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REPUBLIC OF SOUTH AFRICA

PUBLIC PROCUREMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill published in Government Gazette No. of)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

BILL

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

PREAMBLE

AND WHEREAS the Constitution stipulates that contracting of goods and services by organs of state in the national, provincial 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 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 disadvantaged by unfair discrimination within a framework prescribed by national legislation;

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 WHEREAS the Constitution of the Republic of South Africa, 1996, 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 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 WHEREAS the Constitution stipulates that contracting of goods and services by organs of state in the national, provincial 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 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 disadvantaged by unfair discrimination within a framework proscribed by national legislation;~~

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 IN ORDER TO create a single framework that regulates procurement, including preferential procurement, by all organs of state,

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

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CHAPTER 1 DEFINITIONS, OBJECTS, APPLICATION AND ADMINISTRATION OF ACT

Definitions

1. (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, an the accounting officer as defined in section 1 of the Public Finance Management Act;
- (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;

"bid" means a written offer, in the form determined by instruction, in response to an invitation for procurement through a price quotation, a competitive bidding process, a restricted bidding process or any other method envisaged in this Act;

"bid document" means a written or electronic document required to be submitted in response to an invitation to bid;

"bidder" means any person or joint venture tendering that submits for a bid in terms of this Act;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"days" means any days other than Saturdays, Sundays or public holidays as defined in the Public Holidays Act, 1994 (Act No. 36 of 1994);

"decision" means—

- (a) a decision by a procuring institution, the Public Procurement Office or a provincial treasury in terms of this Act (herein referred to as "the decision");
- (b) an omission to take the decision within the period prescribed or specified in this Act;
- (c) an omission to take the decision within a reasonable period, if this Act does not prescribe or specify a period;
- (d) an action taken as a result of the decision; or
- (e) an omission to take action as a result of the decision within the prescribed period or if not prescribed, within 30 days;

"emergency" means an event which is unexpected and requires immediate action to alleviate one or more of the following:

- (a) human injury, death or suffering or deprivation of human rights;
- (b) serious damage to property or financial loss;
- (c) livestock suffering or death;
- (d) serious environmental damage or degradation; or
- (e) interruption of essential services;

natural disaster, epidemic, riot, war, fire or any other situation that may result in a threat to life; health, welfare or safety of the public, which requires immediate action;

"immediate family member" means—

- (a) the spouse, civil partner or life partner;
- (b) the previous spouse, civil partner or life partner;
- (c) children and step children and their spouse, civil partner or life partner;

(d) parents; and

(e) sibling and step sibling and their spouse, civil partner or life partner;

"infrastructure" means the physical facilities and systems that are required to directly or indirectly provide services to the public;

"instruction" means an instruction issued by the Public Procurement Office in terms of section 5;

"member of the Tribunal" means a member of the Tribunal referred to in section 38;

"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);

"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);

"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;
- (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; and
- (h) serious violence directed at overthrowing the constitutional order of the Republic;
- (i) 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 and 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;

"National Treasury" means the National Treasury established by section 5 of the Public Finance Management Act;

"official" means an employee of a procuring institution;

"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 46;

"prescribed" means prescribed by regulation in terms of section 64;

"procurement" means—

- (a) the acquisition of goods, services or infrastructure;
- (b) the construction, repair or maintenance of infrastructure, by a procuring institution;

"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;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"public office bearer" means—

- (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;
- (e) [a judicial officer envisaged in section 174 of the Constitution](#);
- (f) a member of a Municipal Council;
- (g) a member of the National House of Traditional and Khoi-San Leaders;
- (h) a member of a provincial house of Traditional and Khoi-San leaders;

"Public Procurement Office" means the Public Procurement Office established by section 4;

"publish" means publication in the *Gazette* or on a website;

"related" means persons who are connected to one another in any manner contemplated in section 2(1)(a) to (c), read with section 2(2), of the Companies Act, 2008 (Act No. 71 of 2008);

"standard bid documents" means standard bid documents issued in terms of section 5(2)(a);

"supplier" means a person delivering [following-on](#) procurement in terms of this Act;

"transversal term contract" means a contract arranged by the relevant treasury for procurement that is required by [one-two](#) or more procuring institutions;

"treasury" means the National Treasury or a provincial treasury;

"Tribunal" means the Public Procurement Tribunal established by section 36;

"Tribunal rules" means rules made in terms of section 47;

"this Act" includes the regulations, codes of conduct and instructions made in terms of this Act;

(2) Any decision, approval, determination, instruction, notification, notice, report or request in terms of this Act must be in writing.

Objects of Act

2. (1) The objects of this Act are, with due regard to sections 195, 216 and 217 of the Constitution, to—

- (a) introduce uniform treasury norms and standards for all procuring institutions to implement their supply chain management systems as envisaged in section 217(1), read with section 216(1), of the Constitution;
- (b) [prescribe-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.

(2) The uniform treasury norms and standards referred to in subsection (1)(a) must, among others—

- (a) ensure value for money in the use of public funds [through, among others, the assessment of the costs, benefits and risks](#);

- (b) advance ethical conduct and ~~limit combat~~ corruption ~~by all role players,~~ through ~~increased transparency~~ publication of procurement information and ~~other transparency measures~~ and introducing ~~enforcement and~~ appropriate sanctions for transgressors;
 - (c) stimulate economic growth by promoting—
 - (i) local manufacturing;
 - (ii) procurement which is developmental in nature;
 - (iii) innovation; and
 - (iv) investment;
 - (d) ~~improve efficiency in procurement by streamlining procurement processes, amongst others through provide for the use of technology to simplify procurement processes and better leverage economies of scale;~~
 - (e) provide for effective and expedited dispute resolution of procurement related decisions; and
 - (f) promote a sustainable environment.
- ~~(3) — The preferential procurement framework referred to in subsection (1)(b) must, among others, advance —~~
- ~~(a) — previously disadvantaged persons or categories of persons;~~
 - ~~(b) — women, the youth and people with disabilities; and~~
 - ~~(c) — small businesses, local suppliers and suppliers of local content.~~

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; ~~and~~
 - (d) a public entity listed in Schedule 2 or 3 to the Public Finance Management Act; ~~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.~~
- (2) ~~Despite subsection (1), Chapter 4 of this Act applies to Parliament and provincial legislatures.~~
- (3) This Act applies—
- (a) to all procurement carried out by a procuring institution, including procurement through donor funding; and
 - (b) any person who submits a bid or has been awarded a bid.
- ~~(34)~~ In the event of a conflict between a provision of this Act and—
- (a) a provision of any other legislation, the provision of this Act prevails;
 - (b) a procurement rule of a donor ~~or funding agency~~, that rule prevails; or
 - (c) a provision of an international agreement envisaged in section 231 of the Constitution, the provision of that agreement prevails.
- ~~(45)~~ The Minister is responsible for the administration of this Act.

CHAPTER 2 PUBLIC PROCUREMENT OFFICE, PROVINCIAL TREASURIES AND 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.

(2) The Head and other officials of the Public Procurement Office must perform functions in terms of this Act impartially and without fear, favour or prejudice.

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 take-reasonable-measures-to maintain the integrity of the public procurement system;
 - (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;
 - (ii) ensure the professional development and training of officials involved in procurement;
 - (d) develop and implement measures to ensure transparency in procurement by among others, determining by instruction, access by the public to procurement processes;
 - (e) promote standardisation of the public procurement system;
 - (e) promote innovation monitor and integrate revisions and learning towards modernisation in-of the public procurement system from procuring institutions;
 - (f) promote the use of technology in procurement;
 - (g) develop an electronic public procurement system for all procurement;
 - (g) monitor and support the implementation of this Act by procuring institutions;
 - (h) intervene by taking appropriate steps to address material breach of this Act by a procuring institution as may be prescribed;
 - ~~(i) establish and maintain registers for bidders and suppliers debarred in terms of section 16;~~
 - (j) monitor the changes and revisions proposed to the procurement system;
 - ~~(k) publish the names of debarred bidders and suppliers;~~
 - (l) create, maintain and publish one or more databases as envisaged in this Act;
 - ~~(m) request procuring institutions to provide information relating to procurement in terms of this Act in the format determined by the Public Procurement Office;~~
 - ~~(n) require procuring institutions to publish information on their procurement proceedings in the manner and format determined by the Public Procurement Office, as soon as a procurement decision is made;~~ and

(~~AO~~) perform other duties imposed by this Act.

(2) The Public Procurement Office may, in accordance with this Act—

- (a) ~~by instruction, issue, review~~determine and amend standard bid documents;
- (b) establish data retention and reporting requirements applicable to procuring institutions including the format for such reporting;
- ~~(c) require procuring institutions to—~~
 - ~~(i) publish information on their procurement proceedings; and~~
 - ~~(ii) allow the public to observe their adjudication processes for procurement above the prescribed threshold, unless for a national security reason, the Public Procurement Office approves that the procuring institution may not allow the public to observe in a specific matter;~~
- (d) issue binding instructions in accordance with this Act;
- (e) issue non-binding guidelines to assist procuring institutions with the implementation of this Act or any other procurement related matter;
- (f) determine a model procurement policy for different categories of procuring institutions and different categories of procurement;
- ~~(g) declare certain procurement practices as undesirable;~~
- (h) review the procurement policy applied by a procuring institution and advise on amendments;
- (i) consider complaints by a member of the public regarding procurement; and
- (j) exercise other powers conferred by this Act.

