

PORTFOLIO COMMITTEE ON TRADE, INDUSTRY AND COMPETITION

PRESENTATION ON PUBLIC PROCUREMENT ACT, 2024

PRESENTED BY:

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2024



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



PUBLIC PROCUREMENT ACT, 2024

- **INTRODUCTION**

- The President assented the Public Procurement Act, 2024 (Act No. 28 of 2024) on 18 July 2024 and it was published as an Act in the Government Gazette on 23 July 2024. The Act is an overarching national regulatory framework for public procurement across all spheres of government. The provisions of the Act are not in force yet.
- The President will bring the provisions of the Act into operation through a proclamation in the Gazette. Section 69 of the Act enables the President to bring the provisions into operation on different dates (phased approach) and to determine different dates for different categories of procuring institutions such as national and provincial departments, national and provincial public entities and municipalities and municipal entities.

PUBLIC PROCUREMENT ACT, 2024

- **DISCUSSION**

- The Act allows for the repeal or amendment of different provisions of a law to be brought into operation on different dates. For example, the repeal of the Preferential Policy Procurement Framework Act, 2000 (PPPFA), and required regulations should take effect on the same date.
- Many provisions of the Act require regulations prior to the Act being brought into operation. The process of making regulations involves consultation with Ministers whose portfolios are affected, SALGA, the public and Parliamentary scrutiny as outlined in section 63 of the Act. Different regulations for different categories of procuring institutions and for different types of procurement.

PUBLIC PROCUREMENT ACT, 2024

- **DISCUSSION**

- The making of regulations regarding procurement of infrastructure and capital assets, and goods and services related to infrastructure and capital assets, are a mandatory requirement.
- The recommendations on the effective dates for various provisions of the Act and the accompanying regulations will consider the readiness of the affected procuring institutions to implement.
- The current procurement framework provided for under the Public Finance Management Act, 1999, the Municipal Finance Management Act, 2003, the PPPFA and other applicable legislation, remain in place until the relevant provisions of the Public Procurement Act, 2024, and accompanying regulations are in place.

PUBLIC PROCUREMENT ACT, 2024

- **DISCUSSION**

- In terms of section 68 of the Act, the Minister must-
 - a) within 24 months after 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.

PUBLIC PROCUREMENT ACT, 2024

- ARRANGEMENT OF PUBLIC PROCUREMENT ACT AND ITS CHAPTERS

CHAPTER 1	CHAPTER 2	CHAPTER 3	CHAPTER 4	CHAPTER 5	CHAPTER 6	CHAPTER 7
DEFINITIONS, OBJECTS, APPLICATION AND ADMINISTRATION OF ACT	PUBLIC PROCUREMENT OFFICE, PROVINCIAL TREASURIES AND PROCURING INSTITUTIONS Part 1: Public Procurement Office Part 2: Provincial Treasuries Part 3: Procuring institutions	PROCUREMENT INTEGRITY & DEBARMENT	PREFERENTIAL PROCUREMENT	GENERAL PROCUREMENT REQUIREMENTS Part 1: <ul style="list-style-type: none">Procurement system, methods and related matters Part 2: <ul style="list-style-type: none">Use of technology in procurement Part 3: <ul style="list-style-type: none">Access to procurement processes & information	DISPUTE RESOLUTION Part 1: Reconsideration of decision to award Part 2: Public Procurement Tribunal Part 3: Review process Part 4: Stand still process	GENERAL PROVISIONS

PUBLIC PROCUREMENT ACT, 2024

- **ESTABLISHMENT OF THE PUBLIC PROCUREMENT OFFICE WITHIN NATIONAL TREASURY**
 - The Act provides for establishment of the Public Procurement Office to perform functions in terms of this Act.
 - The Public Procurement Office and its Head will perform duties and exercise the powers of the Public Procurement Office on behalf of that Office.

PUBLIC PROCUREMENT ACT, 2024

- **ESTABLISHMENT OF THE PUBLIC PROCUREMENT OFFICE WITHIN NATIONAL TREASURY**
 - The functions of the Public Procurement Office to implement and enforce compliance with the Act are spelt out in Chapter 2.
 - The Act also provides for the functions of provincial treasuries to enforce compliance by procuring institutions at a provincial level.

PUBLIC PROCUREMENT ACT, 2024

- **DESIGNATION OF SECTORS TO SUPPORT INDUSTRIALISATION**

- Section 20 of the Act provides for measures to support industrialization through designation of sectors, sub-sub sectors or industry or product in line with the national industrial policies for local production and content, taking into account economic and other relevant factors where procuring institutions are compelled to consider only locally manufactured goods.
- The responsibility to designate sectors for local production and content is conferred to the Minister responsible for trade, industry and competition.
- The Minister responsible for trade, industry and competition is required to publish the proposed designation in the Gazette and departmental website for public comment stipulating minimum threshold for local production and content and the period for such designation for a period of 30 days. Minister of Finance must be notified of such publication.

