

PUBLIC PROCUREMENT BILL- NT’S RESPONSES TO JSR PROPOSALS

Clause	JSR wording	NT response
Long title	To regulate public procurement; to prescribe a framework within which preferential procurement <u>policy</u> must be implemented; and to provide for matters connected therewith.	Insertion of the word “policy” is not necessary and has been omitted. The Constitution refers to a procurement policy
Preamble	WHEREAS the Constitution stipulates that the contracting of goods and services by organs of state in the national, provincial and local spheres of government, and by other institutions identified in national legislation, must occur in accordance with a system which is fair, equitable, transparent, competitive and cost-effective; AND WHEREAS the Constitution permits organs of state and other institutions identified in national legislation to implement a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons disadvantaged by unfair discrimination within a framework prescribed by national legislation; AND WHEREAS the Constitution provides that national legislation must: • promote an efficient administration; • promote the efficient, effective and economic use of resources in an accountable, ethical and development orientated manner; and • promote the provision of timely, accessible and accurate information to the public. AND WHEREAS the Constitution requires the environment to be protected for the benefit of present and future generations through reasonable legislative and other measures	The proposal by the JSR is not supported The order of paragraphs referring to the constitutional provisions has been rearranged

	AND WHEREAS 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 IN ORDER TO create a single regulatory framework consistent with the Constitution that: • defines and articulates a procurement system as envisaged in section 217 of the Constitution; • allows for the flexible, strategic, and effective pursuit of policy objectives which redress the imbalances of the past and simultaneously commit to sustainable procurement and economic development; • combats corruption; and • provides for public procurement which is developmental in economic nature and outlook, aspiring to expand the productive base of the economy and to support innovation and investment AND RECOGNISING that legislation regulating procurement in the public sphere is fragmented and that there is an urgent need for a specialised authority empowered to drive coherently the modernisation of the public procurement system around the above Constitutional principles and provisions as well as those regulatory principles contained in this Bill	
	CHAPTER 1 DEFINITIONS, OBJECTS, APPLICATION AND ADMINISTRATION OF ACT	
Clause 1	“accounting officer” means— (a) in relation to a department or constitutional institution, the accounting officer as defined in section 1 of the Public	- The insertion of paragraph (d) to include institutions of higher learning is a policy matter and must be omitted since the decision is for the Bill not to apply to these institutions

	“infrastructure” includes construction and other works and information technology systems; “limited competitive bidding procedure” means the procedure described in subsection; “margin of preference” means an adjustment within predetermined limits made to a bidder’s price in terms of a prescribed system to enable a bidder who is eligible for targeted treatment to be awarded a contract when his or her price is higher than the lowest acceptable bid within a prescribed margin; “online portal” means at least one of the central online portals operated by the PPO; “open competitive bidding procedure” means the procedure described in subsection ...; “project” means a temporary endeavour to achieve one or more defined objectives through one or more contracts; “procurement” means the process which creates, manages and fulfils contracts which are concluded following the application of a selection method in Part 2 of Chapter 5; “procurement document” means a document used to solicit bids from the market and / or to conclude a contract; “reservation” means a portion of a contract is subcontracted to suppliers who are eligible for targeted treatment or the whole or part of a contract is reserved for goods or services or any combination thereof which are eligible for targeted treatment; “risk” means exposure to the chance of loss, harm or failure to achieve objectives; “set-aside” means only bidders who are eligible for targeted treatment in a specific procurement may submit a bid and have their bids evaluated; “single-source procurement procedure” means the procedure described in subsection... “township” means an urban living area that any time from the late 19th-century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;	
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	"this Act" includes the regulations, codes of conduct and instructions made in terms of this Act but does not include the procurement implementation policy of section 9;	
Clause 2	Objects and Purposes of Act 2. (1) The objects of this Act are to— (a) define, provide for, and regulate the system for public procurement as contemplated in section 217 of the Constitution; (b) prescribe a framework as contemplated in section 217(2) and (3) of the Constitution in order to define, provide for, and regulate (i) categories of preference in the allocation of contracts and (ii) the protection and advancement of persons and categories of persons disadvantaged by unfair discrimination.(c) provide for powers and authority for the Minister, National and Provincial Treasuries, and the Public Procurement Office to exercise regulatory roles and responsibilities in the national, provincial, and local spheres of government; and (d) provide for uniform treasury norms and standards for all procuring institutions as contemplated in section 216(1), read with section 217, of the Constitution to ensure transparency and expenditure control in the implementation of the procurement system. (2) The purposes of this Act are to promote— (a) fairness in public procurement by (i) ensuring equal treatment of all suppliers to procuring institutions; (ii) advancing ethical conduct; (iii) combating corruption by all role players; (iv) providing a framework for preferential procurement; (iv) providing for effective and expedited dispute resolution of procurement related decisions; and (v) introducing enforcement and appropriate sanctions for transgressors of procurement rules, norms and standards; (b) equitable public procurement by	It is not drafting practice to have a "objects " and "Purpose" clause in a Bill The JSR draft lost the link between section 216(1) and 217(1) of the Constitution. The proposed provisions in clause 2(2) of the JSR draft are too detailed and expects the Act to do things that's not practical Clause 2(2)(a) has been amended to cover the JSR's proposal in clause 2(2)(e)

	(i) ensuring that public procurement is sustainable and has the most positive environmental, social and economic impacts possible over its entire life cycle; (ii) ensuring the protection and advancement in public procurement of persons disadvantaged by unfair discrimination; (ii) stimulating economic growth by promoting— (aa) local manufacturing; (bb) innovation; and (cc) investment; and (iii) promoting the protection of the environment for the benefit of present and future generations; (c) transparency in public procurement by (i) ensuring accountability for decisions; (ii) making procurement data and information publicly available, and usable, through an electronic system designed specifically for this purpose; and (ii) providing the public with timely, accessible and accurate information; (d) competitive public procurement by (i) providing for open competition as the default procurement method; (ii) ensuring that contracts are concluded at open market prices; and (iii) creating a range of procurement methods to facilitate appropriate levels of competition within particular procurement contexts; and (e) promote cost-effectiveness in public procurement by (i) focussing decision making on the attainment of value for money through the evaluation of relevant costs and benefits together with the assessment of risks (ii) ensuring cost-effective project outcomes in the use of public funds;	
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	(iii) enabling accounting officers and accounting authorities to efficiently manage project risks; and (iv) improving efficiency in procurement by streamlining procurement processes including that achieved through the use of technology.	
Clause 3	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; (c) a municipality or a municipal entity; (d) a public entity listed in Schedule 2 or 3 to the Public Finance Management Act; (e) public higher education institution as defined in the Higher Education Act 101 of 1997; and (e) any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the Government Gazette as an institution or category of institutions to which this Act applies.	See response earlier response on the definition of “accounting officer”
	CHAPTER 2- A PUBLIC PROCUREMENT OFFICE, PROVINCIAL TREASURIES AND PROCURING INSTITUTIONS	
Clause 5	General 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) promote and implement necessary measures to maintain the integrity of the public procurement system; (c) guide and support officials and procuring institutions to	Some revisions were made in view of the JSR proposal JSR’s proposals for PPO to consult certain bodies, e.g. CBE, and to be advised by a panel of expert not supported. Draft regulations are published for comment and PPO may consult external experts when needed