(3) The Public Procurement Office may issue different instructions in terms of subsection (2)~~(c)~~ for—

- (a) different categories of procuring institutions; and
- (b) different categories of procurement.

(4) The Public Procurement Office must, in respect of procuring institutions in the national sphere of government—

- (a) exercise oversight over the implementation of the procurement function; and
- (b) promote and enforce effective management and transparency in respect of the procurement function.

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Part 2

Provincial treasuries

Functions of provincial treasuries

- 6.** (1) A provincial treasury must—
- (a) within its provincial administration—
 - (i) exercise oversight over the implementation of the procurement function by a procuring institution; and
 - (ii) promote and enforce effective management and transparency in respect of the procurement function of procuring institutions;
 - (b) intervene by taking appropriate steps to address a material breach of this Act by a procuring institution within its provincial administration;
 - (c) provide any information required by the Public Procurement Office in terms of this Act;
 - (d) perform other duties imposed by this Act.

- (2) A provincial treasury, within its provincial administration, may—
- (a) issue binding provincial instructions on procurement not inconsistent with an instruction issued by the Public Procurement Office;
 - (b) issue non-binding 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;
 - (d) review the procurement policy applied by a procuring institution [and advise on amendments](#);
 - (e) 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.

(4) A provincial treasury may, after consultation with the Public Procurement Office, [investigate review](#) the procurement policy applied by a procuring institution which is a municipality or municipal entity in its province [and advise on amendments](#).

Part 3 **Procuring institutions**

General procurement principles

~~7. (1) A procuring institution must, in the execution of its powers and duties, strive to achieve the objects of this Act.~~

~~(2) A bidder may not be excluded 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.~~

~~(3) A procuring institution may only award a bid to a bidder that complies with—~~

- ~~(a) tax legislation;~~
- ~~(b) the Employment Equity Act, 1998 (Act No. 55 of 1998); and~~
- ~~(c) such other legislation as may be prescribed.~~

Decision-making for procuring institution

8. The accounting officer or accounting authority, as the case may be, is responsible for making decisions on behalf of the procuring institution in terms of this Act.

Duties of procuring institution

9. A procuring institution must—
- (a) conduct procurement in accordance with this Act;
 - (b) develop and implement an effective and efficient supply chain management system as prescribed for—

- (i) procurement;
- (ii) the disposal and letting of assets;
- (c) develop and implement a procurement policy;
- (d) define procurement needs by compiling a statement of requirements and the statement must be included in the invitation documents, evaluation process and contracts;
- (e) ensure that procurement complies with the prescribed thresholds;
- ~~(f) identify the appropriate standard bid documents to be used by the procuring institution and bidders;~~
- ~~(gf)~~ clearly state the methodology and criteria to be used in the evaluation of bids;
- ~~(hg)~~ provide procurement information as may be prescribed or as the Public Procurement Office or the relevant treasury may require; and
- ~~(ih)~~ keep confidential the information that it obtained in relation to procurement proceedings; and
- ~~(j)~~ take all reasonable steps to prevent non-compliance with this Act.

CHAPTER 3 PROCUREMENT INTEGRITY

Codes of conduct

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

(2) Any contravention of the prescribed code of conduct by an 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 ~~officials or other~~ persons involved in procurement

11. ~~An Official~~ official or a member of accounting authority, bid committee and the Tribunal or other persons 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 ~~a detriment-prejudice~~ to any other person-procuring institution;
- (c) not interfere with or exert undue influence on any person involved in procurement;
- (d) avoid conflict of interest; and
- ~~(e)~~ report and disclose information relating to procurement to the Public Procurement Office and the public, in the manner provided for in this Act, safeguard the confidentiality of information relating to procurement, including business information of bidders; and
- ~~(g)~~ disclose any financial or other interest related to any procurement in which that official or other person participates.

Due diligence and declaration ~~Disclosure of interest by regarding officials and other persons involved in procurement~~

12. (1) A procuring institution must take steps in accordance with prescribed procedures to identify—

- (a) automatically excluded persons as envisaged in section 17 and their immediate family members; and
- (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
- (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)(f).

(b) A failure to submit a declaration or submitting a false declaration renders a bid invalid.

(13) If a person related to an official or a member of accounting authority, a bid committee or the Tribunal~~other person~~ involved in procurement in terms of this Act, ~~or a person related to the official or that other person,~~ has, or intends to acquire, a direct or indirect personal interest in a procurement matter, the official or a member of accounting authority, bid committee or the Tribunal~~that other person~~—

- (a) must disclose such interest, ~~as soon as possible~~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
- (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.

(24) A disclosure of interest made in terms of subsection (1) must be recorded in the minutes of the meeting at which it is made or it relates to or any document seeking a decision.

Conduct of bidders and suppliers

~~13. Bidders or suppliers—~~

- ~~(a) must comply with this Act and code of conduct;~~
- ~~(b) may not commit an offence involving corruption, fraud, collusion or coercion; and~~
- ~~(c) must, where considered necessary by the procuring institution and before appointment, be subjected to a vetting investigation envisaged in section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).~~

Declarations of interest by bidders and applicants for registration on database

~~14. (1) A declaration of interest, as determined by instruction, must be made by—~~

- ~~(a) all bidders, in the case of bids; and~~
- ~~(b) all applicants, in the case of applications for registration on a database created by the Public Procurement Office in terms of section 5(1)(f).~~

~~(2) Failure to comply with subsection (1) or submitting a false declaration renders a bid referred to in subsection (1)(a) or an application referred to in subsection (1)(b) invalid.~~

Undue influence

- ~~15. (1) No person may—~~
- (a) interfere with, or ~~improperly~~ influence, the procurement process of a procuring institution;
 - (b) impede the accounting officer or the accounting authority or an official in fulfilling his or her responsibilities in terms of this Act; or

(c) tamper with any bid after its submission or any bid after its 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.

(3) Subsection (1) may not be construed to prohibit any person from disclosing an irregularity regarding a procurement process.

Debarment

16. (1) Before issuing a debarment order in terms of this section, The
the Public Procurement Office—

(a) may provisionally debar a bidder or supplier or any of the directors, members, trustees or partners of that bidder or supplier; and

(b) must provide the bidder or supplier or any of the directors, members, trustees or partners of that bidder or supplier with a provisional debarment notice stipulating the reasons for the intended debarment.

(2) A provisional debarment The notice must—

(a) indicate the reason for the intended debarment; and

(b) indicate the effective date;

invite the bidder or supplier or any of the directors, members, trustees or partners of that bidder or supplier to provide reasons within 10 days why he or she must not be debarred.

(3) The Public Procurement Office 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;

(b) provides 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) committed any offence involving corruption, fraud, collusion or coercion, price fixing, a pattern of under-pricing or breach of confidentiality relating to procurement by a procuring institution;

(e) accepted, delivered against, or made a claim for payment against, an order knowing that the order had not been authorised or was not in a prescribed format or had been issued by a person not authorised to do so;

(f) refused to sign a contract without reasonable justification or to furnish a performance security in accordance with the terms of the bid;

(g) has not performed a material contractual obligation not due to circumstances beyond the control of the supplier;

(h) has been convicted of an offence relating to—

(i) obtaining or attempting to obtain a contract or subcontract; or

(ii) business or professional activities;

(i) attempted, or conspired with, aided, abetted, induced or incited another person to contravene a provision of this Act; or

(j) contravened a provision of this Act.

(4) (a) The Public Procurement Office must consider the reasons submitted in terms of subsection (2)(eb), and—

~~(a) confirm the decision whether to issue a debarment order; or~~

~~(b) withdraw the provisional debarment.~~

~~(5) (b)~~ The Public Procurement Office must inform a debarred person of the decision within five days from the date of the decision.

~~(65)~~ A debarment order takes effect from—

(a) the date on which it is served on the bidder or supplier; or

(b) if the order specifies a later date, the later date.

~~(76)~~ (a) A debarment order may not exceed the prescribed period.

(b) Different periods may be prescribed for debarment in terms of subsection (1).

~~(87)~~ A debarment order prohibits the bidder ~~or~~ supplier ~~or any of the directors, members, trustees or partners of that bidder or supplier~~, for the period specified in the debarment order, from participating in procurement by procuring institutions generally or in circumstances specified in the order.

~~(98)~~ (a) A debarred bidder or supplier ~~subject to a debarment order~~ may not engage in conduct that, directly or indirectly, contravenes the debarment order.

(b) Without limiting paragraph (a), a debarred bidder or supplier ~~subject to a debarment order~~ contravenes that paragraph if the bidder or supplier enters into an arrangement with another person to engage in the conduct that directly or indirectly contravenes a debarment order on behalf of, or in accordance with the directions, instructions or wishes of, the debarred bidder or supplier ~~subject to the debarment order~~.

