

Public Procurement Act – Synopsis

Opening Ambit

The South African Public Procurement Bill proposes a unified system for fair, transparent, and efficient public buying that supports disadvantaged businesses and fights corruption.

Objects of the Act

The Act aims to standardize Treasury norms, promote transparency, combat corruption, advance economic development through local preference, enhance procurement efficiency, provide effective dispute resolution, and support innovation and sustainable development.

Application

The Act applies to government departments, constitutional institutions, municipalities, municipal entities, and public entities.

It governs all procurement activities, including those with donor funding, and takes precedence over conflicting laws. The Minister oversees its administration.

Chapter 1: Definitions

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

The Public Procurement Office, housed within the National Treasury, will ensure impartial enforcement of the Public Procurement Act, fostering integrity and transparency in procurement.

It will achieve this through guidance, adoption of technology, monitoring compliance, and influencing policy.

Provincial treasuries will similarly oversee transparent procurement management within their respective provinces, issuing binding instructions, monitoring practices, and guiding capacity building to align with the Public Procurement Office's directives.

Procuring institutions, guided by the Act, will empower their accounting officers to make decisions that uphold compliance, efficiency, clear specification of needs, information provision, and rectification of errors within their procurement processes.

CHAPTER 3: PROCUREMENT INTEGRITY AND DEBARMENT

Under the Public Procurement Act, participants will be required to adhere to strict conduct rules, which will include maintaining impartiality and avoiding conflicts of interest.

Procuring institutions will enforce transparency by excluding ineligible individuals and will require clear disclosure of interests from bidders.

Interference in procurement processes will be prohibited, with automatic exclusions applying to certain officials.

Officials will be required to refuse directives conflicting with the Act and to report any issues to oversight bodies.

Debarment procedures of suppliers will involve notification, opportunities for response, and reviews for misconduct, prohibiting participation until issues are resolved.

CHAPTER 4: PREFERENTIAL PROCUREMENT

Under the Preferential Procurement Policy Framework, procuring institutions will be required to implement policies that prioritize contract allocation to advance disadvantaged groups as outlined by constitutional guidelines.

This will include setting aside bids for categories such as black people, women, and small enterprises, with targets to be set by the Minister every two years after consultation.

The criteria for prequalification will include requirements for subcontracting to enhance contract preferences for disadvantaged groups, specifying ownership and citizenship criteria.

Additionally, designated sectors will be required to prioritize locally produced goods, with provisions for waivers when local supply is insufficient.

Organs of state will be able to incorporate conditions aimed at promoting sustainable development, job creation, and the development of small enterprises in specific geographical areas.

Penalties will be stipulated for non-compliance with contract terms.

CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

The Public Procurement Act establishes a framework for procuring institutions to ensure strategic and efficient procurement of goods and services.

It mandates clear methods and evaluation criteria, prohibits conflicted officials from bid committees, and requires strict adherence to prevent abuse and corruption.

The Act promotes technology-driven transparency and efficiency in procurement processes, facilitates public scrutiny through accessible portals, and ensures confidentiality while allowing lawful access for investigative purposes and compliance with privacy regulations.

CHAPTER 6

The Public Procurement Act establishes a dispute resolution framework comprising several parts.

First, a dissatisfied bidder can seek reconsideration from the procuring institution before the Public Procurement Tribunal or a court can review the award decision, ensuring internal remedies are exhausted within 10 days of notification.

The Tribunal will be independently established to review bid awards and supplier debarments.

It will be composed of appointed members, including a retired judge as Chairperson, ensuring impartiality and adherence to legal standards.

Tribunal members will be required to disclose conflicts of interest and abstain from proceedings where impartiality is compromised.

Review processes will include applications within specified timeframes, with fees required, and Tribunal decisions will be able to uphold, set aside, or refer back, procurement decisions within set deadlines.

These decisions will be enforceable through judicial review if contested.

CHAPTER 7

The General Provisions of the Public Procurement Act will outline crucial aspects of enforcement and governance.

The Public Procurement Office will have authority to investigate violations and direct corrective actions, involving law enforcement for criminal cases.

It will be able to authorize searches without warrants under specific conditions, ensuring respect for constitutional rights and proper handling of evidence.

The Act will provide for exemptions based on national security or economic impracticality, overseen by the Minister.

Regulations and instructions under the Act will undergo public consultation before issuance, aiming for transparency and compliance.

Offences under the Act will carry penalties, including fines and imprisonment, and certain actions will be protected from liability if done in good faith.

Transitional measures will ensure bids initiated before the Act's implementation follow prior laws. Additionally, the Act will mandate periodic reviews for amendments to enhance effectiveness and stakeholder input in the procurement process.

AMENDMENTS AND REPEALS OF LEGISLATION: See Page 37 of the Act.