	ensure compliance with this Act and in doing so— (i) provide advice and assistance to procuring institutions; (ii) ensure the appropriate and sector specific professional development and training of officials involved in procurement and the delivery management of projects (d) develop and implement measures to ensure transparency of procurement, including the establishment of a system for the proactive disclosure of data and documents by procuring institutions according to a common data standard and on online portals including a central online portal: (e) promote standardisation of procurement policies, methods and procedures, forms of contract and procurement documents; (f) monitor and integrate innovations and learning in procurement from procuring institutions towards the modernisation of the procurement system; (j) establish and maintain a national debarment register in terms of section 16 and publish the names of debarred persons; (k) create, maintain and publish one or more central databases and online portals as envisaged in this Act; (m) ensure cooperation and coordination with and among organs of state on all procurement related matters; (n) ensure effective procurement within the infrastructure sector by regularly consulting with, among others, the: (i) Council for the Built Environment established in terms of the Council for the Built Environment Act of 2000 (Act 43 of 2000) on public procurement matters which have an impact on the built environment; (ii) Construction Industry Development Board established by the Construction Industry	JSR's proposals on inclusion of range of new matters not supported since these matters should be dealt in subordinate instruments, i.e. mainly regulations and also instructions JSR's proposal on omitting authority for PPO and provincial treasuries to issue instructions not supported since instructions are desirable to deal with operational matters
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	Development Board Act of 2000 (Act 38 of 2000) on public procurement matters which have an impact on the construction industry; and (iii) the Presidential Infrastructure Coordinating Commission established in terms of the Infrastructure Development Act of 2014 (Act 23 of 2014) on matters which are related to the national infrastructure plan and its implementation; and (o) promote coherence of the procurement system by monitoring, engaging with and harmonising changes effected to the procurement system by the courts; (2) The Public Procurement Office may, in accordance with this Act— (a) determine, issue, review and amend model policies and associated operating procedures and procurement documents for different categories of institutions and different categories of procurement; (b) establish data retention and reporting requirements applicable to procuring institution including the format for such reporting; (e) issue non-binding guidelines to assist procuring institutions with the implementation of this Act or any other procurement related matter; (f) declare certain procurement practices as undesirable; (g) review the procurement policy applied by a procuring institution; (h) consider complaints by a member of the public regarding procurement; and (i) exercise other powers conferred by this Act. (4) The Public Procurement Office shall consult and be advised by a panel of experts who have collectively have expertise covering the different categories of procurement	
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	encountered in the public procurement system and appropriate sector or industry expertise. The Public Procurement Office shall constitute the panel following a call for nominations from procuring institutions. The term of the panel shall not exceed 3 years.	
Clause 6	Clause 6(3) of Nedlac version omitted by JSR	JSR's proposal on omitting authority for provincial treasuries to issue instructions not supported since instructions are desirable to deal with operational matters
Clauses 7 to 9J		The content of some of the proposed provisions are dealt with elsewhere in the Bill (see below) The content of other provisions are too detailed and will be considered for inclusion in regulations
Clause 7	Implementing the public procurement system 7. (1) A procuring institution must implement the public procurement system provided for in the Act through — (a) the institution's procurement implementation framework comprising: (i) an implementation policy and associated standard operating procedures; (ii) governance arrangements; and (iii) procurement documents. (b) an effective and efficient planning system which: (i) provides for the identification and analysis of the procurement needs of the institution; (ii) ensure that procurement needs support the strategic and operational commitments of the institution; (iii) integrates provisions for procurement related expenditure as part of the institution's operating expenses and capital projects into the budgeting process of the institution; and (c) a suitable means for the tracking of the progress of projects, the monitoring of performance and at least	

	quarterly reporting to the accounting officer or accounting authority as the case may be, and where relevant, to a municipality. (2) The procurement implementation framework referred to in subsection (1) must— (a) be consistent with the objects, purposes and provisions of this Act and any other legislation prescribing a framework for the planning or budgeting of activities to which the procurement implementation framework applies; (b) enable risks which threaten project outcomes to be appropriately and proactively mitigated; (c) enable expenditure to be readily accounted for; (d) be capable of being audited; (e) ensure that what is procured: (i) aligns with institutional mandates and strategic priorities; and (ii) is affordable in terms of existing budgets and future budgetary projections after considering life cycle costs; and (f) timeously discloses data and information at prescribed disclosure points within the procurement cycle on the central online portal in terms of the data standard. (3) A procuring institution must— (a) conduct procurement in accordance with the provisions of this Act; (b) take into account guidelines and model documents issued by the Public Procurement Office in the development of its implementation framework and the implementation of the public procurement system; (c) refrain from engaging in procurement practices which the Public Procurement Office have prohibited in terms of this Act; (d) compile and revise as necessary an annual procurement plan of all planned procurement which is aligned to the budget of the institution and disclose such plans on the	
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	online portal by a date determined by the Public Procurement Office; (e) formulate appropriate procurement strategies and tactics for projects aimed at achieving value for money and cost effective project outcomes taking into account risks, policy objectives and the total cost of ownership or the life cycle of that which is procured; (g) develop suitable procurement documents and, where possible, make use of suitable standard forms of contract and standard component documents; (h) clearly state the methodology and evaluation criteria to be used in the evaluation of bids in procurement documents, evaluate bids strictly in accordance with such methodologies and criteria and document the outcome of the evaluation in each bid in terms of the criteria in an evaluation report for record and audit purposes; (i) following the award of a contract, confirm compliance with contractual requirements, manage contracts in terms of the agreed administrative procedures including those dealing with risk events for which the procuring institution is at risk and close out contracts; (j) disclose procurement information and data at prescribed points in the procurement cycle on the online portal in accordance with the provisions of the data standard or which may be required by a relevant treasury and in the format specified by such treasury; and (k) take all necessary steps to prevent non-compliance with this Act. (4) The accounting officer or accounting authority, as the case may be- (a) is responsible for making decisions on behalf of the procuring institution in terms of this Act; (b) must in a manner that is consistent with the Public Finance Management Act, 1999, the Local Government: Municipal Finance Management Act, 2003 or the Higher Education	
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	Act, 1997, as the case may be; (i) establish clear delegations of authority to enable timeous decision-making and individual and institutional accountability for the delivery of projects; and (ii) allocate roles and duties associated with the full procurement cycle; and (c) must approve the procuring institution's procurement implementation policies and associated standard operating procedures. (5) Where a procuring institution fails to meet or exceed objective indicators of capacity, performance, compliance, and transparency determined by the Public Procurement Office and where instructed by such office, the institution must implement the public procurement system provided for in the Act in accordance with a procurement implementation framework prescribed by the Public Procurement Office.	- dealt with in clause 8 - delegations are dealt with in clause 57- see clause 57(2)(b)
Clause 8	Governance arrangements 8. (1) A procuring institution must identify decision points that form the major boundaries to activities within the different stages of the procurement system to provide an opportunity to: (a) authorise the proceeding with an activity within a process, or commencing of the next process; (b) confirm conformity with requirements before completing processes; or	

