

REPUBLIC OF SOUTH AFRICA

STANDING COMMITTEE AMENDMENTS
TO
PUBLIC PROCUREMENT BILL

[B 18—2023]

(As agreed to by the Standing Committee on Finance (National Assembly))

[B 18A—2023]

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AMENDMENTS AGREED TO

PUBLIC PROCUREMENT BILL

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PREAMBLE

1. On page 2, after the paragraph ending with the word “transparency;”, insert the following paragraph:

AND WHILE RECOGNISING the need to increase the capacity of organs of state to provide goods and services they require, the procurement of goods and services from persons outside the State, where necessary, must be regulated;

CLAUSE 1

1. On page 5, before the definition of “accounting authority”, insert the following definition:

“acceptable bid” means a bid which, in all respects, complies with the specifications and conditions of a bid as set out in the invitation to bid;

2. On page 5, after the definition of “accounting officer”, insert the following definition:

“B-BBEE status level of contributor” means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

3. On page 5, in lines 42 to 43, substitute the definition of “bid” for the following definition:

“bid” means a written offer, which is capable of acceptance and conversion into a contract, in the form determined by the procuring institution in line with its compliance requirements in response to an invitation for procurement through any prescribed procurement method;

4. On page 5, in lines 47 to 48, omit the definition of “bid document”.

5. On page 5, after the definition of “bidder”, insert the following definition:

“black people” has the meaning assigned in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

6. On page 5, after the definition of “capital asset”, insert the following definitions:

“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; or
 - (f) information that is likely to prejudice national security;
7. On page 5, after the definition of “Constitution”, insert the following definition:
- “co-operative”** has the meaning assigned in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005);
8. On page 6, in lines 5 to 14, omit the definition of “decision” and substitute for the following definition:
- “economically active population”** means all persons, within the population of the Republic, who contribute to economic activity or are available to contribute to economic activity;
9. On page 6, in lines 15 to 21, substitute the definition of “emergency” for the following definition:
- “emergency”** means an event which is unexpected and usually dangerous situation that poses an immediate risk to health, life, human rights, property, financial loss, livestock, environment, cybersecurity or the ability of the procuring institution to maintain critical business functions and requires immediate action;
10. On page 6, in lines 22 to 29, substitute the definition of “immediate family member” for the following definition:
- “immediate family member”** means a spouse, civil partner, life partner, child, step-child, parent or sibling;
11. On page 6, after the definition of “immediate family member” insert the following definition:
- “income-generating contract”** means an agreement between the procuring institution and a third party that produces revenue for the procuring institution, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions;
12. On page 6, in lines 30 to 31, substitute the definition of “infrastructure” for the following definition:
- “infrastructure”** means the physical facilities or structures and systems including digital or analogue communication systems that are required to provide services directly or indirectly to the public;
13. On page 6, in lines 32 to 33, substitute the definition of “instruction” for the following definition:
- “instruction”** means an instruction issued by the Public Procurement Office in terms of section 5 or a provincial treasury in terms of section 6;

14. On page 6, after the definition of “member of the Tribunal”, insert the following definition:

“**military veteran**” has the meaning assigned in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);

15. On page 6, in lines 55 to 62, substitute paragraphs (h) and (i) of definition of “national security” for the following paragraphs:

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

16. On page 7, after the definition of “panel”, insert the following definition:

“**people with disabilities**” has the meaning assigned in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);

17. On page 7, in line 47, substitute the definition of “publish” for the following definition:

“**publish**” means publication in the *Gazette* or on a website or on an easily accessible central online portal that is publicly available;

18. On page 7, after the definition of “related persons”, insert the following definition:

“**small enterprise**” has the meaning assigned in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

19. On page 7, in lines 54 to 57, omit the definition of “strategic sourcing”.

20. On page 7, after the definition of “supplier”, insert the following definitions:

“**this Act**” includes the regulations, codes of conduct, instructions and notices made or issued in terms of this Act;

“**transformation**” in relation to public procurement, means the process of change that seeks to—

- (a) redress the unfair discrimination of the past;
- (b) achieve representation of economically active population of the Republic; and
- (c) achieve socio-economic objectives;