PUBLIC PROCUREMENT ACT, 2024

- **DESIGNATION OF SECTORS TO SUPPORT INDUSTRIALISATION**

- A procuring institution must, in the case of designation, advertise a bid with a specific condition that only locally produced goods or manufactured goods, meeting the prescribed minimum threshold for local production and content, will be considered. Any bid not meeting the stipulated minimum threshold is an unacceptable bid and must be disqualified.
- If the required quantities cannot be wholly sourced locally, for the period of the designation, a procuring institution may submit a request for a waiver to the Minister responsible for trade, industry and competition and the Minister for trade, industry and competition must respond within 30 days, failure which approval will be deemed to be granted.

PUBLIC PROCUREMENT ACT, 2024

- **MEASURES TO ADVANCE JOB CREATION AND INTENSIFY LABOUR ABSORPTION**
 - The Act provides measures for local beneficiation and innovation to prevent exportation jobs elsewhere in the world. This provision is meant to align with and bolster similar measures that are already provided for in the existing industrial policy action plan, and to deepen the local manufacturing base and job creation.
 - Further, the Minister responsible for trade, industry and competition may, designate goods produced or manufactured locally through beneficiation and innovation and set the preferential procurement conditions related thereto to achieve the objects of section 22 of this Act.

PUBLIC PROCUREMENT ACT, 2024

- **ROLES AND RESPONSIBILITIES**

- The Minister of Finance is responsible for development of regulations, publication of the regulations for public comments, and submission of the draft set of regulations to Parliament for its scrutiny for a period of 30 days prior to promulgation thereof.
- The Minister responsible for trade, industry and competition must monitor the impact of designation and three (3) years after the designation, publish a report on its impact on the website of the department of that Minister.
- The Minister responsible for trade, industry and competition may at least 12 months after the report is published, review the appropriateness of the designation and its threshold and period, and if outcome of the review so requires, amend or withdraw the designation and its threshold and period.

PUBLIC PROCUREMENT ACT, 2024

- **PREFERENTIAL FRAMEWORK, PROCUREMENT POLICES AND APPLICATION OF PROVISIONS**
 - In terms of section 16 of the Act, a procuring institution must develop and implement a procurement policy providing for categories of preferences in the allocation of contracts; and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination, envisaged in section 217(2) and (3) of the Constitution, the objects of this Act, this framework and regulations made in terms of this Act.
 - The procurement policy of a procuring institution must provide for setting aside bids in accordance with section 17 and if setting aside is not possible, prequalification in accordance with section 18.
 - If procurement in accordance with section 17, 18 and 19 is not possible, the procuring institution must record and report the reasons to the Public Procurement Office and the relevant treasury in a prescribed manner.

PUBLIC PROCUREMENT ACT, 2024

- **PREFERENTIAL FRAMEWORK, PROCUREMENT POLICES AND APPLICATION OF PROVISIONS**

- The Minister of Finance must prescribe targets for set asides and within 30 days of the commencement of this section, consult the relevant Ministers for which categories of persons targets for set aside must be prescribed.
- When prescribing targets, the Minister of Finance must take into account the applicable codes of good practice on black economic empowerment issued in terms of section 9(1) of the B-BBEE Act, 2003.
- The Minister of Finance must at least every two (2) years review the targets with a view of amending targets and prescribing new targets.

PUBLIC PROCUREMENT ACT, 2024

- **THE STATUS OF THE DEVELOPMENT OF REGULATIONS TO THE ACT**

- After the signing of the Act into law, the National Treasury has conducted induction for all departments and other government institutions on the content of the Act to allow participation by departments and other government institutions in the regulations development process.
- During public hearings, Parliament directed the National Treasury, to ensure broad consultation and involvement of external stakeholders as well in the process of developing regulations. Therefore, the process to develop regulations includes government institutions and external stakeholders in keeping with the direction of Parliament.
- The regulations development process started in August 2024 and is expected to continue until the end of the last quarter of the 2024/25 financial year. The plan is to publish the draft set of regulations for public comments in the first quarter of the 2025/26 financial year.

PUBLIC PROCUREMENT ACT, 2024

- **THE STATUS OF THE DEVELOPMENT OF REGULATIONS TO THE ACT**

- The Act requires the Minister of Finance to submit the draft set of regulations to Parliament for its scrutiny for a period of 30 days prior to promulgation thereof.
- Depending on the outcome of Parliamentary scrutiny, the plan is to have the final draft set of regulations promulgated before the anniversary of the signing into law of the Act, and to allow time for change management, training of procuring institutions by relevant government training institutions, such as National School of Government, and to allow procuring institutions to review and update their procurement policies for implementation of the Act.
- All things being equal, the Act will become effective during the third quarter of 2025/26 financial year.

PUBLIC PROCUREMENT ACT, 2024

THANK YOU