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THE PRESIDENCY

No. 5051 23 July 2024

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 28 of 2024: Public Procurement Act, 2024

MOPOPRESIDENTE

No. 5051 23 July 2024

Go itsisiwe gore Mopopresidente o dumetse Molao o o latelang, o o phasaladiwang fano go itsisiwe botlhe:—

No. 28 ya 2024: Molao wa tshenkelo ya dithoto le ditirelo ka puso, 2024

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*(English text signed by the President)
(Assented to 18 July 2024)*

ACT

To regulate public procurement; to prescribe a framework within which preferential procurement must be implemented; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 217(1) of the Constitution of the Republic of South Africa, 1996, stipulates that contracting of goods and services by organs of state in the national, provincial and local sphere of government, and other institutions identified in national legislation, must occur in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;

AND WHEREAS section 217(2) of the Constitution permits organs of state and the identified other institutions, to implement a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination;

AND WHEREAS section 217(3) of the Constitution requires that national legislation must prescribe a framework within which the policy referred to in section 217(2) of the Constitution must be implemented;

AND WHEREAS section 216(1) of the Constitution requires national legislation to prescribe measures to ensure both transparency and expenditure control in each sphere of government by introducing, among others, uniform treasury norms and standards;

AND WHEREAS section 195(1) and (3) of the Constitution provides that national legislation must among others ensure the promotion in public administration of the following principles:

- A high standard of professional ethics;
- efficient, economic and effective use of resources; and
- development-oriented, accountability and transparency;

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

AND RECOGNISING that legislation regulating procurement by organs of state is fragmented and legislation regulating preferential procurement constrains justified advancement of persons or categories of persons;

AND RECOGNISING the need for promoting economic transformation within the ownership and management control of black people and advancing preferential procurement from enterprises that are owned and managed by black people in terms of the codes of good practice on black economic empowerment issued in terms of the

(English text signed by the President)
(Assented to 18 July 2024)

MOLAO

Go laola tshenkelo ya dithoto le ditirelo ka puso; go laela mabapi le letlhomeso leo ka lona tshenkelo e e batlwang e tshwanetseng go tsennngwa mo tirisong; le go laela mabapi le merero e e amanang le ona.

MATSENO

LE FA karolo 217(1) ya Molaotheo wa Rephaboliki ya Aforika Borwa, 1996, e tthagisa gore go dirwa ga dikonteraka mabapi le dithoto le ditirelo ke makala a puso mo bolaoding jwa puso jwa bosetšhaba, porofense le jwa selegae, le ditheo dife tse di supilweng mo molaong wa bosetšhaba, go tshwanetse go diragala go tsamaelana le thulaganyo e e lolameng, ya tekatekano, e e seng bofitlha, ya kgaisano e bile e somarela ditshenyegelo;

E BILE LE FA karolo 217(2) ya Molaotheo e letla makala a puso le ditheo tse dingwe tse di supilweng, go tsenya mo tirisong pholisi ya tshenkelo ya dithoto le ditirelo e e laelang mabapi le ditlhophha tse di batlwang mo kabong ya dikonteraka le mo tshireletsong le mo go ntshetseng pele batho, kgotsa ditlhophha tsa batho, bao ba gateletsweng ka kgethololo e e sa lolamang;

E BILE LE FA karolo 217(3) ya Molaotheo e tlhoka gore molao wa bosetšhaba o tshwanetse go laela letlhomeso leo ka lona pholisi e e kailweng mo karolong 217(2) ya Molaotheo e tshwanetseng go tsennngwa mo tirisong;

E BILE LE FA karolo 216(1) ya Molaotheo e tlhoka gore molao wa bosetšhaba o laele mabapi le ditsela tsa go netefatsa ka bobedi botlhokabofitlha le taolo ya ditshenyegelo mo bolaoding jwa puso ka go itsise, gareng ga tse dingwe, ditlwaelo le maemo a a tshwanang a matlotlo;

E BILE LE FA karolo 195(1) le (3) ya Molaotheo e laela gore molao wa bosetšhaba o tshwanetse gareng ga tse dingwe go netefatsa tswelsetso mo tsamaisong ya puso ya meono e e latelang:

- Maemo a a kwa godimo a maitsholo mo tirong;
- tiriso e e nonofileng, e e somarelang e bile e na le mosola ya ditlamelo; le
- tsepamo mo tlhabololong, go rwala maikarabelo le bosengbofitlha;

LE FA GO LEMOGWA gore tlhokego ya go godisa bokgoni jwa makala a puso go tlamela dithoto le ditirelo tse a di tlhokang, tshenkelo ya dithoto le ditirelo go tswa mo bathong bao ba seng mo Pusong, fa go tlhokega, e tshwanetse go laolwa;

LE GO LEMOGA gore melao e e laolang tshenkelothoto le ditirelo ka makala a puso e kgaogantswe le melao e e laolang tshenkelo e e batlwang e thibela ntshetsopele e e dirweng ka mabaka ya batho kgotsa ditlhophha tsa batho;

LE GO LEMOGA tlhokego ya go tswelsetsa phetolo ya ikonomi mo bong le mo taolong ya bolaodi jwa batho bantsho le go ntshetsa pele tshenkelo e e batlwang go tswa mo dikgwebong tse di tshotsweng le go laolwa ke batho bantsho go ya ka dikhoutho tsa tiragatso e e siameng mo maatlafatsong a ikonomi ya batho bantsho tse di rebotsweng go

Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), in order to enable meaningful participation of black people in the economy;

AND IN ORDER TO create a single framework that regulates public procurement, including preferential procurement, by all organs of state, which among others—

- promotes the use of technology for efficiency and effectiveness; and
- enhances transparency and integrity, among others, to combat corruption,

BE IT THEREFORE ENACTED by Parliament of the Republic of South Africa, as follows:—

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ya ka Molao wa Katoloso ya go Nonotsha Ikonomi ya Bantsho, 2003 (Molao 53 wa 2003), gore go kgontshwe botsayakarolo jo bo nang le bokao jwa batho bantsho mo ikonoming;

LE GORE GO tlangwe lethomeso le le esi le le laolang tshenkelothoto le ditirelo ka puso, go akaretsa le tshenkelothoto le ditirelo e e batlwang, ke makala otlhe a puso, ao gareng ga tse dingwe a—

- tswelentsang tiriso ya thekenoloji mabapi le nonofo le mosola; le
- godisang bosengbofitlha le tshiamo, gareng ga tse dingwe, go lwantsha bomenemene,

DIRWA MOLAO JALO ke Palamente ya Rephaboliki ya Aforika Borwa, jaana:—

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“ accounting authority ” means an accounting authority as defined in section 1 of the Public Finance Management Act;	
“ accounting officer ” means—	
(a) in relation to a department or constitutional institution, the accounting officer as defined in section 1 of the Public Finance Management Act;	40
(b) in relation to a municipality, the municipal official referred to in section 60 of the Municipal Finance Management Act; or	
(c) in relation to a municipal entity, the official of the entity referred to in section 93 of the Municipal Finance Management Act;	45
“ bid ” means a written offer, which is capable of acceptance and conversion into a contract, in the form determined by the procuring institution through any prescribed procurement method;	
“ bid committee ” means persons appointed by the accounting officer or accounting authority to a committee to perform functions within the bid committee system;	50
“ bidder ” means any person or an association of two or more persons that submit a bid;	
“ black people ” has the meaning assigned in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);	

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1. Mo Molaong ono, ntle le fa bokao bo kaya ka mokgwa osele—
“bothati jo bo rwalang maikarabelo” bo kaya bothati jo bo rwalang maikarabelo jaaka go tlhalositswe mo karolong 1 ya Molao wa Taolo ya Matlotlotlo a Setšhaba;
“motlhankedi yo o rwalang maikarabelo” o kaya—
- | | |
|--|----|
| (a) mabapi le lefapha kgotsa setheo sa molaotheo, motlhankedi yo o rwalang maikarabelo jaaka go tlhalositswe mo karolong 1 ya Molao wa Taolo ya Matlotlo a Setšhaba; | 40 |
| (b) mabapi le masepala, motlhankedi wa masepala yo o umakilweng mo karolong 60 ya Molao wa Taolo ya Matlotlo a Masepala; kgotsa | |
| (c) mabapi le setheo sa masepala, motlhankedi wa setheo yo o umakilweng mo karolong 93 ya Molao wa Taolo ya Matlotlo a Masepala; | 45 |
- “maitekotheke”** a kaya maiteko a a kwetsweng, ao a ka amogelwang le go fetolelwa mo konterakeng, ka mokgwa o o tlhomamisitsweng ke setheo se se senkelang ka mokgwa ofe o o laetsweng wa tshenkelo;
- “komiti ya maitekotheke”** e kaya batho ba ba thapilweng ke motlhankedi yo o rwalang maikarabelo kgotsa bothati jo bo rwalang maikarabelo mo komiting go dira ditiro mo thulaganyong ya komiti ya maitekotheke; 50
- “mosenki”** o kaya motho ofe kgotsa mokgatlo ofe wa batho ba babedi kgotsa go feta o o romelang maitekotheke;

- “**capital asset**” means an asset that is tangible or intangible which a procuring institution intends to use for more than 12 months;
- “**confidential information**” means any information which, on a request in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), must or may be refused in terms of that Act; 5
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**co-operative**” has the meaning assigned in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005);
- “**corruption**” means an offence envisaged in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); 10
- “**days**” means any days other than Saturdays, Sundays or public holidays as defined in the Public Holidays Act, 1994 (Act No. 36 of 1994);
- “**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; 15
- “**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;
- “**geographical area**” means the geographical area of a municipality or province; 20
- “**immediate family member**” means a spouse, civil partner, life partner, child, stepchild, parent or sibling;
- “**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; 25
- “**infrastructure**” means the physical facilities or structures and systems, including digital or analogue communications systems that are required to provide services to the public directly or indirectly;
- “**instruction**” means an instruction issued by the Public Procurement Office in terms of section 5(2) or a provincial treasury in terms of section 6(2); 30
- “**member of the Tribunal**” means a member of the Tribunal referred to in section 37;
- “**military veteran**” means any South African citizen who rendered military service to any of the non-statutory military organisations which were involved in South Africa’s Liberation War from 1960 to 1994; 35
- “**Minister**” means the Cabinet member responsible for financial matters;
- “**municipal entity**” has the meaning assigned to it in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- “**Municipal Finance Management Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003); 40
- “**municipality**” when referred to as—
- (a) a corporate body, means a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000; or
 - (b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998); 45
- “**national security**” includes the protection of the people of the Republic and the territorial integrity of the Republic against—
- (a) the threat of use of force or the use of force;
 - (b) foreign acts directed at undermining the constitutional order of the Republic;
 - (c) terrorism or terrorist related activities; 50
 - (d) espionage;
 - (e) exposure of a state security matter with the intention of undermining the constitutional order of the Republic;
 - (f) exposure of economic, scientific or technological secrets vital to the Republic;
 - (g) sabotage; 55
 - (h) cyber-attack;
 - (i) serious violence directed at overthrowing the constitutional order of the Republic; and

- “**batho bantsho**” ba na le bokao jo bo neilweng mo karolong 1 ya Molao wa Katoloso ya go Nonotsha Ikonomi ya Bantsho, 2003 (Molao 53 wa 2003);
- “**thoto ya matlotlo**” e kaya thoto e e angwang kgotsa e e sa angweng e setheo se se senkelang se ikaelelang go e dirisa go feta dikgwedi di le 12;
- “**tshedimisetso e e bofitlha**” e kaya tshedimisetso efe e, ka kopo go ya ka *Promotion of Access to Information Act*, 2000 (Molao 2 wa 2000), e tshwanetseng kgotsa e e ka ganwang go ya ka Molao oo;
- “**Molaotheo**” o kaya Molaotheo wa Rephaboliki ya Aforika Borwa, 1996;
- “**koporasi**” e na le bokao jo e bo neilweng mo karolong 1 ya *Co-operatives Act*, 2005 (Molao 14 wa 2005);
- “**bomenemene**” bo kaya tlolomolao e e bonetsweng pele mo *Prevention and Combating of Corrupt Activities Act*, 2004 (Molao 12 wa 2004);
- “**matsatsi**” a kaya matsatsi afe ntle le Lamatlhatso, Sontaga kgotsa matsatsi a khunulogo jaaka go tlhalositswe mo *Public Holidays Act*, 1994 (Molao 36 wa 1994);
- “**setšhaba se se matlhagathaga mo ikonoming**” se kaya batho botlhe, mo setšhabeng sa Rephaboliki, bao ba nang le seabe mo ikonoming kgotsa bao ba leng teng go etleetsa ditiro tsa ikonomi;
- “**tshoganyetso**” e kaya tiragalo e e sa letelwang e ka gale e leng kotsi e e bayang mo kotsing ka bonako boitekanelo, botshelo, ditshwanelo tsa botho, thoto, tatlhegelo ya ditšhelete, leruo, tikologo, pabalesego mo go diriseng inthanete kgotsa bokgoni jwa setheo se se senkelang go tlamela ditiro tsa botlhokwa tsa kgwebo le go tlhoka kgato ya ka bonako;
- “**kgaolo mo lefatsheng**” e kaya kgaolo mo lefatsheng ya masepala kgotsa porofense;
- “**tokololo e e gaufi ya lelapa**” e kaya monyalanimmogo, molekane wa semolao, molekane wa leruri, ngwana, letla-le-anya, motsadi kgotsa ngwana wa ga rraagwe;
- “**konteraka e e lereng lotseno**” e kaya tumalano magareng ga setheo se se senkelang le motho wa boraro yo o tlhagisetsang setheo se se senkelang lotseno, le go akaretsa, mme e sa lekanyetswa go, go adimisana le go latlha ga dithoto le dikonteraka tsa tetla, go sa akaretse dithekiso ka tlhamalalo le go latlha ga thoto ka difantisi tsa botlhe;
- “**mafaratlhatlha**” a kaya dipopegotheo kgotsa meago le dithulaganyetso, go akaretsa le dithulaganyo tsa tlhaeletsano tsa sedijithale kgotsa analoko tse di tlhokegang go abela setšhaba ditirelo ka tlhamalalo kgotsa e seng ka tlhamalalo;
- “**taelo**” e kaya taelo e e rebotsweng ke Kantorotshenkelo ya Puso go ya ka karolo 5(2) kgotsa matlotlo a porofense go ya ka karolo 6(2);
- “**tokololo ya Lekgotla**” e kaya tokololo ya Lekgotla e e umakilweng mo karolong 37;
- “**mogaka wa sesole**” o kaya moagi ofe wa Aforika Borwa yo o abelaneng ka tirelo ya sesole go efe ya mekgatlho ya sesole e e seng go ya ka molao e e neng e amega mo Ntweng ya Kgololosego ya Aforika Borwa go simolola ka 1960 go fitlha ka 1994;
- “**Tona**” o kaya tokololo ya Kabinete e e rwalang maikarabelo a merero ya matlotlo;
- “**setheo sa masepala**” se na le bokao jo se bo neilweng mo karolong 1 ya *Local Government: Municipal Systems Act*, 2000 (Molao 32 wa 2000);
- “**Molao wa Taolo ya Matlotlo a Masepala**” o kaya *Local Government: Municipal Finance Management Act*, 2003 (Molao 56 wa 2003);
- “**masepala**” fa a kaiwa jaaka—
- (a) lekgotla la semolao, o kaya masepala jaaka go tlhalositswe mo karolong 2 ya *Local Government: Municipal Systems Act*, 2000; kgotsa
 - (b) kgaolo ya lefatshe, o kaya lefelo la masepala le le tlhomamisitsweng go ya ka *Local Government: Municipal Demarcation Act*, 1998 (Molao 27 wa 1998);
- “**tshireletso setšhaba**” e akaretsa tshireletso ya batho ba ba mo Rephaboliking le tshireletsego ya kgaolo ya Rephaboliki kgatthanong le—
- (a) matshosetsi a tiriso ya sesole kgotsa tiriso ya sesole;
 - (b) ditiro tsa boditšhaba tse di lebisitsweng mo go nyatseng tolamo ya molaotheo ya Aforika Borwa;
 - (c) borukhutli kgotsa ditiro tsa borukhutli;
 - (d) botlhodi;
 - (e) go baya morero wa tshireletsego ya puso mo kotsing ka maikaelelo a go nyatsa tolamo ya molaotheo ya Rephaboliki;
 - (f) tshenolo ya diphiri tsa ikonomi, bonetetsi kgotsa thekenoloji tse di botlhokwa mo Rephaboliking;
 - (g) tshenyeletso;
 - (h) tlhaselo ka mafaratlhatlha a inthanete;
 - (i) tirisodikgoka e e masisi e e lebisitsweng kwa go menoleng tolamo ya molaotheo ya Rphaboliki; le

- (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 or 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; 5
- “**National Treasury**” means the National Treasury established by section 5 of the Public Finance Management Act;
- “**official**” means an employee of a procuring institution;
- “open data” means machine-readable data that is made available with the technical and legal characteristics necessary for it to be freely used, reused and redistributed without restrictions, based on a standard determined by an instruction; 10
- “**organ of state**” has the meaning assigned to it in section 239 of the Constitution;
- “**panel**” means a panel of the Tribunal constituted in terms of section 45;
- “**people with disabilities**” has the meaning assigned in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998); 15
- “**prescribed**” means prescribed by regulation in terms of section 63;
- “**procurement**” means—
- (a) the acquisition of goods or services for construction, repair or maintenance of infrastructure or capital assets; 20
- (b) the acquisition of goods or services, other than goods or services referred to in paragraph (a);
- (c) the acquisition of infrastructure or capital assets; or
- (d) the letting or disposal of assets;
- by a procuring institution; 25
- “**procurement system**” means a procurement system envisaged in section 24(1);
- “**procuring institution**” means an institution referred to in section 3(1);
- “**Promotion of Administrative Justice Act**” means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- “**provincial treasury**” means a provincial treasury established by section 17 of the Public Finance Management Act; 30
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**public office bearer**” means—
- (a) a member of Cabinet or a Deputy Minister; 35
- (b) a member of the National Assembly;
- (c) a permanent delegate to the National Council of Provinces;
- (d) a member of an Executive Council;
- (e) a member of a provincial legislature;
- (f) a judicial officer envisaged in section 174 of the Constitution; 40
- (g) a member of a Municipal Council;
- (h) a member of the National House of Traditional and Khoi-San Leaders; or
- (i) a member of a provincial house of Traditional and Khoi-San leaders;
- “**public-private partnership**” means a contract between a procuring institution and a private party where the private party— 45
- (a) performs a function on behalf of the procuring institution or acquires the use of property of an organ of state for its own commercial purposes;
- (b) assumes substantial financial, technical and operational risks in connection with the performance of that function or the use of that property; and
- (c) receives a benefit for performing that function or from using that property, 50 either by way of—
- (i) a consideration payable by the procuring institution;
- (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or
- (iii) a combination of such consideration and such charges or fees; 55
- “**Public Procurement Office**” means the Public Procurement Office established by section 4;

