

Report of the Standing Committee on Finance on the Public Procurement Bill [B18D - 2023] (National Assembly- section 76), dated 13 May 2024

The Standing Committee on Finance (SCOF), having considered the Public Procurement Bill [B18D - 2023] (National Assembly- section 76) referred to it, agrees to the amendments [B18C-2023] and adopts the Bill as amended, as follows:

1. INTRODUCTION

- 1.1. The Public Procurement Bill (PPB) was tabled in Parliament by the Minister of Finance on 30 June 2023. PPB is an ordinary (section 76 of the Constitution) Bill dealing with public procurement and affects provinces.

2. PROCESS

- 2.1. SCOF report on the Bill was adopted on 04 December 2023.
- 2.2. The Select Committee on Finance adopted the amended Bill and Committee report on 08 May 2024 and the Bill was subsequently referred to SCOF to consider the amendments to the Bill.
- 2.3. SCOF was briefed on the technical amendments to the Bill on 10 May 2024 and agreed to the amendments on 13 May 2024.

3. AMENDMENTS TO THE PPB

- 3.1. The amendments to the Public Procurement Bill (B 18B—2023) reflect significant changes to definitions and provisions of the Bill, with several clauses rejected and replaced with new clauses, as shown in the C-list and the D Version of the Bill.
- 3.2. Clause 1: Removal of "(1)" in line 17. Omission of the definition of "acceptable bid" (lines 18-19). Omission of the definition of "B-BBEE status level of contributor" (lines 29-32). Removal of text after "institution" in line 34-35. Replacement of the definition of "bid committee" (lines 37-39). Replacement of the definition of "confidential information" (lines 45-56). Addition of definition for "geographical area" after line 11 on page 6. Amendment of definition of "military veteran" (lines 24-25 on page 6). Replacement of the definition of "procurement" (lines 3-7 on page 7). Addition of "official" before "website" in line 40 on page 7. Replacement of "standard bid document" with "strategic procurement" (line 50 on page 7). Omission of subclause (2) (lines 4-5 on page 8).

Some comparison of amended definitions and new or added definitions.

- 3.3. "Bid Committee": Old Definition: "Persons appointed to perform functions within the bid committee system." New Definition: "Persons appointed by the accounting officer or accounting authority to a committee to perform functions within the bid committee system." This amendment clarifies who appoints members to the bid committee, specifying either the accounting officer or accounting authority within the procuring institution.
- 3.4. "Confidential Information": Old Definition: "Any information that must or may be refused under the Promotion of Access to Information Act, 2000." New Definition: "Any information which, on a request under the Promotion of Access to Information Act, 2000, must or may be refused in terms of that Act." This change specifies that the classification of information as confidential is determined based on the provisions of the Promotion of Access to Information Act, 2000.
- 3.5. "Geographical Area": New Definition: "The geographical area of a municipality or province." This addition provides a clear definition of what constitutes a geographical area within the context of the bill.
- 3.6. "Military Veteran": Old Definition refers to the broad definition of military veteran in the Military Veterans Act, 2011. New Definition: "Any South African citizen who rendered military service to non-statutory military organizations involved in South Africa's Liberation War (1960-1994)." The amendment limits the scope and eligibility criteria for military veterans.
- 3.7. "Procurement": Old Definition dealt with goods and services together with infrastructure and capital assets. New Definition: deals with goods and services, not linked to the construction, repair or maintenance of infrastructure or capital assets, separately.
- 3.8. Official Website: New: "The website officially designated by the procuring institution." This addition clarifies that the term 'website' refers to the specific and official online platform designated by the procuring institution for relevant information.
- 3.9. "Strategic Procurement": New: "A comprehensive procurement approach aligning with a procuring institution's strategies and objectives to enhance cost-effectiveness." This new

definition emphasizes the strategic alignment of procurement activities with organizational goals.

