

Topic: Public Procurement Bill

# GOVERNMENT

## “WORKSTREAM 4: PROCEDURES AND EFFICIENCY

Topic: Public Procurement Bill

# GOVERNMENT

**“BETWEEN INSPIRED AND  
DISILLUSIONED”**

## Discussion Points

- Introduction: 2 mins
- “Methods” (Sections 18(1), (2), (7) & 58): 28 mins
- “Technology” (Sections 24 & 25): 28 mins
- What we did not cover 2 mins

# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

- ~~Part 1: Procurement system, methods and related matters~~
  - Procurement system and methods
  - Use of another organ of state
  - Function performed by another person or organisation
  - Measures to prevent abuse of procurement system
  - Establishment of procurement units
  - Bid committee system
- ~~Part 2: Use of technology in procurement~~
  - Information and communication technology-based procurement system
  - Use of technology by procuring institutions
- Part 3: Access to procurement processes and information
  - Access to procurement processes
  - Disclosure of procurement information
  - Documents to be made available
  - Access by certain authorities to information held by Public Procurement Office and provincial treasuries
  - Protection of information

# Repeal of existing Regulations: PFMA 16 and 16A; MFMA

|     |                    |  |   |
|-----|--------------------|--|---|
| 14. | Act No. 56 of 2003 | Local Government: Municipal Finance Management Act | <p>26. The substitution in section 1 for paragraph (d) of the definition of “irregular expenditure” of the following paragraph: <u>maintain in terms of [section 111] the Public Finance Management Act, 2023.”</u></p> <p>34. The deletion of section 99(2)(h).</p> <p>35. The repeal of Chapter 11.</p> <p>36. The deletion of section 173(1)(a)(ii).</p> |
|-----|--------------------|--|---|

*Entire MFMA Chapter 11 on Goods and Services, SCM and PPP repealed*

|    |                   |                                     |   |   |
|----|-------------------|-------------------------------------|---|---|
| 7. | Act No. 1 of 1999 | Public Finance Management Act, 1999 | <p>9. The deletion of section 38(1)(a)(iii).</p> <p>10. The substitution in section 38(1) for paragraph (a)</p> |   |
|    | <b>Item No.</b>   | <b>No. and year of law</b>          | <b>Short title</b>  | <b>Extent of repeal or amendment</b>  |
|    |                   |                                     |   | <p>11. The deletion of section 51(1)(a)(iii).</p> <p>12. The substitution in section 76(1) for paragraph (k) of the following paragraph:<br/>“(k) the alienation[,] or letting [or other disposal] of state assets;” and</p> <p>13. The deletion of section 76(4)(c).</p> |

*Does deleting PFMA Section 76 effectively “repeal” the PPP and SCM Frameworks?*

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# GOVERNMENT

“METHODS”

# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- ...must prescribe the procurement system for goods, services, infrastructure, capital assets and disposal and letting of assets; methods +requirements +procedures; and procurement thresholds.

|   |    |
|---|----|
| 18. (1) The Minister must prescribe—  | 15 |
| (a) a <u>procurement system</u> for procuring institutions for—   |    |
| (i) <u>procurement and strategic sourcing of goods or services;</u>   |    |
| (ii) <u>procurement and strategic sourcing of infrastructure and capital assets and goods or services related to infrastructure and capital assets; and</u> |    |
| (iii) the disposal and letting of assets;   | 20 |
| (b) types of <u>procurement methods;</u>  |    |
| (c) <u>methods for disposal and letting of assets;</u>  |    |
| (d) the <u>requirements and procedure to be followed for each method</u> prescribed in terms of paragraph (b) or (c); and                                   |    |
| (e) <u>procurement thresholds.</u>  | 25 |

“panel” means a panel of the Tribunal constituted in terms of section 41  
“prescribed” means prescribed by regulation in terms of section 58;  
“...”

# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- Only two methods are specifically identified in section 18. Regulations must describe the process to identify scope of transversal contracts and mandatory participation

(2) (a) The types of procurement methods to be prescribed, must include, but are not limited to, transversal term contracting and public-private partnerships.

(b) The regulations envisaged in paragraph (a) for transversal term contracting must determine—

- (i) a process for identifying what is to be procured through transversal term contracts; and
- (ii) when a procuring institution must participate in a transversal term contract.



# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- Section 18(7) seems to link methods and thresholds

referred to in paragraph (a).

(7) A procuring institution may not split procurement or use different procurement methods to avoid the prescribed threshold.