	(c) provide information which creates an opportunity for corrective action to be taken to change the performance of the activity to bring it closer to what was planned or to change the plan so that it more closely reflects the changed situation brought about by the departure from the plan. (2) The procuring institution must establish a bid committee system as part of the institution's governance arrangement to oversee all competitive and restricted bids of a procurement process above a prescribed threshold which consists of at least a— (i) a bid documentation committee to approve procurement documents including the evaluation criteria contained therein, (ii) a bid evaluation committee to evaluate submissions strictly in accordance with the provisions of the approved procurement documents; and (iii) a bid adjudication committee to consider any residual risks associated with the award of a contract and approve the recommendations of the bid evaluation committee if the report is complete and the reasons for the elimination of bidders are valid and reasonable. (3) If the accounting officer or accounting authority so directs, a committee may be established for the evaluation and adjudication of quotations.	- dealt with in clauses 24 and 25
Clause 9	Procurement implementation policies and standard operating procedures 9. (1) A procuring institution must— (a) develop and document procurement implementation policies to govern the implementation of the public procurement	Content to be considered for inclusion in regulations

	system for the procuring institution which includes preferential treatment within the framework of section 20 and covers the entire procurement cycle as well as any associated upstream and downstream processes such as those relating to planning and budgeting, asset management and logistics management; and (b) disclose the latest version of its procurement implementation policy on a central online portal together with its associated standard operating procedures. (2) The procurement implementation policy identified in subsection (1) must, within the framework of this Act, as a minimum— (a) determine the procuring institution's procurement goals including those relating to the utilisation and leveraging of procurement to support its policy objectives and how such goals will be measured, quantified, verified and monitored for compliance; (b) establish the governance arrangements for the exercise of its procurement functions and the management of procurement processes; (c) allocate responsibilities for taking the necessary actions at decision points within processes; (d) identify the procurement procedures and methods which may be applied to different categories of procurement; (e) identify the nature of contracts where the term of the contracts exceeds 3 years and stipulate the maximum term which may be applied to such contracts; (f) establish requirements for recording and reporting; (g) establish ethical standards which are consistent with the code of conduct contained in this Act; and (h) identifies the standard forms of contract and industry standards that may be incorporated by reference in procurement documents; (3) Standard operating procedures, which may be based on national and international standards which are consistent with objectives of this Act, must be developed to—	
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	(a) execute specific tasks or to react to specific situations, processes or sets of circumstances; and (b) provide institutional rules and guidelines to enable the policy to be efficiently and effectively implemented.	
Clause 9A	Procurement documents 9A. (1) Procurement documents must as relevant— (a) require bidders to submit particulars sufficient for the procuring institution to evaluate their bids, to establish their credentials and to assess their capabilities and capacities to perform the contract; (b) set out, in a clear and unambiguous manner, the criteria by which bidders are to be evaluated and what a bidder must do to submit a responsive bid; (c) define the risks, liabilities and obligations of the parties to the contract, the procedures for the administration of the contract and how the supplier is to be remunerated in terms of the contract, and (d) define the nature, quality and quantity of goods, services or disposals or any combination thereof to be provided in the performance of the contract (2) The accounting officer or accounting authority, as the case may be, may amend a contract provided that: (a) such amendments do not materially expand the scope of the contract or avoid a bidding process; and (b) the details of the amendment together with the justification for the amendment is promptly published on the online portal in terms of the data standard issued by the Public Procurement Office.	Content to be considered for inclusion regulations

Clause 9B	Contract management system 9B. (1) The procuring institution must ensure that the institution has and maintains an effective and efficient contract management system that must be aimed at ensuring that - (a) all contracts for the procurement of goods, services, disposals and any combination thereof, are recorded in a contract register; (b) contracts are monitored and regularly reported on; (c) contracts are administered in accordance with the terms of the contract and performance is enforced; and (d) appropriate measures are taken in the case of non-performance or underperformance. (2) The final contract amount together with the reasons for any increase in contract value must be disclosed on the online portal in accordance with instructions issued by the Public Procurement Office.	Provision for this made in clause 21(2) with details to be contained in regulations Content to be considered for inclusion regulations
Clause 9C	Data retention 9C. (1) A procuring institution must implement a system of record keeping of all records pertaining to all its procurement. (2) The record keeping system referred to in subsection (1) must include an accessible and searchable database in which every record can be identified and linked to the particular procurement and the category of procurement instructed by the Public Procurement Office it relates to and in which all records pertaining to a particular procurement can be identified. (3) All records must be kept for a minimum of five years after the procurement contract had been fully executed or the procurement cancelled.	See new clause 53A

Clause 9D	Reporting framework 9D. (1) A procuring institution must report on its procurement activities in categories of procurement and, where relevant, the particular provincial treasury, in a format and within such timeframes as prescribed consistent with the National Archives and Records Service of South Africa Act, 1996 (Act 43 of 1996) and any other applicable legislation. (2) A procuring institution must at least annually report to the relevant treasury on— (a) an evaluation of its performance in respect of the particular year's procurement plan; (b) the achievement of its targets in respect of targeted procurement as set in its own annual procurement plan; (c) all single source procurement and all deviations from open or limited bidding procedures; (d) on all complaints received and all investigations conducted in relation to procurement; (e) a bid other than the one recommended by a bid evaluation committee and the reasons for doing so unless a different bid was approved to rectify an irregularity; and (f) on any other matter as required by the Public Procurement Office.	Provided for in clause 21(2)(l) and details to be contained in regulations. Content to be considered for inclusion in regulations
Clause 9E	Measures to prevent abuse of the procurement system 9E. The accounting officer or accounting authority of a procuring institution as the case may be must— (a) take all reasonable steps to prevent abuse of the procurement system; (b) take all reasonable steps to ensure that no person interferes with the procurement system or is able to amend or tamper with any bid or contract; (c) investigate any allegation against an official or other role	Dealt with in clause 22

	player of corruption, improper conduct or failure to comply with the procurement system, and when justified– (i) take steps against that official or other role player and inform the relevant treasury of those steps; and (ii) report to the South African Police Service any conduct that may constitute a criminal offence; (d) reject a recommendation for the award of a bid if the recommended bidder has made a misrepresentation or submitted false documents in competing for a particular contract; (e) reject a recommendation for the award of a bid if the recommended bidder has been convicted of any offence involving corruption, fraud, collusion or coercion in competing for any contract; or (f) cancel a contract awarded to a supplier– (i) if it becomes aware that the supplier has made a misrepresentation, submitted falsified documents or has been convicted of any involving corruption fraud, collusion or coercion in competing for a particular bid or during the execution of the contract; or (ii) if any employee or other role player was convicted of any involving corruption, fraud, collusion or coercion act during the bidding process or during the execution of the contract.	
Clause 9F	Infrastructure asset management system 9F. (1) A procuring institution must have and maintain an infrastructure asset management system if it has the responsibility to act as the caretaker of infrastructure throughout its lifecycle. Such a system must seeks to effectively, efficiently, economically and sustainably utilise infrastructure for which the institution is responsible for to serve the current and emerging needs of the institution.	The proposed provision is about maintenance of infrastructure and asset management and does not regulate procurement of infrastructure