- (j) ditiro tse di lebisitsweng kwa go nyatseng bokgoni jwa Rephaboliki jwa go tsibogela tiriso ya, kgotsa matshosetsi a tiriso ya, sesole le tiragatso ya maikarabelo a Rephaboliki kwa nageng esele kgotsa kwa mokgatlhong wa boditshabatshaba mabapi le ofe wa merero e e umakilweng mo tshalosong eno, di ka tswa di laetswe go tswa mo, kgotsa di dirilwe mo, Rephaboliking kgotsa nnyaa, fela di sa akaretse tiro, puelelo, boipelaetso kgotsa kemokgatlhong ya sepolotiki e e mo molaong; 5
- “**Matlotlo a Bosetshaba**” a kaya Matlotlo a Bosetshaba a a tlhomilweng ka karolo 5 ya Molao wa Taolo ya Matlotlo a Setshaba;
- “**motlhankedi**” o kaya modiredi wa setheo sa tshenkelo; 10
- “**tshedimotsetso e e fitlhelegang**” e kaya tshedimotsetso e e buisegang ka motshini e e fitlhelegang ka diponagalo tsa setegeniki le tsa semolao tse di tlhokegang gore e diriswe ntle le tuelelo, e diriswe gape le go phatthalatswa ntle le dikganelo, go ikaegilwe mo maemong a a tlhomamisitsweng ka taolo;
- “**lekala la puso**” le na le bokao jo le bo neilweng mo karolong 239 ya Molaotheo; 15
- “**panele**” e kaya panele ya Lekgotla e e tlhomilweng go ya ka karolo 45;
- “**batho bao ba tshelang ka bogole**” ba na le bokao jo ba bo neilweng mo karolong 1 ya *Employment Equity Act*, 1998 (Molao 55 wa 1998);
- “**laetsweng**” go kaya go laelwa ka molawanataolo go ya ka karolo 63; 20
- “**tshenkelo**” e kaya—
- (a) phitlhelelo ya dithoto kgotsa ditirelo mabapi le kago, paakanyo kgotsa tlamelo ya mafaratlhatlha kgotsa dithoto tsa matlotlo;
- (b) phitlhelelo ya dithoto kgotsa ditirelo, ntle le dithoto kgotsa ditirelo tse di kailweng mo temaneng (a);
- (c) phitlhelelo ya mafaratlhatlha kgotsa dithoto tsa matlotlo; kgotsa 25
- (d) khriso kgotsa tatlho ya dithoto ka setheo se se senkelang;
- “**thulaganyo ya tshenkelo**” e kaya thulaganyo ya tshenkelo e e bonelwang pele mo karolong 24(1);
- “**setheo se se senkelang**” se kaya setheo se se umakilweng mo karolong 3(1);
- “**Molao wa Tsweletso ya Tiragatso ya Bosiamisi**” o kaya *Promotion of Administrative Justice Act*, 2000 (Molao 3 wa 2000); 30
- “**matlotlo a porofense**” a kaya matlotlo a porofense a a tlhomilweng ka karolo 17 ya Molao wa Taolo ya Matlotlo a Setshaba;
- “**Molao wa Taolo ya Matlotlo a Setshaba**” o kaya *Public Finance Management Act*, 1999 (Molao 1 wa 1999); 35
- “**batlhankedi ba ba tshwereng maemo mo pusong**” ba kaya—
- (a) tokololo ya Kabinete kgotsa Motlatsatona;
- (b) tokololo ya Kokoanotheomolao ya Bosetshaba;
- (c) tokololo ya leruri kwa Lekgotleng la Bosetshaba la Diporofense;
- (d) mokhuduthamaga; 40
- (e) tokololo ya kokoanotheomolao ya porofense;
- (f) motlhankedi wa boatlhodi yo o bonelwang pele mo karolong 174 ya Molaotheo;
- (g) tokololo ya Lekgotla la Masepala;
- (h) tokololo ya Ntlo ya Bosetshaba ya Boeteledipele jwa Setso le MaKhoi-San; 45
- (i) tokololo ya ntlo ya porofense ya baeteledipele ba Setso le MaKhoi-San;
- “**tirisanommo go ya poraefete ya puso**” e kaya konteraka magareng ga setheo se se senkelang le letlhakore la poraefete mo letlhakore la poraefete le—
- (a) dirang ditiro mo boemong jwa setheo se se senkelang kgotsa le fitlhelelang tiriso ya thoto ya lekala la puso mabapi le maitlhommo a kgwebo ya lona; 50
- (b) rwalang maikarabelo a magolo a matshosetsi a ditshetele, setegeniki le tiriso mabapi le tiragatso ya tiro eo kgotsa tiriso ya thoto eo; le
- (c) amogelang molemo mabapi le go dira tiro eo kgotsa go tswa mo go diriseng thoto eo, e ka nna ka tsela ya— 55
- (i) kakanyetso ya tuelo ka setheo se se senkelang;
- (ii) dituediso kgotsa dituelo tse di tshwanetseng go kgobokanngwa ke letlhakore la poraefete go tswa mo badirising kgotsa mo bareking ba tirelo e ba e abetsweng; kgotsa
- (iii) kopano ya kakanyetso eo le dituediso kgotsa dituelo tseo; 60
- “**Kantorotshenkelo ya Puso**” e kaya Kantorotshenkelo ya Puso e e tlhomilweng ka karolo 4;

- “**publish**” means publication in the *Gazette* or on an official website or on an easily accessible central online portal that is publicly available;
- “**regulation**” means a regulation made in terms of section 63;
- “**related persons**” means persons who are connected to one another in any manner envisaged in section 2(1)(a) to (c), read with section 2(2), of the Companies Act, 2008 (Act No. 71 of 2008); 5
- “**small enterprise**” has the meaning assigned in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
- “**strategic procurement**” means a comprehensive approach to procurement that aligns with the strategies and objectives of a procuring institution, thereby enhancing cost-effectiveness; 10
- “**supplier**” means a bidder awarded a bid in terms of this Act;
- “**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— 15
- (a) redress the unfair discrimination of the past;
 - (b) achieve representation of the economically active population of the Republic; and
 - (c) achieve socio-economic objectives; 20
- “**transversal term contract**” means a contract arranged by the relevant treasury or another procuring institution mandated in terms of legislation, for procurement that is required by two or more procuring institutions;
- “**treasury**” means the National Treasury or a provincial treasury;
- “**Tribunal**” means the Public Procurement Tribunal established by section 36; 25
- “**Tribunal rules**” means rules made in terms of section 46; and
- “**youth**” has the meaning assigned in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

Objects of Act

2. (1) The objects of this Act are, with due regard to sections 195, 216 and 217 of the Constitution, to— 30
- (a) introduce uniform treasury norms and standards for all procuring institutions to implement their procurement systems as envisaged in section 217(1), read with section 216(1), of the Constitution; and
 - (b) determine a preferential procurement framework for all procuring institutions within which to implement their procurement policies as envisaged in section 217(2) and (3) of the Constitution. 35
- (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; 40
 - (b) advance ethical conduct and combat corruption through access to procurement information and other transparency measures and introducing enforcement and appropriate sanctions for transgressors;
 - (c) advance transformation, beneficiation and industrialisation;
 - (d) stimulate economic development by supporting— 45
 - (i) goods that are produced and services provided in the Republic;
 - (ii) procurement which is developmental in nature; and
 - (iii) investment;
 - (e) improve efficiency and effectiveness in procurement by streamlining procurement processes, amongst others, through the use of technology; 50
 - (f) provide for effective and expedited dispute resolution of procurement related decisions; and
 - (g) promote innovation, sustainable development and the environmental rights in section 24 of the Constitution.

- “**phasalatso**” e kaya phasalatso mo Lokwalodikgannyeng la Puso kgotsa mo webesaeteng kgotsa mo sediriswagareng sa inthanete se se fitlhelegang bonolo se se fitlhelwang ke botlhe;
- “**molawanataolo**” o kaya molawanataolo o o dirilweng go a ka karolo 63;
- “**batho ba ba amanang**” ba kaya batho ba ba nang le kamano ka mokgwa ofe o o bonetsweng pele mo karolong 2(1)(a) go fitlha go (c), ka puisommogo le karolo 2(2), ya *Companies Act*, 2008 (Molao 71 wa 2008); 5
- “**kgwebopotlana**” ee na le bokao jo e bo neilweng mo karolong 1 ya *National Small Enterprise Act*, 1996 (Molao 102 wa 1996);
- “**tshenkelo ya togamaano**” e kaya mokgwa o o akaretsang wa tshenkelo o o lepanang le maano le maikaelelo a ditheo tse di senkelang, o o tokafatsang tshomarelotlotlo e e nonofileng; 10
- “**motlamedi**” o kaya mosenki yo o abetsweng maitekotheke go ya ka Molao ono;
- “**Molao ono**” o akaretsa melawanataolo, dikhoutu tsa maitsholo, ditaello le dikitsiso tse di dirilweng kgotsa tse di rebotsweng go ya ka Molao ono; 15
- “**phetogo**” mabapi le tshenkelo ya puso, e kaya kgato ya go fetoga e e batlang go—
- (a) lolamisa kgethololo e e sa siamang ya mo malobeng;
- (b) fitlhelela boemedi jwa setšhaba se se matlhagatlhaga mo ikonoming sa Rephaboliki; le
- (c) fitlhelela maitlhomong a ikonomi ya loago; 20
- “**konteraka ya pakakgabaganyo**” e kaya konteraka e e rulagantsweng ke matlotlo a a maleba kgotsa setheo se sengwe se se senkelang se se laetsweng go ya ka molao, mabapi le tshenkelo e e tlhokwang ke ditheo tse di senkelang tse pedi kgotsa go feta;
- “**matlotlo**” a kaya Matlotlo a Bosetšhaba kgotsa matlotlo a porofense;
- “**Lekgotla**” le kaya Lekgotlatshenkelo la Puso le le thomilweng ka karolo 36; 25
- “**melawana ya Lekgotla**” e kaya melawana e e dirilweng go ya ka karolo 46; le
- “**bašwa**” ba na le bokao jo b abo neilweng mo karolong 1 ya *National Youth Development Agency Act*, 2008 (Molao 54 wa 2008).

Maitlhomong a Molao

2. (1) Maitlhomong a Molao ono ke, ka kelotlhoko go dikarolo 195, 216 le 217 tsa Molaotheo, go— 30
- (a) itsise ditlwaello le maemo a a tshwanang a matlotlo mabapi le ditheo tsolhe tsa tshenkelo go tsenya mo tirisong dithulaganyo tsa tshenkelo tsa tsona tse di bonelwang pele mo karolong 217(1), ka puisommogo le karolo 216(1), ya Molaotheo; le 35
- (b) tlhomamisa letlhomong la tshenkelo le le batlwang mabapi le ditheo tsotlhe tsa tshenkelo leo ka lona di tla tsenyang mo tirisong dipholisi tsa tshenkelo jaaka go bonetswe pele mo karolong 217(2) le (3) ya Molaotheo.
- (2) Maitlhomong a a umakilweng mo karolwaneng (1) a tshwanetse, gareng ga tse dingwe— 40
- (a) go netefatsa tirisong e e nang le bokgoni, nonofo e bile e somarela ya ditlamello tsa puso ka, gareng ga tse dingwe, tshakatsheko ya ditshenyegelo, melemo le dikotsi;
- (b) go ntshetsa pele maitsholo a mantle le go lwantsha bomenemene ka phitlhelole ya tshedimosetso ya tshenkelo le mekgwa e mengwe e e seng bofitlha le go diragatsa kgatelelo le dikotlhao tse di maleba mo bao ba tloang molao; 45
- (c) go ntshetsa pele phetolo, kunomolemo le tlhomong ya madirelo;
- (d) go phapamisa tlhabolole ya ikonomi ka go tshetsa— 50
- (i) dithoto tse di tlhagisitsweng le ditirelo tse tse di abiwang mo Rephaboliking;
- (ii) ptshenkelo e ka tlhago e leng ya tlhabolole; le
- (iii) peeletso;
- (e) tokafatsa bokgoni le nonofo mo tshenkelong ga baya kwa setlhoeng ditsamaiso tsa tshenkelo, gareng ga tse dingwe, ka tirisong ya thekenoloji; 55
- (f) go laela mabapi le tharabolole e e nonofileng e bile e itlhaganedisitswe ya dithulano tse di amanang le ditshwetso tsa tshenkelo; le
- (g) go tswelletsa boitlhamedi, tlhabolole e e tswelelang le ditshwanelo tsa tikologo mo karolong 24 ya Molaotheo.

Application and administration of Act

3. (1) This Act applies to—
- (a) a department as defined in section 1 of the Public Finance Management Act;
 - (b) a constitutional institution listed in Schedule 1 to the Public Finance Management Act; 5
 - (c) a municipality or a municipal entity; and
 - (d) a public entity listed in Schedule 2 or 3 to the Public Finance Management Act.
- (2) Section 1, Chapter 4, regulations made under section 63, including section 24(1)(d), applicable to Chapter 4, apply to Parliament and provincial legislatures. 10
- (3) This Act applies to—
- (a) all procurement carried out by a procuring institution, including procurement through donor or grant funding;
 - (b) any person who submits a bid or has been awarded a bid; and
 - (c) all procurement carried out by any person on behalf of a procuring institution. 15
- (4) In the event of a conflict between a provision of this Act and a provision of any other legislation, the provision of this Act prevails.
- (5) The Minister is responsible for the administration of this Act.

CHAPTER 2
PUBLIC PROCUREMENT OFFICE, PROVINCIAL TREASURIES AND 20
PROCURING INSTITUTIONS

Part 1
Public Procurement Office

Establishment of Public Procurement Office

4. (1) There is hereby established a Public Procurement Office within the National Treasury. 25
- (2) The Head and other officials of the Public Procurement Office must perform their functions in terms of this Act impartially and without fear, favour or prejudice.
- (3) The Head of the Public Procurement Office performs the duties and exercises the powers of the Public Procurement Office on behalf of that Office. 30

Functions of Public Procurement Office

5. (1) The Public Procurement Office must, in accordance with this Act—
- (a) promote compliance with this Act by procuring institutions;
 - (b) develop, and support the implementation of, necessary measures to maintain the integrity of procurement; 35
 - (c) guide and support officials and procuring institutions to ensure compliance with this Act and in doing so—
 - (i) provide advice and assistance to procuring institutions; and
 - (ii) ensure the professional development and training of officials involved in procurement; 40
 - (d) develop, and support the implementation of, measures to ensure transparency in procurement;
 - (e) promote standardisation in procurement;
 - (f) promote the use of technology and innovation and learning towards modernisation of the public procurement system; 45
 - (g) monitor and oversee the implementation of this Act;
 - (h) intervene by taking appropriate steps to address a material breach of this Act by a procuring institution as may be prescribed;
 - (i) create, maintain and publish one or more databases to facilitate the implementation of this Act; and 50
 - (j) perform any other duties imposed by this Act.

Tiriso le tsamaiso ya Molao

3. (1) Molao ono o diriswa mo—
- (a) lefapheng jaaka go tlhalositswe mo karolong 1 ya Molao wa Taolo ya Matlotlo a Setšhaba;
 - (b) setheong se se tlhomilweng ka Molaotheo se se tlhagisitsweng mo Šejuleng 1 ya the Molao wa Taolo ya Matlotlo a Setšhaba; 5
 - (c) masepala kgotsa setheo sa masepal; le
 - (d) setheo sa puso se se tlhagisitsweng mo Šejuleng 2 kgotsa 3 ya Molao wa Taolo ya Matlotlo a Setšhaba.
- (2) Karolo 1, Kgaolo 4, melawanataolo e e dirilweng ka fa tlase ga karolo 63, go akaretsa le karolo 24(1)(d), e e diriswang mo Kgaolong 4, e diriswa kwa Palamenteng le kwa dikokoanotheomolaong tsa diporofense. 10
- (3) Molao ono o diriswa mo—
- (a) ditshenkelong tsotlhe tse di dirwang ke setheo se se senkelang, go akaretsa le tshenkelo ka moabi kgotsa go thusa ka madi; 15
 - (b) mothong ofe yo o romelang maitekotheke kgotsa yo o abetsweng maitekotheke; le
 - (c) tshenkelong yotlhe e e dirilweng ke motho of emo boemong jwa setheo se se senkelang.
- (4) Mo lebakeng la kgotlhang magareng ga taelo ya Molao ono le taelo ya molao mongwe le mongwe efe, taelo ya Molao ono ke yona e diriswang. 20
- (5) Tona o rwala maikarabelo a tsamaiso ya Molao ono.

KGAOLO 2
KANTOROTSHENKELO YA PUSO, MATLOTLO A DIPOROFENSE LE
DITHEO TSE DI SENKELANG 25

Karolo 1
Kantorotshenkelo ya Puso

Go tlhongwa ga Kantorotshenkelo ya Puso

4. (1) Go tlhongwa fano Kantorotshenkelo ya Puso mo Matlotlong a Bosetšhaba.
- (2) Tlhogo le batlhankedi ba bangwe ba Kantorotshenkelo ya Puso ba tshwanetse go dira ditiro tsa bona go ya ka Molao ono ntle le go tsaya letlhakore le ntle le poifo, kgethololo kgotsa kgobebele. 30
- (3) Tlhogo ya Kantorotshenkelo ya Puso o dira ditiro le go diragatsa dithata tsa Kantorotshenkelo ya Puso mo boemong jwa Kantoro.

Ditiro tsa Kantorotshenkelo ya Puso 35

5. (1) Kantorotshenkelo ya Puso e tshwanetse, go latela Molao ono—
- (a) go tsweletsa kobamelo ya Molao ono ka ditheo tse di senkelang;
 - (b) go tlhama, le go tshegetsatsa go tsenngwa mo tirisong ga, dikgato tse di tlhokegang go tshegetsatsa tshiamo ya tshenkeloo;
 - (c) go kaela le go tshegetsatsa batlhankedi le ditheo tse di senkelang go netefatsa kobamelo ya Molao ono e bile ka go dira jalo— 40
 - (i) go neelana ka kgakololo le thuso go ditheo tse di senkelang; le
 - (ii) go netefatsa tokafatso ya bokgoni mo tirong le mo katisong ya batlhankedi ba ba amegang mo tshenkelong;
 - (d) go tlhabolola le go tshegetsatsa go tsenngwa mo tirisong ga, dikgato tsa go netefatsa bosengbofitlha mo tshenkelong; 45
 - (e) go tsweletsa tlhomamiso mo tshenkelong;
 - (f) go tsweletsa tiriso ya thekenoloji le boithlamedi le go ithuta mo go direng thulaganyo ya tshenkelo ya puso gore e nne ya segompieno;
 - (g) go ela tlhoka le go baya leitlho go tsenngwa mo tirisong ga Molao ono; 50
 - (h) go tsereganya ka go tsaya dikgato tse di maleba go samagana le tlolo e e tseneletseng ya Molao ono ka setheo se se senkelang jaaka go ka tswa go laetswe;
 - (i) go tlhama, go tshola le go phasalatsa sefalanatshedimotsetso se le esi kgotsa go feta go nolofatsa go tsenngwa mo tirisong ga Molao ono; le 55
 - (j) go dira ditiro dingwe le dingwe dife tse di pateletswang ke Molao ono.