“prescribed” means prescribed by regulation in terms of section 58;

# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- Regulations issued for cross-selling, cross-letting, transfers and implementation agents. All implementation agents to comply with PPA.

### Use of another organ of state

19. A procuring institution may, as prescribed—

- (a) acquire goods, services, infrastructure or capital assets from another organ of state;
- (b) use another organ of state to construct, repair or maintain infrastructure or

### Function performed by another person or organisation

20. If a procuring institution transfers funds to a person or organisation other than an organ of state to perform a function on behalf of the procuring institution in terms of legislation authorising it, any procurement required to perform the function must be in accordance with this Act.

“panel” means a panel of the Tribunal constituted in terms of section 41;  
“prescribed” means prescribed by regulation in terms of section 58;

# CHAPTER 7: GENERAL PROVISIONS

- The “Regulations” section makes it mandatory that regulations are needed on a range of details with a direct impact on methods

## Regulations

58. (1) The Minister—

(a) must make regulations regarding—

- (i) ~~the use of information technology in procurement;~~
- (ii) (v) procedures for bid specification, invitation, submission, opening, evaluation, adjudication and awarding of bids and cancellation of procurement processes; 15
- (vi) the setting of market related price ceilings for procurement;
- (vii) procurement funded partially or in full by donor or grant funding;
- (viii) measures for the participation of a manufacturer of goods in a bid to supply the goods it manufactures;
- (ix) circumstances and procedures for pre-qualification of bidders; 20
- (x) ~~the completion of the procurement process during the bid validity period~~

# CHAPTER 7: GENERAL PROVISIONS

## Regulations

58. (1) The Minister—

(a) must make regulations regarding—

(i) any (xi) emergency procurement, which may include—

(ii) con (aa) the different types of emergency procurement that may be used and 25  
(iii) the the circumstances under which the different types may be used;

(bb) an outline of the planning efforts of the procuring institution to limit the need for emergency procurement and to improve responsiveness during an emergency;

(cc) the pre-requisites for awarding bids and administering contracts 30 during emergencies;

(dd) options available to the procuring institution during an emergency and the preferred methods of procurement; and

(ee) procedures to be followed in respect of emergency procurement processes, including the recording of deliberations and the making 35 of recommendations and awards;

# Methods

## Section 18(1) and (7)

### Welcomed

- The notions of systems and methods
- Systems, methods already detailed in ISO and CIDB for construction
- Strategic sourcing recognised
- Major categories listed (goods or services, infrastructure, capital assets)
- Disposals and leasing satisfies ACSA / Imperial
- Procurement thresholds are included
- Relationship between thresholds and methods is recognised

### Questionable

- The term “methods” not defined?
- Procurement bill without procurement methods is a global oddity?
- Strategic sourcing definition confusing and not “regulated”?
- Why no “goods *and* services”?
- Should this not be a Procurement, & Disposals Bill?
- What about concessions, sale of spectrum, sale of slots/rights and other income generating contracts?
- What about disposal and asset leasing thresholds?

## Welcomed

- Transversal term contracts identification process will be regulated
- Public-Private Partnerships (PPPs) not forgotten
- The “transversal contracts are mandatory” provision has been dropped

## Questionable

- Is a transversal term contract a method?
- What about other contract types?
- What about other framework agreements such as panels and framework types (single, open, closed...)?
- Will a transversal non-term contract also be defined and regulated?
- Is the level of detail in TR16 on PPPs representative of the detail for all methods?
- Why is “when...must” even mentioned?

### Welcomed

- Procuring from other organs of state will be prescribed

### Questionable

- Creating unnecessary complication (all methods) or leaving a gap for exemptions?

- Section 20: Massive implications for institutions, suppliers and recipients of grants (SETAs, R&D sector, Development Agencies, Universities etc) and procurement agents

## Welcomed

- The abuse of emergency procurement is recognised
- Regulating the procedures for specification, invitation, opening, evaluation, adjudication, award, cancellation, bid validity will be welcomed by many

## Questionable

- Skewed emphasis on emergency but other methods (urgent, single, sole, limited) that are abused are not even mentioned
- Institutions procuring complexity are extremely concerned
- Significant methods and procedures complexity
- Preference framework, particularly pre-qualification and award brings additional complexity



# Conclusions and Recommendations

- Given that the minister must prescribe by way of regulation, procurement methods, requirements & procedures and disposal & asset leasing methods ...
- ... together with all procedures for specification, invitation, opening, evaluation, adjudication, award, cancellation, bid validity ...
- ... and describes a few significant and detailed methods such as PPPs, Transversal term contracts and emergency procurement ...
- ... but leaves out MANY other methods ...
- ... and leaves / defers preference pre-qualification and award procedures to institutions,
- ... has the PPO “trumped itself” into having to complete and roll-out (with existing competence and capacity) all of this detail before the Act and Regulations can be effective, or risk halting entire sectors or reverting to wide-scale exemptions?