	(2) The infrastructure asset management system referred to in subsection (1) must be aimed at— (a) the progressive development of the system to incorporate an infrastructure asset register and procedures for the identification of critical infrastructure needs enabling reliable, consistent and updated infrastructure information to inform optimised decision making; (b) the consideration of the entire lifecycle (service life) of such assets and the associated costs, from the identification of a need through to the final decommissioning of the asset; (c) ensuring that life-cycle infrastructure asset management planning is carried out for large individual assets or groups of infrastructure assets, which include operation, maintenance and refurbishment requirements; and (d) following a risk based approach to achieve a balance between cost, risk and performance.	
Clause 9G	Logistics management system 9G. (1) A procuring institution must as necessary have and maintain an efficient and effective logistics management system which sets inventory levels, places orders, receives, stores and distributes goods and expedites orders. (2) The logistics management system referred to in subsection (1) must be aimed at ensuring that - (a) effective control mechanisms are in place - (i) to prevent theft, losses, wastage and misuse; and (ii) to maintain stock levels at an optimum and economic level; (b) the logistics management system is regulated by institutional standard operating procedures on at least the following matters: (i) the requisitioning of goods or services; (ii) the placing of orders for goods or services; (iii) the receipt of goods; (iv) the distribution of goods;	Dealt with in clause 21(2)(h) with details to be contained regulations Proposals from JSR to be considered for inclusion in regulations

	(v) the preparation of payment vouchers; (vi) the reconciliation of asset and inventory records with financial accounts; and (vii) inventory management including the measurement of inventory for reporting in the annual financial statements and associated disclosures; and (c) the reliability of suppliers is monitored, at least in relation to - (i) compliance with delivery periods; (ii) quantity and quality of goods supplied; and (iii) actions taken against non-performing or underperforming suppliers.	
Clause 9H	Disposal of moveable assets 9H. (1) Before the disposal of any movable asset, the accounting officer or accounting authority as the case may be of a procuring institution must determine the appropriate methods and options for disposal of surplus, redundant and under-performing assts after at least taking the following into account: (a) the nature and quantity or volume of the movable asset to be disposed of; (b) the potential market value or trade-in price of the movable asset; (c) the value of the component parts of the movable asset; (d) whether the movable asset can be used to support any other Government programme; (e) environmental considerations relating to the type of movable asset; and (f) market conditions. (2) The accounting officer or accounting authority of a procuring institution may transfer any movable asset free of charge to any organ of state and such transfer shall not be considered a procurement.	Dealt with in clause 21(2)(j) with details to be contained regulations Proposals from JSR to be considered for inclusion in regulations

	(3) The disposal or transfer of movable assets by a procuring institution in terms of this subsection is subject to any legislation regulating the disposal or transfer of assets of its kind.	
Clause 9I	Lease contracts 9I. (1) An accounting officer or accounting authority of a procuring institution, as the case may be, may enter into a lease contract between a procuring institution and a private party in terms of which the private party acquires the use of state property for its own commercial purposes, provided that- (a) where the procuring institution is a municipality, it has complied with the Local Government: Municipal Finance Management Act 2003 and the Municipal Asset Transfer Regulations prior to concluding any lease contract; (b) the lease contract contains a description of the state property, the uses, if any, to which that state property has been subject and a description of the types of use that a private party may legally subject the state property to; (c) the rentals for immovable state property (excluding state housing for officials and political office bearers) must be at market-related tariffs, unless the relevant treasury approves otherwise. No state property may be let free of charge without the prior approval of the relevant treasury; and (d) rentals received by the procuring institution under the lease contract are treated as revenue in accordance with the Local Government: Municipal Finance Management Act, 2003 and the Public Finance Management Act, as applicable. (2) The accounting officer or accounting authority as the case may be must review, at least annually when finalising the budget, all fees, charges, rates, tariffs or scales of fees or other charges of state property let under a lease contract to ensure sound financial planning and management.	Dealt with in clauses 9(b)(ii), 21(1)(a)(ii) and 21(1)(c) with details to be contained regulations Proposals from JSR to be considered for inclusion in regulations

	(3) The implementation of a lease contract involving the use of state property by a private party does not divest the accounting officer or accounting authority of the procuring institution concerned of the responsibility for ensuring that such state property is appropriately protected against forfeiture, theft, loss, wastage and misuse.	
Clause 9J	Public private partnership transactions 9J. (1) An accounting officer or accounting authority of a procuring institution, as the case may be, may subject to the relevant treasury approval, enter into a public-private partnership transaction between a procuring institution and a private party in terms of which: (a) the private party performs an institutional function or service on behalf of the procuring institution; (b) the private party assumes substantial technical, financial and operational risk in relation to the performance of such institutional function or service; and (c) receives a benefit for doing so either by way of a consideration to be paid by the procuring institution or charges or fees to be collected by the private party from users or customers of a service provided to them or a combination thereof. (2) To determine whether a proposed public-private partnership transaction in subsection (1) is in the best interest of the procuring institution, the procuring institution must undertake a feasibility study that - (a) explains the strategic and operational benefits of the proposed public-private partnership transaction for the institution in terms of - (i) its strategic objectives; and (ii) government policy. (b) describes in specific terms the nature of the institutional function concerned and the extent to which that function, both legally and by nature, can be performed by a private party;	Provision to enable regulations provided for in clause 64(1)(a)(vii) Proposals from JSR to be considered for inclusion in regulations