~~(109)~~ A procuring institution must—

~~(a) inform the Public Procurement Office of any bidder or supplier who alleged to have committed any of the acts listed in subsection (3) for possible debarment; and~~

~~(b) submit the relevant evidence in support of the allegation.~~

~~(110)~~ A procuring institution must take all reasonable steps to comply with the conditions of the debarment order.

~~(121)~~ The Public Procurement Office may, after informing the relevant procuring institution, on application by a debarred bidder or supplier ~~subject to a debarment order~~—

(a) reduce the period of the debarment order; or

(b) revoke the debarment order, if the order was made in error of fact or law or fraud.

~~(12)~~ The Public Procurement Office must—

~~(a) establish and maintain a debarment register for bidders and suppliers debarred in terms of this section; and~~

~~(b) make the register publicly available.~~

Automatic exclusion from procurement

17. (1) The following persons may not submit a bid in procurement:

(a) A ~~member of Parliament~~ public office bearer;

- (b) a leader of a political party registered in terms of the Electoral Commission Act (Act No. 51 of 1996)~~a member of the Cabinet;~~
- (c) a person appointed under the Public Service Act, 1994 (Proclamation No. 103 of 1994)~~member of a provincial legislature or a member of a provincial Executive Council;~~
- (d) an official or employee of a constitutional institution listed in Schedule 1 to the Public Finance Management Act~~councillor as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);~~
- (e) an official or employee of a public entity listed in Schedules 2 and 3 to the Public Finance Management Act~~judicial officer envisaged in section 174 of the Constitution;~~
- (f) an official or employee of~~any organ of state~~a municipality;
- (g) a person appointed under section 12A of the Public Service Act, 1994;
- (gh) any entity in which a person mentioned in paragraphs (a) to (h) is a director or has a controlling or other substantial interest;
- (hi) a bidder or supplier~~subject to a debarment order~~debarred in terms of section 16;
- (i) an entity in which a bidder or supplier debarred in terms of section 16—
 - (aa) has a controlling interest; and
 - (bb) is a director or a member.
- (ik) 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 for~~ procurement ~~of in~~ that institution.
 - (3) A person related to a person referred to in paragraphs (a), (c) and (f) of subsection (1) may not submit a bid for procurement in the institution in which the person is a member or employed.

Declaration by~~Prohibition~~ Public Procurement Office of certain practices as undesirable

- 18.** (1) The Public Procurement Office—
- (a) may in accordance with a prescribed process declare a particular procurement practice to be ~~undesirable~~ prohibited for all or a category of procuring institutions; and
 - (b) must publish the declaration.
- (2) The Public Procurement Office must take into account the following principles when considering whether to ~~declare~~ prohibit a practice ~~as undesirable~~:
- (a) That the practice concerned is not likely to result in fairness, equity, transparency, competitiveness or cost-effectiveness, or to promote socio-economic, industrial or environmental development; and
 - (b) that if the practice is allowed to continue, it is likely to defeat the objects of this Act.
- (3) A procurement practice ~~declared undesirable~~ prohibited in terms of subsection (1) may not be applied by a procuring institution subject to the

declaration.

Directions inconsistent with Act

19. (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 by—

(a) ~~a public office bearer; or~~

(b) ~~any other 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 in terms of this Act, the affected person must not comply with the direction and immediately submit in writing to—~~

(a) ~~submit in writing to the public office bearer or other person in with authority, as the case may be, the objection and the reason for the objection; and~~

(b) ~~inform in writing his or her supervisor, where applicable, and the Public Procurement Office, of the direction, the objection and the reason for the objection.~~

~~(2) If after receiving the objection and the reason referred to in subsection (1), the public office bearer or other person directs the affected person, in writing, to comply with the direction concerned, the affected person—~~

(a) ~~must comply with the direction and immediately submit a written report to the Minister; and~~

(b) ~~despite any term of employment of the affected person, may not be subjected to any disciplinary measures for complying with the direction.~~

~~(3) If the affected public office bearer or other person may not, fails or refuses to provide the direction in writing, the affected person—~~

(a) ~~must not comply with the instruction; and~~

(b) ~~despite any term of his or her employment, of the affected person may not be subjected to any disciplinary measures due to the non-compliance with the direction of the person with authority.~~

CHAPTER 4 PREFERENTIAL PROCUREMENT

Preferential ~~framework and~~ procurement ~~policies~~ policy

20. (1) ~~The Minister must prescribe a framework for preferential treatment~~ When implementing 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.

a procuring institution must do so in accordance with the objects of this Act, this Chapter and section 10(1)(b) of the Broad-Based Black Economic Empowerment Act, 2003.

(2) ~~The framework policy envisaged in subsection (1) must, with due regard to macro-economic stability and growth objectives of the Republic,~~ include—

- (a) one or more preference point systems and thresholds;
- (b) measures regarding preference for—
 - (i) a category or categories of persons or enterprises or a sector;
 - (ii) goods or infrastructure that are produced in the Republic; ~~or and~~
 - ~~(iii)~~ services provided, in the Republic;
- (c) measures—
 - (i) to set aside the awarding of bids to promote any of the preferences referred to in paragraph (b);
 - (ii) to set subcontracting as a bid condition to promote any of the preferences referred to in paragraph (b);
 - ~~(iii)~~ (iv) for subcontracting by suppliers awarded bids that promote any of the preferences referred to in paragraph (b);
 - ~~(iv)~~ (v) to advance creation of jobs, intensification of labour absorption and economic development;
 - (vi) to limit the negative economic impact of importation of goods or services; and
 - (vii) to advance a sustainable environment.

(3) ~~Regulations—~~

(a) must be made regarding the application of subsection (2)(a) and (b)(ii) and (iii); and

(b) may be made regarding any other provision of this Chapter.

~~(34)~~ (4) Without limiting the generality of subsection (1)(b)(i), the ~~framework policy~~ may include preferences for—

- (a) citizens or permanent residents of the Republic;
- (b) enterprises that are majority owned or controlled by citizens or permanent residents of the Republic, or both citizens and permanent residents;
- (c) enterprises based in townships, rural or underdeveloped areas or in a particular province or municipality.

~~(45)~~ (5) Persons referred to in ~~this section~~ subsections (1)(b) and (2)(b)(i) include, but are not limited to—

(a) black people as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); ~~black people as defined in~~

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~~the Employment Equity Act, 1998 (Act No. 55 of 1998),~~

~~(b) women, people with disabilities and youth as defined in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008) between, and who are citizens of the Republic.~~

~~(5)(a) A procuring institution must determine a procurement policy in accordance with the framework envisaged in this Chapter and its determination and implementation of the policy must ensure that the economic costs do not outweigh the objectives of the preferential measures in its policy.~~

~~(b) The framework envisaged in subsection (1) must provide a criteria to assist procuring institutions in determining a procurement policy complying with paragraph (a).~~

~~(c) The Public Procurement Office or a provincial treasury may, as prescribed, direct a procuring institution to adjust its procurement policy or its implementation of the policy if there is evidence that it negatively impacts on macro-economic stability or growth of the Republic or that the economic costs outweigh the objectives of the preferential measures in the policy.~~

~~(6) For purposes of reviewing the —~~

~~(a) the framework envisaged in subsection (1); and~~

~~(b) procurement policies;~~

~~a procuring institution must submit information relating to procurement in terms of this framework and its policy, as determined by instruction to —~~

~~(i) the Public Procurement Office; and~~

~~(ii) in case of a procuring institution in a province, to the provincial treasury of that province.~~

~~(76)~~ The Minister must consult with the relevant Minister before making a regulation under this Chapter affecting the powers or functions assigned to that Minister.

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CHAPTER 5

SUPPLY CHAIN MANAGEMENT AND BIDDING PROCESS

*Part 1**Supply chain management***Supply chain management system and procurement methods**

- 21.** (1) The Minister must prescribe—
- (a) a supply chain management system for—
 - (i) procurement of goods or services;
 - (ii) procurement of infrastructure and capital assets and goods or services related to infrastructure and capital assets; and
 - (iii) the disposal and letting of assets of a procuring institution;
 - (b) types of procurement methods including procuring from another organ of state;
 - (c) methods for disposal and letting of assets by a procuring institution; and
 - (d) the requirements and procedure to be followed for each method prescribed in terms of paragraph (b) or (c).

(2) A supply chain management 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;
- (c) demand management;
- (d) procurement planning and budgeting;
- (e) acquisition management;
- (f) contract management, including assessment of projects against outcomes;
- (g) risk management;
- (h) logistics management;
- (i) asset management;
- (j) disposal management;
- (k) monitoring and assessment of procurement performance; and
- (l) reporting.

(3) A procuring institution must develop, document, maintain and implement an effective and efficient supply chain management system in accordance with this Act.

(4) A procuring institution may stipulate in the bid documents, irrespective of the procurement method, that bidders may only quote in South African currency, inclusive of all applicable taxes.

(5) A procuring institution may not split procurement or use different procurement methods to avoid the prescribed threshold.

(6) If the Public Procurement Office creates a database in terms of section 5(1)(l) for prospective suppliers, procuring institutions may only procure from suppliers listed in that database.

