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What you could expect from the forthcoming Public Procurement Bill

Parliament has adopted the Public Procurement Bill (PPB) in early December 2023 and has sent it to the National Council of Provinces (NCOP) for adoption of which some predict that it may be passed before the national elections.

The Bill would after acceptance regulate all state procurement and empower the Minister of Finance to promulgate Regulations pertaining to preferential procurement.

On the face of it the Bill depicts compliance with all the enabling sections of the Constitution, especially Section 217 which demands that all state procurement systems must be “fair, equitable, transparent, competitive and cost-effective.”

Bidders and all those connected to a procurement process will have to comply with a set of codes which is included in the Bill and failure to do so could lead to them being debarred from state tenders.

The Bill also requires that all those organs of state which falls under its ambit must implement a procurement policy inclusive of “Categories of preference” meaning who would receive a preference within the scope of, “The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.”

The contentious application of set-asides is allowed for under the scope of preferential procurement, also, in favour of certain categories of persons.

Also, the much debated “Prequalification Criteria” will be re-introduced into the tendering framework, and only to consider those bids which complies with the minimum criteria as set out in the bid document.

It also makes provision for “Subcontracting as condition of bid” and Local Content and Production for designated sectors, as was the case prior to the 2022 Regulations, will remain the prerogative of the Minister of Trade and Industry.

The Bill also deals with provisions for an organ of state to apply “Measures to advance sustainable development and matters such as beneficiation and innovation” and only to consider bidders who are complying with the required contracting conditions, respectively.

A dispute resolution process is also introduced by the Bill for aggrieved bidders to object, appeal or lodge a dispute to a procurement decision through the office of the Public Procurement Tribunal.

According to Gerrit Davids, lead advisor at TaranisCo Advisory, procurement and tendering agency, “It seems that the Bill has gone back to the future and despite still placing emphasis on preferential treatment for “Persons, or categories of persons, disadvantaged by unfair discrimination” it has brought back the B-BBEE Status requirement of bidders through the “Prequalification Criteria”, which means that B-BBEE certificates will again be of importance in future tendering.”

Davids says, “Bidders would again be required to re-align their shareholding both in lieu of the, “Historically Disadvantaged Individual” elements and B-BBEE, to comply with the “Prequalification Criteria”, respectively.”

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