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3 National Webinars

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PROVINCIAL AND LOCAL GOVERNMENT INPUTS				
Ref	The Big Themes / Considerations	Relevant sections in the Bill	Implications and Impact	Recommendation
1.1	Augment Application of the Act	§ 3(1) provides responsibilities to municipalities and entities. § 3(2) provides for the assignment of portions of the Act to Parliament and Provincial Legislatures	It is not clear why only the preferential procurement provisions are applied to provincial legislatures and not municipalities and entities. The MFMA, the PFMA and the CPA Act as amended are national legislation and apply to all municipalities and entities. The Bill undermines one of the core objectives of the Act. Significant change to power of Municipal Councils relative to the MFMA, 116(3)(a), 116(3)(b) and 120(6).	Provincial legislatures fully in under the Act make the necessary amendments to the Act as is done in relation to the PFMA and CPA.
1.2		§ 4(1)(a)(i) provides for the issuance of Regulations to be issued	§ 4(1)(a)(i) provides for the issuance of Regulations to be issued. This provision may have a significant financial impact on provinces and municipalities as international donors may be required to fund the issuance of Regulations.	Make sure rights of Municipal Councils (Constitution 151 & 161) are clear in the Bill. Also point 2.3 below Change management required? Delete all references to "universal term contracts to be issued" and "universal term contracts to be issued" and apply the District Regulations to all contracts. Refer also 10.2. Delete all references to "universal term contract and manage this as a method through regulations. Refer also 10.2.
1.3		§ 4(1)(a)(ii) provides that Donor funding may be used for the purposes of the Act	This provision may have a significant financial impact on provinces and municipalities as international donors may be required to fund the issuance of Regulations.	Delete "donor funding" from s 3(3)(e) but retain the Regulation mandates as per s 34(1)(a)(iv) to manage procurement. Supporting for transparency

¹151. (1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic. (2) The executive and legislative authority of a municipality is vested in its Municipal Council. (3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. (4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions."
²160. (1) A Municipal Council—(a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;"

Public Procurement Bill: NCOP INPUTS (Venter, Quinot and Scott)

Ref	Sections in the Bill (06Dec2023)	Implications and Impact	Recommendation
1.	Application of the Act		
1.1.	s 3(1) provides for the application of the Act to Parliament and Provincial Legislatures	It is not clear why only the preferential procurement provisions apply to Parliament and Provincial Legislatures and not the rest of the Act. This leads to continued fragmentation of the procurement system. Procurement by provincial legislatures is largely not governed under this Act, but still under the Financial Management of Parliament and Provincial Legislatures Act, 2009. This undermines one of the core objectives of the Act.	Bring provincial legislatures fully in under the Act and make the necessary amendments to the FMPPL Act as is done in relation to the PFMA and MFMA.
1.2.	s 3(3)(a), provinces and municipalities must adhere to the Act unless exempted (s 62)	This provision may have a significant financial impact on provinces and municipalities as international donors may opt not to adhere to red-tape requirements. Requesting an exemption may result in delays.	Delete s 3(3)(a) and s 62. Use the Regulation mandate as per s 64(1)(a)(vii) to manage accounting and reporting for transparency purposes.
1.3.	s 1 defines a 'transversal term contract as the mandate of the relevant treasury or a procuring institution mandated by law' and s 64(1)(a)(xi) provides for Regulations to be issued	No provision is made for 'transversal term contracts' to be procured via the District Development Model as mandated by the President.	Expand definition of 'transversal term contracts' to be inclusive of procurement applying the District Development Model. See also 10.2 below. OR Delete all references to 'transversal term contract' and manage this as a method through regulations. Refer also 10.2.
1.4.	s 3(1) provides application to municipalities and municipal entities.	Significant change to power of Municipal Councils relative to the MFMA. 116(2)(d), 116(3)(a) and 120(6).	Make sure rights of Municipal Councils (Constitution 151' & 161') are clear in the Bill. Also point 2.3 below. Change management required?

10 Themes:
35x Recommendations



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1. Application of the Act

- Must include Parliament & Provincial Legislators:
 - **Continued fragmentation**
- Donor funding - significant **financial and service delivery risk**
- **District Development Model ignored**
 - Transversal contracts



2. Constitutionality and Definition of the Act

- Ignores the **local and socio-economic CONSTITUTIONAL objectives** of provinces and local government
- PPO and PT binding instructions **excludes CoGTA and/or SALGA**
- Conflicts original legislative and executive powers of provincial legislatures and local government:
 - Chap 3 of the **Constitution**,
 - **Intergovernmental Relations Framework Act**, and
 - s 5 of the **MFMA**.