21. On page 7, in lines 59 to 60, substitute the definition of “transversal term contract” for the following definition:

“**transversal term contract**” means a contract arranged by the relevant treasury or other procuring institutions mandated in terms of legislation, for procurement that is required by two or more procuring institutions;

22. On page 7, after the definition of “Tribunal rules” insert the following definition:

“youth” has the meaning assigned in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

23. On page 8, in line 1 to 2, omit the definition of “this Act”.

CLAUSE 2

1. On page 8, in lines 16 to 17, substitute for the following:
 - (2) The objects referred to in subsection (1) must, among others—
 - (a) ensure efficient, effective and economic use of public resources through, among others, the assessment of the costs, benefits and risks;
2. On page 8, in line 24, insert “and” at the end of subparagraph (ii).
3. On page 8, in line 25, omit subparagraph (iii).
4. On page 8, in line 31, substitute paragraph (g) for the following paragraph:
 - (g) promote innovation and sustainable development.

CLAUSE 3

1. On page 8, in line 44, omit “and” in paragraph (a).
2. On page 8, in line 45, substitute the full-stop for the expression “; and” after the word “bid”.
3. On page 8, in sub-clause (3) after paragraph (b), add the following paragraph:
 - (c) all procurement carried out by any person on behalf of a procuring institution.

CLAUSE 5

1. On page 9, in line 34, omit “non-binding”.
2. On page 9, in line 36, before “determine”, insert “after consultation with the relevant category of procuring institutions”.
3. On page 9, in lines 38 to 40, omit paragraph (d).

CLAUSE 6

1. On page 10, in line 14, omit “non-binding”.
2. On page 10, in lines 18 to 20, omit paragraph (d).
3. On page 10, in lines 26 to 30, omit sub-clause (4).

CLAUSE 8

1. On page 10, in line 40, in paragraph (b) of sub-clause (1), omit “develop and”.
2. On page 10, in lines 42 to 44, omit paragraphs (d) and (e) of sub-clause (1).
3. On page 10, in line 52, omit paragraph (b).

CLAUSE 10

1. On page 11, in line 23, substitute paragraph (d) for the following paragraph:
 - (d) if a conflict of interest exists in a procurement matter, disclose such conflict and recuse himself or herself from participating in the process of that procurement matter.

CLAUSE 13

1. On page 12, in line 11, substitute heading for the following heading:

Automatic exclusion from submitting bid
2. On page 12, in lines 14 to 15, substitute paragraph (b) of sub-clause (1) with the following paragraph:

an official or employee of Parliament or a provincial legislature;
3. On page 12, in lines 32 to 34, omit sub-clause (3).

CLAUSE 14

1. On page 12, reject clause 14 and substitute for the following clause:

Directions inconsistent with Act

14. (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 any 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 to do in terms of this Act, the affected person must not comply with the direction.

- (2) The affected person—
- (a) must inform the Public Procurement Officer or relevant provincial treasury, in the prescribed manner, of the direction, the objection and the reason for the objection;
 - (b) may submit in writing to the person with authority, the objection, and the reason for the objection;
 - (c) may inform, in writing, his or her supervisor who must initiate an investigation into the allegation within a period prescribed in the procuring institution policies;
 - (d) may report to the Public Service Commission or any other relevant body for investigation.

(3) If the supervisor does not initiate an investigation, the Public Procurement Office or the relevant provincial treasury must initiate an investigation in the prescribed manner unless reported in terms of subsection (2)(d).

(4) The affected person may not, despite any term of his or her employment, be subjected to occupational detriment as defined in section 1 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), due to the non-compliance with the direction of the person with authority.

CLAUSE 15

1. Reject clause 15.

CLAUSE 16

1. Reject clause 16 and substitute for a new clause:

Debarment

16. (1) Before issuing a debarment order in terms of this section, a procuring institution must provide the bidder, supplier or any of the directors, members, trustees or partners of that bidder or supplier (herein called “the affected person”) with a notice of the intention to debar.

(2) The notice must—

- (a) indicate the reason for the intended debarment; and
- (b) invite the affected person to provide reasons why he or she must not be debarred.