Other amendments

- 3.10. Clause 2: Amendment to line 30 on page 8: Old: Various functions, including promoting innovation, sustainable development, and environmental rights. New: Promote innovation, sustainable development, and environmental rights as outlined in section 24 of the Constitution. This change specifies the focus of promoting innovation and sustainable development within the context of constitutional environmental rights.
- 3.11. Clause 3: Amendment to line 39 on page 8: Old: Subclause (2) (entirely replaced). New: Section 1, Chapter 4, and regulations under section 64 (including section 24(1)(d)) that apply to Chapter 4, are applicable to Parliament and provincial legislatures. This amendment clarifies the application of specified regulations to Parliament and provincial legislatures as outlined in Chapter 4 of the bill.
- 3.12. Clause 4: Amendments on page 9: Line 9: Addition of “other” after “and”. Line 10: Insertion of a new subclause (3) defining the duties and powers of the Head of the Public Procurement Office. These changes expand the responsibilities of the Head of the Public Procurement Office in performing duties and exercising powers on behalf of the office.
- 3.13. Clause 5: Amendments on page 9: Line 14: Replacement of “promote and implement” with “develop, and support the implementation of”. Line 21: Replacement of “develop and” with “develop, and support the implementation of”. Lines 32-33: Replacement of paragraph (a) to specify issuing binding instructions for effective implementation of the Act by procuring institutions. After Line 33: Addition of new paragraph (b) allowing issuance of non-binding circulars for municipalities and municipal entities. Line 35: Replacement of “or” with “and” for clarification. After Line 43: Insertion of a new subsection (4) defining the binding nature of circulars issued to municipalities and municipal entities. These amendments focus on the development and support of implementation strategies for effective procurement practices among various entities, specifying binding instructions and non-binding circulars accordingly.
- 3.14. Clause 6: Amendment after line 52 on page 9: Addition of a new provision to enforce effective management and transparency in procurement functions of procuring institutions, excluding municipalities and municipal entities. Amendment in line 54 on page 9: Addition of clarification that the provisions apply to institutions excluding municipalities or municipal entities. Amendment in lines 5-7 on page 10: Replacement of paragraph (a) to specify issuing non-binding circulars to municipalities and municipal entities and issuing binding provincial instructions to other procuring institutions via notice in the Provincial Gazette. Addition after line 16 on page 10: Insertion of new subsections (4) and (5) specifying the binding nature of circulars issued to municipalities and municipal entities and defining the duties and powers of the head of a provincial treasury. These changes outline the enforcement and management responsibilities related to procurement functions across different types of institutions, along with the issuance of instructions and circulars to ensure effective implementation of the Act.
- 3.15. Clause 8: Amendment in lines 26-27 on page 10: Replacement of paragraph (b) to emphasize the development and implementation of an effective and efficient procurement system and policy as per section 24. Amendment in line 33 on page 10: Replacement of paragraph (e) to highlight compliance with measures aimed at preventing abuse of the procurement system as outlined in section 26. Replacement of subclause (2) in lines 34-35 on page 10: Substitution of subclause (2) to allow procuring institutions, as prescribed, to correct any action or omission made under the Act based on an error of law or fact or fraud. These amendments strengthen the focus on developing and implementing effective procurement systems and policies while ensuring compliance with measures aimed at preventing abuse within the procurement framework.
- 3.16. Clause 9: Amendment in line 40 on page 10: Replacement of “or other officer,” with “, an official,”.
- 3.17. Clause 11: Amendment in line 28 on page 11: Addition of “, in writing,” after “interest,”. This specifies that disclosures related to conflicts of interest must be made in writing.
- 3.18. Clause 12: Amendment in lines 42-43 on page 11: Replacement of paragraph (b) to specify actions that impede the responsibilities of specified individuals or entities within the procurement framework.
- 3.19. Clause 14: Amendments on page 12: Addition in line 16: Insertion of “, in writing or verbally,” after “directed”. Addition in line 18: Insertion of “or is contrary to the provisions of this Act” after “this Act”. Replacement in line 26: Substitution of “his or her supervisor” with “the line manager of the person”. Replacement in line 27: Substitution of “prescribed” with “determined”.

Replacement in line 31: Substitution of “supervisor” with “line manager was informed of the allegation in terms of subsection (2)(c) but”. Omission in line 34: Removal of “his or her”. These amendments clarify procedures related to communication and reporting within the procurement context.