2. Constitutionality and Definition of the Act

- Definition of ‘This Act’ includes Regulations, codes of conduct, instructions, and notices:
 - **No insight on 36 matters** in the Bill
 - Yet, if AO fails to take reasonable steps to implement the Act, they are liable for an **offence or imprisoned** for 3 years and/or a fine



3. Organisational implications of PPO, PTs and institutions

- Specialist office of the PPO national level:
 - **Powers just assigned** to PTs, no specialist office
- Procuring institution functions defined
 - **NO original powers are allowed to municipalities**
- No provision is made for the **minimum organisational requirements** and/or competencies and/or its positioning
 - **No Regulations** to be issued regarding the structuring of these units

4. Preferential Procurement (Chapter 4)

- **Prequalification limitation on one** will retard transformation at provincial and local government:
 - **Impossible, for example, for a province or municipality to support black women-owned small businesses within their geography**
- **Local content and production** ignore the local and socio-economic objectives **of provinces and local government**
- **‘complementary goals’** and other definitions missing:
 - **Material term** – No basis to comment



4. Preferential Procurement (Chapter 4)

- Procedural measures that do not belong at primary law:
 - **Will be limiting**
- Subcontracting **condition of BID** – should be **condition of CONTRACT**
 - Empower **construction mafia** and **radical business forums**
 - **Unreasonable community expectations** (e.g. 30%)
 - Significant **practical challenges**
 - **Condition of CONTRACT** works

5. Industry/Sector Alignment

- Health – NHI alignment?



6. Dispute / Tribunal mechanism

- Risks paralysing public procurement – **single and no maximum**
 - **Multiple** Tribunals likely needed
- 18-24 months to establish.
 - **NO transitional arrangements**
- Working mechanisms in **Gauteng and KZN to be abolished?**
- Ignores **MEDIATION** as a dispute resolution mechanism



7. Financial / budget impact

- “No significant financial implications for the State ...” – **Cannot be**
 - “RECOGNISING the need to **increase the capacity of organs of state**”
 - Impact on **Donor funding** losses
 - Hidden costs to provinces & municipalities on **organisations / ICT**
 - Set-up costs and operational costs of the **Tribunal(s)**
 - Costs related to the **standstill provision**
 - **PPO enter and search powers** - increased staffing costs and unintended consequences in institutions
 - **Additional scope** into procurement
 - Obligations relating to **debarment**

7. Financial / budget impact

- “No significant financial implications for the State ...” – **Cannot be**
 - Implementation of **systems at provinces and local government**
 - **Premium** is critical to successful transformation – must fund this



8. Trumping provision

- Must consider **ALL potential conflicts:**
 - Asset management and **Municipal Asset Transfer Regulations** and the **Government Immovable Asset Management Act 2007**
 - **Investments and Municipal Investment Regulations**
 - Donors and sponsorships and **Cost Containment Regulations & GRAP standards**
 - Regulations regarding competency requirements for officials involved in procurement and **Municipal Regulations on Minimum Competency Levels**

9. Cooperative Governance in the Bill

- Cooperative discussions, potential infringements:
 - 9 infringement areas identified
 - No provision is made to consult CoGTA or SALGA
 - CIDB must do ALL in consultation with the PPO. **Is this the intention?**



10. Operational scope, methods & technology

- Provinces and Municipalities - Not create and maintain their own databases: **hamper local & socio-economic development**
- **Definitions missing**, including method
 - Take out ~~Transversal contracts~~ as an example of a method
- Scope of ~~Contract management~~; risk management and ~~asset management~~ under procurement
- Remove the **obligation to create a single ICT system** –
Appropriate provision recommended



10 Themes, 35 Recommendations

Ref	Sections in the Bill (FOIA 2002)	Implications and Impact	Recommendation
1.	Application of the Act		
1.		It is unclear why only the preferential procurement provisions are applied to Provincial Legislatures and not the rest of the Act. The effect will be continued fragmentation of the procurement system. Provincial Legislatures is largely not governed under this Act, but still under the Financial Management of Government (FMPPL) Act.	Bring provincial legislatures fully in under the Act and make the necessary amendments to the FMPPL Act as is done in the PFMA and MFMA.
2.			
3.			
4.			
5.		This provision may have a significant financial impact on provinces and municipalities. It is not clear why donor funding is exempted (s 62).	Delete 'donor funding' from s 3(3)(a) but retain the exemption in s 64(1)(a)(vii) to manage accounting and reporting for transparency purposes.
6.			
7.		s 1 defines a 'transversal term contract' as a contract relevant treasury or a procuring institution. No provision is made for transversal term contracts' to be procured via the District Development Model as mandated by the Bill.	Expand definition of 'transversal term contracts' to be inclusive of procurement applying the District Development Model. See also 10.2 below. OR Delete all references to 'transversal term contract' and manage this as a method through regulations. Refer also 10.2.
8.			
9.			
10.		s 3(1) provides a significant change to powers of Municipal Councils relative to the FMPPL Act (s 3(1)(a) and (b)).	Make sure rights of Municipal Councils (Constitution 151) are protected. Also point 2.3 below. Change management required.