	(c) in the case of a proposed public-private partnership transaction in respect of which the procuring institution will incur financial commitments, demonstrates the affordability of the proposed transaction and the security or Government support required to finance the transaction; (d) sets out the proposed allocation of financial, technical and operational risks between the procuring institution and the private party; (e) demonstrates the anticipated value for money to be achieved by the proposed transaction; and (f) explains the capacity of the procuring institution to procure, implement, manage, enforce, monitor and report on the proposed transaction. (3) The feasibility study referred to in subsection (2) must be submitted to the relevant treasury for approval. The procuring institution may not proceed with the implementation phase of the proposed commercial transaction without the prior approval of the relevant treasury. (4) If at any time after treasury approval has been issued in terms of subsection (3), but prior to the implementation of the public-private partnership transaction, any assumptions in the feasibility study for the proposed public-private partnership transaction are materially revised, including those concerning affordability, value for money and substantial technical, operational and financial risk transfer, the accounting officer or accounting authority of the procuring institution must immediately - (a) provide the relevant treasury with details of the revision, including a statement regarding the purpose and impact of the revision on the affordability, value for money and risk transfer evaluation in the feasibility study; and (b) submit the revised feasibility study to the relevant treasury for approval. (5) The implementation of an agreement following approval granted in subsection (3) involving the performance of an	
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	institutional function does not divest the accounting officer or accounting authority of the procuring institution concerned of the responsibility for ensuring that such institutional function is effectively and efficiently performed in the public interest.	
	CHAPTER 3 PROCUREMENT INTEGRITY	Proposals in the JSR draft to regulate following not supported - Steps to be taken by PPO and procuring institutions sufficiently dealt with elsewhere. PPO should not be tasked with what is proposed in cl 12 - Incentivisation of whistleblowers - Public liaison procurement officers
Clause 12	Due diligence, declarations of interest and publication of certain relationships Disclosure of interest by persons involved in procurement 12. (1) In the course of engaging the business of a supplier, the Public Procurement Office and procuring institutions must take steps, in accordance with procedures determined by the Minister, to identify: (a) all persons with a controlling or substantial interest in the supplier; (b) all sources of potential bias toward the supplier; (c) all automatically excluded persons, in terms of Section 17, with whom a person in (a) has a family, business, or other close relationship. (2) The steps taken in terms of (1) must include, but are not limited to, the receipt of declarations of interest from: (a) all applicants, in the case of applications for registration on a database created by the Public Procurement Office in terms of section 5(1)(l); (b) all bidders, in the case of bids; (c) all suppliers, in the process of contracting and contract management. (3) Failure to submit or submitting a false	Provided for in clause 14 This clause has been revised to include the JSR proposal except for clause 12(4) which is considered to be prejudicial

	declaration renders an application referred to in sub-section (2)(a) or a bid referred to in sub-section (2)(b) invalid. (4) The Public Procurement Office must provide for the publication of all relationships between public office bearers, accounting officers and authorities, and suppliers on the central online portal.	
Clause 14A	Public liaison procurement officers 14A. (1) All procuring institutions must designate one or more members of staff to act as the primary point of contact for any member of the public and civil society organisation that may require information pertaining to a procurement or that may want to submit information to the procuring institution in respect of a particular procurement. (2) The member(s) of staff referred to in subsection (1) must ensure that members of the public and civil society organisations have adequate access to procurement information, including in terms of section 14B(3) (3) The contact information of the member(s) of staff referred to in subsection (1) must be clearly published on the central portal established in this Act and the website of the procuring institution. (4) The member(s) of staff referred to in subsection (1) must ensure that all information received from members of the public and civil society organisations in relation to procurement be conveyed without delay to the relevant decision-makers within the procuring institution.	Proposal not supported. Regulations of this is not necessary.
Clause 14B	Procurement Transparency 14B. (1) Procuring institutions and the Public Procurement Office must proactively disclose information pertaining to the procurement processes of procuring institutions. (2) The Public Procurement Office must establish a procurement data standard including— (a) specifying data points which are to the greatest feasible extent useful for public monitoring of procurement processes and	Provided for in clauses 2(2)(b), 5(1)(d), 5(4)(b), 6(1)(b) and also in new clause 53A

	systems; (b) timeous and permanent publication of these data points on a single online portal that: (i) is freely accessible without registration; (ii) facilitates tracking across a specific procurement process or system of all data points relevant to that procurement process or system; and (iii) publishes data in a format that enables machine processing, interoperability, and free use, reuse, and redistribution of data. (3) Bidders, suppliers, and members of the public have a right of access to procurement information, subject to the following subsection. (4) The right of access to procurement information may be limited on grounds of: (a) confidentiality as provided for in section 56 of this Act, , (b) protection of commercial information (c) safety of individuals and property (d) protection of law enforcement and legal proceedings; (e) national security; and (f) vexatious and frivolous requests. (5) Bidders, suppliers, and members of the public may appeal to the Tribunal from decision by a procuring institution on a request for access to procurement information.	
Clause 14C	Encouragement of whistleblowing in procurement 14C. (1) Any person who knowingly makes an untrue statement to gain a benefit or assist another in gaining a benefit in procurement violates this Act. (2) A person who commits the violation in (1) is liable for double the amount of the damages sustained by the state and to a prescribed administrative penalty; provided that if a person violating this section is the relator described in (3) then that person shall only be liable for the administrative penalty. (3) Any person, hereafter referred to as the relator,	Proposal not supported

	may file in confidence at a High Court a disclosure in good faith and with full information alleging a violation under (1). (4) Such a disclosure will remain in confidence for 120 days and be subject to investigation by the Special Investigative Unit or equivalent permanent institution, which must with full access to the disclosure and within the 120 days indicate whether or not it will itself take on the action. (5) If the Public Procurement Office takes on the action, a relator who is an original source of new information material to the success of the action shall be eligible to receive no less than 10 percent and not more than 25 percent, as deemed just by the Court, of the damages recovered. (7) If the Public Procurement Office does not take on the action, the relator shall be eligible to proceed with the action and to receive between 20 and 33 percent, as deemed just by the Court, of the damages recovered. (8) The disclosure under (3) is a protected disclosure under the Protected Disclosures Act (16 of 2000), but a relator who discloses false information is liable under the terms of Section 9B of that Act. (9) In consultation with the Minister of Justice and Constitutional Development, the Minister shall regulate the process authorized in this section.	
	CHAPTER 4 FRAMEWORK FOR PREFERENTIAL PROCUREMENT POLICY	Chapter was revised and is now a framework which determines what procurement policy of a procuring institution must contain in respect of preferential procurement Reference to macro economic stability omitted

		Specific aspects to be prescribed are provided for, e.g. cl 20(2)(b)(ii) – regulations on locally produced or manufactured goods
Clause 20	Targeted treatment in procurement 20. (1) Procuring institutions implementing Chapter 5 of this Act must engage in targeted treatment, within the framework for preferential targeted procurement policy set out in this section, including- (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. (2) The targeted treatment envisaged in subsection (1) must, with due regard to the objectives of this Act and to other legislation providing for the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination, include— (a) one or more targeted treatment mechanisms in procurement in subsection 3; and (b) one or more targeted categories in subsection 4. (3) The targeted treatment mechanisms envisaged in subsection (2)(a) include- (a) set-asides; (b) margins of preference ; (c) reservations; (d) any combination of the mechanisms in subsections (a), (b), and (c). (4) The targeted categories envisaged in subsection (2)(b) include- (a) a category or categories of persons or enterprises including; (i) citizens or permanent residents of the Republic; (ii) enterprises that are majority owned or controlled by citizens or permanent residents of the	