- (2) The Public Procurement Office may, in accordance with this Act—
- (a) in relation to procuring institutions, except municipalities and municipal entities, issue, by notice in the *Gazette*, binding instructions as provided for in this Act and on any other procurement matter for the effective implementation of this Act; 5
 - (b) in relation to municipalities and municipal entities, issue non-binding circulars, on the subject of an instruction, provided for in this Act, and any other matter for the effective implementation of this Act;
 - (c) issue guidelines to assist procuring institutions with the implementation of this Act and any other procurement related matter; 10
 - (d) after consultation with the relevant category of procuring institutions, determine a model procurement policy for different categories of procuring institutions and different categories of procurement, which a procuring institution may adopt, with or without amendments, or not adopt; and
 - (e) exercise other powers conferred by this Act. 15
- (3) The Public Procurement Office may issue different instructions in terms of subsection (2) for—
- (a) different categories of procuring institutions; and
 - (b) different categories of procurement.
- (4) A circular referred to in subsection (2)(b) will be binding on— 20
- (a) a municipality, if adopted by its council; or
 - (b) a municipal entity, if adopted by the council of the entity's parent municipality.

Part 2 **Provincial treasuries**

- Functions of provincial treasuries** 25
6. (1) A provincial treasury must—
- (a) within its province—
 - (i) monitor and oversee the implementation of the procurement function by a procuring institution;
 - (ii) promote effective management and transparency in respect of the procurement function of procuring institutions; and 30
 - (iii) enforce effective management and transparency in respect of the procurement function of procuring institutions except municipalities and municipal entities;
 - (b) intervene by taking appropriate steps to address a material breach of this Act by a procuring institution, except a municipality or municipal entity, within its province as may be prescribed; 35
 - (c) provide any information required by the Public Procurement Office in terms of this Act; and
 - (d) perform other duties imposed by this Act. 40
- (2)(a) A provincial treasury, within its province, may, in relation to—
- (i) municipalities and municipal entities, issue non-binding circulars; and
 - (ii) other procuring institutions, issue, by notice in the *Provincial Gazette*, binding provincial instructions, on procurement matters for the effective implementation of this Act and not inconsistent with an instruction issued by the Public Procurement Office; 45
- (b) issue guidelines to assist procuring institutions with the implementation of this Act or any other procurement related matter;
- (c) assist procuring institutions in building their capacity for efficient, effective and transparent procurement management; and 50
- (d) exercise other powers conferred by this Act.
- (3) A provincial treasury may issue different instructions in terms of subsection (2)(a) for—
- (a) different categories of procuring institutions; and
 - (b) different categories of procurement. 55
- (4) A circular referred to in subsection (2)(a)(i) will be binding on—
- (a) a municipality, if adopted by its council; or

- (2) Kantorotshenkelo ya Puso e ka, go tsamaelana le Molao ono—
- (a) mabapi le ditheo tse di senkelang, ntle le bomasepala le ditheo tsa masepala, rebola, ka kitsiso mo Lokwalodikgannyeng la Puso, ditaello tse di tlamang jaaka go laetswe mo Molaong ono le mo morerong mongwe le mongwe ofe wa tshenkelo mabapi le go tsenngwa mo tirisong ga Molao ono; 5
 - (b) mabapi le bomasepala le ditheo tsa masepala, makwalotiko a a sa tlameng, ka ga morero wa taelo, o o laetsweng mo Molaong ono, le morero mongwe le mongwe ofe mabapi le tsenyotirisong e e nonofileng ya Molao ono;
 - (c) rebola dikaelo go thusa ditheo tse di senkelang ka go tsenya mo tirisong Molao ono le morero mongwe le mongwe ofe o o amanang le tshenkelo; 10
 - (d) morago ga go rerisana le setlhopho se se maleba sa ditheo tse di senkelang, tlhomamisa sekai sa pholisi ya tshenkelo mabapi le mefuta e e farologaneng ya ditheo tse di senkelang le mefuta e e farologaneng ya tshenkelo, e setheo se se senkelang se e ka e amogelang, ka ditlhabololo le ntle le ditlhabololo, kgotsa go se amogele; le 15
 - (e) diragatsa dithata tse dingwe tse di roletsweng ka Molao ono.
- (3) Kantorotshenkelo ya Puso e ka rebola ditaello tse di farologaneng go ya ka karolwana (2) mabapi le—
- (a) ditlhopho tse di farologaneng tsa ditheo tse di senkelang; le
 - (b) ditlhopho tse di farologaneng tsa tshenkelo. 20
- (4) Lekwalotiko le le kailweng mo karolwaneng (2)(b) le tlile go tlama—
- (a) masepala, fa le amogetswe ke khansele ya ona; kgotsa
 - (b) setheo sa masepala, fa le amogetswe ke khansele ya masepalamogolo wa setheo.

Karolo 2 25
Matlotlo a diporofense

Ditiro tsa matlotlo a diporofense

6. (1) Matlotlo a diporofense a tshwanetse—
- (a) mo porofenseng ya ona—
 - (i) go ela tlhoko le go baya leitho go tsenngwa mo tirisong ga tiro ya tshenkelo ka setheo se se senkelang; 30
 - (ii) go tseletsa taolo e e nonofileng le bothokabofitlha mabapi le tiro ya tshenkelo ya ditheo tse di senkelang; le
 - (iii) go gatelela taolo e e nonofileng le bothokabofitlha mabapi le tiro ya tshenkelo ya ditheo tse di senkelang ntle le bomasepala le ditheo tsa masepala; 35
 - (b) go tseganya ka go tsaya dikgato tse di maleba go samagana le tlolo e e tseletseng ya Molao ono ka setheo se se senkelang, ntle le bomasepala kgotsa ditheo tsa masepala, mo porofenseng ya sona jaaka go ka laelwa;
 - (c) go neelana ka tshedimotsetso efe e e tlhokwang ke Kantorotshenkelo ya Puso go ya ka Molao ono; le 40
 - (d) go dira ditiro tse dingwe tse di pateletswang ke Molao ono.
- (2)(a) Matlotlo a porofense, mo porofenseng ya ona, a ka, mabapi le—
- (i) bomasepala le ditheo tsa masepala, rebola makwalotiko a a sa tlameng; le
 - (ii) ditheo tse dingwe tse di senkelang, rebola, ka kitsiso mo Lokwalodikgannyeng la Porofense, ditaello tse di tlamang tsa porofense, ka ga merero ya tshenkelo mabapi le go tsenngwa mo tirisong go go nonofileng ga Molao ono le go tsamaelana le le taelo e e rebotsweng ke Kantorotshenkelo ya Puso; 45
 - (b) rebola dikaelo go thusa ditheo tse di senkelang ka go tsenngwa mo tirisong ga Molao ono kgotsa ka morero mongwe le mongwe ofe o o amanang le tshenkelo; 50
 - (c) thusa ditheo tse di senkelang ka go aga bokgoni jwa tsona mabapi le taolo e e nonofileng, e e nang le bokgoni e bile e se bofitlha; le
 - (d) diragatsa dithata tse dingwe tse di roletsweng ka Molao ono.
- (3) Matlotlo a diporofense a ka rebola ditaello ditaello tse di farologaneng go ya ka karolwana (2)(a) mabapi le— 55
- (a) ditlhopho tse di farologaneng tsa ditheo tse di senkelang; le
 - (b) ditlhopho tse di farologaneng tsa tshenkelo.
- (4) Lekwalotiko le le kailweng mo karolwaneng (2)(a)(i) le tlile go tlama—
- (a) masepala, fa le amofetswe ke khansele ya ona; kgotsa

(b) a municipal entity, if adopted by the council of the entity's parent municipality.

(5) The head of a provincial treasury performs the duties and exercise the powers of the provincial treasury on behalf of the provincial treasury.

Part 3
Procuring institutions

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Decision-making for procuring institution

7. The accounting officer or accounting authority of a procuring institution is responsible for making decisions on behalf of the procuring institution in terms of this Act.

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Duties of procuring institution

8. (1) A procuring institution must—

- (a) conduct procurement in accordance with this Act;
- (b) develop and implement an effective and efficient procurement system, including a procurement policy, as envisaged in section 24;
- (c) define procurement needs by compiling a statement of requirements and the statement must be included in the invitation documents, evaluation process and contracts;
- (d) provide procurement information as may be prescribed or as the Public Procurement Office or the relevant provincial treasury may require; and
- (e) comply with the measures to prevent abuse of its procurement system envisaged in section 26.

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(2) A procuring institution may, as prescribed, correct any action or omission purportedly made in terms of this Act, if the action or omission was based on an error of law or fact or fraud.

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CHAPTER 3
PROCUREMENT INTEGRITY AND DEBARMENT

Codes of conduct

9. (1) An accounting officer, an official, a member of an accounting authority, a bid committee or the Tribunal, a bidder or a supplier or any other person, involved in procurement in terms of this Act, must comply with the prescribed code of conduct.

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(2) Any contravention of the prescribed code of conduct by an accounting officer or other official, or a member of accounting authority, a bid committee or the Tribunal constitutes misconduct and steps must be taken in terms of the applicable procedure.

Conduct of persons involved in procurement

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10. An accounting officer or other official, or a member of an accounting authority, bid committee or the Tribunal, or any other person, involved in procurement in terms of this Act must—

- (a) exercise powers and perform duties impartially and with the degree of care and diligence that a reasonable person would exercise in similar circumstances;
- (b) not use their position, or information obtained because of their position, improperly to gain an advantage for themselves or someone else or cause prejudice to any other person;
- (c) not interfere with or exert undue influence on any person involved in procurement; and
- (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.

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- (b) setheo sa masepala, fa le amogetswe ke khansele ya masepalamogolo wa setheo.
- (5) Tlhogo ya matlotlo a porofense o dira ditiro le go diragatsa dithata tsa matlotlo a porofense mo boemong jwa matlotlo a porofense.

Karolo 3
Ditheo tsa di senkelang

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Go tsaya tshwetso mabapi le setheo se se senkelang

7. Motlhankedi yo o rwalang maikarabelo kgotsa bothati jo bo rwalang maikarabelo jwa setheo se se senkelang bo rwa maikarabelo mabapi le go tsaya tshwetso mo boemong jwa setheo se se senkelang go ya ka Molao ono.

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Ditiro tsa setheo se se senkelang

8. (1) Setheo se se senkelang se tshwanetse go—
- (a) senkela go tsamaelana le Molao ono;
- (b) tlhama le go tsenya mo tirisong thulaganyo ya tshenkelo e e nonofileng e bile e na le bokgoni, go akaretsa le pholisi ya tshenkelo, jaaka go bonetswe pele mo karolong 24;
- (c) tthalosa ditlhokego tsa tshenkelo ka go kgobokanya lenane la ditlhokego e bile lenane le tshwanetse go akaretsa mo makwalong a taletso, mo tshakatshekong ya tsamaiso le mo dikonterakeng;
- (d) neelana ka tshedimosetso ya tshenkelo jaaka go ka laelwa kgotsa jaaka Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a a maleba a ka tlhoka; le
- (e) obamela dikgato tsa go thibela tirisobotlhaswa ya dithulaganyo tsa sona e e bonelwang pele mo karolong 26.
- (2) Setheo se se senkelang se ka, jaaka go laetswe, siamisa tiro efe kgotsa tlogelo e go tsewang gore e dirilwe go ya ka Molao ono, fa tiro kgotsa tlogelo e ne e theilwe mo phosong ya molao, kgotsa ya dintlha kgotsa mo tsietsong.

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KGAOLO 3
TSHIAMO YA TSHENKELO LE KGANELO

Dikhoutu tsa maitsholo

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9. (1) Motlhankedi yo o rwalang maikarabelo, motlhankedi, tokololo ya bothati jo bo rwalang maikarabelo, komiti ya maitekotheke kgotsa Lekgotla, mosenki kgotsa mothelesi kgotsa motho mongwe le mongwe ofe, yo o amegang mo tshenkelong go ya ka Molao ono, o tshwanetse go obamela khoutu ya maitsholo e e laetsweng ka motlhankedi yo o rwalang

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(2) Tlolo efe ya khoutu ya maitsholo e e laetsweng ka motlhankedi yo o rwalang maikarabelo kgotsa motlhankedi yo mongwe, tokololo ya bothati jo bo rwalang maikarabelo, komiti ya maitekotheke kgotsa Lekgotla ke maitsholomabe e bile dikgato di tshwanetse go tsewa go ya ka tsamaiso e e diriswang.

Maitsholo a batho ba ba amegang mo tshenkelong

10. Motlhankedi yo o rwalang maikarabelo kgotsa motlhankedi yo mongwe, tokololo ya bothati jo bo bo rwalang maikarabelo, komiti ya maitekotheke kgotsa Lekgotla, kgotsa motho mongwe le mongwe ofe, yo o amegang mo tshenkelong go ya ka Molao ono o tshwanetse go—

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- (a) diragatsa dithata le go dira ditiro ntle le go tsaya letlhakore le ka tlhokomelo le matsetseleko a magolo a motho ofe o ka a dirisang mo maemong a a tshwanang le ao;
- (b) se dirise maemo a bona, kgotsa tshedimosetso e e bonweng ka ntlha ya maemo a bona, e seng ka tshwanelo go iponela molemo kgotsa bonela motho yo mongwe molemo kgotsa go gobelela motho mongwe le mongwe ofe;
- (c) se itshunye kgotsa go susumetsa motho ofe yo o amegang mo tshenkelong; le
- (d) fa go nna le go thulana ga kgatlhegelo mo morerong wa tshenkelo, go senola thulano eo le go ikgogela morago mo go tseyeng karolo mo tsamaisong ya morero oo wa tshenkelo.

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Due diligence and declaration of interest regarding persons involved in procurement

11. (1) A procuring institution must take steps in accordance with prescribed procedures to identify—
- (a) automatically excluded persons as envisaged in section 13 and their immediate family members; and 5
 - (b) related persons as envisaged in subsection (3).
- (2)(a) The steps envisaged in subsection (1) include the prescribed declaration of interest to be made by—
- (i) all bidders, in the case of bids; and 10
 - (ii) all applicants, in the case of applications for registration on a database created by the Public Procurement Office in terms of section 5(1)(i).
- (b) A failure to submit a declaration or submitting a false declaration renders a bid invalid.
- (3) If a person related to an accounting officer or other official or a member of an accounting authority, a bid committee or the Tribunal involved in procurement in terms of this Act, has, or intends to acquire, a direct or indirect personal interest in a procurement matter, the accounting officer or other official or a member of an accounting authority, a bid committee or the Tribunal— 15
- (a) must disclose such interest in writing, immediately after receiving the agenda of the meeting of a bid committee of the procuring institution regarding a procurement, or on notification of a matter being brought to the attention of the bid committee or at any time during the consideration of the bid when the official or other person becomes aware of the interest; and 20
 - (b) may not be present at or participate in the deliberations or decision-making process of the procuring institution in relation to the agenda item or the matter in question. 25
- (4) A disclosure of interest made in terms of subsection (3) must be recorded in the minutes of the meeting at which it is made, or it relates to or any document seeking a decision. 30

Undue influence

12. (1) No person may—
- (a) interfere with, or influence, the procurement process of a procuring institution;
 - (b) impede an accounting officer, an accounting authority or an official of a procuring institution, the Public Procurement Office or a provincial treasury in fulfilling responsibilities in terms of this Act; or 35
 - (c) tamper with any bid after its submission or award.
- (2) Subsection (1) does not apply to an official or any other person exercising a power or performing a duty in terms of legislation. 40
- (3) Subsection (1) may not be construed to prohibit any person from disclosing an irregularity regarding a procurement process.

Automatic exclusion from submitting bid

13. (1) The following persons may not submit a bid: 45
- (a) A public office bearer;
 - (b) an official or employee of Parliament or a provincial legislature;
 - (c) a person appointed in terms of section 9 or 12A of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
 - (d) an official or employee of a constitutional institution listed in Schedule 1 to the Public Finance Management Act; 50
 - (e) an official or employee of a public entity listed in Schedules 2 and 3 to the Public Finance Management Act;
 - (f) an official or employee of a municipality or municipal entity;

Go dira ka tlhoafalo e e tshwanetseng le tlhomamiso ya dikgatlhegelo mabapi le batho ba ba amegang mo tshenkelong

11. (1) Setheo se se senkelang se tshwanetse go tsaya dikgato go latela ditsamaiso tse di laetsweng go tlhagisa—
- (a) batho ba go se akaretswe ga bona go itiragaletseng jaaka go bonelwa pele mo karolong 13 le ditokololo tse di magareng tsa losika la bona; le 5
- (b) batho ba ba amanang jaaka go bonelwa pele mo karolwaneng (3).
- (2)(a) Dikgato tse di bonelwang pele mo karolwaneng (1) di akaretsa netefatso e e laetsweng ya kgatlhegelo e e tla dirwang ke—
- (i) basenki botlhe, mo lebakeng la maitekotheke; le 10
- (ii) badirakopo botlhe, mo lebakeng la dikopo tsa boikwadiso mo sefalanatshedimosetsong se se tlhamilweng ke Kantorotshenkelo ya Puso go ya ka karolo 5(1)(i).
- (b) Go retelelwa ke go romela netefatso kgotsa go romela netefatso e e fosagetseng go dira gore maitekotheke a tsewe jaaka a a sa nepagalang. 15
- (3) Fa motho yo o amanang le motlhankedi yo o rwalang maikarabelo kgotsa motlhankedi yo mongwe kgotsa tokololo ya bothati jo bo bo rwalang maikarabelo, komiti ya maitekotheke kgotsa Lekgotla le le amegang mo tshenkelong go ya ka Molao ono, a, kgotsa a ikaelela go fitlhelela, kgatlhego ya boena ka tlhamalalo kgotsa e seng ka tlhamalalo mo morerong wa tshenkelo, motlhankedi yo o rwalang maikarabelo kgotsa motlhankedi yo mongwe kgotsa tokololo ya bothati jo bo bo rwalang maikarabelo, komiti ya maitekotheke kgotsa Lekgotla le— 20
- (a) tshwanetse go senola kgatlhegelo eo, ka bonako morago ga go amogela lenanetema la kopano ya komiti ya maitekotheke ya setheo se se senkelang mabapi le tshenkelo, kgotsa kitsiso e e ka ga morero o o fa pele ga komiti ya maitekotheke kgotsa ka nako efe ka motsi wa tshenkatsheko ya maitekotheke fa motlhankedi kgotsa motho yo mongwe a lemoga ka ga kgatlhegelo; le 25
- (b) ka se tseenele kgotsa le ka se tseye karolo mo dipuisanong kgotsa mo tsamaisong ya go tsaya tshwetso ya setheo se se senkelang mabapi le ntlha e e mo lenanetemeng kgotsa mo morerong o o sekasekwang. 30
- (4) Tshenolo ya kgatlhegelo e e dirilweng go ya ka karolwana (3) e tshwanetse go gatiswa mo metsotsong ya kopano e e dirilweng kwa go yona, kgotsa e e amanang le yona kgotsa mo lokwalong lefe le le batlang tshwetso.