(3) A procuring institution 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) 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 or breach of confidentiality relating to procurement by a procuring institution;
- (e) has not performed a material contractual obligation not due to circumstances beyond the control of the supplier;
- (f) has been convicted of an offence relating to—
 - (i) obtaining or attempting to obtain a contract or subcontract; or
 - (ii) business or professional activities;
- (g) attempted, or conspired with, aided, abetted, induced or incited another person to contravene a provision of this Act; or
- (h) contravened a provision of this Act.

(4) (a) The procuring institution must consider the reasons submitted in terms of subsection (2)(b) and decide whether to issue a debarment order.

(b) The procuring institution must notify—

- (i) the affected person; and
 - (ii) the Public Procurement Office,
- within five days from the date of the decision.

(5) The procuring institution may, on application by the affected person—

- (a) reduce the period of the debarment order; or
- (b) revoke the debarment order, if the order was made in error of fact, error of law or fraud.

- (6) The Public Procurement Office must—
- (a) establish and maintain a debarment register of persons debarred in terms of this section; and
 - (b) make the register publicly available.
- (7) The Public Procurement Office must immediately after being notified of the decision to debar in terms of subsection (4)(b) include the name of the affected person in the register referred to in subsection (6).
- (8) A debarment order takes effect on the date the name of the affected person appears in the register referred to in subsection (6).
- (9) A debarment order may not exceed the prescribed period and different periods may be prescribed for debarment in terms of subsection (3).
- (10) A debarment order prohibits the affected person, for the period specified in the debarment order, from participating in procurement by procuring institutions generally or in circumstances specified in the order.
- (11) (a) A person debarred in terms of this section may not engage in conduct that, directly or indirectly, contravenes the debarment order.
- (b) Without limiting paragraph (a), a person debarred contravenes that paragraph if the person enters into an arrangement with another person to engage in the conduct that directly or indirectly contravenes a debarment order in accordance with the directions of the person debarred.

CLAUSE 17

1. On pages 14 to 15, substitute Chapter 4 for the following chapter:

CHAPTER 4

PREFERENTIAL PROCUREMENT

Preferential framework and procurement policies

17. A procuring institution must implement 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, envisaged in section 217(2) and (3) of the Constitution, in accordance with the objects of this Act and the framework in this Chapter.

Set-asides for preferential procurement

18. (1) A procuring institution must set-aside a bid for a category of persons provided for in subsection (3) in accordance with the prescribed thresholds and conditions.

(2) (a) The Minister must, subject to this subsection, prescribe targets for set-aside referred to in subsection (1).

(b) The Minister must, within 30 days after the commencement of this section consult the relevant Ministers for which categories of persons targets for set-aside must be prescribed.

(c) The Minister must, at least every two years after prescribing any target for set-aside as envisaged in terms of paragraph (b), consult as envisaged in paragraph (b), on proposed amendments to any target so prescribed and prescribing new targets.

(d) If no target for set-aside for a category of persons is prescribed in terms of paragraph (a), a procuring institution is not precluded from setting aside a bid for that category.

- (3) Persons referred to in subsection (1) are limited to—
- (a) black people;
 - (b) black women;
 - (c) women;
 - (d) black people with disabilities;
 - (e) people with disabilities;
 - (f) small enterprises owned by—
 - (i) black people;
 - (ii) black women;
 - (iii) women;
 - (iv) black people with disabilities;
 - (v) people with disabilities;
 - (vi) black people who are youth; or
 - (vii) youth;
 - (g) small enterprises within a particular geographical area;
 - (h) small enterprises;
 - (i) co-operatives which consists of members who are black people; or
 - (j) co-operatives.

(4) (a) Persons referred to in subsection (3)(a) to (f) must be owned by the relevant category in accordance with the prescribed percentages.

(b) Persons referred to in subsection (3)(a) to (h) must be owned by citizens of the Republic in accordance with the prescribed percentages.

(c) Persons referred to in subsection (3)(i) and (j) must have members of the relevant category and citizens of the Republic in accordance with the prescribed percentages.

(5) A bid set-aside in terms of subsection (1), must be evaluated as follows:

- (a) Assessment against terms and conditions as stated in the bid document;
- (b) if functionality is part of the bid, evaluation must be done in terms of functionality and the minimum qualifying score;
- (c) a bid must be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation; and
- (d) qualifying bids must be evaluated further in terms of the prescribed criteria which may include complementary goals as prescribed.

