



NORTH WEST PROVINCIAL LEGISLATURE

PORTFOLIO COMMITTEE ON PREMIER, FINANCE, COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS

COMMITTEE REPORTS

REPORT ON THE PUBLIC PROCUREMENT BILL [B18B-2023]

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ACRONYMS

BBBEE	Broad-Based Black Economic Empowerment
MEC	Member of the Executive Council
NW	North West
NWPG	North West Provincial Government
PFMA	Public Financial Management Act
PPPFA	Preferential Procurement Policy Framework Act
SMME	Small Medium and Micro Enterprise

1. INTRODUCTION

The Legislative authority of a province is vested in its Provincial Legislature, and confers on the Provincial Legislature the power to pass for its province with regard to any matter within a functional area listed in Schedule 4 and Schedule 5 of the Constitution, as per Section 104. It is on this premise that the Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs held a Public Hearing on the Public Procurement Bill to solicit inputs from the public and stakeholders into the Bill.

The *Constitution of the Republic of South Africa 1996* and the *PFMA 1999* creates a basis on which oversight by Legislatures should be accomplished.

2. PROCESS FOLLOWED

The Public Procurement Bill [B18B-2023] was formally referred by the Speaker, Honourable B.R.S. Dantjie to the Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs for consideration and reporting.

The Portfolio Committee received a presentation from National Treasury on the Public Procurement Bill [B18B-2023] at a meeting held on 22 February 2024. Following a briefing, the Committee embarked on Public Hearings throughout the province on 6 March 2024 held as follows; Ngaka Modiri Molema District (Zeerust Municipal Hall - 231), Bojanala District (Mabodisa Community Hall - 228) Dr Ruth Segomotsi Mompati District (Ganyesa Auditorium Hall - 264) and Dr Kenneth Kaunda District (Potchefstroom Banquet Hall - 240). A total of **963** people was reached in various districts of the Province.

3. OBJECTIVE OF THE PUBLIC PROCUREMENT BILL [B18B-2023]

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

4. PRESENTATION BY NATIONAL TREASURY

CHAPTER 1 – APPLICATION (clause 3)

- Clause 3 provides that the Act is to apply to—
 - a department as defined in section 1 of the Public Finance Management Act,
 - a constitutional institution listed in Schedule 1 to the Public Finance Management Act,
 - a public entity listed in Schedule 2 or 3 to the Public Finance Management Act,
 - a municipality as defined in the Municipal Finance Management Act,
 - a municipal entity as defined in the Municipal Finance Management Act.
- Provision is also made for the application of Chapter 4 (preferential procurement) to Parliament and provincial legislatures.

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

- The Bill proposes establishment of a Public Procurement Office within National Treasury and provides for its functions, which include:
 - issuing instructions and promoting compliance by procuring institutions
 - promoting and taking measures to maintain the integrity of procurement system
 - guiding and supporting officials and procuring institutions to ensure compliance promote the use of technology and innovation and learning towards modernisation of the public procurement system
 - implementing measures to ensure transparency in procurement
 - issuing guidelines (clauses 4 and 5)
- Clause 6 provides for the functions of provincial treasuries
- Clause 7 stipulates that accounting officers and authorities make decisions obo procuring institutions in terms of the Act
- The duties of procuring institutions are set out in clause 8

CHAPTER 3 - PROCUREMENT INTEGRITY AND DEBARMENT

- Provision is made for codes of conduct for officials, bidders, suppliers, members of the Tribunal and others person involved in a procurement process (clause 9), and specific conduct measures (clause 10)
- Due diligence and declaration of interest regarding persons involved in procurement (clause 11)
- Prohibiting undue influence and interference (clause 12)
- Provides for automatic exclusion of specified persons from submitting bids, e.g. public officer bearers, employees in public administration (clause 13)
- Measures for functionaries in procurement on how to deal with directions to inconsistent with the Act (clause 14)
- Provision for department of bidders and suppliers (clause 15)