Tlhotlheletso e e sa tshwanelang

12. (1) Ga go motho ope yo o ka— 35
- (a) itshunyang mo, kgotsa tlhotlheletsang, tsamaiso ya tshenkelo ya setheo se se senkelang;
- (b) kgoreletsang motlhankedi yo o rwalang maikarabelo kgotsa bothati jo bo rwalang maikarabelo kgotsa motlhankedi wa setheo se se senkelang, Kantorotshenkelo ya Puso kgotsa matlotlo a porofense mo go diragatseng maikarabelo a gagwe go ya ka Molao ono; kgotsa 40
- (c) tshwenyanang le maitekotheke afe morago ga thomelo kgotsa kabo ya ona.
- (2) Karolwana (1) ga e diriswe mo motlhankeding kgotsa mo mothong mongwe le mongwe ofe yo o diragatsang thata kgotsa yo o dirang tiro go ya ka molao.
- (3) Karolwana (1) e ka se tseelwe gore e thibela motho ofe mo go senoleng bothokatsiamo mabapi le tsamaiso ya tshenkelo. 45

Go se akaretswe go go itiragalelang mo go romeleng maitekotheke

13. (1) Batho ba ba latelang ba ka se romele maitekotheke:
- (a) Modiredipuso;
- (b) motlhankedi kgotsa modiredi wa Palamente kgotsa kokoanotheomolao ya porofense; 50
- (c) motho yo o thapilweng go ya ka karolo 9 kgotsa 12A ya *Public Service Act*, 1994 (Kgoeletso 103 ya 1994);
- (d) motlhankedi kgotsa modiredi wa setheo se se tlhomilweng ka molaotheo se se tlhagisitsweng mo Šejuleng 1 ya Molao wa Taolo ya Matlotlo a Setšhaba; 55
- (e) motlhankedi kgotsa modiredi wa setheo sa puso se se tlhagisitsweng mo Dišejuleng 2 le 3 tsa Molao wa Taolo ya Matlotlo a Setšhaba;
- (f) motlhankedi kgotsa modiredi wa masepala kgotsa setheo sa masepala;

- (g) any entity in which a person mentioned in paragraphs (a) to (f) is a director or has a controlling or other substantial interest;
 - (h) a bidder or supplier debarred in terms of section 15;
 - (i) an entity in which a bidder or supplier debarred in terms of section 15—
 - (i) has a controlling interest; or
 - (ii) is a director or a member; and
 - (j) an executive member of a controlling body of a procuring institution.
- (2) A non-executive member of a controlling body of a procuring institution may not submit a bid in that institution.

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, in writing or verbally, 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 or is contrary to a provision of this Act, the affected person must not comply with the direction.
- (2) The affected person—
- (a) must inform the Public Procurement Office 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, the line manager of the person who must initiate an investigation into the allegation within a period determined in the procuring institution policies; and
 - (d) may report to the Public Service Commission or any other relevant body for investigation.
- (3) If the line manager was informed of the allegation in terms of subsection (2)(c) but 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 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.

Debarment

15. (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 issuing of a debarment order; and
 - (b) invite the affected person to provide reasons, within 10 days, why the debarment order should not be issued.
- (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;

- (g) setheo sefe se motho yo o umakilweng mo ditemaneng (a) go fitlha go (f) e leng mokaedi kgotsa a nang le taolo kgotsa kgatlhegelo e e tseneletseng;
- (h) mosenki kgotsa mothelesi yo o kganetsweng go ya ka karolo 15;
- (i) setheo se mosenki kgotsa mothelesi a kganetsweng mo go sona go ya ka karolo 15— 5
- (i) a nang le kgatlhegelo ya taolo; kgotsa
- (ii) e leng mokaedi kgotsa tokololo; le
- (j) tokololo ya khuduthamaga ya mokgatlho o o laolang wa setheo se se senkelang.
- (2) Tokololo e e seng ya khuduthamaga ya mokgatlho o o laolang wa setheo se se senkelang e ka se romele maitekotheko mo setheong seo. 10

Dikaelo tse di sa tsamaelaneng le Molao

14. (1) Fa motlhankedi yo o rwalang maikarabelo, bothati jo bo bo rwalang maikarabelo, tokololo ya bothati jo bo rwalang maikarabelo kgotsa motlhankedi wa setheo se se senkelang (yo fano a bidiwang “motho yo o amegang”) a laelwa, ka go kwala kgotsa ka molomo, ke motho ofe yo o nang le taolo mo mothong yo o amegang (yo fano a bidiwang ômotho yo o nang le taoloö), go dira kgotsa go tlogela go dira sengwe mabapi le tshenkelo, se motho yo o amegang a dumelang gore ga a letlwa go se dira go ya ka Molao ono kgotsa ga se tsamaelane le taelo ya Molao ono, motho yo o amegang ga a tshwanela go obamela taelo. 15 20
- (2) Motho yo o amegang—
- (a) o tshwanetse go itsise Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a a maleba, ka mokgwa o o laetsweng, ka ga taelo, kemokgatlhanong le mabaka a kemokgatlhanong;
- (b) o ka romela ka go kwalela motho yo o nang le taolo, kemokgatlhanong, le mabaka a kemokgatlhanong; 25
- (c) o ka itsise, ka go kwala, molaodi ka tlhamalalo wa motho yo o tshwanetseng go simolola patlisiso ya magatwe mo pakeng e e tlhomamisitsweng mo dipholising tsa setheo se se senkelang; e bile
- (d) o ka begela Khomišene ya Bodiredipuso kgotsa mokgatlho mongwe le mongwe ofe o o maleba mabapi le patlisiso. 30
- (3) Fa molaodi ka tlhamalalo a ne a itsisitswe ka ga magatwe go ya ka karolwana (2)(c) mme a se simolole patlisiso, Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a a maleba a tshwanetse go simolola patlisiso ka mokgwa o o laetsweng ntle le fa go begilwe go ya ka karolwana (2)(d). 35
- (4) Motho yo o amegang o ka se, go sa nyatswe peelo efe ya tiro, bewa ka fa tlase ga tatlhegeloiro jaaka go tlhalositswe mo karolong 1 ya *Protected Disclosures Act*, 2000 (Molao 26 wa 2000), ka ntlha ya go se obamele taelo ya motho yo o nang le taolo.

Kganelo

15. (1) Pele go rebolwa taelo ya kganelo go ya ka karolo eno, setheo se se senkelang se tshwanetse go tlamela mosenki, mothelesi kgotsa mongwe wa bakaedi, ditokololo, batlhokomedi kgotsa badirammogo ba mosenki kgotsa mothelesi yoo (fano o bidiwa ômotho yo o amegangö) ka kitsiso ya maikaelelo a go kganela. 40
- (2) Kitsiso e tshwanetse go—
- (a) tlhagisa lebaka la go rebolwa ga taelo ya kganelo e e ikaeletseng; le 45
- (b) laetsa motho yo o amegang go neelana ka mabaka, mo matsatsing a le 10, a gore goreng taelo ya kganelo e sa tshwanela go rebolwa.
- (3) Setheo se se senkelang se tshwanetse go rebola taelo ya kganelo kgatlhanong le mosenki kgotsa mothelesi e bile se ka rebola taelo ya kganelo kgatlhanong le ofe wa bakaedi, ditokololo, batlhokomedi kgotsa badirammogo ba mosenki kgotsa mothelesi yoo, fa mosenki kgotsa mothelesi a— 50
- (a) tlametse tshedimosetso e e fosagetseng mo maitekong a theko kgotsa mo lokwalong lengwe le lengwe lefe le le rometsweng kwa setheong se se senkelang mabapi le tsamaiso kgotsa konteraka ya tshenkelo;
- (b) tlametse tshedimosetso e e fosagetseng mabapi le maitlhamo a boikwadiso mo sefalanatshedimosetsong jaaka go bonetswe pele mo Molaong ono; 55
- (c) dirisana le ba bangwe go itshunya mo botsayakarolong jwa baitekalesego ba bangwe;

- (d) has been convicted of an 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; 5
- (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 10
- (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; 15
 (ii) the Public Procurement Office; and
 (iii) the relevant provincial treasury, if applicable,
 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 20
 (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 25
 (b) make the register publicly available.
- (7) The Public Procurement Office must, subject to the outcome of an application for review of the decision in terms of section 48, 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). 30
- (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. 35
- (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 written or verbal directions of the person debarred. 40

CHAPTER 4

PREFERENTIAL PROCUREMENT

45

Preferential framework, procurement policies and application of provisions

16. (1) A procuring institution must develop and 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, 50

envisaged in section 217(2) and (3) of the Constitution, in accordance with the objects of this Act, the framework in this Chapter and regulations made in terms of this Act.

(2) The procurement policy of a procuring institution, referred to in subsection (1), must provide for— 55

- (a) setting aside bids in accordance with section 17; and

- (d) bonwe molato wa tlolomolao e e mabapi le bomenemene, tsietsa, therisanelobosula kgotsa pateletso, kgodisotlhotlwa kgotsa go se obamele bofitlha go go amanang le tshenkelo ka setheo se se senkelang;
- (e) sa diragatsa maikarabelo a a diretsweng konteraka e se ka ntlha ya mabaka a a seng mo taolong ya mothelesi; 5
- (f) athloetswe tlolomolao e e amanang le—
 (i) go fitlhelela kgotsa go leka go fitlhelela konteraka kgotsa konterakapotlana; kgotsa
 (ii) kgwebo kgotsa ditiro tsa seporofesene;
- (g) lekile, kgotsa a logile maano mmogo le, a thusitse, a rotloeditse, a susumeditse 10
 kgotsa a tlhotlheledise motho yo mongwe go tlola taelo ya Molao ono; kgotsa
- (h) sa obamela taelo ya Molao ono.
- (4)(a) Setheo se se senkelang se tshwanetse go tsaya tsia mabaka a a rometsweng go ya ka karolwana (2)(b) le go swetsa gore a taelo ya kganelo e rebolwe.
- (b) Setheo se se senkelang se tshwanetse go itsise— 15
 (i) motho yo o amegang;
 (ii) Kantorotshenkelo ya Puso; le
 (iii) matlotlo a porofense a a maleba, fa go le maleba, mo matsatsing a le matlhano go tloga ka letlha la tshwetso.
- (5) Setheo se se senkelang se ka, ka kopo ya motho yo o amegang— 20
 (a) fokotsa paka ya taelo ya kganelo; kgotsa
 (b) tlosa taelo ya kganelo, fa taelo e ne e dirilwe ka phoso ya dintlha, phoso ya molao kgotsa tsietsa.
- (6) Kantorotshenkelo ya Puso e tshwanetse go—
 (a) tlhoma le go tshola rejisetara ya kganelo ya batho ba ba kganetsweng go ya ka 25
 karolo eno; le
 (b) dira gore rejisetara e fithelelwe ke setšhaba.
- (7) Kantorotshenkelo ya Puso e tshwanetse, go latela ditlamorago tsa kopo ya tshkatsheko ya tshwetso go ya ka karolo 48, ka bonako morago ga go itsiswe ka ga tshwetso ya go kganela go ya ka karolwana (4)(b) go akaretsa leina la motho yo o 30
 amegileng mo rejisetareng e e umakilweng mo karolwaneng (6).
- (8) Taelo ya kganelo e simolola go dira ka letlha le leina la motho yo o amegang le tlhagelelang mo rejisetareng e e umakwang mo karolwaneng (6).
- (9) Taelo ya kganelo e ka se fete paka e e laetsweng e bile dipaka tse di farologaneng 35
 di ka laelwa mabapi le kganelo go ya ka karolwana (3).
- (10) Taelo ya kganelo e thibela motho yo o amegang, sebaka sa paka e e tsepamisitsweng mo taolong ya kganelo, mo go tseyeng karolo mo tshenkelong ka ditheo tse di senkelang ka kakaretso kgotsa mo mabakeng a a tsepamisitsweng mo taolong.
- (11)(a) Motho yo o kganetsweng go ya ka karolo eno o ka se dire maitsholo a, ka 40
 tlhamamlalo kgotsa e seng ka tlhamalalo, a sa obameleng taelo ya kganelo.
- (b) Ntle le go lekanyetsa temana (a), motho yo o kganetsweng ga a obamele temana eo fa motho a rulaganya le motho yo mongwe go dira maitsholo a ka tlhamalalo kgotsa e seng ka tlhamalalo a sa obameleng taelo ya kganelo go tsamaelana le ditaelo tse di kwetsweng kgotsa tsa molomo tsa motho yo o kganetsweng. 45

KGAOLO 4 TSHENKELO E E BATLWANG

Letlhomeso, dipholisi tsa tshenkelo le tiriso e e batlwang ya ditaelo

16. (1) Setheo se se senkelang se tshwanetse go tsenya mo tirisong pholisi ya tshenkelo e e laelang mabapi le— 50
 (a) mefuta e e batlwang mo kabong ya dikonteraka; le
 (b) tshireletso kgotsa ntshetsopele ya batho, kgotsa ditlhopho tsa batho, bao ba sokolang ka ntlha ya kgethololo e e sa lolamang,
 e e bonelwang pele mo karolong 217(2) le (3) ya Molaotheo, go tsamaelana le maitlomo a Molao ono le letlhomeso mo Kgaolong eno le melawanataolo e e dirilweng 55
 go ya ka Molao ono.
- (2) Pholisi ya tshenkelo ya setheo se se senkelang, se se umakilweng mo karolwaneng (1), e tshwanetse go laela mabapi le—
 (a) go beelwa thoko ga maitekotheke go tsamaelana le karolo 17; le

- (b) if setting aside in accordance with section 17 is not possible, pre-qualification in accordance with section 18.
- (3) If procurement in accordance with section 17, 18 or 19 is not possible, the procuring institution must record and report the reasons to the Public Procurement Office and the relevant treasury in the prescribed manner. 5
- (4)(a) The threshold prescribed for section 18(1) must be higher than the threshold prescribed for section 17(1).
- (b) The threshold prescribed for section 19(1) must be higher than the threshold prescribed for section 18(1).
- (5) A bid subject to this Chapter must in addition to the applicable provisions of this Chapter, be evaluated in terms of the criteria envisaged in section 24(1)(d). 10
- (6) Any procurement in terms of this Act must comply with a designation for local production and content in terms of section 20, if applicable.

Set-asides for preferential procurement 15

17. (1)(a) 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.
- (b) The prescribed conditions referred to in paragraph (a) must include a minimum of potentially qualifying suppliers. 20
- (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. 25
- (c) When prescribing targets, the Minister must take into account the applicable codes 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).
- (d) The Minister must, at least every two years after prescribing any target for set-aside, consult as envisaged in paragraph (b), and take into account the codes of goods practice referred to in paragraph (c), on proposed amendments to any target so prescribed and prescribing new targets. 30
- (e) 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. 35
- (3) Persons referred to in subsection (1) are limited to—
- (a) black people;
 - (b) black women;
 - (c) women;
 - (d) black people with disabilities; 40
 - (e) people with disabilities;
 - (f) military veterans;
 - (g) persons referred to any of the paragraphs (a) to (f) within a geographical area;
 - (h) small enterprises owned by— 45
 - (i) black people;
 - (ii) black women;
 - (iii) women;
 - (iv) black people with disabilities;
 - (v) people with disabilities;
 - (vi) military veterans; 50
 - (vii) black people who are youth; or
 - (viii) youth;
 - (ix) persons referred to in any of the subparagraphs (i) to (viii) within a particular geographical area;
 - (i) small enterprises within a particular geographical area; 55
 - (j) small enterprises;
 - (k) co-operatives which consist of members who are black people; or
 - (l) co-operatives;

- (b) fa peelothoko go tsamaelana le karolo 17 e sa kgonege, tshiamelopele go tsamaelana le karolo 18.
- (3) Fa tshenkelo go tsamaelana le karolo 17, 18 kgotsa 19 e sa kgonege, setheo se se senkelang se tshwanetse go rekota le go begela Kantorotshenkelo ya Puso le matlotlo a a maleba mabaka ka mokgwa o o laetsweng. 5
- (4)(a) Dipeelo tse di laetsweng mo karolong 18(1) di tshwanetse go nna kwa godimo ga peelo e e laetsweng mo karolong 17(1).
- (b) Peelo e e laetsweng mo karolong 19(1) e tshwanetse go nna kwa godimo ga peelo e e laetsweng mo karolong 18(1).
- (5) Maitekotheke a a go ya ka Kgaolo eno a tshwanetse mo godimo ga ditaelo tse di diriswang tsa Kgaolo eno, go tlhatlhajwa go ya ka mokgwa o o bonelwang pele mo karolong 24(1)(d). 10
- (6) Tshenkelo efe go ya ka Molao ono e tshwanetse go obamela go tlhlongwa mabapi le tlhagiso ya selegae le diteng go ya ka karolo 20, fa di diriswa.

Dipeelothoko mabapi le tshenkelo e e batlwang 15

17. (1)(a) Setheo se se senkelang se tshwanetse go beela kwa thoko maitekotheke a setlhopha sa batho ba ba laetsweng mo karolwaneng (3) go tsamaelana le dipeelo le mabaka a a laetsweng.
- (b) Dipeelo tse di laetsweng tse di umakilweng mo temaneng (a) di tshwanetse go akaretsa bonnye jwa batholesi ba ba siametseng bao ba nang le bokgoni. 20
- (2)(a) Tona o tshwanetse, go latela karolwana eno, go laela tseo di totilweng mabapi le peelothoko e e umakilweng mo karolwaneng (1).
- (b) Tona o tshwanetse, mo matsatsing a le 30 morago ga tshimololo ya karolo eno, go rerisana le Ditona tse di maleba tseo mabapi le tsona ditlhopha tsa batho bao mabapi le bona tseo di totilweng tsa peelothoko di tshwanetseng go laelwa. 25
- (c) Fa a laela tse di totilweng, Tona o tshwanetse go tsaya tsia dikhoutu tse di diriswang tsa tiragatso e e siameng mo nonofisong ya ikonomi ya batho bantsho e e rebotswenggo ya ka karolo 9(1) ya Molao wa Katoloso ya go Nonotsha Ikonomi ya Bantsho, 2003 (Molao 53 wa 2003).
- (d) Tona o tshwanetse, bonnye mo dingwageng dingwe le dingwe tse pedi morago ga go laela tseo di totilweng tse mabapi le go beelwa thoko, go rerisana jaaka go bonetswe pele mo temaneng (b), le go tsaya tsia dikhoutu tsa tiragatso e e siameng tse di umakilweng mo temaneng (c), ka ga ditlhabololo tse di tshitsintsweng mo go efe ya tse di totilweng jaaka go laetswe le go laela tse di ntšhwa tse di tlileng go totwa. 30
- (e) Fa go laetswe go sa totiwang mabapi le peelothoko ya setlhopha sa batho go ya ka temana (a), setheo se se senkelang ga se a kganelwa mo go beeleng thoko maitekotheke mabapi le setlhopha seo. 35
- (3) Batho ba ba umakilweng mo karolwaneng (1) ba lekanyeditswe go—
- (a) batho bantsho;
- (b) basadi ba bantsho; 40
- (c) basadi;
- (d) batho bantsho ba ba tshelang ka bogole;
- (e) batho ba ba tshelang ka bogole;
- (f) bagaka ba sesole;
- (g) batho ba ba umakilweng mo go efe ya ditemana (a) go fitlha go (f) mo lefelong la naga; 45
- (h) dikgwebopotlana tsa—
- (i) batho bantsho;
- (ii) basadi ba bantsho;
- (iii) basadi; 50
- (iv) batho bantsho ba ba tshelang ka bogole;
- (v) batho ba ba tshelang ka bogole;
- (vi) bagaka ba sesole;
- (vii) batho bantsho bao e leng bašwa; kgotsa
- (viii) bašwa; 55
- (ix) batho ba ba umakilweng mo ditemanatlaleletsong (i) go fitlha go (viii) mo lefelong la naga le le rileng;
- (i) dikgwebopotlana tse di mo lefelong la naga le le rileng;
- (j) dikgwebopotlana;
- (k) dikgwebotirisanommogo tse ditokololo tsa tsona e leng batho bantsho; kgotsa 60
- (l) dikoporasi;

(m) co-operatives referred to in paragraph (k) or (l) within a particular geographic area.