	Republic, or both citizens and permanent residents; (iii) enterprises based in townships, rural or underdeveloped areas or in a particular province or municipality; (iv) black people as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); (v) women; (vi) people with disabilities; and (vii) youth; (viii) small, medium enterprises and micro enterprises; (ix) enterprises aiming to use labour at a particular level of skill; and (b) a category or categories of goods or services, including (i) goods that are produced, or services provided, in the Republic; (ii) goods that are produced, or services provided, by black people as defined in section 1 of the Broad-Based Black Economic Empowerment Act or by enterprises certified in terms of that Act; (iii) goods or services meeting specified environmental characteristics; and (iv) goods or services meeting a minimum threshold established by the Minister for trade for local production and content. (5) Notwithstanding the provisions of subsection (3), set-asides may only be used in conjunction with targeted categories in subsection (4) for targeted treatment relating to subsection (1)(b) (6) The use of a targeted treatment mechanism or a combination of targeted treatment mechanisms in conjunction with a particular targeted category must be reasonable, taking into account the objectives of the Act and the sphere of government of the procuring institution.	
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	(7) To the extent that targeted treatment consists of the targeted treatment mechanism of reservations, as envisaged in subsection 3(c) implemented in conjunction with goods or services meeting a minimum threshold established by the Minister responsible for trade for local production and content, such targeted treatment is presumed reasonable. (8) The Minister may prescribe a regulatory framework for the implementation of this section by procuring institutions. (9) The Minister must consult with the relevant Minister before making a regulation under this Chapter affecting the powers or functions assigned to that Minister.	
Clause 20A	Local Production and Content 20A. (1) When procuring goods or services, a procuring institution must determine whether such goods or services are in a designated sector for local production and content as envisaged in this section. (2) The Department of Trade and Industry may, in consultation with the National Treasury- (a) designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content and taking into account economic and other relevant factors; and (b) stipulate a minimum threshold for local production and content for locally produced goods or services or locally manufactured goods. (3) The National Treasury must inform procuring institutions of any designation made in terms of this section. (4) Subject to section 20, a procuring institution must, in the case of procuring goods or services in a designated sector, engage in targeted treatment using margins of preference and/or reservations in conjunction with a category or categories of goods or services meeting a minimum threshold established by the Minister for trade for local production and content unless there are justifiable reasons for not doing so such as capacity to deliver	Provided for in clause 20(2)(b)(ii)

	the required goods and services within project timelines, technical considerations and availability of input materials and components.	
	CHAPTER 5 PROCUREMENT PRACTICES, PROCEDURES AND METHODS	
Clause 21	Prohibited exclusion of bidders from participating in procurement 21. A procuring institution may not exclude a bidder from participating in procurement on the basis of citizenship and permanent residence status, race, religion, gender or any other criterion not related to his or her eligibility or qualification, except to the extent provided in this Act.	Similar provision in revised version omitted
Clause 22	Rejection of bid 22. (1) A bid may be rejected only in accordance with this Act. (2) A procuring institution must, before the conclusion of a contract, reject a bid if— (a) the bid is non-responsive to the requirements set out in the procurement documents; (b) there is evidence of collusion among bidders; (c) the bidder is included in the list of persons automatically excluded from eligibility to bid in terms of section 17 of this Act; (3) Before awarding any bid, a procuring institution must verify if a preferred bidder, or any of that bidder's directors, members, trustees or partners, is listed on the register for bidders and suppliers debarred in terms of section 16.	Clause 27 retained

Clause 22A	Negotiations prior to award 22A. Procuring institutions may negotiate with a preferred bidder or preferred bidders before the award of the contract, if these negotiations: (1) are fair; (2) do not allow the bidder concerned a second (unfair) opportunity to amend the bid; and (3) do not result in the final agreed terms differing materially from the invitation to bid.	Provision included in clause 64 to enable regulations on this matter. Content of JSR proposal to be considered for inclusion in regulations
Clause 23	Award of bids 23. (1) A procuring institution may only award a bid to a bidder- (a) that complies with tax legislation; and such other legislation as may be prescribed; (b) that is listed on a data base of prospective suppliers as prescribed; and (c) if it is satisfied that the bidder's prices are market related and the bidder has the necessary capabilities and capacity to perform the procurement contract. (2) Subject to section 25, a procuring institution must, in the absence of an application for reconsideration or review envisaged in section 35(1) or section 37(1) by any other bidder, award a bid to a bidder that— (a) submits a bid which, in all respects, complies with the provisions of the procurement document; and (b) is the most advantageous offer ascertained on the basis of the evaluation criteria specified and in the manner indicated in the procurement documents, unless the award is made in terms of single-source procurement procedure (3) In evaluating bids and determining the successful bidder, the procuring institutions shall use only those criteria and procedures that have been set out in the procurement documents and shall apply those criteria and procedures in the	Content to be considered for inclusion in regulations. Provision made in clause 64 for Minister to prescribe legislation to be complied with by bidders

	manner that has been disclosed in those procurement documents. No criterion or procedure shall be used that has not been set out in accordance with this provision. (4) If the bidder who has been awarded the contract— (a) fails to sign the contract; or (b) fails to provide any required security for the performance of the contract, within the prescribed period, a procuring institution may select another bidder from amongst the remaining valid bids and apply the provisions of subsections (1) and (2).	
Clause 24	Provision of written reasons for decisions taken 24. A procuring institution must, in terms of section 5 of the Promotion of Administrative Justice Act, provide reasons for any decisions that are taken during the acquisition phase of a procurement process.	Provision is not necessary
Clause 25	Cancellation of procurement process 25. (1) Procuring entities may prior to the award decision, cancel a procurement process only if- (a) due to changed circumstances, there is no longer a need for the goods or services requested; (b) funds are no longer available to cover the total envisaged expenditure; (c) no acceptable bids are received; or (d) there is a material irregularity in the bidding process. (2) The reason for the cancelation of a procurement process must be disclosed on the online portal as prescribed.	Clause 30 retained
Clause 26	Re-advertising of bid	Clause 31 retained

	26. (1) A procuring institution may re-advertise a bid if— (a) all bids have been rejected; or (b) the procurement process has been cancelled in terms of section 25. (2) Before re-advertising, a procuring institution must— (a) examine and record the reason for the rejection of all the bids or the cancellation of the bidding process; and (b) review and suitably modify the procurement documents.	
Clause 26A-32E	<i>Range of selection methods</i> Selection and range of procurement methods 26A. (1) Except as otherwise provided for in this Act, a procuring institution must procure goods, services and any combination thereof or undertake disposals through open competitive bidding. (2) A procuring institution may procure goods, services and any combination thereof or undertake disposals by means of the following methods only in accordance with sections (xx) to (xx) of this Act: (a) limited competitive bidding; (b) single-source procurement; (c) electronic reverse auctions; (d) framework agreements; (e) quotations; (f) transversal contracting; or (g) unsolicited bids. (3) A procuring institution may use open competitive bidding in combination with any of the methods listed in subsection (2) if the conditions for at least one of the procurement methods are met.	JSR proposals on procurement methods to be considered for inclusion in regulations