CHAPTER 4: PREFERENTIAL PROCUREMENT

CONTEXT

- The first iteration of the framework to be prescribed by national legislation (as per s217(3) of the Constitution was the PPPFA and the first version of the preferential procurement regulations issued in 2001:
 - Limitation: only providing for preference in the allocation of contracts (s217(2)(a)), but not the protection or advancement of persons or categories of persons (s217(2)(b))
 - Despite this limitation, there was a clear line of sight to the Constitution in that the specific goals mentioned in the PPPFA clearly referenced preference for persons or categories of persons disadvantaged by unfair discrimination on the basis of race, gender and disability.
 - Empowerment was measurable and the premium was quantifiable
 - Diluted the impact of preference by combining the functionality score with the score for price and empowerment (preference). This was remedied by the court when it was held that functionality should be used to determine whether the bidder/tenderer can deliver on the contract and provide the necessary quality. Thereafter, a price and preference evaluation should occur.
- The second iteration of the framework kept the PPPFA in place but revised the regulations in 2011 to replace specific goals with B-BBEE status level of contributor, based on a Cabinet resolution. It also introduced designations for local production and content.
 - It is submitted to that these provisions were outside the scope of the law but were not challenged.

- The third iteration of the regulations was gazetted in 2017. The introduction of the B-BBEE elements in the Preferential Procurement Regulations, 2011 diluted the objectives of the PPPFA and undermined the advancement of specific preferential goals, such as black persons, women and persons with disabilities. To this end, the regulations had the following implications:
 - Advantages: Greater and more meaningful measures for empowerment, as acknowledged by both the minority and majority judgment of the ConCourt. The 2017 regulations also provided for creation of a preferential procurement policy that is flexible but standardised
 - Challenge: It was not the minister's place to determine policy on behalf of the institution on such measures for empowerment due to the structure of the PPPFA (i.e. it gave the power to the organs of state to determine policy)
 - The fourth iteration of the regulations in 2022 had to address the challenges referred to in the Concourt judgment as well as ensuring that the regulations remain within the scope of the PPPFA, unlike in the 2011 and 2017 iterations that replaced specific goals with B-BBEE and provided for local production and content as a disqualification criterion

CHAPTER 5 – GENERAL PROCUREMENT REQUIREMENTS

The Chapter provides for the procurement systems and methods:

- The Minister must prescribe, by regulation, a framework within which procuring institutions must implement the procuring system, which includes—
 - (a) a strategic approach to procurement—
 - (i) in other countries
 - (ii) for infrastructure, capital assets and goods or services related to maintenance of infrastructure and capital assets
 - (iii) for the disposal and letting of assets
 - (iv) to promote innovation
 - (b) types of procurement methods
 - (c) the requirements and procedure to be followed for each prescribed method (clause 25(1))
 - The Minister may determine—
 - (a) by notice in the Gazette, procurement thresholds
 - (b) different thresholds for—
 - (i) different categories of procuring institutions
 - (ii) different categories of procurement (clause 25(2))

CHAPTER 6 – DISPUTE RESOLUTION

- The Chapter provides for a right of the bidder to seek a reconsideration by a procuring institution of its decision to award a bid and, if dissatisfied, then a review by a Tribunal (clauses 37 and 49)
- This Chapter provides for the establishment of a Public Procurement Tribunal, its composition, the qualifications of the members and other relevant provisions for the functioning of the Tribunal (clauses 38-48)
- The Tribunal may also review a debarment order issued by a procuring institution against a bidder or supplier (clause 50)
- An application made to the Tribunal is to be heard by a panel constituted by the Chairperson of the Tribunal (clause 47)
- A procuring institution is prohibited from awarding a contract during the reconsideration or review proceedings (clause 55)
- A party dissatisfied with a Tribunal order may institute judicial review in terms of Promotion of Administrative Justice Act (clause 54)