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

(b) Persons referred to in subsection (3)(a) to (j) must be owned by citizens of the Republic in accordance with the prescribed percentages. 5

(c) Persons referred to in subsection (3)(k), (l) and (m) 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 in terms of the prescribed criteria. 10

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

Prequalification criteria for preferential procurement

18. (1) A procuring institution must, in accordance with the prescribed thresholds and conditions, apply the following prequalification criteria for a bid to promote preferences in the allocation of contracts: 15

(a) A bidder having a prescribed minimum percentage of preferential procurement from enterprises that are owned and managed by black people in terms of the applicable 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); 20

(b) a bidder subcontracting a prescribed minimum percentage to—

(i) a small enterprise which is owned by black people; 25

(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 who are military veterans;

(vi) a small enterprise; 30

(vii) a small enterprise referred to any of the subparagraphs (i) to (vi) within a particular geographical area;

(viii) a co-operative which consists of members who are black people;

(ix) a co-operative;

(x) a co-operative referred to in subparagraph (viii) or (ix) within a particular geographic area. 35

(2) The prescribed conditions referred to in subsection (1) must include a minimum of potentially qualifying suppliers.

(3)(a) Persons referred to in subsection (1) (b)(i) to (vii) must be owned by the relevant category in accordance with the prescribed percentages. 40

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

(c) Persons referred to in subsection (1)(b)(viii) and (x) must have members of the relevant category and citizens of the Republic in accordance with the prescribed percentages. 45

(4) When procuring, procuring institutions must identify procurement opportunities, in a particular sector, industry or commodity, supply market, and the availability of small enterprises or co-operatives or both, that may be eligible to bid to support sectors or industries that are not sufficiently transformed where any prequalification criteria referred to in subsection (1) could be applied. 50

(5) A bidder that fails to meet any prequalification 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 (6), evaluate the bid, referred to in subsection (1), in terms of the prescribed criteria. 55

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

- (m) dikoporasi tse di umakilweng mo temaneng (k) go fitlha go (l) mo lefelong la naga le le rileng.
- (4)(a) Batho ba ba umakilweng mo karolwaneng (3)(a) go fitlha go (h) ba tshwanetse go go wela mo setlhopheng se se maleba go tsamaelana le diphesente tse di laetsweng.
- (b) Batho ba ba umakilweng mo karolwaneng (3)(a) go fitlha go (j) ba tshwanetse go nna baagi mo Rephaboliking go tsamaelana le diphesente tse di laetsweng. 5
- (c) Batho ba ba umakilweng mo karolwaneng (3)(k), (l) le (m) ba tshwanetse go nna le ditokololo tsa setlhopho se se maleba sa baagi ba mo Rephaboliking go tsamaelana le diphesente tse di laetsweng.
- (5) Maitekotheke a a beetsweng thoko go ya ka karolwana (1) a tshwanetse go sekasekwa go tsamaelana le mokgwa o o laetsweng. 10
- (6) Karolo eno e diriswa ka diphetogo tse di tlhokegang le jaaka go laetswe mo maitekotheke mabapi le konteraka e e lereng lotseno.

Mokgwa wa pele wa tshiamelo mabapi le tshenkelo e e batlwang

18. (1) Setheo se se senkelang se tshwanetse, go tsamaelana le dipeelo tse di laetsweng le mabaka, go dirisa mokgwa o o latelang wa pele wa tshiamelo wa maitekotheke go tswelletsatsa tse di batlwang mo kabong ya dikonteraka: 15
- (a) Mosenki yo o nang le bonnye jwa phesente jo bo laetsweng jwa tshenkelo e e batlwang go tswa mo dikgwebong tse di tshotsheng le go laolwa ke batho bantsho go ya ka khoutu ya tiragatso e e siameng e e diriswang mo nonofisong ya batho bantsho e e rebotsweng go ya ka karolo 9(1) ya Molao wa Katoloso ya go Nonotsha Ikonomi ya Bantsho, 2003 (Molao 53 wa 2003); 20
- (b) mosenki yo o nayang konteraka e e kwa tlase ya bonnye jwa phesente e e beilweng go—
- (i) kgwebopotlana e e leng ya batho bantsho; 25
- (ii) kgwebopotlana e e leng ya batho bantsho bao e leng bašwa;
- (iii) kgwebopotlana e e leng ya batho bantsho bao e leng basadi;
- (iv) kgwebopotlana e e leng ya batho bantsho bao ba tshelang ka bogole;
- (v) kgwebopotlana e e leng ya batho bantsho bao e leng bagaka ba sesole; 30
- (vi) kgwebopotlana;
- (vii) kgwebopotlana e e umakilweng mo go efe ya ditemanatlaleletso (i) go fitlha go (vi) mo lefelong le le rileng mo nageng;
- (viii) koporasi e e nang le ditokololo tse e leng batho bantsho;
- (ix) koporasi;
- (x) koporasi e e umakilweng mo ditemanatlaleletsong (viii) kgotsa (ix) mo lefelong le le rileng mo nageng. 35
- (2) Dipeelo tse di laetsweng tse di umakilweng mo karolwaneng (1) di tshwanetse go akaretsa bonnye jwa bathelesi ba ba siametseng e bile ba na le bokgoni.
- (3)(a) Batho ba ba umakilweng mo karolwaneng (1)(b)(i) go fitlha go (vii) ba tshwanetse go wela mo setlhopheng se se maleba go tsamaelana le diphesente tse di laetsweng. 40
- (b) Batho ba ba umakilweng mo karolwaneng (1)(b)(i) go fitlha go (vii) ba tshwanetse go nna baagi ba mo Rephaboliking go tsamaelana le diphesente tse di beilweng.
- (c) Batho ba ba umakilweng mo karolwaneng (1)(b)(viii) le (x) ba tshwanetse go nna le ditokololo tsa setlhopho se se maleba sa baagi ba mo Rephaboliking go tsamaelana le diphesente tse di laetsweng. 45
- (4) Fa di senkela, ditheo tse di senkelang di tshwanetse go tlhagisa ditšhono tsa tshenkelo, mo lephateng le le rileng, mo bodirelong kgotsa mo thotong, mmaraka wa theleso, le go nna teng ga dikgwebopotlana kgotsa dikoporasi kgotsa ka bobedi, tse di ka kgonang go iteka lesego go tshegetsa maphata kgotsa madirelo a a sa fetogang sentle a mo go ona efe ya mekgwa ya pele ya tshiamelo e e umakilweng mo karolwaneng (1) e ka diriswang. 50
- (5) Mosenki yo o retelelwang ke go fitlhelela mokgwa wa pele wa tshiamelo o o tlhagisitsweng mo makwalong a maitekotheke ke maitekotheke a a sa amogeleseng e bile a tshwanetse go iletswa. 55
- (6) Setheo se se senkelang se tshwanetse, mo godimo ga dikgato tse di tlhagisitsweng mo dikarolwaneng (1) go fitlha go (6), go sekaseka maitekotheke, a a umakilweng mo karolwaneng (1), go ya ka mokgwa o o laetsweng.
- (7) Karolo eno e diriswa le diphetogo tse di tlhokegang le jaaka go laetswe mo maitekotheke mabapi le konteraka e e lereng lotseno. 60

Subcontracting as condition of bid

- 19.** (1)(a) Where feasible, a procuring institution must subcontract a contract above the prescribed threshold, to advance persons or categories of persons in subsection (2)(a) to (j) in accordance with the prescribed criteria.
- (b) The prescribed conditions referred to in paragraph (a) must include a minimum of 5 potentially qualifying suppliers.
- (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— 10
- (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; 15
- (f) a small enterprise which is owned by black people who are military veterans;
- (g) a small enterprise referred to in any of the paragraphs (b) to (f) within a particular geographical area;
- (h) a co-operative which consists of members who are black people; or
- (i) a co-operative; 20
- (j) a co-operative referred to in paragraph (h) or (i) in a particular geographical area.
- (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 25 Republic in accordance with the prescribed percentages.
- (c) Persons referred to in subsection (2)(h), (i) and (j) 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. 30
- (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.
- (7) This section applies with the necessary changes and as prescribed to a bid for an 35 income-generating contract.

Designation of sectors for local production and content

- 20.** (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 40 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 45
- (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 50 thresholds, for public comment for thirty days in the *Gazette* and on the departmental website and has notified the Minister of such publication;

Go dira konteraka e e kwa tlase jaaka peelo ya maitekotheke

19. (1)(a) Fa go kgonega, setheo se se senkelang se tshwanetse go neelana ka konteraka e e kwa tlase mo konterakeng e e kwa godimo ga peelo e e laetsweng, go ntshetsa pele batho kgotsa ditlhophha tsa batho mo karolwaneng (2)(a) go fitlha go (j) go tsamaelana le mokgwa o o beilweng. 5

(b) Dipeelo tse di laetsweng tse di umakilweng mo temaneng (a) di tshwanetse go akaretsa bonnye jwa bathelesi ba ba siametseng e bile ba na le bokgoni.

(2) Fa setheo se se senkelang se dirisa konteraka e e kwa tlase jaaka go bonelwa pele mo karolwaneng (1), setheo se se senkelang se tshwanetse go bapatsa maitekotheke ka peelo e e rileng ya go iteka lesego ya gore mosenki yo o atlegileng o tshwanetse go dira konteraka e e kwa tlase ya palotlase e e beilweng ya diphesente tsa boleng jwa konteraka go— 10

- (a) kgwebopotlana;
- (b) kgwebopotlana ya batho bantsho;
- (c) kgwebopotlana ya batho bantsho bao e leng bašwa; 15
- (d) kgwebopotlana ya batho bantsho bao e leng basadi;
- (e) kgwebopotlana ya batho bantsho bao ba tshelang ka bogole;
- (f) kgwebopotlana ya batho bantsho bao e leng bagaka ba sesole;
- (g) kgwebopotlana e e umakilweng mo go efe ya ditemana (b) go fitlha go (f) mo lefelong le le rileng mo nageng; 20
- (h) koporasi e e nang le ditokololo tse e leng batho bantsho; kgotsa
- (i) koporasi;
- (j) koporasi e e umakilweng mo temaneng (h) kgotsa (i) mo lefelong le le rileng mo nageng.

(3)(a) Batho ba ba umakilweng mo karolwaneng (2)(a) go fitlha go (g) ba tshwanetse go wela mo setlhopheng se se maleba go tsamaelana le diphesente tse di laetsweng. 25

(b) Batho ba ba umakilweng mo karolwaneng (2)(a) go fitlha go (g) ba tshwanetse go nna baagi ba mo Rephaboliking go tsamaelana le diphesente tse di beilweng.

(c) Batho ba ba umakilweng mo karolwaneng (2)(h), (i) le (j) ba tshwanetse go nna le ditokololo tsa setlhophha se se maleba sa baagi ba mo Rephaboliking go tsamaelana le diphesente tse di laetsweng. 30

(4) Basenki ba tshwanetse go tthagisa le go tlhophha badiri ba dikonteraka tse di kwa tlase jaaka go laetswe.

(5) Mosenki yo o retelwang ke go fitlhelela taelo efe ya mokgwa wa go dira konteraka e e kwa tlase e e tthagitsweng mo makwalong a maitekotheke ke maitekotheke a a sa amogeleseng o tshwanetse go ilelwa. 35

(6) Setheo se se senkelang se tshwanetse, mo godimo ga dikgato tse di tthagitsweng mo dikarolwaneng (1) go fitlha go (5), go sekaseka maitekotheke go ya ka mekgwa e e laetsweng.

(7) Karolo eno e diriswa le diphetogo tse di tlhokegang le jaaka go laetswe mo maitekotheke mabapi le konteraka e e lereng lotseno. 40

Go tlhonga ga maphata mabapi le tthagiso ya selegae le diteng

20. (1) Tona yo o rwalang maikarabelo a kgwebo, madirelo le kgaisano (fano o bidiwa “Tona yo o rwalang maikarabelo”) o tshwanetse, ka kitsiso mo Lokwalodikgannyeng la Puso— 45

- (a) go tlhoma lephata, lephatapotlana kgotsa bodirelo kgotsa setlhasiswa go tsamaelana le tlhabololo ya bosetšhaba le dipholisi tsa madirelo mabapi le tthagiso ya selegae le diteng, mo fela dithoto tse di tthagitsweng kgotsa tse di dirilweng selegae di fitlhelelang bonnye selekanyo se se laetsweng sa tthagiso ya selegae le diteng, ka go tsaya tsia mabaka a ikonomi le a mangwe a a maleba; 50
- (b) go baya selekanyo se se kwa tlase mabapi le tthagiso ya selegae le diteng; le
- (c) go baya paka ya go tlhonga.

(2) Tlhomo le peo, jaaka go bonelwa pele mo karolwaneng (1)(a) le (b), di ka diragala fela morago ga fa Tona yo o rwalang maikarabelo a sena go— 55

- (a) phasalatsa tlhomo e e tshitsintsweng, go akaretsa le bonnye jwa dilekanyo tse di tshitsintsweng, mabapi le ditshwaelo tsa setšhaba sebaka sa matsatsi a le masometharo mo Lokwalodikgannyeng la Puso le mo webesaeteng ya lefapha le fa Tona a setse a itsisitswe ka ga phasalatsa eo;

- (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. 5
- (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— 10
- (i) the number of existing manufacturers available in the country;
- (ii) security of supply or capability to supply or the period that the designation is to be in effect; 15
- (iii) the contribution of other role-players in the supply chain of the commodity or product including distributors and product agents;
- (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. 20
- (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. 25
- (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. 30
- (b) The responsible Minister must within 30 days respond to the request for a waiver giving reasons for the decision, failing which approval will be deemed to be granted to the procuring institution that made the request. 35
- (c) 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— 40
- (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 45
- (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. 50
- (9) The responsible Minister—
- (a) must monitor the impact of a designation in terms of subsection (1) and three years after the designation publish a report on its impact on the website of the department of that Minister; and
- (b) may at least 12 months after that 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 in terms of subsections (1) to (4). 55

- (b) sekaseka ditshwaelo tsotlhe tse di amaogetsweng le go tsibogela ditshwaelo mo šejuleng e e tlhagisang ditshwaelo le ditsibogelo;
- (c) baakanya tlhomo e e tshitsintsweng morago ga go tsaya tsia ditshwaelo le ditshitsinyo tse di dirilweng ka motsi wa logato la ditshwaelo tsa setšhaba; le
- (d) romelela Tona tlhomo e e tshitsintsweng e e baakantsweng le go sekaseka ditshwaelo dife tse di dirilweng ke Tona. 5
- (3) Mo go tlhomamiseng selekanyo se se umakilweng mo karolwaneng (1)(b), Tona yo o rwalang maikarabelo o tshwanetse, mo godimo ga go tsaya tsia ditshwaelo tsa setšhaba le ditsibogelo tse di bonelwang pele mo karolwaneng (2), go ela tlhoko—
- (a) gore a go na le batlhagisi ba selegae ba ba lekaneng mo nageng ba ba siametseng go gaisanela tlanelo ya dithoto tse di tlhometsweng tlhagiso ya selegae le diteng ka go tlhomamisa—
- (i) palo ya batlhagisi ba ba leng teng mo nageng;
- (ii) tshireletsego ya theleso kgotsa bokgoni jwa go thelesa sebaka sa paka ya tiriso ya tlhomo; 15
- (iii) seabe sa batsayakarolo ba bangwe mo ketaneng ya theleso ya thoto kgotsa kungo go akaretsa le baphatlalatsi le baemedi ba dikungo;
- (iv) ka moo tlhagiso ya selegae le diteng di amang ditiro ka teng; le
- (b) kutlwalo ya ikonomi mo dithotong tse di tswang kwa ntle.
- (4) Batlhagisi ba ba lekaneng ba selegae ba ba umakilweng mo karolwaneng (3)(a) ba tshwanetse go tlhomamiswa ke Tona yo o rwalang maikarabelo mme ba ka se nne kwa tlase ga batlhagisi ba selegae ba le bararo. 20
- (5)(a) Setheo se se senkelang se tshwanetse, mo lebakeng la tlhomo go ya ka karolwana (1), go bapatsa taletso ya maitekotheko ka peelo e e totobaditsweng ya gore ke fela dithoto tse di tlhagisitsweng kgotsa tse di dirilweng mo gae, tse di fitlhelelang bonnye jwa selekanyo jo bo beilweng mabapi le tlhagiso ya selegae, di tla tsewang tsia. 25
- (b) Maitekotheko a a retelelwang ke go fitlhelela bonnye jwa selekanyo jo bo beilweng mabapi le tlhagiso ya selegae le diteng ke maitekotheko a a sa amogeleseng e bile a tshwanetse go iletswa.
- (6)(a) Fa palo e e tlhokegang ya thoto go ya ka tlhomo mo karolwaneng (1), e ka se bonwe ka gotlhe go tswa mo batlhagising ba selegae kgotsa ka selekanyo se se tlhomilweng sa selegae sebaka sa tlhomo, kgotsa ka bobedi, setheo se se senkelang se ka romela kopo ya go se obamele, ka mofuta o o tlhomamisitsweng ke Tona yo o rwalang maikarabelo. 30
- (b) Tona yo o rwalang maikarabelo o tshwanetse mo matsatsing a le 30 go tsibogela kopo ya go se obamele e e tlhagisang mabaka a tshwetso, mme fa a ka retelelwa go dira jalo go tla tsewa setheo se se senkelang se se dirileng kopo se reboletswe. 35
- (c) Tona yo o rwalang maikarabelo o ka tlhomamisa ka kitsiso mo Lokwalodikgannyeng la Puso le mo webesaeteng ya lona, go fitlhela nako e e rileng, gore ditheo tsa tshenkologare di letlwe go se obamele tshenkelo ka bonnye jwa dilekanyetso tse di beilweng mabapi le tlhagiso ya selegae le diteng jaaka go bonelwa pele mo temaneng (a). 40
- (7) Fa Tona yo o rwalang maikarabelo a sa letle gore go se obamelwe jaaka go umakilwe mo karolwaneng (6), e bile setheo se se senkelang se na le bosupi jo bo lekaneng jwa gore palo ya dithoto tse di tlhokegang e ka se bonwe ka gotlhe go tswa mo batlhagising ba selegae kgotsa ka selekanyo sa diteng se se beilweng sebaka sa paka ya tlhomo, kgotsa ka bobedi, setheo se se senkelang—
- (a) se ka bapatsa taletso ya maitekotheko ntle le peelo e e totobaditsweng ya gore ke fela dithoto tse di tlhagisitsweng mo gae, tse di fitlhelelang bonnye jwa selekanyo sa tlhagiso ya selegae le diteng di tla tsewang tsia; e bile 50
- (b) se tshwanetse gore mo matsatsing a le 14 morago ga papatso go itsise Tona yo o rwalang maikarabelo ka nepagalo le ka ga mabaka.
- (8) Setheo se se senkelang se tshwanetse, mo godimo ga dikgato tse di beilweng mo karolwaneng (1) go fitlha go (7), sekaseka maitekotheko go ya ka mekgwa e e laetsweng. 55
- (9) Tona e e rwalang maikarabelo—
- (a) o tshwanetse go baya kutlwalo ya go tlhongwa leitlho go ya ka karolwana (1) e bile morago ga dingwaga tse tharo tsa go tlhongwa go phasalatsa pegelo ka ga kutlwalo ya gona mo webesaeteng ya lefapha la Tona eo; e bile
- (b) o ka, bonnye mo dikgweding tse 12 morago ga go phasalatsa pegelo, sekaseka tshiamo ya tlhomo le peelo le paka ya yona, mme fa ditlamorago tsa tshekatsheko di tlhoka jalo, o ka baakanya kgotsa a gogela morago tlhomo le peelo le paka go ya ka dikarolwana (1) go fitlha go (4). 60