	Open competitive bidding procedure 27. (1) In terms of open competitive bidding, procuring institutions must- (a) publicly advertise bids in the prescribed manner for a minimum prescribed period; (b) open bids at the same time and in the manner as set out in the procurement documents; (c) subject to section 25, award the bid to the bidder that submitted the most advantageous bid ascertained on the basis of the criteria and procedures for evaluating bids specified in the procurement documents; and (d) notify all bidders that submitted bids before the closing time for submissions at the same time of the outcome of the evaluation process. (2) The Minister must prescribe procedures for the method of public advertising of invitations to bid and the minimum content of invitations to bid. Limited competitive bidding procedure 28. (1) A procuring institution may procure by means of limited competitive bidding which maximizes competition to the extent feasible when: (a) the subject matter of the procurement, by reason of its highly complex, specialised nature, compatibility with existing systems or components or performance characteristics is available only from a limited number of suppliers, provided that the procuring institution has undertaken market research to confirm such conditions; (b) as the second stage of an open competitive bidding procedure; (c) a rotating database of prequalified suppliers is in place which allows access to the data base at regular intervals and	
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	affords all prequalified suppliers an opportunity over time to bid on the subject matter of the procurement; or (d) the scope of the procurements falls within the scope of an existing framework agreement; (e) provided that the provisions of (1) (d), (e) and (f) are complied with at the conclusion of the processes associated therewith. (2) Procuring institutions must publish the justification for the adoption of the limited competitive bidding procedure on the online portal as prescribed. Single-source procurement procedure 28A. (1) A procuring institution may deviate from the use of open or limited competitive bidding procedures and use a single-source procedure when: (a) a rapid response is required due to the presence of, or the imminent risk of, emergency; and there is insufficient time be dealt with, or mitigate the risks relating thereto using the open or restricted competitive procedure; (b) only one supplier has been identified as possessing the necessary experience and qualifications or product in relation to a particular need; (c) the goods or services or any combination thereof being procured are largely identical to work previously executed by a supplier and cannot technically or economically be separated from a previous contract and it is not in the interest of the public or procuring institution to obtain other bids; (d) the nature of the required goods or services or any combination thereof, or the risks attached thereto, do not permit prior overall pricing; (e) none or only one responsive bid is received; (f) it is impractical to pursue an open or restricted competitive selection procedure due to artistic or technical reasons, or exclusive rights;	
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(g) specialist or strategic inputs are required to address gaps and shortcomings in initiating and implementing projects which threaten project outcomes; or

(h) the procurement falls below a prescribed threshold value.

(2) Procuring institutions must publish the justification for the adoption of the single-source procedure on the online portal as prescribed.

Disposal methods

29. (1) Disposals may be undertaken using the open or restricted competitive selection methods, the single-source selection methods, a public auction, transfers to other organs of state; and controlled dumping.

(2) Where the auction procedure is utilized—

(a) the assets or items which are to be auctioned must be displayed in public for a reasonable time before the date of the auction; and

(b) prospective bidders must be informed of any requirements for deposits, eligibility criteria and the procedures for making payment and taking delivery of the purchased items in advance of the auction.

(3) If movable assets are disposed of by means of written price quotations or auctions, the award must be made to the bidder who offers the highest price.

Electronic Procurement

32 (1) The Public Procurement Office must progressively implement electronic systems for each of the procurement methods in this Act.

(2) Procuring institutions must use electronic systems envisaged in subsection (1) to implement any of the procurement methods in this Act.

Electronic reverse auctions

32A (1) A procuring institution may engage in procurement by means of an electronic reverse auction under the following conditions:

- (a) It is feasible for the procuring institution to formulate a detailed description of the subject matter of the procurement;
- (b) There is a competitive market of suppliers anticipated to be qualified to participate in the electronic reverse auction, such that effective competition is ensured;
- (c) The criteria to be used by the procuring institution in determining the successful submission are quantifiable and can be expressed in monetary terms; and
- (d) The procuring institution has the necessary capacity and electronic systems in place to operate an electronic reverse auction, as certified by the Public Procurement Office.

(2) When inviting bids under a procedure involving an electronic reverse auction, the procuring institution shall, in addition to all information to be made available to potential bidders, publish the following information as a minimum about the auction:

- (a) The mathematical formula that will be used in the evaluation procedure during the auction;
- (b) How the auction can be accessed, including appropriate information regarding connection to the auction;
- (c) The deadline by which the bidders must register for the auction and requirements for registration;
- (d) The date and time of the opening of the auction and requirements for the identification of bidders at the opening of the auction;
- (e) Criteria governing the closing of the auction;

(3) During the auction:

- (a) All bidders shall have an equal and continuous opportunity to present their bids;

(b) There shall be automatic evaluation of all bids in accordance with the criteria, procedure and formula set out in the bidding documents;

(c) Each bidder must receive, instantaneously and on a continuous basis during the auction, sufficient information allowing it to determine the standing of its bid vis-à-vis other bids;

(d) There shall be no communication between the procuring institution and the bidders or among the bidders, other than as provided for in (a) and (c) of this subsection.

(4) The procuring institution shall not disclose the identity of any bidder during the auction.

Framework agreements

32B (1) A procuring institution may conclude framework agreements with one or more suppliers for goods and services or any combination thereof following a suitable procedure set out in subsections 28A, 28B or 29A subject to:

(a) the term of a framework agreement not exceeding four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement and where provided for in the procuring institution's procurement implementation policy`;

(b) orders issued to perform work in terms of contracts based on the agreement not being issued or entered into after the expiry of the term of the agreement;

(c) the terms of the agreement not being amended during the term of the contract;

(d) the procuring institution not being obliged to make use of the agreement and being free to approach the market for goods or services, or a combination thereof, whenever it considers that better value in terms of time, cost or quality may be obtained; and

(e) orders issued or contracts awarded in terms of such agreements are disclosed on the online portal in accordance with the provisions of the data standard.

(2) Orders based on an agreement concluded in terms of subsection (1) where the agreement sets out all the terms governing the provision of the work may be issued within the limits of the terms laid down in the agreement provided that where more than one supplier has an agreement covering the same scope, the award may be made:

(a) without reopening competition based on objective conditions for determining which of the suppliers is to perform the work; or

(b) with the reopening of competition amongst suppliers included under the framework.

(3) Contracts based on an agreement concluded in terms of subsection (1) where the agreement does not set out all the terms governing the provision of the work may be awarded within the limits of the terms laid down in the agreement following the reopening of competition between those admitted to a framework agreement. Such contracts may under no circumstances entail substantial modifications to the terms laid down in that framework agreement.

(4) A procuring institution may permit other procuring institutions to make use of such an agreement provided that such institutions are identified by name or category during the bidding process

Requests for quotations

32C (1) Procuring institutions may use a limited bidding procedure by means of requests for quotations for procurements below a threshold value and under such other conditions as prescribed.

(2) Where the procuring institution engages in procurement by means of request for quotations, it shall request written quotations from as many suppliers as practicable.