Measures to prevent abuse of supply chain management system

22. The accounting officer or accounting authority of a procuring institution must—

- (a) take ~~all reasonable necessary~~ steps to prevent abuse of the supply chain management system;
- (b) take ~~all reasonable necessary~~ steps to ensure that no person interferes with the supply chain management system or is able to amend or tamper with any bid or contract;
- (c) investigate any allegation against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system, and ~~when justified—~~
 - (i) ~~where necessary,~~ 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.

Part 2

Institutional arrangements

Establishment of procurement units

23. (1) Every institution must establish a procurement unit as part of its supply chain management system.

(2) The responsibilities of the procurement unit must at least include the following:

- (a) Implementation of functions allocated to the unit in terms of this Act and the supply chain management system of the procuring institution;
- (b) maintenance of the supply chain management system to ensure effectiveness and efficiency;
- (c) regular reporting to the procuring institution on the performance of the supply chain management system;
- (d) rendering assistance and administrative support to the line function managers and other officials of the procuring institution in the performance of their procurement responsibilities;
- (e) providing advice to a procurement committee on request;

- (f) any other functions that the accounting officer or accounting authority may consider necessary.

Establishment of committees

24. (1)(a) A procuring institution must, within the supply chain management system, establish a committee system consisting of at least—

- (i) a bid specification committee;
- (ii) a bid evaluation committee; and
- (iii) a bid adjudication committee.

(b) The Minister must prescribe the functions of the committees referred to in paragraph (a).

(2) The committee system established in terms of subsection (1) must be applied for all competitive and restricted bids or any other procurement method envisaged in this Act which requires that a committee be a part of the procurement process.

(3) If the accounting officer or accounting authority so directs, a committee may be established for the evaluation and adjudication of quotations.

(4) A procuring institution must ensure the segregation of duties in the composition of all bid committees.

(5) In the exercise of its function, a bid committee must act without fear, favour or prejudice, and is not subject to the direction or control of any other person.

Appointment of bid committee members

25. (1) The accounting officer or accounting authority of a procuring institution must appoint the members of the respective committees and specify the duties of each member.

(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 of the Public Service Act; and
- (c) any person having a conflict of interest.

(3) Compulsory membership of bid committees for one or more categories of procurement may be prescribed.

Decisions of accounting officer or accounting authority on recommendations of bid adjudication committee

26. ~~If~~ When the bid adjudication committee makes a recommendation, the accounting officer or accounting authority may—

- (a) ~~in the absence of an application for reconsideration or review in terms of section 35(1) or 37(1)~~ award the bid, taking into account the recommendations of the bid evaluation committee and bid adjudication committee; or
- (b) decide ~~not to proceed or~~ to start afresh with the adjudication process as prescribed; or

(c) decide to cancel the procurement process in terms of section 30.

Part 3 **Bidding process**

Rejection of bid

27. (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;
 - (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—
 - (i) an official of a procuring institution to which this Act applies;
 - (ii) a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008) and a director of the company is an official of a procuring institution, unless the official is a director by virtue of his or her office, or in his or her official capacity;
 - (iii) a close corporation incorporated under the Close Corporations Act, 1984 (Act No. 69 of 1984) and a member of the close corporation is an official of a procuring institution;
 - (iv) a co-operative registered under the Co-operatives Act, 2005 (Act No. 14 of 2005) and a member of the co-operative is an official of a procuring institution; or
 - (v) a partnership, if a partner is an official of a procuring institution;
 - (d) the bidder or any director, member, trustee or partner of the bidder is listed in the register for bidders and suppliers debarred in terms of section 16.
- (43) 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.

Disagreements between bid evaluation committee and bid adjudication committee

28. If the bid adjudication committee disagrees with the recommendation of the bid evaluation committee and recommends to the accounting officer or accounting authority, a bid other than the bid recommended by the bid evaluation committee, the bid adjudication committee's recommendation must include the reasons for the decision.

Relevant treasuries to be notified in event of awards deviating from recommendations

29. (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.

Cancellation of procurement

- 30.** (1) A procuring institution may cancel the procurement process only if—
- (a) the procurement is no longer required;
- (b) insufficient funding is available for the procurement;
- (c) it is not economically viable to proceed with the bid;
- (d) there is a significant change in the required technical specifications, bidding conditions, conditions of contract or other details;
- (e) no responsive bids are received;
- (f) an irregularity in the procurement process occurred;
- (g) there is evidence of the commission of any offence involving corruption, fraud, collusion or coercion by bidders; ~~or~~
- (h) cancellation is considered to be in the interest of national security as advised by the State Security Agency; or
- (i) there is noncompliance with a provision of the Act.
- (2) The Public Procurement Office may cancel the procurement of a procuring institution only if—
- (a) following an investigation, the Public Procurement Office is satisfied that an irregularity occurred in the procurement process;
- (b) cancellation is considered to be in the interest of national security as advised by the State Security Agency.
- (2) The reason for cancelling a ~~bid-procurement~~ must be noted in the record of the procurement process and promptly communicated to the bidders.
- (3) A procuring institution or the Public Procurement Office is not liable to a bidder by reason only of cancellation of the procurement in terms of ~~subsection (1).~~
- (4) If a decision to cancel the procurement is taken before the deadline for submission of bids, any bid received must be returned unopened to the bidder.
- (5) If a bid is cancelled in terms of subsection (1)(d), the procurement may not be re-advertised on the same technical specifications, bidding conditions or conditions of contract.

Re-advertising of bid

- 31.** (1) A procuring institution may re-advertise a bid if—
- (a) all bids have been rejected as envisaged in section 27; or
- (b) the procurement process has been cancelled as envisaged in section 30.
- (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 details envisaged in section 30(1)(d).

Conclusion of contracts

32. (1) 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 within 10 days of the notice referred to in subsection (2), award a bid to a bidder that—

- (a) submits a bid which, in all respects, complies with the specification and conditions of the bid as set out in the bid documents; and
- (b) obtains the highest score, subject to Chapter 4.

(2) A procuring institution must, in the manner and form determined by instruction, notify—

- (a) the successful bidder; and
- (b) the other bidders,

specifying the name and address of the successful bidder and the price of the contract.

(3) 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.

(4) Subsections (2) and (3) apply to the award of a new bidder.

(5) A procuring institution must promptly and in a manner determined by instruction, publish the results of a procurement process.

(6) A procuring institution may award a bid to qualifying multiple bidders as may be prescribed.

CHAPTER 6
DISPUTE RESOLUTION
Part 1

Reconsideration and review

Reconsideration or review of decision

- 33.** (1) A bidder 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.
- (2) The Minister may prescribe decisions which qualify for a reconsideration or a review in terms of this Act.
- (3) A bidder seeking a reconsideration or review of a decision must pay the prescribed fee.

Prohibition on concluding contract during reconsideration or review proceedings

- 34.** (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 review process; or
- (b) review in accordance with section 37, a procuring institution may not conclude a contract with the successful bidder prior to completion of the review process.
- (2) Despite subsection (1), if an emergency requires procurement—
- (a) in the case of a procuring institution in the national sphere of government, the Public Procurement Office; or
- (b) in the case of a procuring institution in the provincial or local sphere of government, the relevant provincial treasury,
- may upon request by the procuring institution authorise the conclusion of a contract ~~or an extension to an existing contract~~ prior to the lapse of the period referred to in subsection (1)(a) or completion of the review process.
- (3) The conclusion of a contract, referred to in subsection (2), must be limited to the quantity required to meet the emergency until the completion of the reconsideration or review process.
- (4) The request of the procuring institution referred to in subsection (2) must—
- (a) state the emergency that require the conclusion of ~~the contract or extension~~;
- (b) state the grounds for the emergency;
- (c) specify the quantity required to meet the emergency; and
- (d) recommend the supplier with whom the contract ~~or extension~~ is to be concluded.

Part 2
Reconsideration by procuring institution

Reconsideration by procuring institution

35. (1) A bidder may submit an application for reconsideration to the procuring institution if not satisfied with a decision ~~made in terms of this Act to award a bid~~ by that institution.

(2) An application envisaged in subsection (1) must be submitted to the procuring institution within 10 days of the date the bidder became aware of the ~~circumstances giving rise to the application~~ decision to award a bid.

(3) A procuring institution may dismiss an application for reconsideration if the application was not submitted within 10 days of the date the bidder became aware of the decision to award a bid ~~circumstances giving rise to the application~~ or of the date when that bidder should have become aware of ~~these circumstances~~ the decision, whichever is earlier.

(4) Unless the application is dismissed as envisaged in subsection (3) or withdrawn by the bidder, the procuring institution must—

- (a) immediately institute an investigation; and
- (b) make a decision and inform the bidder within ~~10 days after the submission of the application~~ the prescribed timeframes.

- (5) A decision referred to in subsection (4)(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.

(6) A procuring institution may reconsider a decision it made in terms of this Act if the decision was based on error of law or fact or fraud.

Part 3 **Review**

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) the Public Procurement Office to debar a bidder or supplier in terms of section 16.~~

- (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 laws.

Review ~~process~~ of decision of procuring institution

37. (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.

(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 five days of being informed of

the procuring institution's decision, on the ground that the application raises public interest considerations.