Measures to advance sustainable development

21. 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 5

22. 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. 10

Contracting conditions

23. (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. 15

**CHAPTER 5
GENERAL PROCUREMENT REQUIREMENTS**

Part 1***Procurement system, methods and related matters*** 20**Procurement system and methods**

24. (1) The Minister must prescribe a framework within which a procuring institution must develop and implement its procurement system, referred to in section 8(1)(b), which includes—

(a) the promotion of strategic procurement— 25

(i) for procurement in other countries for use in those 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 stimulate innovation; 30

(b) types of procurement methods;

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

(d) the criteria for evaluation of bids, which must include, but are not limited to, cost-effectiveness, capability, functionality and technical requirements, without limiting new entrants or emerging suppliers or both. 35

(2) The Minister may determine—

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

(b) different thresholds for— 40
(i) different categories of procuring institutions; and
(ii) different categories of procurement.

(3) A procurement system referred to in subsection (1) must provide for the following matters in a manner consistent with this Act:

(a) Procurement policy; 45
(b) institutional and governance arrangements;

(c) demand management;

(d) procurement planning and budgeting;

(e) acquisition management;

(f) contract management, including assessment of projects against outcomes;

(g) risk management; 50

Dikgato tsa go ntshetsa pele tlhabololo e e tsweleng

21. Setheo se se senkelang se ka, go tsamaelana le dipeelo tse di beilweng, laela mabapi le dikgato tsa go ntshetsa pele tlhabololo e e tsweleng mo tshenkelong.

Dikgato tsa kunomolemo le boithlamedi, go ntshetsa pele go tlangwa ga ditiro, koketso ya kamogelo ya badiri le tlhabololo ya dikgwebopotlana mo karolong e e rileng ya lefatshe 5

22. Fa se senkela, setheo se se senkelang se ka, go tsamaelana le dipeelo tse di beilweng, laela mabapi le dikgato tsa kunomolemo le boithlamedi, go ntshetsa pele go tlangwa ga ditiro, koketso ya kamogelo ya badiri le tlhabololo ya dikgwebopotlana mo karolong e e rileng ya lefatshe. 10

Dipeelo tsa go dira konteraka

23. (1) Setheo se se senkelang se ka, jaaka go laetswe, laela mabapi le dikgato tse di batlwang jaaka peelo ya konteraka e mothelesi a tshwanetseng go e fitlhelela kwa bokhutlong jwa konteraka.

(2) Tseo di tshwanetseng go fitlhelelwa mo isagong di tshwanetse go nna karolo ya konteraka le tsa botlhokwa tse di beilweng tse di tshwanetseng go fitlhelelwa mmogo le dikotlha tse di tlangwa go pateletswa fa mothelesi a retelwa ke go di fitlhelela go tsamaelana le dipeelo tse di beilweng mo konterakeng. 15

**KGAOLO 5
DITLHOKEGO KA KAKARETSE TSA TSHENKELO** 20**Karolo 1****Thulaganyo, mekgwa le merero e e amanang ya tshenkelo****Thulaganyo le mekgwa ya tshenkelo**

24. (1) Tona o tshwanetse go laela letlhomiso leo ka lona ditheo tse di senkelang di tshwanetseng go tlhama le go tsenya thulaganyo ya tsona ya tshenkelo mo tirisong, le le umakilweng mo karolong 8(1)(b), le le akaretsang— 25

- (a) tsweliso ya tshenkelo ya togamaano—
- (i) tshenkelo mo dinageng tse dingwe mabapi le tiriso mo dinageng tseo;
 - (ii) mabapi le mafaratlhatlha, dithoto tsa matlotlo le dithoto kgotsa ditirelo tse di amanang le tlhokomelo ya mafaratlhatlha le dithoto tsa matlotlo; 30
 - (iii) mabapi le tatlo le khiriso ya dithoto; le
 - (iv) go rotloetsa boithlamedi pele;

- (b) mefuta ya mekgwa ya tshenkelo;
- (c) ditlhokego le tsamaiso e e tshwanetseng go latelwa mabapi le mekgwa mongwe le mongwe o o laetsweng; le 35

- (d) mekgwa ya tshakatsheko ya maitekotheke, e e tshwanetseng go akaretsa, mme ga e a lekanyetswa go, tshomarelo ya madi, bokgoni, tirego le ditlhokego tsa setegeniki, ntle le go lekanyetsa bao ba fetsang go goroga kgotsa bathelesi ba ba tlhagelelang kgotsa bobedi jwa bona.

(2) Tona o ka tlhomamisa— 40

- (a) ka kitsiso mo Lokwalodikgannyeng la Puso, ditekanyetso tsa tshenkelo; le
- (b) ditekanyetso tse di farologaneng tsa—
- (i) ditlhopho tse di farologaneng tsa ditheo tse di senkelang; le
 - (ii) ditlhopho tse di farologaneng tsa tshenkelo.

(3) Thulaganyo ya tshenkelo e e umakilweng mo karolwaneng (1) e tshwanetse go laela mabapi le merero e e latelang ka mekgwa o o tsamaelanang le Molao ono: 45

- (a) Pholisi ya tshenkelo;
- (b) dithulaganyetso tsa ditheo le taolo;
- (c) taolo ya tlhokego;
- (d) go rulaganyetsa le go dira tekanyetsokabo mabapi le tshenkelo; 50
- (e) taolo ya go reka;
- (f) taolo ya konteraka, go akaretsa le tshakatsheko ya diporojeke kgatlhanong le ditlamorago;
- (g) taolo ya dikotsi;

- (h) logistics management;
 - (i) disposal management;
 - (j) monitoring and assessment of procurement performance; and
 - (k) reporting.
- (4) The Public Procurement Office may, by instruction, determine standard bid documents. 5
- (5) A procuring institution must stipulate in the bid documents, irrespective of the procurement method, that bidders may only quote in South African currency, inclusive of all applicable taxes.
- (6) The Public Procurement Office must create and maintain a database in terms of section 5(1)(i) for prospective suppliers. 10

Use of another organ of state

25. A procuring institution may, as prescribed—
- (a) acquire goods, services, infrastructure or capital assets from another organ of state; 15
 - (b) use another organ of state to construct, repair or maintain infrastructure or capital assets;
 - (c) let assets to another organ of state; or
 - (d) transfer, or otherwise dispose of assets, to another organ of state.

Measures to prevent abuse of procurement system 20

26. (1) The accounting officer or accounting authority of a procuring institution must—
- (a) take necessary steps to prevent non-compliance with this Act and abuse of its procurement system;
 - (b) take necessary steps to ensure that no person interferes with its procurement system or is able to amend or tamper with any bid or contract; 25
 - (c) investigate any allegation against an official or other role player of corruption, improper conduct or failure to comply with its procurement system, and—
 - (i) where necessary, take steps against that official or other role player, and inform the Public Procurement Office and the relevant provincial treasury of those steps; and 30
 - (ii) report to the South African Police Service any conduct that may constitute a criminal offence;
 - (d) verify that a bidder is not an affected person whose name appears in the register of persons debarred in terms of section 15; 35
 - (e) reject a recommendation for the award of a bid if the recommended bidder has—
 - (i) made a misrepresentation or submitted false documents in competing for a particular contract;
 - (ii) been convicted of any offence involving corruption, fraud, collusion or coercion in competing for any contract; or 40
 - (f) cancel a contract awarded to a supplier—
 - (i) if it becomes aware that the supplier has made a misrepresentation, submitted false documents or information or has been convicted of any offence involving corruption, fraud, collusion or coercion in competing for a particular bid or during the execution of the contract; or 45
 - (ii) if any official or other role player was convicted of any offence involving corruption, fraud, collusion or coercion act during the bidding process or during the execution of the contract.
- (2) If a provision of a contract concluded by a procuring institution and the successful bidder is contrary to a provision of this Act, that provision is null and void. 50

- (h) taolo ya dithulaganyetso;
 - (i) taolo ya tatlho;
 - (j) kelotlhoko le tshakatsheko ya tiragatso ya tshenkelo; le
 - (k) go bega.
- (4) Kantorotshenkelo ya Puso e ka, ka taelo, tlhomamisa makwalo a a beilweng a maitekotheke. 5
- (5) Setheo se se senkelang se tshwanetse go tlhagisa mo makwalong a maitekotheke, go sa kgathalesege mokgwa wa tshenkelo, gore baitekalesego ba ka dira khouto fela ka ledi la Aforika Borwa, go akaretsa le makgetho otlhe a a diriswang.
- (6) Kantorotshenkelo ya Puso e tshwanetse go tlhama le go tshola sefalanatshedimosetso go ya ka karolo 5(1)(i) sa bathelesi ba ba solofetsweng. 10

Tiriso ya setheo se sengwe sa puso

25. Setheo se se senkelang se ka, jaaka go laetswe—
- (a) reka dithoto, ditirelo, mafaratlhatlha kgotsa dithoto tsa matlotlo go tswa mo setheong se sengwe sa puso; 15
 - (b) dirisa setheo se sengwe sa puso go aga, go baakanya kgotsa go tlamela mafaratlhatlha kgotsa dithoto tsa matlotlo;
 - (c) hirisetsa setheo se sengwe sa puso dithoto; kgotsa
 - (d) sutisetsa, kgotsa ka mokgwa mongwe se ka latlhela dithoto, kwa setheong se sengwe sa puso. 20

Dikgato tsa go thibela tirisobotlhaswa ya thulaganyo ya tshenkelo

26. (1) Motlhankedi yo o rwalang maikarabelo kgotsa bothati jo bo rwalang maikarabelo jwa setheo se se senkelang bo tshwanetse go—
- (a) tsaya dikgato tse di maleba go thibela botlhoka kobamelo jwa Molao ono le tirisobotlhaswa ya thulaganyo ya tshenkelo ya ona; 25
 - (b) tsaya dikgato tse di maleba go netefatsa gore ga go ope yo o itshunyang mo thulaganyong ya tshenkelo ya sona kgotsa yo o kgonang go fetola kgotsa go tshwenyana le maitekotheke kgotsa konteraka efe;
 - (c) batlisisa magatwe afe kgatllhanong le motlhankedi kgotsa monnalseabe mo bomenemeneng, maitsholongmabe kgotsa mo go retelelweng ke go obamela thulaganyo ya tshenkelo ya sona, le— 30
 - (i) fa go tlhokega, go tsaya dikgato kgatllhanong le motlhankedi yoo kgotsa monnalseabe yo mongwe, le go itsise Kantorotshenkelo ya Puso le matlotlo a diporofense a a maleba ka ga dikgato tseo; le
 - (ii) go begela Tirelo ya Sepodisi ya Aforika Borwa ka ga maitsholo afe ao a tsewang jaaka tlolomolao ya bosenyi; 35
 - (d) netefatsa gore mosenki ga se motho yo o amegileng yo leina la gagwe le tlhagelelang mo rejisetareng ya batho ba ba kganetsweng go ya ka karolo 15;
 - (e) se amogele katlanegiso ya go abiwa ga maitekotheke fa mosenki yo o atlanegisitsweng a— 40
 - (i) tsieditse kgotsa a rometse makwalo a a fosagetseng mo go gaisaneleng konteraka e e rileng;
 - (ii) bonwe molato wa tlolomolao efe e e amanang le bomenemene, tsietso, therisanelobosula kgotsa pateletso mo go gaisaneleng konteraka efe; kgotsa 45
 - (f) fedisa konteraka e e abetsweng mothelesi— 50
 - (i) fa bo lemoga gore mothelesi o tsieditse, o rometse makwalo kgotsa tshedimosetso e e fosagetseng kgotsa o bonwe molato wa tlolomolao efe e e amanang le bomenemene, tsietso, therisanelobosula kgotsa pateletso mo go gaisaneleng maitekotheke a a rileng kgotsa ka motsi wa go diragatswa ga konteraka; kgotsa 50
 - (ii) fa modiredi ofe kgotsa monnalseabe yo mongwe a bonwe molato wa tlolomolao efe e e amanang le bomenemene, tsietso, therisanelobosula kgotsa pateletso ka motsi wa thulaganyo ya maitekotheke kgotsa ka motsi wa tiragatso ya konteraka. 55
- (2) Fa taelo ya konteraka e e konotetsweng ke setheo se se senkelang le mosenki yo o atlegileng e sa tsamaelane le taelo ya Molao ono, taelo eo ga e amogelesege.

Bid committee system

27. (1) The Minister must prescribe a bid committee system for procuring institutions.
- (2) A procuring institution must ensure that persons who participate in bid committees have the relevant knowledge, skills and technical expertise to achieve the intended result required during the relevant committee process. 5
- (3) 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, 1994 (Proclamation No. 103 of 1994); and 10
 - (c) any person having a conflict of interest.

Part 2**Use of technology in procurement****Information and communication technology-based procurement system**

28. (1) The Public Procurement Office must develop an information and communication technology-based procurement system in order to enhance efficiency, effectiveness, transparency and integrity and to combat corruption. 15
- (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 subsection (1), the system must, subject to the due diligence conducted, provide for the following components progressively: 20
- (a) A single platform that at least provides access for officials, bidders, suppliers and members of the public to all procurement related services;
 - (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; 25
 - (c) requirements and procedures for procurement methods prescribed in terms of section 24(1);
 - (d) reporting requirements on procurement;
 - (e) an electronic marketplace to enable efficient procurement of common goods and services; and 30
 - (f) a suitable hosting option for procurement data to enable easy reporting, analysis, research and oversight of procurement transactions.

Use of technology by procuring institutions

29. (1) Procuring institutions must— 35
- (a) to the extent possible, use technology in the implementation of this Act; and
 - (b) when available, use the different components of the procurement system, referred to in section 28(1).
- (2)(a) During the development of the procurement system, referred to in section 28(1), the Public Procurement Office must 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. 45
- (c) The Public Procurement Office must—

Thulaganyo ya komiti ya tshenkelo

27. (1) Tona o tshwanetse go laela thulaganyo ya komiti ya maitekotheke mabapi le ditheo tse di senkelang.
- (2) Setheo se se senkelang se tshwanetse go netefatsa gore batho ba ba tsayang karolo mo dikomiting tsa maitekotheke ba na le kitso, dikgono le boitseanape jwa setegeniki jo bo maleba go fitlhelela ditlamorago tse di ikaletsweng ka motsi wa tsamaiso e e maleba ya dikomiti. 5
- (3) Batho ba ba latelang ba ka se nne ditokololo tsa komiti ya maitekotheke e e bonelwang pele mo karolwaneng (1): 10
- (a) Modiredipuso;
- (b) motho yo o thapilweng go ya ka karolo 12A ya *Public Service Act*, 1994 (Kgoeletso 103 ya 1994); le
- (c) motho ofe yo o nang le kgatlhegelo e e thulanang.

Karolo 2***Tiriso ya thekenoloji mo tshenkelong*** 15**Thulaganyo ya tshenkelo e e theilweng mo thekenolojing ya tshedimosetso le tlhaeletsano**

28. (1) Kantorotshenkelo ya Puso e tshwanetse go tlhoma thulaganyo ya tshenkelo e e theilweng mo thekenolojing ya tshedimosetso le tlhaeletsano go godisa nonofo, bokgoni, bosengbofitlha le tshiamo le go lwantsha bomenemene. 20
- (2) Morago ga go sekaseka ka tlhoafalo bokgoni jwa thekenoloji ya tshedimosetso le tlhaeletsano jwa lephata, go thusa ka go dirwa ga kitsiso ya kagego mabapi le go tlhongwa ga thulaganyo ya tshenkelo, e e umakilweng mo karolwaneng (1), thulaganyo e tshwanetse, go latela go dirwa ka tlhoafalo e e tshwanetseng, go laela mabapi le dikarolwana tse di latelang ka iketlo: 25
- (a) Sebaka se le esi se bonnye se nayang batllhankedi, basenki, bathelesi le ditokololo tsa setšhaba phitlhelelo ya ditirelo tsotlhe tse di amanang le tshenkelo;
- (b) tshedimosetso e e fitlhelegang e e tlwaelegileng e e tsamaelanang go ralala modiko wa tshenkelo o o tllileng go diriswa ke ditheo tse di senkelang go tsamaelana le go ipaakanya ga tsona go go tlhomamiswang go tsamaelana le taelo; 30
- (c) ditlhokego le dithulaganyo tsa mekgwa ya tshenkelo tse di tlhalositsweng go ya ka karolo 24(1);
- (d) ditlhokego tsa go bega ka ga tshenkelo; 35
- (e) lefelo la mmara ka la seileketeroniki go kgontsha tshenkelo e e nonofileng ya dithoto le ditirelo tse di tlwaelegileng; le
- (f) tsholelo e e siameng ya tshedimosetso ya tshenkelo go kgontsha go bega, tshekatsheko, patlisiso le kelotlhoko e e bonolo ya ditirisano tsa tshenkelo.