- 3.20. Clause 15: Amendments on page 12-13: Replacement in line 44: Substitution of “intended debarment” with “intended issuing of a debarment order”. Replacement in lines 45-46: Substitution of paragraph (b) to specify inviting affected persons to provide reasons within 10 days why a debarment order should not be issued. Replacement in line 55: Substitution of “committed any” with “has been convicted of an”. Replacement in lines 11-12 on page 13: Insertion of new subparagraphs (ii) and (iii) specifying involvement of the Public Procurement Office and relevant provincial treasury, if applicable, in certain processes. These changes refine and specify the procedures and criteria related to debarment orders and associated processes.
- 3.21. Clauses 16 to 20 have been rejected and substituted with new clauses.
- 3.21.1. New Clause 16: This clause outlines the development and implementation of a procurement policy by procuring institutions, aligning with preferences and protections as per Section 217(2) and (3) of the Constitution. It specifies categories of preference and protections for disadvantaged persons or categories, in accordance with the objectives of the Act and related regulations. The policy must address bid set-asides, pre-qualification criteria, and reporting procedures if certain procurement methods are not feasible.
- 3.21.2. New Clause 17 (Set-asides for Preferential Procurement): This clause mandates procuring institutions to set aside bids for specific categories of persons, such as black individuals, women, persons with disabilities, and others, subject to prescribed thresholds and conditions. The Minister is tasked with prescribing targets for set-asides and consulting relevant ministers for input on these targets. If no set-aside targets are prescribed, procuring institutions are not prohibited from setting aside bids for eligible categories.
- 3.21.3. New Clause 18 (Prequalification Criteria for Preferential Procurement): This clause requires procuring institutions to apply prequalification criteria to promote preferences in contract allocation. Criteria include bidder preferences based on black economic empowerment and subcontracting to small enterprises owned by disadvantaged groups.
- 3.21.4. New Clause 19 (Subcontracting as Condition of Bid): This clause mandates procuring institutions to subcontract contracts above a certain threshold to advance disadvantaged groups, such as small enterprises owned by black individuals, women, and others. Bidders failing to meet subcontracting criteria stipulated in bid documents are disqualified.
- 3.21.5. New Clause 20: This clause details the responsibilities of the Minister in responding to requests for waivers related to preferential procurement designations. The responsible Minister must monitor and publish reports on the impact of designations and review their appropriateness after a specified period.
- 3.22. Clause 21 was rejected, indicating that this specific clause will not be included in the final version of the Bill.
- 3.23. Clause 25: Amendment in lines 28-37 on page 17: Replacement of subsection (1) to specify that the Minister must prescribe a framework for procuring institutions to develop and implement their procurement systems. The framework includes provisions for strategic procurement, types of procurement methods, procedure requirements, and bid evaluation criteria. Amendment in line 2 on page 18: Omission of paragraph (i).
- 3.24. Clause 27: Amendments: Addition after line 33 on page 18: Insertion of a new provision (d) to verify that a bidder is not listed as an affected person in the debarment register. Addition after line 47 on page 18: Insertion of a new subsection (2) stating that any contract provision contrary to the provisions of the Act is null and void.
- 3.25. Clause 28 has been rejected.
- 3.26. Clause 29: Addition after line 7 on page 19: Insertion of a new subsection (2) requiring procuring institutions to ensure that members of bid committees possess relevant knowledge, skills, and technical expertise for effective committee processes.
- 3.27. Clause 30: Amendment in line 29 on page 19: Replacement of paragraph (c) to include requirements and procedures for procurement methods prescribed under Section 24(1). Amendment in line 31 on page 19: Substitution of 'a' with 'an electronic'.