(6) If the goods or services required cannot be procured in terms of this section, the procuring institution must—

- (a) procure in accordance with section 19; and
- (b) record the reasons and report to the Public Procurement Office and the relevant treasury in the form determined by the Public Procurement Office.

(7) This section applies with the necessary changes and as prescribed to a bid for an income-generating contract.

Prequalification criteria for preferential procurement

19. (1) A procuring institution must, in accordance with the prescribed thresholds and conditions, apply prequalification criteria to promote preferences in the allocation of contracts, by advertising a bid with a specific bid condition that only one or more of the following bidders may respond:

- (a) A bidder having a stipulated minimum B-BBEE status level of contributor;
- (b) persons referred to in section 18(3)(a), (b), (c), (d), (e) or (f); or

- (c) a bidder subcontracting a prescribed minimum percentage to—
- (i) a small enterprise which is owned by black people;
 - (ii) a small enterprise which is owned by black people who are youth;
 - (iii) a small enterprise which is owned by black people who are women;
 - (iv) a small enterprise which is owned by black people with disabilities;
 - (v) a small enterprise which is owned by black people within a particular geographical area;
 - (vi) a small enterprise which is owned by black people who are military veterans;
 - (vii) a small enterprise; or
 - (viii) a co-operative which consists of members who are black people;
 - (ix) a co-operative.

(2) (a) Persons referred to in subsection (1)(a), (b) and (c)(i) to (vii) must be owned by the relevant category in accordance with the prescribed percentages.

(b) Persons referred to in subsection (1)(a), (b) and (c)(i) to (vii) must be owned by citizens of the Republic in accordance with the prescribed percentages.

(c) Persons referred to in subsection (1)(c)(viii) and (ix) must have members of the relevant category and citizens of the Republic in accordance with the prescribed percentages.

(3) A procuring institution may only select one of the preferences identified in paragraph (c) of subsection (1).

(4) Procuring institutions must at the procurement and bid planning stage identify procurement opportunities to promote preferences in the allocation of contracts and apply any or more of the prequalification criteria referred to in subsection (1)(a) to (c).

(5) Procuring institutions must conduct market research and industry analysis to identify procurement opportunities, level of transformation in a particular sector or commodity, supply market, and availability of small enterprises or co-operatives or both and their B-BBEE status level that may be eligible to bid in order to identify sectors and industries that are not transformed where any of the prequalification criteria referred to in subsection (1)(a) to (c) could be applied to assist in transforming those sectors and industries.

(6) A procuring institution, subsequent to the research and analysis envisaged in subsection (5), may only select one or more prequalification criteria if there are a prescribed minimum number of bidders to ensure competition.

(7) A bidder that fails to meet any prequalification criteria stipulated in the bid documents is an unacceptable bid and must be disqualified.

(8) A procuring institution must, in addition to the measures stipulated in subsections (1) to (7), evaluate the bid in terms of the prescribed criteria which may include complementary goals as prescribed.

(9) This section applies with the necessary changes and as prescribed to a bid for an income-generating contract.

Subcontracting as condition of bid

20. (1) Where feasible, a procuring institution must subcontract a contract above a prescribed amount, to advance persons or categories of persons in subsection (2)(a) to (i).

(2) If a procuring institution applies subcontracting as envisaged in subsection (1), the procuring institution must advertise the bid with a specific bidding condition that the successful bidder must subcontract a prescribed minimum percentage of the value of the contract to—

- (a) a small enterprise;
- (b) a small enterprise which is owned by black people;
- (c) a small enterprise which is owned by black people who are youth;
- (d) a small enterprise which is owned by black people who are women;
- (e) a small enterprise which is owned by black people with disabilities;
- (f) a small enterprise which is owned by black people living in a particular geographical area;
- (g) a small enterprise which is owned by black people who are military veterans;
- (h) a co-operative which consists of members who are black people; or
- (i) a co-operative.

(3) (a) Persons referred to in subsection (2)(a) to (g) must be owned by the relevant category in accordance with the prescribed percentages.