(3) Requests for quotations must be solicited by means of the electronic platform prescribed by Public

	Procurement Office and from suppliers registered on the central supplier database, except where an insufficient number of suppliers are registered for the particular goods or services requested. (4) Each supplier must submit a quote with a firm price and is not permitted to change its quotation. No negotiations shall take place between the procuring institution and a supplier or with respect to a quotation presented by the supplier during the adjudication of quotations submitted. (5) The successful quotation must be the lowest-priced quotation meeting the needs of the procuring institution as set out in the request for quotations. Transversal contracts 32D. (1) A relevant treasury may assess potential transversal contracts covering common goods and services in terms of cost and quality and other determined criteria and approve those contracts which meet such criteria. (2) The Minister may after consultation with the relevant treasuries provide for the compulsory participation of procuring entities in transversal contracts regarding common goods and services unless the Public Procurement Office has exempted the procuring institution from such participation. (3) The Public Procurement Office must maintain and make accessible a list of the approved transversal contracts of the relevant treasuries and provide procuring entities with a list of goods or services that are required to be procured in the next financial year through transversal contracts no later than six months before the commencement of the next financial year in order to determine the extent of the need for such goods or services that may be provided for in such contracts. (4) Transversal contracts must be concluded in terms of the open competitive bidding procedure or the limited bidding procedure, either in a single stage or in two-stages,	
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depending on whether the conditions for the use of either of those procedures have been met.

(5) Transversal contracts may take the form of framework agreements as provided for in the Act.

Unsolicited bids

32E. (1) Procuring entities are not obliged to consider unsolicited bids.

(2) A procuring institution may decide to consider an unsolicited bid, only if -

- (a) the goods or service that is offered in terms of the bid is a demonstrably or proven unique innovative concept;
- (b) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement is vested in the bidder;
- (c) the bid presents a value proposition which demonstrates a clear, measurable and foreseeable benefit for the procuring institution;
- (d) the bid is in writing and clearly sets out the proposed cost;
- (e) the person who made the bid is the sole provider of the goods or service; and
- (f) the procuring institution is satisfied that adequate reasons exist for not going through normal bidding processes.

(3) The procuring institution must reject an unsolicited bid if -

- (a) the bid relates to known institutional requirements that can, within reasonable and practical limits, be acquired through normal bidding processes;
- (b) the goods or service is used for or relates to a matter that does not fall within the mandate or function of the procuring institution; and
- (c) the bid does not comply with subsection (2).

(4) The accounting officer or accounting authority may only approve the award of an unsolicited bid if the

	bid adjudication committee of the procuring institution has made a recommendation on the bid. (5) If a procuring institution decides to consider an unsolicited bid that complies with subsection (2), the procuring institution must publish the reasons for accepting an unsolicited bid on the online portal as prescribed.	
Clause 32F	Appointment of bid committee members 32F. (1) The accounting officer or accounting authority of a procuring institution must, in writing, appoint the members of the institution's bid committees to perform the functions assigned to a committee in the institution's implementation policy and standard operating procedures. (2) The following persons may not be appointed to a bid committee: (a) a public office bearer; (b) a person appointed in terms of section 12A to the Public Service Act and (c) any person having a conflict of interest. (3) The accounting officer or accounting authority of a procuring institution may, in writing, appoint technical advisors and subject experts to assist a bid committee with any technical aspect related to a bid. (4) Technical advisers and subject experts referred to in sub-regulation (3) do not have voting rights in any bid committee	Clause retained- see clause 25
Clause 32G	Composition of bid committees 32G. (1) A bid evaluation committee must consist of at least three employees of the procuring institution. (2) A person that served as a member of the bid specification committee may also serve as a member of the bid evaluation committee for the particular procurement.	To be considered for inclusion in regulations

	(3) No member of a bid specification committee or bid evaluation committee may serve on the bid adjudication committee for the same procurement process.	
Clause 32H	Decisions of accounting officer or accounting authority on recommendations of bid adjudication committee 32H. (1) If the bid adjudication committee makes a recommendation, the accounting officer or accounting authority must— (a) award the bid, taking into account the recommendations of the bid evaluation committee and bid adjudication committee; or (b) decide not to proceed in terms of section 25; or (c) decide to start afresh with the adjudication process.	Clause retained- see clause 26
Clause 32I	Relevant treasuries to be notified in event of awards deviating from recommendations 32I. (1) The accounting officer or accounting authority must report any award made, to the relevant treasury, where— (a) the recommendation of the bid evaluation committee was rejected by the bid adjudication committee; or (b) the recommendation of the bid adjudication committee was rejected by the accounting officer or accounting authority and the bid was awarded to another bidder. (2) The report in terms of subsection (1) must be— (a) submitted within 30 days of the decision to award; and (b) accompanied by the reasons for the award. (3) The relevant treasury must make the report in terms of subsection (1) publicly available on an online portal.	Clause retained- see clause 29 Other proposals in this clause to be considered for inclusion in PPO's instruction (cl 32I(3))
	CHAPTER 6 DISPUTE RESOLUTION	

Clause 33	33. (1) A bidder <u>or procuring institution</u> may, in accordance with section 35 or 37, seek a reconsideration or review of a decision by a procuring institution in terms of this Act.	Inclusion of procuring institution to have its decision reviewed by Tribunal is not supported
Clause 35	35. (6) A procuring institution may reconsider a decision it made in terms of this Act if the decision was based <u>upon a material irregularity</u> .	Retain wording in revised Bill
Clause 36	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; (b) <u>a procuring institution upon application by the accounting officer or accounting authority of that institution in terms of section 37(4);</u> (c) the Public Procurement Office to debar a bidder or supplier in terms of section 16.	JSR proposal not supported. See response in clause 33(1)
Clause 37	Review of decision of procuring institution <u>37. (4) An accounting officer or accounting authority may submit an application for review of a decision of its procuring institution-</u> <u>(a) if the accounting officer or accounting authority is of the view that there was a material irregularity in the taking of the decision; and</u> <u>(b) within 10 days of becoming aware of the circumstances giving rise to the application.</u>	JSR proposal not supported. See response in clause 33(1)
Clause 49	Tribunal orders 49. (1) In review proceedings in terms of section 36(1)(a) <u>and (b)</u> , the panel may, by order—	JSR proposal not supported. See response in clause 33(1)

	(2) In review proceedings in terms of section 36(1)(c), the panel may, by order—	
	CHAPTER 7 GENERAL PROVISIONS	
Clause 54	Generally applicable regulatory instruments to be published 54. The Public Procurement Office must ensure that copies of all regulations, instructions, determinations, guidelines and codes of conduct that are issued in terms of this Act and having general application are accessible at the offices of the Public Procurement Office and on the online portal.	Retain clause 54 of revised Bill. JSR proposal are similar to what clause 54 already provides
Clause 56	Disclosure of procurement information 56. In order to maintain the integrity of the selection processes of this Act and of the public procurement system, no person may disclose procurement information except— (a) for the purpose of carrying out the provisions of this Act; (b) in terms of other legislation including the Promotion of Access to Information Act; (c) with the permission of the Public Procurement Office or the relevant provincial treasury; (d) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or (e) in terms of an order of court or the Tribunal.	Retain clause 56 in revised Bill
Clause 64	Regulations (1)(a)(iii), (v), (vii), (xiii), (xvii), (xxi) and (xxiii) omitted by the JSR	Paragraphs omitted by the JSR to be retained given responses and drafting proposals to affected clauses