- 3.28. Clause 31: Amendment in line 41 on page 19: Omission of ', by instruction,',
Addition after line 46 on page 19: Insertion of new provisions under paragraph (c) for the Public Procurement Office to ensure alignment with national e-strategy and publish related notices in the Gazette.
- 3.29. Clause 33: Amendment in lines 23-24 on page 20: Replacement of 'required under section 56(7)(aA)' with 'in the register maintained in terms of 56(14)'. Addition after line 24 on page 20: Insertion of new information requirements regarding bids awarded to immediate family members or related persons of individuals automatically excluded from bidding under Section 13, as well as details on bid cancellations.
- 3.30. Clause 34: Amendment in lines 42-43 on page 20: Replacement of 'National Treasury website' with 'website of the National Treasury'.
- 3.31. Clause 36: Amendment in lines 25-26 on page 21: Replacement of 'or a provincial treasury' with ', a provincial treasury or a procuring institution'. Amendment in lines 28-29 on page 21: Replacement of 'or the relevant provincial treasury' with ', the relevant provincial treasury or the relevant procuring institution'. Amendment in line 33 on page 21: Replacement of 'or a provincial treasury' with ', a provincial treasury or a procuring institution'.
- 3.32. Clause 42: Amendment in line 13 on page 23: Replacement of "him or her" with "that member". Amendment in lines 17-18 on page 23: Replacement of "him or her from performing his or her" with "the performing of".
- 3.33. Clause 43: Amendment in line 44 on page 23: Replacement of "his or her responsibilities" with "responsibilities of the member".
- 3.34. Clause 46: Amendment in lines 13-14 on page 24: Replacement of "45(a) may not use his or her position or any information by virtue of his or her work" with:
"43(a) may not use the work of that member or person".
- 3.35. Clause 47: Amendment in lines 17-18 on page 24: Replacement of subclause (1) with: "(1) The Chairperson must constitute a panel for an application envisaged in section 47 or 48 regarding— (a) a national department envisaged in section 3(1)(a), a constitutional institution referred to in section 3(1)(b), or a national public entity envisaged in section 3(1)(d), at the national sphere of government; or (b) a provincial department envisaged in section 3(1)(a), a municipality or municipal entity referred to in section 3(1)(c), or a provincial public entity envisaged in section 3(1)(d), in the relevant province."
- 3.36. Clause 48: Addition after line 41 on page 24: Insertion of new provisions to further regulate the functioning of panels, including their functioning in the national or provincial sphere of government to facilitate ease of access for the applicant.
- 3.37. Clause 52: Amendment in lines 38-43 on page 25: Replacement of subparagraphs (iii) and (iv) with: "(iii) without just cause, fail to answer fully and satisfactorily to the best knowledge of the person all questions lawfully put to the person; or (iv) fail to produce any object or information, including but not limited to any working papers, statements, correspondence, books, or other documents in possession or custody or under control of the person, which the person has been required to produce."
- 3.38. Clause 53: Addition after line 14 on page 26: Insertion of new provisions to specify the timeframe for making an order in terms of subsection (1) within 30 days after the submission of the application for review, with a possible extension of up to 30 days upon request by the Chairperson of the Tribunal.
- 3.39. Clause 55: Amendment in line 42 on page 26: Omission of "or review process". Amendment in line 48 on page 26: Replacement of "(xi)" with "(xii)".
- 3.40. Clause 56: Amendment in line 55 on page 26: Replacement of "61" with "60, if it has reasonable cause to suspect that non-compliance has occurred".
- 3.41. Clause 57: Amendment in line 26 on page 28: Omission of "and". Amendment in line 28 on page 28: Replacement of "investigation." with "investigation; and". Addition after line 28 on page 28: Insertion of: "(viii) take photographs and videos of equipment and documents."
- 3.42. Clause 59: Amendment in line 44 on page 29: Insertion after "regulations":
"and a decision by notice in the Gazette". Amendment in lines 48-49 on page 29: Replacement of "him or her" with "the Director-General". Amendment in line 54 on page 29: Addition after "section 20": ", except a decision by notice in the Gazette". Amendment in line 59 on page 29: Replacement of "him or her" with "the Director-General". Amendment in line 1 on page 30: Replacement of "he or she" with "the Director-General". Replacement of subclauses (4) and (5) in lines 8-17 on page 30:
With the following new subclauses: "(4) The Head of the Public Procurement Office may, except the issuance of instructions— (a) delegate to an official of the Public Procurement Office any

power conferred on the Head Public Procurement Office by this Act; (b) authorise an official of the Public Procurement Office to perform any duty imposed on the Head of the Public Procurement Office by this Act; (c) delegate to a provincial treasury any power conferred on the Head of the Public Procurement Office by this Act; or (d) authorise a provincial treasury to perform any duty imposed on the Head of the Public Procurement Office by this Act. (5) The Head of a provincial treasury may, except the issuance of instructions— (a) delegate to any of its officials any power conferred on the Head of the provincial treasury by this Act; or (b) authorise any of its officials to perform any duty imposed on the Head of the provincial treasury by this Act.”