(b) Persons referred to in subsection (2)(a) to (g) must be owned by citizens of the Republic in accordance with the prescribed percentages.

(c) Persons referred to in subsection (2)(h) and (i) must have members of the relevant category and citizens of the Republic in accordance with the prescribed percentages.

(4) Bidders must identify and select subcontractors as prescribed.

(5) A bidder that fails to meet any mandatory subcontracting criteria stipulated in the bid documents is an unacceptable bid and must be disqualified.

(6) A procuring institution must, in addition to the measures stipulated in subsections (1) to (5), evaluate the bid in terms of the prescribed criteria which may include complementary goals as prescribed.

(7) This section applies with the necessary changes and as prescribed to a bid for an income-generating contract.

Designation of sectors for local production and content

21. (1) The Minister responsible for trade, industry and competition (herein called “the responsible Minister”) must, by notice in the *Gazette*—

- (a) designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced or manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors;
- (b) stipulate a minimum threshold for local production and content; and
- (c) stipulate the period of the designation.

(2) The designation and stipulation, as envisaged in subsection (1)(a) and (b), may only occur after the responsible Minister has—

- (a) published the proposed designation, including the proposed minimum thresholds, for public comment for thirty days in the *Gazette* and on the departmental website and has notified the Minister of such publication;

- (b) reviewed all comments received and provided responses to the comments in a schedule setting out the comments and responses;
- (c) updated the proposed designation after considering the comments and proposals made during the public comment stage; and
- (d) submitted the updated proposed designation to the Minister and considered any comments made by the Minister.

(3) In determining the threshold referred to subsection (1)(b), the responsible Minister must, in addition to considering the public comments and responses envisaged in subsection (2), consider—

- (a) whether there are sufficient local manufacturers in the country who are capable to compete for the provision of goods designated for local production and content by determining—
 - (i) the number of existing manufacturers available in the country;
 - (ii) security of supply or capability to supply for the period that the designation is to be in effect;
 - (iii) the contribution of other role-players in the supply chain of the commodity or product including distributors and product agents; and
 - (iv) the effect of local production and content on employment; and
- (b) the economic impact on imported goods.

(4) The sufficient local manufacturers referred to in subsection (3)(a) must be determined by the responsible Minister but may not be less than three local manufacturers.

(5) (a) A procuring institution must, in the case of a designation in terms of subsection (1), advertise the invitation to bid with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.

(b) A bid that fails to meet the minimum stipulated threshold for local production and content is an unacceptable bid and must be disqualified.

(6) (a) If the required quantity of goods subject to a designation in terms of subsection (1), cannot be wholly sourced from local manufacturers or at the designated local content threshold for the period of the designation, or both, the procuring institution may submit a request for a waiver, in the form determined by the responsible Minister.

(b) The responsible Minister may determine by notice in the *Gazette* and on its website that, until further notice, that procuring institutions are granted a waiver from procuring at the stipulated minimum thresholds for local production and content as envisaged in paragraph (a).

(7) If the responsible Minister does not grant the waiver referred to in subsection (6), and the procuring institution has sufficient evidence that the quantity of goods required cannot be wholly sourced from local manufacturers or at the designated local content threshold for the period of the designation, or both, the procuring institution—

- (a) may advertise the invitation to bid without a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content will be considered; and
- (b) must within 14 days after the advertisement inform the responsible Minister accordingly and of the reasons.

(8) A procuring institution must, in addition to the measures stipulated in subsection (1) to (7), evaluate the bid in terms of the prescribed criteria which may include complementary goals as prescribed.

Other preference measures

22. If sections 18, 19, 20 and 21 are not applicable, preferences must be allocated as prescribed.

Measures to advance sustainable development

23. A procuring institution may, in accordance with prescribed conditions, provide for measures to advance sustainable development in procurement.

Measures for beneficiation and innovation, advancing creation of jobs, intensification of labour absorption and development of small enterprises within particular geographical area

24. When procuring, a procuring institution may, in accordance with prescribed conditions, provide for measures to advance the creation of jobs, intensification of labour absorption, beneficiation, innovation and the development of small enterprises within a particular geographical area.

Contracting conditions

25. (1) A procuring institution may, as prescribed, provide for measures for preference as a condition of contract that the supplier must achieve at the end of the contract.