# Conclusions and Recommendations

- 1) The minister has no choice but to either issue the draft regulations concurrently with the Bill...
  - ... or redraft Section 18 of the Bill to include methods, at least at a framework level to cover all procurement and
    - ... at a Regulations level describe all methods and procedures across all categories, construction, innovation, R&D, complexity, consultants....
    - ... many more definitions and clearer and clarify many other terms such as “... participation of manufacturer of goods in a bid...” (is local missing?)
- 3) Drop reference to mandatory for Transversals
- 2) Drop completely Section 20 on “functions performed by another person or organisation”
- 4) Drop Section 58(1)(a)(vi) on “price ceilings”
- 5) Need body/bodies in addition to PPO to support complex procurement

# Methods and procedures diversity in South Africa

- Emergency catheter procurement at Kalafong hospital
- Square Kilometre Array (SKA) project across Africa
- Power station repurposing at Eskom
- Route Extension and next phase PPP at Gautrain Management Agency
- Locomotives at Transnet Freight Rail
- Competitive Dialogue by National Research Foundation (NRF)
- Security at PRASA
- Pre-Commercial Procurement by Technology Innovation Agency (TIA)
- “Pitches” at SABC
- Tshwane innovation challenge hackathon
- Architectural design competition at Constitutional Court
- Bulk water project in Giyani
- Vaccines procurement by Departments of Health

# Methods and procedures diversity in South Africa

- Framework agreements in Sol Plaatjies and Mpumalanga
- Msikaba mega-bridge in Lusikisiki, Eastern Cape by SANRAL
- Hammanskraal waste-water treatment
- Badger infantry combat vehicles between Denel and SANDF
- Electronic reverse auction for election material by the IEC
- Nuclear waste disposal in Vaalputs
- R14b spectrum auction by ICASA
- 25-year concession at Richard's Bay Transnet Port Authority
- Medical Waste disposal across South Africa
- Airport slots at OR Tambo
- Restaurant lease in King Shaka International Airport
- Wild animal auction by SANPARKS

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**GOVERNMENT**

**“TECHNOLOGY”**

# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- The PPO must develop an ICT system for “all procurement”

### Information and communication technology-based procurement system

24. (1) The Public Procurement Office must develop an information and communication technology-based procurement system that complies with section 18, for all procurement, in order to enhance efficiencies, effectiveness, transparency and integrity and to combat corruption.

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(2) After conducting an information and communication technology due diligence of

# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- The single platform PPO-developed system MUST progressively include open data access and a marketplace for common goods and services

(2) After conducting an information and communication technology due diligence of the sector, to assist with the formulation of the design brief for the development of the procurement system, referred to in paragraph (a), the system must, subject to the due diligence conducted, provide for the following components progressively:

- (a) A single platform that at least provides access for officials, bidders, suppliers and members of the public to all procurement related services; 20
- (b) standardised and interoperable open data across the procurement cycle to be used by procuring institutions according to their readiness determined in accordance with an instruction;
- (c) uniform procurement procedures and processes; 25
- (d) reporting requirements on procurement;
- (e) a marketplace to enable efficient procurement of common goods and services; and
- (f) a suitable hosting option for procurement data to enable easy reporting, analysis, research and oversight of procurement transactions. 30



# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- Institutions will have to use the components as they become available (and justify where not possible).
- PPO will issue instructions to determine requirements.

25. (1) Procuring institutions must—

(a) to the extent possible, use technology for the implementation of this Act; and

(b) when available, use the different components of the procurement system, referred to in section 24(b). 35

(2) (a) During the development of the procurement system, referred to in section 24(1)(a), the Public Procurement Office must, by instruction, determine requirements for digitisation, automation, reporting and innovations that information and communication technology may enable, applicable to procurement processes by procuring institutions. 40

(b) The requirements referred to in paragraph (a) must include the provision for—

(i) analysis and publication of data; and

(ii) readiness assessments for procurement technology.