(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

38. (1) A person debarred in terms of section 16(1) may, within 10 days of being informed of the the decision to debar, submit an application for review to the Tribunal.

(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 five days of being informed of the procuring institution's decision, on the ground that the application raises public interest considerations.

(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.

Composition of Tribunal

38. (1) The Tribunal consists of as many members as the Minister appoints with due regard to section 46(1)(b).

(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 five years' experience in law; and
- (c) a sufficient number of persons with five years' experience in procurement.

(3) The Minister must appoint a member of the Tribunal referred to in subsection (2)(b) as the Deputy Chairperson.

Qualification of members of Tribunal

39. A person may be appointed as a member of the Tribunal if that person—

- (a) possesses the necessary skills, expertise and knowledge; and
- (b) is a citizen or permanent resident of the Republic.

Functions of Chairperson and Deputy Chairperson of Tribunal

40. (1) The Chairperson—

- (a) must preside at meetings of the Tribunal; and
- (b) is responsible for managing the work of the Tribunal.

(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

41. (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 him or her 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
- (b) the member has any interest which precludes him or her from performing his or her 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.

(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.

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

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

(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 such shorter period as the Minister may approve.

(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 41(2); or
- (c) an independent inquiry by the Minister has found that the member has—
 - (i) failed in a material way to discharge his or her responsibilities; 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.

(6) The Minister must determine the remuneration and other terms

and conditions of service for members of the Tribunal.

Finances of Tribunal

43. The Tribunal is financed from—

- (a) money that is appropriated by Parliament; and
- (b) prescribed fees for the Tribunal.

Resources of Tribunal

44. The Chairperson may—

- (a) for the ~~work-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);
 - (ii) second persons in accordance with applicable law; or
 - (iii) engage persons on contract otherwise than as employees;
- (b) enter into contracts;
- (c) acquire and dispose of assets; and
- (d) do anything else necessary for the ~~effective functioning~~performance of the Tribunal's ~~functions~~.

Conduct of persons involved in work of Tribunal

45. A member of the Tribunal or a person referred to in section 44(a) may not use his or her position or any information by virtue his or her work for the Tribunal to impede the Tribunal's ability to perform its functions—

- ~~(a) improperly benefit himself or herself or another person; or~~
- ~~(b) impede the Tribunal's ability to perform its functions.~~

Panels of Tribunal

46. (1) The Chairperson must constitute a panel for each application envisaged in section 37.

(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 37, to a panel to whom a review is or was assigned.

(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—

- (a) a member of the Tribunal to preside over the panel;
- (b) a member of the Tribunal referred to in section 38(2)(b);
- (c) a member of the Tribunal referred to in section 38(2)(c); and
- (d) such other members of the Tribunal as the Chairperson of the Tribunal decides.

(5) If, for any reason, a panel member 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 panel members; or
- (c) constitute a new panel and direct the new panel to either continue the proceedings or start proceedings afresh.

Tribunal rules

- 47.** (1) The Tribunal may make rules regarding proceedings for an application envisaged in section 37 and may amend or revoke such rules.
- (2) The Tribunal must give notice in the *Gazette* or its website where the Tribunal rules, and amendments and revocations of Tribunal rules, will be available.

Review proceedings

- 48.** (1) In review proceedings—
- (a) the Chair 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
 - (c) any party may be represented by a legal representative during the proceedings.
- (2) The Chair 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 Chair 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.
- (4) In review proceedings, the panel is not bound by the rules of evidence, but may, subject to this section, inform itself on any relevant matter in any appropriate way.
- (5) (a) A Chair 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
 - (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;
 - (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 of his or her knowledge all questions lawfully put to him or her; 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 he or she has been required to produce.

(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.

(6) A person giving evidence or information, or producing documents, has the protections and liabilities of a witness giving evidence in proceedings before the High Court.

Tribunal orders

49. (1) In review proceedings in terms of section 36(1)(a), the panel may, by order—

- (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) order a procuring institution not to make an award or cancel an award made for the procurement under review;
- (d) order 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
- (g) dismiss the application.

(2) In review proceedings in terms of section 36(1)(b), the panel may, by order—

- (a) confirm the debarment order of the Public Procurement Office;
- (b) substitute the debarment order for its own order;
- (c) set aside the debarment order of the Public Procurement Office; or
- (d) dismiss the application.

(2) If a panel is divided in opinion as to an order to be made, the opinion of the majority of the panel members prevails, but if they are equally divided in opinion, the opinion of the Chair of the panel prevails.

(3) 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.

(4) The Tribunal may, by order, summarily dismiss an application for review of a decision if the application is frivolous, vexatious or trivial.

(5) 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

50. (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.

(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 49(1) 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
 - (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.

CHAPTER 7 GENERAL PROVISIONS

Investigation by Public Procurement Office

51. (1) The Public Procurement Office may, if requested by the relevant treasury or on its own initiative, investigate any procurement related matter in accordance with this Act.

(2) The Public Procurement Office must, if an investigation in terms of subsection (1) indicates—

- (a) non-compliance with this Act by—
 - (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.
- (b) commission of an offence by an official of a procuring institution, 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

52. (1) The Public Procurement Office may, for purposes of investigating a procurement related matter in terms of section 51, 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;
- (b) an official of a procuring institution; or
- (c) bidder or supplier to whom a bid has been awarded in accordance with this Act.

(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; 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 contemplated 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 contemplated 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 a 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; and
- (vii) take possession of, and take from the premises, a document or item that may afford evidence required for the investigation.

(b) The authorised person must, on request, allow the person apparently in charge 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 charge 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.

(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.

(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.

(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 63 based on the false or misleading nature of the answer.

Warrants

53. (1) (a) A judge or magistrate who has jurisdiction may issue a warrant for the purposes of section 52(2) of this Act on application by a person authorised in terms of section 52(1) of this Act.

(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 59(1) of this Act setting out under oath or affirmation why it is necessary to enter and investigate the premises; and
- (ii) if it appears to the magistrate or judge from the information under oath or affirmation that—

(aa) there are reasonable grounds for suspecting that improper conduct has occurred; and

(bb) entry and search of the premises are likely to yield information pertaining to the improper conduct.

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

(3) The person authorised in terms of section 59(1) of this Act 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

(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 59(1) may perform an entry, search or seizure.

(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;

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

(d) the expiry of one month after the date it was issued, whichever occurs first.

[Disclosure of procurement information by Public Procurement Office and procuring institutions](#)

53A. (1) The Public Procurement Office must by instruction determine requirements to and procuring institutions must disclose procurement information in accordance with this Act in the manner and format determined by instruction.

(2) The instruction envisaged in subsection (1) must, among others, require—

- (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 tender process;
 - (ii) all information regarding a bid;
 - (iii) the identity of each entity registered to participate in procurement and 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);
 - (iv) the date, reasons for and value of an award to a bidder, including the record of the beneficial ownership of that bidder required under section 56(12) of the Companies Act, 2008;
 - (v) contracts entered into with a supplier and invoices submitted by the supplier;
 - (b) that the information referred to in paragraph (a) be published as quickly as possible—
 - (i) on an easily accessible central online portal that is publicly available free of charge;
 - (ii) in a format that—
 - (aa) enables tracking of information relevant to the entire process of a specific procurement;
 - (bb) is electronic and interoperable;
 - (cc) if it contains confidential information, only that information is severed.
- (3) For purposes of this section “confidential information” means—
- (a) personal information protected in terms of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
 - (b) commercial information, the disclosure of which is likely to damage a commercial interest of a bidder;
 - (c) information that is likely to endanger the life or safety of a person;
 - (d) information that is likely to prejudice or impair the security of a building, structure or critical system, including but not limited to, a computer system, a communication system and a transportation system;
 - (e) information that is likely to prejudice law enforcement or legal proceedings;
 - (f) information that is likely to prejudice national security.

Access to procurement processes

53B. The Public Procurement Office must determine by instruction measures for the public, civil society and the media to—

- (a) access procurement processes;
- (b) scrutinise procurement;
- (c) monitor high-value or complex procurement that entail significant risks of mismanagement and corruption.

Documents to be made available

54. (1) 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 and have general application,
- are accessible at the offices of the Public Procurement Office and its website.

(2) The copies referred to in subsection (1) must be published in such form as the Public Procurement Office considers will make them readily accessible.

Access to information held by Public Procurement Office

55. (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;
- (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 if the Public Procurement Office reasonably believes 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 appropriate Intelligence Structure, as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), if it reasonably believes that the information relates to

any potential threat or threat to the national security.

Protection of information

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

- (a) for ~~the purpose of~~ carrying out ~~the a~~ provisions of this Act or any other legislation;
- (b) with the permission of the Public Procurement Office or the relevant provincial treasury;
- (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 or a provincial treasury 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).

Use of technology

57. Procuring institutions must, to the extent possible, use information and communication technology in the implementation of this Act.

Function performed by another person or organisation

58. If a procuring institution transfers funds to a person or organisation other than an organ of state to perform a function on behalf of the procuring institution in terms of legislation authorising it, any procurement required to perform the function must be in accordance with this Act.