(2) Future deliverables must form part of the contract with set milestones to be achieved together with penalties to be imposed if the supplier fails to achieve them in accordance with conditions stipulated in the contract.

CLAUSE 18

1. On page 15, in lines 18 to 27, substitute sub-clauses (1) and (2) for the following:

(1) The Minister must prescribe a framework within which procuring institutions must implement the procurement system referred to in section 8(1)(b) 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; and

(iv) to promote innovation;

(b) types of procurement methods; and

(c) the requirements and procedure to be followed for each prescribed method.

(2) The Minister may determine—

(a) by notice in the *Gazette*, procurement thresholds; and

(b) different thresholds for—

(i) different categories of procuring institutions; and

(ii) different categories of procurement.

2. On page 15, in line 49, substitute “may” with “must”.
3. On page 15, in lines 54 to 55, omit paragraph (b).
4. On page 15, in lines 56 to 57, omit sub-clause (7).

CLAUSE 20

1. On page 16, reject clause 20.

CLAUSE 22

1. On page 16, in lines 41, 42 and 44, substitute “unit” for “function”.
2. On page 16, in line 45, omit “allocated to the unit”.
3. On page 16, in lines 50 to 53, substitute paragraph (d) for the following paragraph:

(d) provide strategic support to the procuring institution in the performance of its procuring responsibilities;

CLAUSE 23

1. On page 17, in line 3, omit:
and the functions of each committee

CLAUSE 24

1. On page 17, in lines 13 to 14, omit:
that complies with section 18, for all procurement

CLAUSE 25

1. On page 17, in line 35, substitute “24(b)” for “24(1)”.

CLAUSE 26

1. On page 17, in lines 47 to 52, substitute sub-clause (1) for the following sub-clause:

(1) The Minister may prescribe measures for the public, civil society and media to access, scrutinise and monitor procurement processes.
2. On page 18, in line 1, substitute “instruction” with “regulations”.
3. On page 18, in line 2, substitute “must put in place” for “may introduce”.
4. On page 18, in line 6, omit “and”.
5. On page 18, in line 8, substitute the full-stop for the expression “; and”.

6. On page 18, after line 8, insert the following paragraph:

(c) must exclude confidential information.

CLAUSE 27

1. On page 18, in line 10, substitute sub-clause (1) for the following sub-clause:

“(1) The Minister must prescribe requirements to disclose information regarding procurement.”
2. On page 18, in line 12, substitute “instruction” for “regulations”.
3. On page 18, in line 24, substitute “56(12)” for “56(7)(aA)”.
4. On page 18, in lines 37 to 46, omit sub-clause (3).

CLAUSE 31

1. On page 20, in lines 5 to 24, reject clause 31 and to substitute with the following clause:

Reconsideration by procuring institution

31. (1) A bidder may submit an application for reconsideration to the procuring institution if that bidder is not satisfied with a decision to award a bid by that institution.

(2) (a) Subject to paragraph (c), the Tribunal or a court may not review a decision to award a bid unless the bidder has exhausted the internal remedy envisaged in subsection (1).

(b) Subject to paragraph (c), the Tribunal or a court must, if it is not satisfied that the internal remedy has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in the Tribunal for a review in terms of this Act or a court for judicial review.

(c) The Tribunal or a court may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust the internal remedy if the Tribunal or the court considers it in the interest of justice.

(3) An application referred to in subsection (1) must be submitted to the procuring institution within 10 days of the date the bidder is informed of the decision to award a bid.

(4) A procuring institution may dismiss an application for reconsideration if the application was not submitted within 10 days of the date the bidder is informed of the decision to award a bid.

(5) Despite the period stated in subsection (4), a bidder may request the procuring institution to consider an application for reconsideration filed after the expiry of the period mentioned in subsection (3), on the ground that the application raises public interest considerations.

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

(a) immediately institute an investigation; and

(b) make a decision and inform the bidder within 30 days.

(7) A decision referred to in subsection (6)(b)—

(a) must state whether the application is granted or dismissed, in whole or in part;

(b) must state the reasons for the decision; or

(c) may state any corrective measures to be taken.