# CHAPTER 7: GENERAL PROVISIONS

## Regulations

58. (1) The Minister—

(a) must make regulations regarding—

(i) any matter required by this Act to be prescribed;

(ii) competency requirements for officials involved in procurement;

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(iii) the requirements for submission of

(iv) the use of information and communications technology in procurement;

(v) procedures for bid specification, invitation, submission, opening, evalu

### Welcomed

- Some inspired by the technology vision (Ukraine's eProcurement, ChileCompra, Korea's KONEPS, Ghana and more)
- “a Marketplace” encouraging
- “...efficiency, effectiveness, transparency and integrity...” aspirational
- Uniformity welcomed
- “Single platform” can assist

### Questionable

- Complies with “all procurement” in Section 18. Concerned, fearful and sceptical
- Use of “system” between section 25 and “procurement system”
- What about marketplaces?
  - National
  - Central Procurement Bodies
  - Institution-specific marketplaces
  - Links to private marketplaces

### Welcomed

- Requirements will be determined

### Questionable

- Requirements definition by instruction:
  - Time frames
  - Level of detail
  - Finding at institutional level

- Funding for this (transparent) :
  - PPO?
  - The institutions?

# Conclusions and Recommendations

1. Drop Sections 24 and 25 in the Bill or revise
  - a. To earlier versions of the Bill
  - b. Change towards architecture
  - c. Minister / PPO role of catalyst and enabler
  - d. Clear description of the components of “...efficiency, effectiveness, transparency and integrity”. Draft referenced “quicker and cheaper” – Put it back in
2. Clear timeframes, plan and budget for the “single platform”
  - a. National and Institutional
3. Drop Section 58(1)(a)(iv) on regulations “use of ICT in procurement”
4. Clarify the link and dependencies between methods and procedures and ICT (P-Cards, eAuctions; eCatalogues; eSubmissions; eCompliance; eEvaluation and more)

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**GOVERNMENT**

**NOT DISCUSSED**

# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- New component in the system include Procurement Policy; institutional and governance arrangements, contract management and asset management.

|   |    |
|---|----|
| (3) A procurement system referred to in subsection (1) must provide for the following matters in a manner consistent with this Act: |    |
| <i>New (a)</i> Procurement policy;  | 35 |
| <i>New (b)</i> institutional and governance arrangements;   |    |
| <i>(c)</i> demand management;   |    |
| <i>(d)</i> procurement planning and budgeting;  |    |
| <i>(e)</i> acquisition management;  |    |
| <i>New (f)</i> contract management, including assessment of projects against outcomes;  | 40 |
| <i>(g)</i> risk management;   |    |
| <i>(h)</i> logistics management;  |    |
| <i>New (i)</i> asset management;  |    |
| <i>(j)</i> disposal management;   |    |
| <i>(k)</i> monitoring and assessment of procurement performance; and  | 45 |
| <i>(l)</i> reporting.   |    |

# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- PPO will continue to issue standard bid documents and maintain CSD

(4) The Public Procurement Office may, by instruction, determine standard bid documents.

(5) A procuring institution may stipulate in the bid documents, irrespective of the procurement method, that bidders may only quote in South African currency, inclusive of all applicable taxes. 50

(6) (a) The Public Procurement Office must create and maintain a database in terms of section 5(1)(i) for prospective suppliers.

(b) A procuring institution may only procure from suppliers listed in the database, referred to in paragraph (a). 55

(7) A procuring institution may not split procurement or use different procurement methods to avoid the prescribed threshold.

“panel” means a panel of the Tribunal constituted in terms of section 41  
“prescribed” means prescribed by regulation in terms of section 58;



# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- Change from SCM units to procuring units. The position is not prescribed.

### Establishment of procurement units

22. (1) Every procuring institution must establish a procurement unit as part of its procurement system.

(2) The responsibilities of the procurement unit must at least include the following:

- (a) Implementation of functions allocated to the unit in terms of this Act and the procurement system of the procuring institution; 45
- (b) maintenance of its procurement system to ensure effectiveness and efficiency;
- (c) regular reporting to the procuring institution on the performance of its procurement system;
- (d) rendering assistance and administrative support to the line function managers and other officials of the procuring institution in the performance of their procurement responsibilities; 50
- (e) providing advice to a procurement committee on request; and
- (f) any other functions that the accounting officer or accounting authority may consider necessary. 55

# CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

## Part 1: Procurement system, methods and related matters

- Bid committee system and functions of each committee will be prescribed by way of regulation.

### **Bid committee system**

**23.** (1) The Minister must prescribe a bid committee system for procuring institutions and the functions of each committee.

(2) The following persons may not be members of a bid committee envisaged in subsection (1):

- (a) A public office bearer;
- (b) a person appointed in terms of section 12A of the Public Service Act; and
- (c) any person having a conflict of interest.

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