Tiriso ya thekenoloji ka ditheo tse di senkelang 40

29. (1) Ditheo tse di senkelang di tshwanetse—
- (a) ka bogolo jo bo kgonegang, go dirisa thekenoloji mo go tsenyeng Molao ono mo tirisong; le
- (b) fa di le teng, go dirisa dikarolwana tse di farologaneng tsa thulaganyo ya tshenkelo, tse di umakilweng mo karolong 28(1). 45
- (2)(a) Ka motsi wa go tlhongwa ga thulaganyo ya tshenkelo, e e umakilweng mo karolong 28(1), Kantorotshenkelo ya Puso e tshwanetse go tlhomamisa ditlhokego mabapi le go dira sedijithale, go itirisa, go bega le boitlhamedi tse thekenoloji ya tshedimosetso le tlhaeletsano e ka di kgontshang, tse di diriswang mo thulaganyong ya tshenkelo ka ditheo tse di senkelang. 50
- (b) Ditlhokego tse di umakilweng mo temaneng (a) di tshwanetse go akaretsa ditaelo mabapi le—
- (i) tshekatsheko le phasalatso ya dinewa; le
- (ii) ditshekatsheko tsa boipaakanyo mabapi le thekenoloji ya tshenkelo.
- (c) Kantorotshenkelo ya Puso e tshwanetse go— 55

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- (i) ensure that the determination envisaged in paragraph (a), accords with the national e-strategy envisaged in section 5 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), and norms and standards for electronic government for the public service envisaged in section 3(1)(g) of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 5
- (ii) publish a notice in the *Gazette* where the determination envisaged in subsection (2)(a) may be obtained.

Part 3

Access to procurement processes and information

Access to procurement processes 10

30. (1) The Minister must prescribe measures for the public, civil society and the media to access, scrutinise and monitor procurement processes.

(2) The regulation envisaged in subsection (1)—

- (a) may introduce measures to ensure candid deliberations and to protect officials from undue influence and threats and to provide for disallowing or terminating access by the public or a specific category of persons or a specific person if such access resulted in, or is likely to, inhibit candid deliberations or result in undue influence of, or threats to, officials; 15
- (b) may be limited to certain categories of procurement or procurement above a specified threshold; and 20
- (c) must exclude confidential information.

Disclosure of procurement information

31. (1) The Minister must prescribe requirements to disclose information regarding procurement.

(2) The regulation envisaged in subsection (1) must, among others, require— 25

- (a) the categories of information to be disclosed to enable effective monitoring of procurement, which includes among others—
 - (i) the reasons for the decision, where a decision is made to not follow an open competitive bid process;
 - (ii) all information regarding a bid; 30
 - (iii) the identity of each entity which submits a bid, including information relevant to that entity contained in the companies register established under section 187(4) of the Companies Act, 2008 (Act No. 71 of 2008), if applicable;
 - (iv) the date, reasons for and value of an award to a bidder, including the record of the beneficial ownership of that bidder in the register maintained in terms of section 56(14) of the Companies Act, 2008; 35
 - (v) information regarding a bid above the prescribed value awarded to an immediate family member, or a related person, of a person automatically excluded by section 13 from submitting a bid; 40
 - (vi) contracts entered into with a supplier and invoices submitted by the supplier; and
 - (vii) information regarding bids cancelled and the reasons for the cancellation; and
- (b) that the information referred to in paragraph (a) be published as quickly as possible— 45
 - (i) on an easily accessible central online portal that is publicly available free of charge; and
 - (ii) in a format that—
 - (aa) enables tracking of information relevant to the entire process of a specific procurement; 50
 - (bb) is electronic and interoperable; and
 - (cc) if it contains confidential information, only that information is severed.

- (i) netefatsa gore tlhomamiso e e bonetsweng pele mo temaneng (a), e nyalana le togamaano ya seileketeroniki ya bosetšhaba e e bonetsweng pele mo karolong 5 ya *Electronic Communications and Transactions Act*, 2002 (Molao 25 wa 2002), le ditlwaelo le maemo a puso ya seileketeroniki a tirelopuso a a bonetsweng pele mo karolong 3(1)(g) ya *Public Service Act*, 1994 (Kgoeletso 103 ya 1994); 5
- (ii) phasalatsa kitsiso mo Lokwalodikgannyeng la Puso mo tlhomamiso e e bonetsweng pele mo karolwaneng (2)(a) e ka bonwang.

Karolo 3

Phitlhelelo ya ditsamaiso tsa tshenkelo le tshedimisetso

Phitlhelelo ya ditsamaiso tsa tshenkelo 10

30. (1) Tona o tshwanetse go laela dikgato mabapi le setšhaba, baagi le bobegakgang go fitlhelela, go sekaseka ka tseenelelo le go baya ditsamaiso tsa tshenkelo leitho.

(2) Molawanataolo o o bonetsweng pele mo karolwaneng (1)—

- (a) o ka itsise ditsela tsa go netefatsa ditherisano tsa boammaruri le go sireletsa batlhankedi mo tlhotlheletsong e e sa tshwanelang le mo matshosetsing le go laela mabapi le go sa letleng kgotsa mo go khutliseng phitlhelelo ka setšhaba kgotsa setlhopha se se rileng sa batho kgotsa motho yo o rileng fa e le gore phitlhelelo eo e bakile kgoreletso, kgotsa e ka, kgoreletsa ditherisano tsa boammaruri kgotsa e ka baka tlhotlheletso e e sa tshwanelang ya, kgotsa go tshosetswa ga, badiredi; 15 20
- (b) o ka lekanyetswa mo ditlhopheng tse di rileng tsa tshenkelo kgotsa tshenkelo e e kwa godimo ga selekanyo se se beilweng; e bile
- (c) o tshwanetse go se akaretse tshedimisetso e e bofitlha.

Tshenolo ya tshedimisetso ya tshenkelo

31. (1) Tona o tshwanetse go laela ditlhokego tsa go senola tshedimisetso mabapi le tshenkelo. 25

(2) Molawanataolo o o bonelwang pele mo karolwaneng (1) o tshwanetse, gareng ga tse dingwe, go lopa—

- (a) ditlhopha tsa tshedimisetso e e tlileng go senolwa go kgontsha peoleitlho e e nonofileng ya tshenkelo, e e akaretsang gareng ga tse dingwe— 30
 - (i) mabaka a tshwetso, fa tshwetso e tserwe ya go se latele tsamaiso ya maitekotheke ya botlho e e gaisanelwang;
 - (ii) tshedimisetso yotlho mabapi le maitekotheke;
 - (iii) boitshupo jwa setheo sengwe le sengwe se se romelang maitekotheke, go akaretsa le tshedimisetso e e maleba ya setheo e e mo rejisetareng ya ditlamo e e tlhomilweng ka fa tlase ga karolo 187(4) ya *Companies Act*, 2008 (Molao 71 wa 2008), fa bo le teng; 35
 - (iv) letlha, mabaka a le boleng jwa kabo e e newang mosenki, go akaretsa le rekoto ya bong jwa kunomolemo ya mosenki yoo mo rejisetareng e e tshotsweng go ya ka karolo 56(14) ya *Companies Act*, 2008; 40
 - (v) tshedimisetso e e mabapi le maitekotheke a a kwa godimo ga boleng jo bo laetsweng a a abetsweng wa losika, kgotsa motho yo o amanang, le motho yo kgetholotsweng ke karolo 13 mo go romeleng maitekotheke;
 - (vi) dikonteraka tse di dirilweng le mothelesi le mananetheko a a rometsweng ke mothelesi; le 45
 - (vii) tshedimisetso e e mabapi le maitekotheke a a phimotsweng le mabaka a go phimolwa ga ona; le
- (b) gore tshedimisetso e e umakilweng mo temaneng (a) e phasalatswe ka bonako jo be kgonegang—
 - (i) mo kgolaganong ya mafaratlhatlha e e fitlhelang bonolo e e fitlhelwang ke botlho ntle le tuelelo; le 50
 - (ii) ka mokgwa—
 - (aa) o o kgontshang go batlwa ga tshedimisetso e e maleba go tsamaiso yotlho ya tshenkelo e e rileng;
 - (bb) wa seileketeroniki e bile o tsamaelana; le 55
 - (cc) fa e na le tshedimisetso e e bofitlha, ke fela tshedimisetso eo e tla tloswang.

Documents to be made available

32. The Public Procurement Office must ensure that copies of—

- (a) this Act and any regulations made thereunder; and
- (b) all instructions, guidelines and codes of conduct that are issued in terms of this Act,

are accessible at the offices of the Public Procurement Office and the website of National Treasury.

Access by certain authorities to information held by Public Procurement Office and provincial treasuries

33. (1) Subject to any applicable law, the Public Procurement Office or the provincial treasury may make information pertaining to this Act in its possession available to—

- (a) an investigating authority in the Republic;
- (b) the National Prosecuting Authority;
- (c) an intelligence division in an organ of state;
- (d) the Public Protector;
- (e) the Auditor-General;
- (f) the South African Revenue Service;
- (g) an investigating authority outside of the Republic subject to the approval of the Minister; or
- (h) a person who is entitled to receive such information in terms of an order of court or other national legislation.

(2) Information envisaged in subsection (1) may only be made available to an entity referred to in subsection (1)(a) to (e)—

- (a) at the initiative of the Public Procurement Office, the relevant provincial treasury or the request of an authorised official of the entity; and
- (b) if the Public Procurement Office or the relevant provincial treasury reasonably believes such information is required to investigate suspected unlawful activity or it is in the public interest to provide such information.

(3) A request for information envisaged in subsection (2)(a) must specify the required information and the purpose for which the information is required.

(4) The Public Procurement Office or the relevant provincial treasury may, as a condition to the provision of any information envisaged in subsection (1), make the procedural arrangements regarding the furnishing of such information that the Public Procurement Office or the relevant provincial treasury considers appropriate to maintain the confidentiality of the information before the information is provided.

(5) A person who obtains information from the Public Procurement Office or the relevant provincial treasury may use that information only—

- (a) within the scope of that person's power or duty in terms of any legislation; or
- (b) for the purpose specified in the request.

(6) The Public Procurement Office or the relevant provincial treasury must make information in its possession available to the National Intelligence Structure, as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), if the Public Procurement Office or the relevant provincial treasury reasonably believes that the information relates to any potential threat or threat to the national security.

Protection of information

34. (1) No person may disclose confidential information held by or obtained from the Public Procurement Office, a provincial treasury or a procuring institution for purposes of this Act, except—

- (a) for carrying out a provision of this Act or any other legislation;
- (b) with the permission of the Public Procurement Office, the relevant provincial treasury or the relevant procuring institution;
- (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (d) in terms of an order of court.

Ditlankana tse di tshwanetseng go nna teng

32. Kantorotshenkelo ya Puso e tshwanetse go netefatsa gore dikhopi tsa—

(a) Molao ono le melawanataolo efe e e dirilweng ka fa tlase ga ona; le

(b) ditaelo tsothle, dikaelo le dikhoutu tsa maitsholo tse di rebotsweng go ya ka Molao ono,

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di a fitlhelelwa kwa dikantorong tsa Kantorotshenkelo ya Puso le mo webesaeteng ya Matlotlo a Bosetšhaba.

Phitlhelelo ya tshedimisetso ka bothati jo bo rileng e e tshotsweng ke Kantoro ya Tshenkelo ya Puso le matlotlo a diporofense

33. (1) Go latela molao ofe o o diriswang, Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a ka dira gore tshedimisetso e e mo tsholong ya yona e e mabapi le Molao ono e fitlhelelwe ke—

(a) bothati jo bo batlisisang mo Rephaboliking;

(b) Bothati jwa Bosekisi jwa Bosetšhaba;

(c) lekala la matlhale mo setheong sa puso;

(d) Mosireletsi wa Setšhaba;

(e) Morunikakaretso;

(f) Tirelo ya Lotseno ya Aforika Borwa;

(g) bothati jo bo batlisisang kwa ntle ga Rephaboliki ka thebolo ya Tona; kgotsa

(h) motho yo o tshwanetseng go amogela tshedimisetso eo go ya ka taelo ya kgotlatshekelo kgotsa molao o mongwe wa bosetšhaba.

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(2) Tshedimisetso e e bonelwang pele mo karolwaneng (1) e ka dirwa fela gore e fitlhelelwe ke setheo se se umakilweng mo karolwaneng (1)(a) go fitlha go (e)—

(a) ka tshimololo ya Kantorotshenkelo ya Puso, matlotlo a diporofense a a maleba kgotsa ka kopo ya modiredi yo o neilweng tetla wa setheo; le

(b) fa Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a a maleba ka mabaka a dumela gore tshedimisetso eo e a tlhokega go batlisisa tiro e e seng mo molaong e e belaelwang kgotsa go le mo kgalthegeelong ya setšhaba go tlamela tshedimisetso eo.

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(3) Kopo ya tshedimisetso e e bonelwang pele mo karolwaneng (2)(a) e tshwanetse go totobatsa tshedimisetso e e tlhokegang le maitlthomo ao tshedimisetse e a batlelwang.

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(4) Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a a maleba a ka, jaaka peelo ya tlamela ya tshedimisetso efe e e bonelwang pele mo karolwaneng (1), dira dithulaganyo tsa tsamaiso mabapi le go neelana ka tshedimisetso e Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a a maleba a tsayang gore e siametse go tsholwa sephiri pele tshedimisetso e tlamelwa.

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(5) Motho yo o bonang tshedimisetso go tswa mo Kantorotshenkelong ya Puso kgotsa mo matlotlong a porofense a a maleba o ka dirisa tshedimisetso eo fela—

(a) go ya ka thata kgotsa tiro ya motho yoo go ya ka molao ofe; kgotsa

(b) mabapi le maitlthomo a a totobaditsweng mo kopong.

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(6) Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a a maleba a tshwanetse go dira gore tshedimisetso e e mo tsholong ya yona e fitlhelelwe ke Thulaganyo ya Matlhale ya Bosetšhaba, jaaka go tlhalositswe mo karolong 1 ya *National Strategic Intelligence Act*, 1994 (Molao 39 wa 1994), fa Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a a maleba ka mabaka a dumela gore tshedimisetso e amana le matshosetsi afe a a kgonagalang kgotsa matshosetsi mo tshireletsegong ya bosetšhaba.

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Tshireletso ya tshedimisetso

34. (1) Ga go motho yo o ka senolang tshedimisetso e e bofitlha e e tshotsweng kgotsa e e bonweng go tswa kwa Kantorotshenkelong ya Puso, mo matlotlong a diporofense kgotsa mo setheong se se senkelang mabapi le maitlthomo a Molao ono, ntle le—

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(a) mabapi le tiragatso ya taelo ya Molao ono kgotsa molao mongwe le mongwe ofe;

(b) ka tetla ya Kantorotshenkelo ya Puso, matlotlo a diporofense a a maleba kgotsa setheo se se maleba se se senkelang;

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(c) mabapi le maitlthomo a ditsamaiso tsa semolao, go akaretse le ditsamaiso dife fa pele ga kantoro ya moatlhodi; kgotsa

(d) go ya ka taelo ya kgotlatshekelo.

(2) The Public Procurement Office, a provincial treasury or a procuring institution must take appropriate measures in respect of personal information in its possession or under its control to prevent—

- (a) loss of, damage to or unauthorised destruction of the information; and
 - (b) unlawful access to or processing of personal information,
- other than in accordance with this Act and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

CHAPTER 6 DISPUTE RESOLUTION

Part 1

Reconsideration of decision to award

Reconsideration by procuring institution

35. (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; and
- (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 47(1).

Part 2

Public Procurement Tribunal

Establishment of Tribunal

36. (1) The Public Procurement Tribunal is hereby established to review decisions taken by—

- (a) a procuring institution in terms of section 35; and

(2) Kantorotshenkelo ya Puso, matlotlo a diporofense kgotsa setheo se se senkelang se tshwanetse go tsaya dikgato tse di maleba mabapi le tshedimosetso e e ka ga gago e e mo tsholong ya yona kgotsa e e ka fa tlase ga taolo ya yona go thibela—

- (a) tatlhegelo, tshenyego kgotsa go tlhakatlhakannwa go go sa letlwang ga tshedimosetso; le 5
- (b) phithhelelo e e seng mo molaong kgotsa tsamaiso ya tshedimosetso e e ka ga gago,

ntle le go tsamaelana le Molao ono le *Protection of Personal Information Act*, 2013 (Molao 4 wa 2013).

KGAOLO 6 THARABOLOLO YA THULANO

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Karolo 1 Tshekatshekogape ya tshwetso ya go aba

Tshekatshekogape ka setheo se se senkelang

35. (1) Mosenki o ka romelela setheo se se senkelang kopo ya tshekatsheko fa mosenki yoo a sa kgotsofatswa ke tshwetso ya go abiwa ga maitekotheke ke setheo seo. 15

(2)(a) Go latela temana (c), Lekgotla kgotsa kgotlatshekelo e ka se sekaseke tshwetso ya go aba maitekotheke ntle le fa mosenki a batlile thuso ya ka fa gare e e bonelwang pele mo karolwaneng (1).

(b) Go latela temana (c), Lekgotla kgotsa kgotlatshekelo e tshwanetse, fa e sa kgotsofala gore thuso ya ka fa gare e dirisitswe, go laela gore motho yo o amegang o tshwanetse go dirisa pele thuso eo pele a simolola ditsamaiso mo Lekgotleng mabapi le tshekatsheko go ya ka Molao ono kgotsa kgotlatshekelo mabapi le tshekatsheko ya boatlhodi. 20

(c) Lekgotla kgotsa kgotlatshekelo e ka, mo mabakeng a a kgethegileng le ka kopo ya motho yo o amegang, golola motho yoo mo tlamegong ya go dirisa thuso ya ka fa gare fa Lekgotla kgotsa kgotlatshekelo e bona go le mo kgatlhegolong ya bosiamisi. 25

(3) Kopo e e umakilweng mo karolwaneng (1) e tshwanetse go romelelwa setheo se se senkelang mo matsatsing a le 10 a letlha le mosenki a itsisitsweng ka ga tshwetso ya go aba maitekotheke. 30

(4) Setheo se se senkelang se ka se tseye tsia kopo ya tshekatsheko fa kopo e ne e sa romelwa mo matsatsing a le 10 a letlha le mosenki a itsisitsweng ka ga tshwetso ya go aba maitekotheke.