(8) If the decision of the procuring institution in terms of subsection (6)(b) results in the withdrawal of the original award, the awarded bidder if not satisfied with the decision of the procuring institution, may file an application for review with the Tribunal in terms of section 43(1).

CLAUSE 32

1. On page 20, in line 30, substitute “the Public Procurement Office” for “a procuring institution”.

CLAUSE 47

1. On page 24, in lines 22 and 24, substitute “Public Procurement Office” for “procuring institution”.
2. On page 24, in lines 26 to 28, substitute sub-clause (3) for the following sub-clause:

(3) (a) The decision of the majority of the members of the panel constitutes a decision of the panel.

(b) The chairperson of the panel has a casting vote in the event of an equality of votes.

CLAUSE 49

1. On page 25, in lines 4 to 18, substitute sub-clauses (2) to (4) for the following sub-clause:

(2) If an emergency requires procurement for a matter that is the subject of a reconsideration or a review as envisaged in subsection (1), emergency procurement may take place as envisaged in section 58(1)(a)(xi).

CLAUSE 50

1. On page 25, in line 23, after “institution” insert “, a member of the public”.

CLAUSE 53

1. On page 28, insert after sub-clause (1) the following:
 - (2) (a) The Minister responsible for trade, industry and competition may—
 - (i) delegate to the Director-General responsible for trade, industry and competition a power conferred in terms of section 21; or
 - (ii) authorise the Director-General responsible for trade, industry and competition to perform any duty imposed on the Minister by section 21;
 - (b) The Director-General responsible for trade, industry and competition may—
 - (i) delegate to any official of the department for trade, industry and competition 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).

CLAUSE 54

1. On page 28, in lines 49 to 52, reject clause 54 and substitute for the following clause:

Limitation of liability

54. No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act.

CLAUSE 56

1. On page 29, in line 36, omit “or”.
2. On page 29, in line 38, substitute the full-stop for the expression “;”.
3. On page 29, insert after paragraph (b) the following paragraphs:
 - (c) a disaster is declared in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002); or
 - (d) a state of emergency as envisaged in section 37 of the Constitution is declared.
4. On page 29, in line 41, omit “a regulation made in terms of this Act or”.

CLAUSE 57

1. On page 29, in line 43, substitute “Deviation” for “Departure”.
2. On page 29, in line 45, substitute “deviation” for “departure”.
3. On page 29, in line 45, omit “a regulation or”.
4. On page 29, in line 50 to 52, omit paragraphs (c) and (d).
5. On page 29, in line 55, substitute “deviation” for “departure”.
6. On page 29, after line 56, insert the following subsection:
 - (3) Subsections (1) and (2) applies with the necessary changes to instructions issued by a provincial treasury in terms of section 6(2).

CLAUSE 58

1. On page 30, after subparagraph (x) insert the following subparagraph:
 - (xi) transversal term contracts and public private partnerships;

NEW CLAUSE

1. On page 31, after clause 58, insert a new clause:

Instructions

59. (1) The Public Procurement Office or a provincial treasury must, before making an instruction, publish—

- (a) a draft of the instruction;
- (b) a statement explaining the need for and the intended operation of the instruction;
- (c) a statement of the expected impact of the instruction; and
- (d) a notice inviting submissions in relation to the instruction and stating the form and manner in which the submissions are to be made.

(2) (a) With each instruction, the Public Procurement Office or a provincial treasury must publish a consultation report.

(b) A consultation report referred to in paragraph (a) 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.

CLAUSE 61

1. On page 31, in line 28, substitute “Minister by notice” for “President by proclamation”.
2. On page 31, in line 29, substitute “Minister” for “President”.

SCHEDULE

1. On page 33, item 11 in the 1st column, substitute sub-item 19 in the 4th column for the following item:

19. The substitution in section 5 for subsection (4) of the following subsection:

“(4) To promote uniform and ethical standards within the construction industry, the Board—

- (a) must, in consultation with the Public Procurement Office, publish a code of conduct for all public sector construction-related procurement and all participants involved in public sector procurement process; and
- (b) may, after consultation with the Public Procurement Office, initiate, promote and implement national programmes and projects aimed at the standardisation of procurement documentation, practices, and procedures.”;

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