Delegation

- 59.** (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; or
 - (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 him or her in terms of paragraph (a); or
 - (ii) authorise that official to perform any duty he or she is authorised to perform in terms of paragraph (a).

(2) 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
- (b) authorise that official to perform any duty imposed on the accounting officer or accounting authority by this Act.

(3) The Public Procurement Office may—

- (a) delegate to a provincial treasury any power conferred on the Public Procurement Office by this Act; or
- (b) authorise a provincial treasury to perform any duty imposed on the Public Procurement Office by this Act.

(4) A provincial treasury may—

- (a) delegate to any of its officials any power conferred on the provincial treasury by this Act; or
- (b) authorise any of its officials to perform any duty imposed on the provincial treasury by this Act.

(5) 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.

(6) Any delegation of a power or authorisation to perform a duty in terms of this section—

- (a) must be in writing;
- (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

60. A person who exercises a power or performs a duty in terms of this Act is not liable for, or in respect of, any loss or damage suffered or incurred by any person arising from a decision taken or action performed in good faith in the exercise of a power or performance of a duty in terms of this Act.

Offences

61. (1) A person who—

- (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 his or her functions or in the exercise of his or her power under this Act;
- (c) without authorisation opens any sealed bid, including such bids as may be submitted through an electronic system and any document required to be sealed, or divulges their contents prior to the appointed time for the public opening of the bid documents;
- (d) connives or colludes to commit a corrupt, fraudulent, collusive or coercive or obstructive act related to procurement under this Act;
- (e) contravenes section 15;
- (f) contravenes section 16(9)(a); or

(g) 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.

(2) A person who—

- (a) without reasonable excuse fails or refuses to give information, produce any document, records or reports required in terms of this Act;
- (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 48(5) of this Act, commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding three years or both.

(3) An accounting officer or accounting authority who fails to take reasonable steps to implement the supply chain management system of the procuring institution commits an offence in terms of this Act and is liable on conviction to a fine or to imprisonment for a term not exceeding three years or both.

(4) A member of the Tribunal who fails disclose an interest in terms of section 48(2) commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding three years or both.

(5) If a person's conduct in terms of this Act constitutes an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the offence must be dealt with in terms of that Act.

Exemption

62. (1) The Minister may, with or without conditions, exempt a procuring institution from any provision of this Act, if national security is likely to be compromised.

(2) An exemption referred to in subsection (1)—

- (a) may apply to any procuring institution to which this Act applies or a category of procuring institutions; and
- (b) must be published in the *Gazette* or on the website of the National Treasury.

(3) For purposes of this section, this Act excludes a regulation made in terms of section 64 or an instruction.

Deviation

63. (1) The Public Procurement Office may, with or without conditions, authorise a deviation from a provision of a regulation made in terms of section 64 or an instruction if—

- (a) it is impossible, impractical or uneconomical to comply with the regulation or instruction;
- (b) market conditions or behaviour do not allow effective application of the regulation or instruction;
- (c) required by an international agreement binding on the Republic in terms of

- section 231 of the Constitution;
- (d) a disaster is declared in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002); or
- (e) national security is likely to be compromised.

(2) If a deviation is authorised in terms of subsection (1), the Public Procurement Office must, within 14 days, inform the Auditor-General.

Regulations

- 64.** (1) The Minister—
- (a) must make regulations regarding—
- (i) any matter required by this Act to be prescribed;
 - (ii) procurement thresholds;
 - (iii) the threshold for the variation of price in a contract;
 - (iv) the setting of market related price ceilings for procurement;
 - (v) procedures for projects or services funded by grants in accordance with technical assistance agreements;
 - (vi) measures for the participation of a manufacturer of goods in a bid to supply the goods it manufactures;
 - (vii) procedures for procurement under a public-private partnership;
 - (viii) procedures for procurement from another organ of state;
 - (ix) competency requirements of officials involved in procurement;
 - (x) the use of information and communications technology in procurement;
 - (xi) procedures for procurement under transversal term contracts;
 - (xii) circumstances under which procuring institutions must participate in a transversal term contract;
 - (xiii) pre-qualification of bidders, circumstances and procedures for pre-qualification processes;
 - (xiv) procedures for bid specification, invitation, submission, opening, evaluation, adjudication and awarding of bids and cancellation of procurement processes;
 - (xv) procedures to conduct evaluation and adjudication in public for certain types of procurement or procurement above a threshold;
 - (xvi) the requirements for security vetting of—
 - (aa) officials employed by the Public Procurement Office, a provincial treasury and officials employed in a supply chain management unit of a procuring institution;
 - (bb) a bidder before the award of a bid.
 - (xvii) the completion of the procurement process during the bid validity period and the extension of the period to prevent undue delays or unjustified cancellations;
 - (xviii) procedures for lodging complaints regarding procurement in terms of this Act by a member of the public;
 - (xix) fees for services rendered by the Tribunal;
 - (xx) procedures for advertisements and publication of bid notices by procuring institutions;
 - (xxi) percentages for contract variations or amendments;

- (xxii) retention and the reporting of procurement data; and
- (xxiii) 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;
 - (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;
 - (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.

(b) may make regulations—

- (i) permitted by this Act to be prescribed;
- (ii) regarding negotiations with a preferred bidder or bidders prior to the award of the bid;
- (iii) regarding requirements for bidders to comply with specified legislation;
- (iv) lifestyle audits of persons automatically excluded in terms of section 17 and their immediate family members and related persons, if an immediate family member or a related person is awarded a bid above a threshold stipulated in the regulations; and
- (#v) regarding any procedural or administrative matters that are necessary to implement the provisions of this Act.

(2) The Minister may not make a regulation unless the Minister has published—

- (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
- (d) a notice inviting submissions in relation to the regulation and stating where, how and by when submissions are to be made.

(3) Regulations to be made in terms of this Act must be submitted to Parliament for parliamentary scrutiny at least 30 days before their promulgation.

(4) A regulation comes into~~takes~~ effect—

- (a) on the date that it is published; or
- (b) if the regulation provides that it takes effect on a later date, on the later date.

(5) (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
- (ii) a response to the issues raised in the submissions.

(6) The Minister ~~may make different regulations for—~~

- (a) may make different regulations for—

- (i) different categories of procuring institutions;
- (ii) different categories of procurement; and
- (b) different categories of procurement must make regulations regarding the procurement of—
 - (i) infrastructure and capital assets; and
 - (ii) goods or services related to infrastructure and capital assets.

Transitional measures

65. A bid awarded or advertised before the commencement of this Act must be dealt with in terms of the law applicable at the time of the award or advertisement.

Repeal of laws and saving

66. (1) Subject to subsection (2), the laws 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.

Short title and commencement

67. (1) This Act is called the Public Procurement Act, 2022, and takes effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined by the Minister 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
- (c) the repeal or amendment of different provisions of a law repealed or amended by this Act.

SCHEDULE
AMENDMENTS AND REPEALS
(Section 12366)

Act No. and year	Short title	Extent of repeal or amendment
Act No. 86 of 1968	State Tender Board Act, 1968	1. The repeal of the whole
No. 89 of 1970	National Supplies Procurement Act, 1970	2. The repeal of the whole
Act No. 107 of 1997	Housing Act, 1997	3. The amendment of section 3 by the substitution in subsection (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] <u>subject to the Public Procurement Act, 2022, review the procurement policy on housing development and determine a new policy by no later than a date set by the Minister;</u> "
Act No. 36 of 1998	National Water Act, 1998	4. The amendment of section 26 by the substitution in subsection (1) for paragraph (n) of the following paragraph: "(n) <u>subject to the Public Procurement Act, 2022,</u> prescribing procedures for the allocation of water by means of <u>a bid [public tender]</u> or auction;" 5. The amendment of section 45 by the substitution in subsection (2) for paragraph (f) of the following paragraph: "(f) allocated to every other applicant by <u>means of a bid [public tender]</u> or auction:"
Act No. 88 of 1998	State Information Technology Agency Act, 1998	6. The amendment of section 7- (a) by the substitution in subsection (4)(a) for subparagraph (ii) of the following paragraph: "(ii) procure that service <u>in accordance with the Public Procurement Act, 2022, [through the Agency in terms of subsection (3)]</u> if the Agency indicates in writing that it is unable to provide the service itself;" (b) by the substitution in subsection (4)(b) for subparagraph (ii) of the following paragraph:

Act No. and year	Short title	Extent of repeal or amendment
		"(ii) procure that in accordance with the Public Procurement Act... [service through the Agency in terms of subsection (3)]"; (c) by the substitution for the word "and" of the word "or" at end of paragraph (a) of subsection (5); and (d) by the substitution in subsection (5) for paragraph (b) of the following paragraph: "(b) procure any information technology goods or services in accordance with the Public Procurement Act, 2022 [through the Agency]"; 7. The amendment of section 23 by the substitution in subsection (1) for paragraph (a) of the following: "must, <u>subject to the Public Procurement Act, 2022</u>, make regulations regarding the manner in which procurement in terms of section 7(3) to (7) must take place, <u>with the concurrence</u> [subject to the approval] of the Minister of Finance; and"
Act No. 111 of 1998	Correctional Services Act, 1998	8. The amendment of section 103 by the substitution for subsection (1) of the following subsection: "(1) The Minister may, [subject to any law governing the award of contracts by the State] <u>subject to the Public Procurement Act, 2022</u>, 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."
Act No. 1 of 1999	Public Finance Management Act, 1999	9. The amendment of section 38— (a) by the deletion in subsection (1)(a) of subparagraph (iii); (b) by the substitution in subsection (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] <u>Public Procurement Office established by section 4 of the Public Procurement Act, 2022</u>;" 10. The amendment of section 51 by the deletion in subsection (1)(a) of subparagraph (iii).