CHAPTER 7 – GENERAL PROVISIONS

- Provision is made for the Public Procurement Office to investigate any procurement related matter for purposes of establishing any **non-compliance** with the Act (clauses 56-58)
- Clause 59 enables functionaries to delegate powers and duties
- The Bill provides for the criminalisation, among others, of conduct of a person who
 - knowingly gives false or misleading information or evidence
 - interferes with or exerts undue influence on any official of a procuring institution or a member of the Tribunal in the performance of their functions
 - connives or colludes to commit a corrupt, fraudulent, collusive or coercive or obstructive act related to procurement
 - causes loss of public assets or funds as a result of negligence (clause 61)
- Limitation of liability for powers and duties performed in good faith in terms of the Act (clause 60)
- Provision is made for exemptions from the provisions of the Act and regulations, as well as departures from instructions (clauses 62 and 63)

5. DELIBERATIONS OF THE PORTFOLIO COMMITTEE

The Committee deliberated as follows;

- 5.1 The Committee commends such a piece of legislation as matters pertaining to procurement have been problematic and are not regulated rigidly.
- 5.2 The Committee raised a concern that, some individuals who are part of Bid Committees do not have the experience or expertise to deal with matters before them, this results in some tenders being wrongfully approved.

6. ADVERTISING OF THE BILL

Stakeholders and communities were requested to submit written inputs.

6.1 ADVERTISING OF THE BILL

Stakeholders and communities were requested to submit written inputs.

Advertisements were posted on;

- North West Provincial Legislature Facebook page, North West Provincial Legislature Twitter handle
Regional newspapers
- The Mail, Klerksdorp Record and Rustenburg Herald
Community newspapers
- Ntsae Media (business INC and News fact) GIS Media, Ratlou News, Lekwa-Teemane Tribune, Molopo News and Tlhabane News, Taung Daily News, Tabea News, Mmega wa Dikgang.

Advertisements were broadcast on;

National radio stations

- Motsweding FM, SA FM and RSG FM

Community radio stations

- YOU FM, Mafikeng FM, Bophirima FM, Vaaltar FM, Kopanong FM, Star FM, Moretele FM, Mafisa FM and Bojanala FM.

7. PUBLIC INPUTS/CONCERNS

7.1 BOJANALA DISTRICT

7.1.1 There are no inputs due to community unrest at the venue of the Public Hearing.

7.2 DR RUTH SEGOMOTSI MOMPATI DISTRICT

7.2.1 The community sought clarity on how does the Bill seek to address the challenge of one person being considered for tenders repeatedly.

7.2.2 The community raised a concern that the Bill is silent on consequent management and accountability regarding fruitless expenditure in municipalities and departments.

7.2.3 How does the Bill align with departments and municipality budgets in terms of fruitless expenditure?

7.2.4 There was a view that public participation must be provided in terms of implementation of this Bill on the ground.

7.2.5 The community enquired if the Bill makes provision for young emerging entrepreneurs who are not sound financially to meet the tender requirements and BBBEE standards.

7.2.6 A concern was raised that a workshop was needed to enable informed inputs on the Bill.

7.3 NGAKA MODIRI MOLEMA DISTRICT

7.3.1 Communities deliberated on the issue of debarment of bidders and suppliers, whether a person convicted of crime will be allowed to bid for a tender, whilst awaiting sentencing.

7.3.2 Whether the use of organ state for procurement, will not affect SMME's negatively, as they will not be able to bid.

7.4 DR KENNETH KAUNDA DISTRICT

- 7.4.1 The community was greatly concerned about rural areas and informal settlements that are not formalised and procured for electrification.
- 7.4.2 A proposal was made that the Constitution of the Republic of South Africa be amended, due to the fact that it has been raised in many public hearings. The current Constitution does not benefit the people of South Africa
- 7.4.3 Our locally produced products should benefit local markets, they should not be sent to western countries to be refined and sold back to South Africa.

8. ADOPTION OF THE BILL

Three (3) districts voted in support of the Bill.

9. RECOMMENDATION OF THE PORTFOLIO COMMITTEE

The Committee recommends as follows;

- 9.1 National Treasury once the Bill becomes an Act must monitor procurements rigidly nationally and provincially this will avert irregularities of procurements in supply chain management.

10. ACKNOWLEDGEMENTS

The Chairperson of Committee thanked all the present Members of the Portfolio Committee for their commitment to the oversight process of the Public Procurement Bill [B18B-2023].

