2)(h).</p> <p>38. The repeal of Chapter 11.</p> <p>39. The deletion of section 163(2)(b).</p> <p>40. The substitution in section 168(1) for paragraph (g) of the following paragraph: “(g) the alienation, letting or disposal of assets by municipalities or municipal entities, subject to the Public Procurement Act, 2024;”.</p> <p>41. The deletion of section 173(1)(a)(ii) and (a)(iv)(bb).</p> <p>42. The substitution in section 173(2)(a) for subparagraph (iii) of the following subparagraph: “(iii) fails to take all reasonable steps to prevent corruptive practices in the management of the entity’s assets[,] or receipt of money [or supply chain management system];”.</p> <p>43. The substitution in section 173(5) for paragraph (e) of the following paragraph: “(e) contravenes a provision of section [115 (2), 118 or] 126 (5); or”.</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
15.	Act No. 4 of 2006	Electricity Regulation Act, 2006	44. The substitution in section 34(1)(e) for subparagraph (i) of the following subparagraph: “(e) subject to the Public Procurement Act, 2024, be established through a [tendering] bid procedure which is fair, equitable, transparent, competitive and cost-effective;”.
16.	Act No. 16 of 2013	Spatial Planning and Land Use Management Act, 2013	45. The substitution in section 49 of subsection (5) for the following subsection: “(5) If external engineering services are installed by an applicant instead of payment of development charges, the [provision of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003)] Public Procurement Act, 2024, pertaining to procurement and the appointment of contractors on behalf of the municipality does not apply.”.
17.	Act No. 23 of 2014	Infrastructure Development Act, 2014	46. The substitution in section 8 for subsection (2) of the following subsection: “(2) If the Commission designates a strategic integrated project which must be implemented, it must determine whether the state has the capacity to implement the project or whether the whole or part of the project must be [put out to tender or] procured [through another form of procurement allowed by the Public Finance Management Act, 1999 (Act No. 1 of 1999)] in terms of the <u>Public Procurement Act, 2024</u> .”. 47. The substitution in section 12 for subsection (4) of the following subsection: “(4) The Director-General or accounting authority of a public entity responsible for an aspect of infrastructure remains the accounting officer or accounting authority in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) [, the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000),] or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).”.