Act No. and year	Short title	Extent of repeal or amendment
		11. The amendment of section 76- (a) by the substitution in subsection (1) for paragraph (k) of the following paragraph: "(k) the alienation[, or letting [or other disposal] of state assets;" and (b) by the deletion in subsection (4) of paragraph (c).
Act No. 20 of 1999	Road Traffic Management Corporation Act, 1999	12. 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] <u>accordance with the Public Procurement Act, 2022."</u>
Act No. 5 of 2000	Preferential Procurement Policy Framework Act, 2000	13. The repeal of the whole.
Act No. 32 of 2000	Local Government: Municipal Systems Act, 2000	14. The amendment of section 83 by the substitution in subsection (1) for paragraph (a) of the following paragraph: <u>"(a) comply with the Public Procurement Act, 2022;"</u>
Act No. 38 of 2000	Construction Industry Development Board Act, 2000	15. The amendment of section 5— (a) by the substitution in subsection (3) for paragraph (c) of the following paragraph: "(c) must, within the framework of the procurement policy of Government, <u>and in consultation with the Public Procurement Office established by section 4 of the Public Procurement Act, 2022</u> [promote the standardisation of] standardise the procurement process with regard to the construction industry;" (b) by the substitution in subsection (4) for paragraph (b) of the following paragraph: "(b) may, <u>after consultation with the Public Procurement Office established by section 4 of the Public Procurement Act, 2022</u>, initiate, promote and implement national programmes and projects aimed at the standardisation of procurement documentation, practices and procedures." (c) by the addition of the following subsection after subsection (1): <u>"(1A) The Board must, in consultation with the Public Procurement Office, develop procurement policies that promote procurement reforms contemplated in section 5(1)(a)(vii)."</u>

Act No. and year	Short title	Extent of repeal or amendment
		16. The amendment of section 16 by substitution for subsection (3) of the following subsection: “(3) The Minister must, <u>in consultation with the Minister of Finance</u>, 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] <u>the Public Procurement Act, 2022.</u>” 17. The amendment of section 33 by the substitution for subsection (1) of the following: “(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) <u>The Minister may, with the concurrence of the Minister of Finance, make regulations regarding procurement in terms of this Act.</u>”
Act No. 51 of 2003	Armaments Corporation of South Africa, Limited Act, 2003	18. The amendment of section 2 by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: “(4) Subject to [this Act] <u>the Public Procurement Act, 2022</u>, the Corporation may—”.
Act No. 53 of 2003	Broad-Based Black Economic Empowerment Act, 2003	19. The amendment of section 9- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) qualification criteria for [preferential purposes for procurement and other] economic activities;” and (b) by the substitution of subsection (5) for the following subsection: “(6) If requested to do so, the Minister may 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).” 20. The amendment of section 10 by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) developing and implementing a preferential procurement policy, subject to the <u>Public</u>

Act No. and year	Short title	Extent of repeal or amendment
		<u>Procurement Act, 2022</u>:". 21. The amendment of section 13P by the substitution for subsection (1) of the following subsection: "(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] bid defaulters [which the National Treasury may maintain] established and maintained by the Public Procurement Office in terms of the <u>Public Procurement Act, 2022</u>, for that purpose."
Act No. 56 of 2003	Local Government: Municipal Finance Management Act, 2003	22. The amendment of section 1 by the substitution for paragraph (d) of the definition of 'irregular expenditure' of the following paragraph: "(d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, <u>the Public Procurement Act, 2022</u>, a requirement of the supply chain management [policy] 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," 23. The amendment of section 2 by the deletion of paragraph (f). 24. The amendment of section 14 by the substitution 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, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of [section 111] the Public Procurement Act, 2022." 25. The amendment of section 33 by the deletion of subsection (4). 26. The amendment of section 65 by the substitution in subsection (2) for paragraph (i) of the following paragraph: "(i) that the municipality's supply chain management system[policy referred to in section 111] complies with the Public Procurement Act, 2022 [is implemented in a way that is fair, equitable, transparent, competitive and cost-effective]; and"

Act No. and year	Short title	Extent of repeal or amendment
		27. The amendment of section 75 by the deletion of subsection 1(j). 28. The amendment of section 81 by the substitution for paragraph (e) of subsection (1) of the following paragraph: “(e) must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain 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.” 29. The amendment of section 90 by the substitution 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 policy which the municipal entity must have and maintain in terms of [section 111] the Public Procurement Act, 2022.” 30. The amendment of section 99 by the deletion of subsection 2(h). 31. The repeal of Chapter 11 32. The amendment of section 173 by the deletion in subsection 1(a) of sub-paragraph (ii).
Act No. 4 of 2006	Electricity Regulations Act, 2006	33. The amendment of section 34 by the substitution in section (1)(e) for subparagraph (i) of the following subparagraph: “(e) <u>subject to the Public Procurement Act, 2022,</u> be established through a [tendering] bid procedure which is fair, equitable, transparent, competitive and cost-effective;”
Act No. 23 of 2014	Infrastructure Development Act, 2014	34. The amendment of section 8 by the substitution of subsection (2) for the following: “(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)] <u>in terms of the Public Procurement Act, 2022.</u>” 35. The amendment of section 12 by the substitution of subsection (4) for the following: “(4) The Director-General or accounting authority of a public entity responsible for an aspect of infrastructure

Act No. and year	Short title	Extent of repeal or amendment
		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)."

MEMORANDUM ON OBJECTS OF PUBLIC PROCUREMENT BILL, 2022

1. PURPOSE OF BILL

The aim of the Bill is to regulate public procurement and to prescribe a framework within which preferential procurement must be implemented.

2. BACKGROUND

2.1 Section 195 of the Constitution of the Republic of South Africa (“the Constitution”) requires national legislation must, among others, ensure the promotion in public administration of the following principles:

- (a) A high standard of professional ethics;
- (b) efficient, economic and effective use of resources; and
- (c) development-oriented, accountability and transparency.

2.2 In terms of section 216(1) of the Constitution, national legislation must prescribe measures to ensure both transparency and expenditure control in each sphere of government by introducing, among others, uniform treasury norms and standards.

2.3 Section 217(1) of the Constitution stipulates that, procurement by organs of state and identified institutions, must occur in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

2.4 The Constitution in section 217(2) allows for organs of state 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. Section 217(3) of the Constitution requires national legislation to prescribe a framework within which the procurement policy must be implemented. The Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), was enacted for this purpose.

2.5 The public procurement regime in South Africa is currently fragmented as there are a number of laws which regulate procurement across the public administration. This fragmentation results in confusion as different procurement rules apply. Some of these laws pre-date the constitutional order brought about in 1994.

2.6 It is important and necessary, considering the history of South Africa and the developments since the coming into operation of the Constitution, to have legislation which creates a single framework regulating procurement, in line with all applicable stipulations of the Constitution and which contributes to address the economic and social challenges of South Africa.

3. OVERVIEW OF BILL

The Bill aims to create a single regulatory framework for public procurement and eliminate fragmentation in laws which deal with procurement in the public sector by, among others—

- (a) determining general procurement requirements;
- (b) providing for an enabling framework for preferential procurement;
- (c) establishing a Public Procurement Office within the National Treasury and defining its functions;
- (d) defining the functions of provincial treasuries;
- (e) defining the functions of procuring institutions;
- (f) providing for measures to ensure the integrity of the procurement process;
- (g) providing for the power to prescribe different methods of procurement and bidding process;
- (h) providing for dispute resolution mechanisms; and
- (i) providing for the repeal and amendment of certain laws.

4. CHAPTER BY CHAPTER BREAKDOWN OF BILL

4.1 Chapter 1- Definitions, objects, application and administration of Act (clauses 1-3)

4.1.1 Clause 1 contains various definitions aimed at facilitating the interpretation of the Bill.

4.1.2 Clause 2 provides for the objects of the Bill which are to—

- (a) introduce uniform treasury norms and standards for all procuring institutions to implement their supply chain management systems as envisaged in section 217(1), read with section 216(1), of the Constitution; and
- (b) prescribe 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.

4.1.3 Clause 3 also sets out the application of the Bill and provide for provisions to deal with conflict between the Bill and other legislation, including conflict between a provision of the Bill and procurement rule of a donor or a funding agency as well as conflict between a provision of the Bill and a provision of an international agreement envisaged in section 231 of the Constitution.