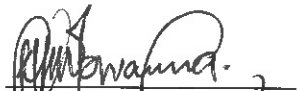
The cooperation of the MEC for Finance, the Head of the department as well as senior officials from the department is highly appreciated.

The Chairperson of Committee would also like to thank the support staff for contributing in compiling this report.

11. ADOPTION OF THE REPORT

The Portfolio Committee recommends that the House approve the passing of the Public Procurement Bill [B18B-2023].

I present to this House, the report of the Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs for consideration and adoption.



HON. A. MOTSWANA

CHAIRPERSON: PREMIER, FINANCE, COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS

07/03/24.
DATE

12. WRITTEN SUBMISSIONS

1. Thabo Molatole – Ramotshere Moiloa Local Municipality
2. Mlahleki Jonathan – Ditsobotla Local Municipality



Legislature Building
Dr James Moroka Drive
Private Bag X2018
MMABATHO, 2735

Enquiries: Ms Agnes Masedi
Cell Nr. 079 495 1958
Email: agnes@nwpl.org.za

**PORTFOLIO COMMITTEE ON
PREMIER, FINANCE, COOPERATIVE GOVERNANCE,
HUMAN SETTLEMENTS & TRADITIONAL AFFAIRS**

WRITTEN SUBMISSION

PUBLIC HEARING ON PUBLIC PROCUREMENT BILL

[B18B-2023] HELD ON 6 MARCH 2024

DATE: 06/03/24

MUNICIPALITY: DITSOBOTLA MUNICIPALITY.

NAME & SURNAME	MLANLEKI: JONATHAN.
ADDRESS	NO 30503 DITHWANENG SECTION LICHTENBURG 2741
CELL NUMBER	084 562 2698



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MMABATHO, 2735

Enquiries: Ms Agnes Masedi
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Email: agnes@nwpl.org.za

DETAILED SUMMARY OF THE BILL:

AS I am a ward committee at bodibe ward 12. as far as am concerned, I want to start my own business, but I don't have a start, so I want to know how can department of finance helped me, as a youth I want to help many families in my village but, I don't have a power by helping others, this business that I want to start is a recycle bottle, maybe department of finance they can help me so that I can help the poor families those who don't have income, and in need of funding but there is no one who is willing to help me because they don't take bottle seriously, so I just want to know how Government can help me, to start up

SIGNATURE: 



NORTH WEST PROVINCIAL LEGISLATURE

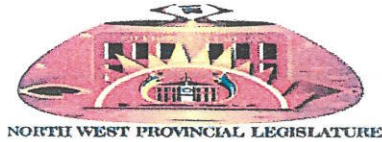
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DETAILED SUMMARY OF THE BILL:

In the village that am residing as a ward committee am living under pressure as a community the plea for the water, we are struggling to get water it takes 2 weeks or a month for people to get water, and my portfolio is transport, there are some of the section they struggling with the transport, especially when they come back from town, their travel a long distance to their places, where's we have a counselor who should get the route that go through the village that are not wright for the taxis to drop off them nearby their places a counselor fail to call grader to clean those route so that taxis can go and drop off community so as a department my you please help

SIGNATURE: 



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WRITTEN SUBMISSION

PUBLIC HEARING ON PUBLIC PROCUREMENT BILL

[B18B-2023] HELD ON 6 MARCH 2024

DATE: 06 MARCH 2024

MUNICIPALITY: KAMOTSHERE MUILOA LOCAL MUNICIPALITY

NAME & SURNAME	THABO DANIEL MOBATOLE
ADDRESS	602EB MAJAKAMA SECTION MISWELETJOKU
CELL NUMBER	0764144102



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Private Bag X2018
MMABATHO, 2735

Enquiries: Ms Agnes Masedi
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Email: agnes@nwpl.org.za

DETAILED SUMMARY OF THE BILL:

IN A SITUATION WHEREBY A CONTRACTOR
IS GIVEN A TENDER, CONDUCTED THE JOB
WITHOUT COMPLETING IT, WHAT MEASURES ARE
TO BE FOLLOWED PROCEDURALLY FOR THE
CONTRACTOR TO COMPLETE THE JOB.

SIGNATURE: _____