- 3.43. New Clause 61: Insertion of a new clause after clause 60: Financial misconduct (1) An accounting officer or accounting authority of a procuring institution commits financial misconduct if that officer or authority fails to take reasonable steps to implement this Act or the procurement system of the procuring institution in accordance with this Act. (2) A charge of financial misconduct, referred to in subsection (1), must be investigated, heard, and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority.
- 3.44. Clause 61: Replacement of paragraphs (b) to (d) in lines 36-44 on page 30: With the following paragraphs: (b) interferes with or exerts undue influence on any official of a procuring institution or member of the Tribunal in the performance of a duty or in the exercise of a power under this Act; (c) without authorization opens a sealed bid, whether submitted electronically or otherwise, or discloses their contents prior to the official public opening of the bid; (d) conspires to commit extortion or a corrupt, fraudulent, collusive, or coercive or obstructive act related to procurement under this Act. Amendment in line 54 on page 30: Replacement of “excuse” with “explanation”. Omission of subclause (3) in lines 4-7 on page 31.
- 3.45. Clause 62: Omission of “or” in line 19 on page 31. Replacement of “declared.” with “declared; or” in line 20 on page 31. Addition after line 20 on page 31: Insertion of: “(e) it is uneconomical to comply with any provision of this Act. (2) If a request for an exemption is made in terms of subsection (1), the Minister must make a decision within 30 days after receipt of all the relevant documents.”
- 3.46. Clause 63: Replacement of “impossible, impractical or uneconomical” with “uneconomical” in line 27 on page 31. Addition after line 30 on page 31: Insertion of: “(2) The Public Procurement Office must, with or without conditions, authorise a departure from a provision of an instruction, issued in terms of section 5(2) if it is impossible or uneconomical to comply with the instruction. (3) If a request for a departure is made in terms of subsection (1) or (2), the Public Procurement Office must make a decision within 30 days after receipt of all the relevant documents.” Replacement of “(1) and (2)” with “(1) to (4)” in line 33 on page 31.
- 3.47. Clause 64: Insertion after “Minister” in line 36 on page 31: Addition of: “, by notice in the Gazette” Omission of item (aa) in lines 41-43 on page 31. Omission of subparagraph (vi) in line 50 on page 31. Addition after line 28 on page 32: Insertion of: “(vi) regarding contracting methods for any category of procurement; and”. Replacement of subclause (2) in lines 31-32 on page 32: With the following: “(2) The Minister, before complying with subsection (3), must consult— (a) the relevant Minister on a draft regulation affecting the portfolio of that Minister; and (b) organised local government on a draft regulation affecting municipalities or municipal entities.”
- 3.48. New Clause 65: Insertion of a new clause after clause 65: In writing requirement “Any request, decision, approval, authorisation, determination, direction or notification or report in terms of this Act must be in writing.”
- 3.49. Clause 66: Addition after “the commencement of” in line 13 on page 33: Insertion of: “the applicable provision or provisions of”.
- 3.50. New Clause 68: Insertion of a new clause after line 18 on page 33: Review of Act “68. The Minister must— (a) within 24 months after this Act is first published as an Act in the Gazette, review the implementation of this Act and the need for amendments to this Act; (b) consult stakeholders, including Nedlac, during the review; and (c) within 27 months after this Act is first published as an Act in the Gazette, make public a report on the review and submit it to Parliament.”
- 3.51. Clause 68: Replacement of “2023” with “2024” in line 21 on page 33.
- 3.52. The provided new schedule outlines a comprehensive set of amendments and repeals to existing legislation, all related to the implementation and alignment with the Public Procurement Bill.
- 3.53. Preamble Amendments: Insertion of “and local” after “provincial” in the first paragraph. Insertion of “, or categories of persons” after “the advancement of persons” in the second paragraph. Omission of “within a framework prescribed by national legislation” from the second

paragraph. Insertion of additional text after the second paragraph to align with constitutional requirements. Insertion of text recognizing the importance of economic transformation and black economic empowerment after the sixth paragraph.

- 3.54. Arrangement of Sections Amendments: Replacement of the section heading to "PROCUREMENT INTEGRITY AND DEBARMENT". Replacement of text to include "framework, procurement policies and application of provisions". Omission of "Other preference measures". Omission of "Establishment of procurement functions". Insertion of a new section titled "Financial misconduct". Insertion of a new section titled "In writing requirement". Insertion of a new section titled "Review of Act".

4. CONCLUSION

4.1. The Committee agrees with the amendments made [B18C-2023].

4.2. The Committee adopts the Bill as amended [B18D-2023].

The Democratic Alliance (DA) reserve their position.

Report to be considered.