4.2 Chapter 2- Public Procurement Office, provincial treasuries and procuring institutions (clauses 4-9)

4.2.1 The Bill establishes a Public Procurement Office within the National Treasury and provides for the functions of the Public Procurement Office, which include, among other things—

- (a) promoting compliance with the Bill by procuring institutions;

- (b) promoting and taking reasonable measures to maintain the integrity of the supply chain management system;
- (c) guiding and supporting officials and procuring institutions to ensure compliance with the Bill;
- (d) promoting the use of technology in procurement; and
- (e) establishing and maintaining a register for debarred bidders and suppliers.

4.2.2 This Bill also provides for the functions of provincial treasuries and procuring institutions.

4.2.3 The Bill sets out the general procurement requirements which procuring institutions must strive to achieve and take into account when undertaking procurement.

4.2.4 The Bill clarifies who the functionary responsible for making decisions on behalf of a procuring institution is.

4.3 Chapter 3- Procurement integrity (clauses 10-19)

4.3.1 Chapter 3 provides for measures to protect the integrity of the procurement process. Officials, bidders, suppliers, members of the Tribunal and any other person involved in a procurement process are required to comply with the applicable codes of conduct prescribed by the Minister. Provision is also made for vetting of bidders and suppliers where considered necessary by the procuring institution.

4.3.2 The Bill requires officials or other persons involved in procurement or a person related to the official or that other person to disclose a direct or indirect personal interest in a procurement.

4.3.3 The Bill prohibits any person from unduly influencing a procurement process.

4.3.4 This chapter provides for the issuing of a debarment order to bidders or suppliers by a procuring institution under specified circumstances. A debarment order prohibits the bidder or supplier, for the period specified in the order, from participating in procurement generally or in circumstances specified in the order. The Public Procurement Office is required to publish the names of debarred bidders or suppliers and make such names available to procuring institutions upon request.

4.3.5 The Bill provides a power for the Public Procurement Office to declare certain procurement practices as undesirable.

4.3.6 The Bill provides protection for employees who refuse to take directions inconsistent with the Bill.

4.4 Chapter 4- Preferential procurement (clause 20)

4.4.1 Chapter 4 regulates preferential procurement and enables the Minister to prescribe a framework for preferential treatment to implement a procurement policy by a procuring institution 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. the chapter makes specific reference to women, youth and people with disabilities.

4.4.2 According to this chapter the framework prescribed by the Minister must include, among others—

- (a) one or more preference point systems and thresholds;
- (b) measures to advance a category or categories of persons or business or a sector;
- (c) measures for preference to set aside the allocation of contracts; and
- (d) measures aimed at advancing industrial development.

4.5 Chapter 5- Supply chain management and bidding process (clauses 21-32)

4.5.1 Chapter 5 requires the Minister to prescribe—

- (a) a supply chain management system for—
 - (i) procurement; and
 - (ii) the disposal and letting of assets of a procuring institution;
- (b) types of procurement methods including procuring from another organ of state;
- (c) methods for disposal and letting of assets by a procuring institution; and
- (d) the requirements and procedure to be followed for each prescribed method.

4.5.2 This Chapter requires a procuring institution to develop, document, maintain and implement an effective and efficient supply chain management system in accordance with this Bill. A supply chain management system envisaged in the Bill must provide for the following matters:

- (a) Procurement policy;
- (b) institutional and governance arrangements;
- (c) demand management;
- (d) procurement planning and budgeting;
- (e) acquisition management;
- (f) contract management;
- (g) risk management;
- (h) logistics management;
- (i) asset management;
- (j) disposal management;
- (k) monitoring and assessment of procurement performance; and
- (l) reporting.

4.5.3 The Bill enjoins an accounting officer or accounting authority to, among others, take reasonable steps to prevent abuse of the supply chain management system.

4.5.4 The chapter also provides for the establishment of a committee system for the procuring institution consisting of at least—

- (a) a bid specification committee;
- (b) a bid evaluation committee; and
- (c) a bid adjudication committee.

4.5.5 Every procuring institution is required to establish a procurement unit, which is responsible for, among others—

- (a) implementation of functions allocated to the unit in terms of this Bill and the supply chain management system of the procuring institution; and
- (b) maintenance of the supply chain management system to ensure its effectiveness and efficiency.

4.5.6 This chapter also regulates the bidding process, including—

- (a) rejection of bid or proposal;
- (b) cancellation of procurement;
- (c) re-advertising of bid; and
- (d) conclusion of contracts.

4.6 Chapter 6- Dispute resolution (clauses 33-50)

4.6.1 The chapter provides for a right of the bidder to seek a reconsideration of a procuring institution's decision by the procuring institution itself.

4.6.2 This chapter also provides for a right of review of a decision taken by a procuring institution or a failure of a procuring institution to make a decision.

4.6.3 A procuring institution is prohibited from awarding a contract during the reconsideration or review proceedings.

4.6.4 This chapter establishes the Public Procurement Tribunal to review decisions made by a procuring institution. The chapter also provides for the appointment of members of the Tribunal and other related matters.

4.6.5 The Tribunal may make an order—

- (a) confirming a decision of a procuring institution;
- (b) setting the decision aside and remitting the matter to the relevant procuring institution for further consideration;
- (c) overturning the award of a contract;
- (d) ordering that the procurement proceedings be terminated;
- (e) taking such alternative action as is appropriate in the circumstances;
- (f) requiring 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 a procuring institution in the procurement proceedings

that is not in compliance with the provisions of this Bill, and for any loss or damages suffered, which must be limited to the costs relating to the application; or

- (g) dismissing the application.

4.6.6 The Bill allows any party dissatisfied with an order of the Tribunal to institute judicial review in terms of Promotion of Administrative Justice Act, 2000.

4.7 Chapter 7- General provisions (clauses 51-67)

4.7.1 This chapter provides for a power for the Public Procurement Office to investigate any procurement related matter in accordance with the Bill, if requested by the relevant treasury or on its own initiative.

4.7.2 The chapter also authorises the Public Procurement Office to enter and search premises of a procuring institution, an official of a procuring institution or a bidder or supplier to whom a bid has been awarded, for purposes of investigating a procurement related matter.

4.7.3 This chapter regulates the use of information held by the Public Procurement Office or a provincial treasury for purposes of the Bill as well as the protection of personal information held by or obtained from the Public Procurement Office or a provincial treasury.

4.7.4 The Bill allows procuring institutions to use information and communication technology in the implementation of the Bill.

4.7.5 This chapter enables the Minister, the Director-General: National Treasury, the accounting officer or accounting authority of a procuring institution and the Public Procurement Office to delegate functions conferred by the Bill.

4.7.6 The chapter provides for the criminalisation of the conduct of any person who—

- (a) knowingly gives false or misleading information or evidence under this Bill;
- (b) interferes with or exerts undue influence on any official of a procuring institution or a member of the Tribunal in the performance of his or her functions or in the exercise of his or her power under this Bill;
- (c) without authorisation opens any sealed bid;
- (d) connives or colludes to commit a corrupt, fraudulent, collusive or coercive or obstructive act related to procurement under this Bill; and
- (e) causes loss of public assets or funds as a result of negligence in the implementation of this Bill.

4.7.7 The chapter provides for exemption to be granted by the Minister, to a procuring institution from any provision of this Bill when undertaking national security-related procurement.

4.7.8 The chapter further provides for deviation to be authorised by the Public Procurement Office, from a provision of a regulation or an instruction under specified circumstances.

4.7.9 The chapter provides for a power for the Minister to make regulations regarding, among others, procurement thresholds, variation of contracts, procedures for procurement under the public-private partnership, codes of conduct for officials, members of the Tribunal, bidders and suppliers, the use of information and communications technology in procurement, different methods of procurement, procedure for lodging procurement complaints and reviews and percentages for contract variations or amendments.

4.7.10 The chapter provides for the provisions of the Bill to be brought into operation on different dates and also on different dates for different categories of procuring institutions or different categories of procurement.

5. FINANCIAL IMPLICATIONS FOR STATE

No substantial financial implications for the State are envisaged.

6. CONSULTATION

The development of the draft Bill included consultation with—

- (a) various national and provincial departments, municipalities and public institutions; and
- (b) the Directors-General's Clusters for Governance and Administration, Economic Sector, Employment and Infrastructure Development and Justice, and Crime Prevention and Security.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established under section 76 of the Constitution, since it contains provisions to which the procedure set out in section 76(4)(b) of the Constitution applies.

7.2 Chapter 4 of the Constitution provides for the procedures that Bills must follow in Parliament. Section 76 of the Constitution provides for parliamentary procedure for ordinary Bills affecting the provinces. In terms of section 76(3) a Bill must be dealt with in accordance with the procedure established by either subsection 76(1) or subsection 76(2) if it falls within a functional area listed in Schedule 4.

7.3 In *Tongoane and Others v Minister for Agriculture and Land Affairs and Others*, 2010 (8) BCLR 741 (CC) at paragraphs 70 and 72, the Constitutional Court

stated that the test for determining how a Bill is to be tagged must be broader than that for determining legislative competence. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3), and second, by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence.

7.4 This test compels us to consider the substance, purpose and effect of the subject matter of the proposed Bill.

7.5 The State Law Advisers and the National Treasury are of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional communities.