(5) Go sa nyatswe paka e e tlhagisitsweng mo karolwaneng (4), mosenki o ka kopa setheo se se senkelang go tsaya tsia kopo ya tshekatshekogape e e dirilweng morago ga letlha la go ya bokhutlong ga paka e e umakilweng mo karolwaneng (3), ka lebaka la gore kopo e ngoka tshekatsheko ya kgatlhego ya setšhaba. 35

(6) Ntle le fa kopo e kgapetswe thoko jaaka go bonetswe pele mo karolwaneng (4) kgotsa e gogetswe morago ke mosenki, setheo se se senkelang se tshwanetse—

- (a) ka bonako go simolola patlisiso; le 40
- (b) go tsaya tshwetso le go itsise mosenki mo matsatsing a le 30.

(7) Tshwetso e e umakilweng mo karolwaneng (6)(b)—

- (a) e tshwanetse go o supa gore kopo e amogetswe kgotsa e kgapetswe kwa thoko, ka gotlhe kgotsa ka karolo; 45
- (b) e tshwanetse go tlhagisa mabaka a tshwetso; e bile
- (c) e ka tlhagisa dikgato tsa paakanyo tse di tlleng go tsewa. 45

(8) Fa tshwetso ya setheo se se senkelang go ya ka karolwana (6)(b) e na le ditlamorago tsa kgogelomorago ya kabo ya ntlha, mosenki yo o abetsweng yo o sa kgotsofatswang ke tshwetso ya setheo se se senkelang, o ka faela kopo gore e sekasekwe kwa Lekgotleng go ya ka karolo 47(1). 50

Karolo 2 Lekgotla la Tshenkelo la Puso

Go tlhongwa ga Lekgotla

36. (1) Lekgotla la Tshenkelo la Puso le a tlhongwa fano go sekaseka tshwetso e e tserweng ke— 55

- (a) setheo se se senkelang go ya ka karolo 35; le

- (b) a procuring institution to debar a bidder or supplier in terms of section 15.
- (2) The Tribunal—
- (a) is independent;
 - (b) must be impartial and exercise its powers without fear, favour or prejudice;
 - (c) is a tribunal of record; and
 - (d) must perform its function in accordance with this Act and other relevant legislation.

Composition of Tribunal

37. (1) The Tribunal consists of as many members as the Minister appoints with due regard to section 38. 10
- (2) The members of the Tribunal must include—
- (a) one person who is a retired judge who must be the Chairperson;
 - (b) a sufficient number of persons with 10 years' experience in law; and
 - (c) a sufficient number of persons with 10 years' experience in procurement.
- (3) The Minister must appoint the Chairperson with the concurrence of the Minister responsible for justice. 15
- (4) The Minister must appoint a member of the Tribunal referred to in subsection (2)(b) as the Deputy Chairperson.

Qualification of members of Tribunal

38. (1) A person may be appointed as a member of the Tribunal if that person— 20
- (a) possesses the necessary skills, expertise and knowledge; and
 - (b) is a citizen or permanent resident of the Republic.
- (2) The Minister must, by notice in the *Gazette* and at least two newspapers circulating widely in the Republic, invite any interested person within the Republic to nominate a person meeting the requirements for appointment to the Tribunal as a candidate for appointment. 25

Functions of Chairperson and Deputy Chairperson of Tribunal

39. (1) The Chairperson—
- (a) must preside at meetings of the Tribunal; and
 - (b) is responsible for managing the work of the Tribunal. 30
- (2) The Deputy Chairperson performs the functions of the Chairperson—
- (a) on delegation by the Chairperson;
 - (b) in the absence of the Chairperson; or
 - (c) if the office of the Chairperson is vacant.

Disclosure of interest by members of Tribunal

40. (1) Subject to subsection (2), a member of the Tribunal may not participate in the proceedings at any meeting of the Tribunal, if in relation to any matter before the Tribunal— 35
- (a) the member or a person related to that member is a director, member or partner of, or has controlling interest or any financial interest in the business of the bidder or any person who made representations in relation to the application by the bidder; or
 - (b) the member has any interest which precludes the performing the functions as a member in a fair, unbiased and proper manner. 40
- (2)(a) If at any stage during the proceedings before the Tribunal it appears that a member has or may have any interest envisaged in subsection (1), the member must immediately fully disclose the nature of the interest and leave the proceedings to enable the remaining members to determine whether the member must be precluded from participating in the proceedings by reason of a conflict of interest. 45

- (b) setheo se se senkelang go kganela mosenki kgotsa mothelesi go ya ka karolo 15.
- (2) Lekgotla—
- (a) le ikemetse;
- (b) le tshwanetse go se tseye letlhakore e bile le tshwanetse go diragatsa dithata tsa lona ntle le poifo, tseoletlhakore kgotsa kgobebelelo; 5
- (c) ke Lekgotla la rekoto; e bile
- (d) le tshwanetse go dira ditiro tsa lona go tsamaelana le Molao ono le melao e mengwe e e maleba.

Popego ya Lekgotla 10

37. (1) Lekgotla le bopilwe ka ditokololo di le dintsi tse Tona o ka di thapang ka kelotlhoko go karolo 38.
- (2) Ditokololo tsa Lekgotla di tshwanetse go akaretsa—
- (a) motho a le esi yo e leng moatlhodi yo o rotseng tiro yo o tshwanetseng go nna Modulasetulo; 15
- (b) palo e e lekaneng ya batho ba ba nang le maitemogelo mo molaong; le
- (c) palo e e lekaneng ya batho ba ba nang le maitemogelo a dingwaga di le 10 mo tshenkelong.
- (3) Tona o tshwanetse go thapa Modulasetulo ka tumalano le Tona yo o rwalang maikarabelo a bosiamisi. 20
- (4) Tona o tshwanetse go thapa tokololo ya Lekgotla e e umakilweng mo karolwaneng (2)(b) jaaka Motlatsamodulasetulo.

Borutegi jwa ditokololo tsa Lekgotla

38. (1) Motho o ka thapiwa jaaka tokololo ya Lekgotla fa motho yoo—
- (a) a na le dikgono tse di tlhokegang, boitseanape le kitso; e bile 25
- (b) e le moagi kgotsa moagi wa leruri mo Rephaboliking.
- (2) Tona o tshwanetse, ka kitsiso mo Lokwalodikgannyeng la Puso le ka bonnye mo makwalodikgannyeng a le mabedi a a phatlhalatswang ka bophara mo Rephaboliking, go laletsa motho ofe yo o nang le kgalhego mo Rephaboliking go tlhopha motho yo o nang le ditlhokego tsa go thapiwa mo Lekgotleng jaaka ntlhopheng mabapi le go thapiwa. 30

Ditiro tsa Modulasetulo le Motlatsamodulasetulo wa Lekgotla

39. (1) Modulasetulo—
- (a) o tshwanetse go okama dikopano tsa Lekgotla; e bile
- (b) o rwala maikarabelo mabapi le go laola tiro ya Lekgotla. 35
- (2) Motlatsamodulasetulo o dira ditiro tsa Modulasetulo—
- (a) fa a laetswe ke Modulasetulo;
- (b) fa Modulasetulo a se teng; kgotsa
- (c) fa go na le phatlhatiro mo kantorong ya Modulasetulo.

Tshenolo ya kgalhegelo ka ditokololo tsa Lekgotla 40

40. (1) Go latela karolwana (2), tokololo ya Lekgotla e ka se tseye karolo mo ditsamaisong kwa kopanong efe ya Lekgotla, fa mabapi le morero ofe o o fa pele ga Lekgotla—
- (a) tokololo kgotsa motho yo o amanang le tokololo eo e le mokaedi, tokololo kgotsa molekane wa, kgotsa a na le kgalhegelo ya go laola kgotsa kgalhegelo efe ya ditšhelete mo kgwebong ya mosenki kgotsa motho ofe yo o dirileng ditlhagiso mabapi le kopo ka mosenki; kgotsa 45
- (b) tokololo e na le kgalhegelo efe e e sa mo letleng go dira ditiro jaaka tokololo ka mkgwa o o lolameng, o o sa tseyeng letlhakore e bile o nepagetse.
- (2)(a) Fa ka legato lefe ka motsi wa ditsamaiso fa pele ga Lekgotla go tlhagelela gore tokololo e na le kotsa go lebega e kete e na le kgalhegelo efe e e bonelwang pele mo karolwaneng (1), tokololo e tshwanetse gore ntle le tshenyoy nako e senole ka botlalo mofuta wa kgalhegelo le go tswa mo ditsamaisong go kgontsha ditokololo tse di setseng go tlhomamisa gore a tokololo e se letlwe go tsaya karolo mo ditsamaisong ka ntlha ya thulano ya kgalhegelo. 55

(b) The disclosure envisaged in paragraph (a) and the decision taken by the remaining members regarding the determination must be recorded in the minutes of the proceedings.

(c) If any member fails to disclose any interest envisaged in subsection (1) or if, having such interest, the member attends or in any manner contributes to the proceedings of the Tribunal, the contribution must be disregarded, but the decision of the Tribunal is not invalid. 5

Term of office, re-appointment, termination and conditions of service of members of Tribunal

41. (1) A member of the Tribunal holds office for a period of five years, or the shorter period that the Minister determines. 10

(2) A member of the Tribunal may be re-appointed at the expiry of a term for a further term not exceeding three years.

(3) A member of the Tribunal may resign by giving at least three-months' notice to the Minister, or the shorter period as the Minister approves. 15

(4) The Minister may terminate the appointment of a member of the Tribunal if—

(a) the member is unable to perform the functions of office due to ill health or other reasons accepted by the Minister;

(b) the member fails to disclose an interest in terms of section 40(2); or

(c) an independent inquiry by the Minister has found that the member has— 20

(i) failed in a material way to discharge responsibilities of the member; or

(ii) acted in a way that is inconsistent with continuing to hold office.

(5) Subject to the Promotion of Administrative Justice Act, if an independent inquiry has been undertaken in terms of subsection (4)(c), the Minister may suspend the affected member from office pending a decision. 25

(6) The Minister must determine the remuneration and other terms and conditions of service for members of the Tribunal.

Finances of Tribunal

42. The Tribunal is financed from—

(a) money that is appropriated by Parliament; and 30

(b) prescribed fees for the Tribunal.

Resources of Tribunal

43. The Chairperson may—

(a) for the effective functioning of the Tribunal—

(i) appoint persons as employees and determine their conditions of service in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994); 35

(ii) second persons in accordance with applicable law; or

(iii) engage persons on contract otherwise than as employees;

(b) enter into contracts; 40

(c) acquire and dispose of assets; and

(d) do anything else necessary for the effective functioning of the Tribunal.

Conduct of persons involved in work of Tribunal

44. A member of the Tribunal or a person referred to in section 43(a) may not use the work for the Tribunal to impede the Tribunal's ability to perform its functions. 45

Panels of Tribunal

45. (1) The Chairperson must constitute a panel for an application envisaged in section 47 or 48 regarding—

(a) a national department envisaged in section 3(1)(a), a constitutional institution referred to in section 3(1)(b) or a national public entity envisaged in section 3(1)(d), at the national sphere of government; or 50

(b) Tshenolo e e bonelwang pele mo temaneng (a) le tshwetso e e tserweng ke ditokololo tse di setseng mabapi le tlhomamiso e tshwanetse go gatiswa mo metsotsong ya ditsamaiso.

(c) Fa tokololo efe e retelelwa ke go senola kgatlhegelo efe e e bonelwang pele mo karolwaneng (1) kgotsa fa, a na le kgatlhegelo eo, tokololo e tsenela kgotsa ka mokgwa ofe a nna le seabe mo ditsamaisong tsa Lekgotla, seabe ga se a tshwanela go tsewa tsia, fela tshwetso ya Lekgotla e a dira. 5

Paka ya tiro, kemiso ya botokololo le dipeelo tsa tirelo tsa ditokololo tsa Lekgotla

41. (1) Tokololo ya Lekgotla e nna mo tirong sebaka sa paka ya dingwaga tse tlhano, kgotsa paka e khutshwane e e tlhomamiswang ke Tona. 10

(2) Tokololo ya Lekgotla e ka thapiwa gape kwa go ya bokhutlong ga paka sebaka sa paka e nngwe e e sa feteng dingwaga tse tharo.

(3) Tokololo ya Lekgotla e ka leboga tiro ka go naya Tona kitsiso ya bonnye dikgwedi tse tharo, kgotsa paka e khutshwane jaaka Tona a rebotse.

(4) Tona o ka kgaola tiro ya tokololo ya Lekgotla fa— 15

(a) tokololo e sa kgone go dira ditiro tsa kantoro ka ntlha ya go sa itekanelang kgotsa ka mabaka a mangwe a a amogelwang ke Tona;

(b) tokololo e retelelwa ke go senola kgatlhegelo go ya ka karolo 40(2); kgotsa

(c) patlisiso e e ikemetseng ka Tona e fitlhetse gore tokololo e—

(i) e reteletswe segolo go diragatsa maikarabelo a tokololo; kgotsa 20

(ii) dirile ka tsela e e sa tsamaelaneng le go tswelala pele go nna mo tirong.

(5) Go latela Molao wa Tsweliso ya Bosiamisi jwa Tsamaiso, fa patlisiso e e ikemetseng e dirilwe go ya ka karolwana (4)(c), Tona o ka sekega tokololo e e amegang mo tirong go sa letilwe tshwetso.

(6) Tona o tshwanetse go tlhomamisa tuelo le melawana le dipeelo mabapi le ditokololo tsa Lekgotla. 25

Matlole a Lekgotla

42. Lekgotla le bona matlole go tswa mo—

(a) mading a a lekanyeditsweng ke Palamente; le

(b) dituelo tse di laetsweng tsa Lekgotla. 30

Ditlamelo tsa Lekgotla

43. Modulasetulo o ka—

(a) mabapi le go dira ka nonofo ga Lekgotla—

(i) thapa batho jaaka badiri le go tlhomamisa dipeelo tsa tirelo tsa bona go tsamaelana le *Public Service Act, 1994* (Kgoeletso 103 ya 1994); 35

(ii) tshegets batho go tsamaelana le molao o o diriswang; kgotsa

(iii) dira le batho ba ba mo konterakeng e seng jaaka badiri;

(b) dira dikonteraka;

(c) fitlhelela le go latlha dithoto; le

(d) dira sengwe le sengwe se se tlhokegang mabapi le go dira ka nonofo ga Lekgotla. 40

Maitsholo a batho ba ba amegang mo tirong ya Lekgotla

44. Tokololo ya Lekgotla kgotsa motho yo o umakilweng mo karolong 43(a) o ka se dirise tiro ya Lekgotla go kgoreletsa bokgoni jwa Lekgotla jwa go dira ditiro tsa lona.

Dipanele tsa Lekgotla

45

45. (1) Modulasetulo o tshwanetse go tlhoma panele mabapi le kopo e e bonelwang pele mo karolong 47 kgotsa 48 mabapi le—

(a) (a) lefapha la bosetšhaba le le bonetsweng pele mo karolong 3(1)(a), setheo sa semolaotheo se se umakilweng mo karolong 3(1)(b) kgotsa setheo sa puso sa bosetšhaba se se bonetsweng pele mo karolong 3(1)(d), mo lekaleng la bosetšhaba la puso; kgotsa 50

- (b) a provincial department envisaged in section 3(1)(a), a municipality or municipal entity referred to in section 3(1)(c) or a provincial public entity envisaged in section 3(1)(d), in the relevant province.
- (2) Any reference in this Act to the Tribunal must be construed as including a reference, where appropriate in the case of an application envisaged in section 47 or 48, to a panel to whom a review is or was assigned. 5
- (3) The panel—
- (a) is the decision-making body for that particular application; and
 - (b) performs the functions of the Tribunal when hearing the application.
- (4) A panel consists of— 10
- (a) a member of the Tribunal as Chairperson of the panel;
 - (b) a member of the Tribunal referred to in section 37(2)(b);
 - (c) a member of the Tribunal referred to in section 37(2)(c); and
 - (d) such other members of the Tribunal as the Chairperson of the Tribunal decides. 15
- (5) If, for any reason, a member of the panel is unable to complete a hearing of an application, the Chairperson may—
- (a) replace the member;
 - (b) direct that the proceedings continue before the remaining members of the panel; or 20
 - (c) constitute a new panel and direct the new panel to either continue the proceedings or start proceedings afresh.

Tribunal rules

- 46.** (1) The Tribunal must make rules regarding proceedings for applications, envisaged in sections 47 and 48, including the finalisation thereof, and may amend or revoke such rules. 25
- (2) The Tribunal rules must further regulate the functioning of panels, referred to in section 45, including their functioning in the national or provincial sphere of government to facilitate ease of access for the applicant.
- (3) The Tribunal must give notice in the *Gazette* or its website where the Tribunal rules, and amendments and revocations of Tribunal rules, are available. 30

Part 3 **Review process**

Review of decision of procuring institution

- 47.** (1) If a bidder is not satisfied by a decision made by a procuring institution in terms of section 35, that bidder may, within 10 days of being informed of the procuring institution's decision, submit an application for review to the Tribunal. 35
- (2) Despite the period stated in subsection (1), a bidder may request the Tribunal to consider an application for review filed after the expiry of the period mentioned in subsection (1), but not later than 15 days of being informed of the procuring institution's decision, on the ground that the application raises public interest considerations. 40
- (3) The Tribunal must inform the bidder of its decision in terms of subsection (2) and the reasons within five days from the date of receipt of the request.

Review of decision to debar

- 48.** (1) A person debarred in terms of section 15(3) may, within 10 days of being informed of the decision to debar, submit an application for review to the Tribunal. 45
- (2) Despite the period stated in subsection (1), a bidder may request the Tribunal to consider an application for review filed after the expiry of the period mentioned in subsection (1), but not later than 15 days of being informed of the procuring institution's decision, on the ground that the application raises public interest considerations. 50
- (3) The Tribunal must inform the bidder of its decision in terms of subsection (2) and the reasons within five days from the date of receipt of the request.

- (b) lefapha la porofense le le bonetsweng pele mo karolong 3(1)(a), masepala kgotsa setheo sa masepala se se umakilweng mom o karolong 3(1)(c) kgotsa setheo sa puso sa porofense se se bonetsweng pele mo karolong 3(1)(d), mo porofenseng e e maleba.
- (2) Kaelo efe mo Molaong ono go Lekgotla e tshwanetse go tsewa jaaka e e akaretsang kaelo, fa go le maleba mo lebakeng la kopo e e bonelwang pele mo karolong 47 kgotsa 48, go panele e mo go yona tshekatsheko e newang kgotsa e neilweng. 5
- (3) Panele—
- (a) ke setheo se se dirang tshwetso mabapi le kopo eo e e rileng; e bile
- (b) e diragatsa ditiro tsa Lekgotla fa e reetsa kopo. 10
- (4) Panele e bopilwe ka—
- (a) tokololo ya Lekgotla jaaka Modulasetulo wa panele;
- (b) tokololo ya Lekgotla e e umakilweng mo karolong 37(2)(b);
- (c) tokololo ya Lekgotla e e umakilweng mo karolong 37(2)(c); le
- (d) ditokololo tse dingwe tseo tsa Lekgotla jaaka Modulasetulo a ka swetsa. 15
- (5) Fa, ka lebaka lefe, tokololo ya panele e sa kgone go wetsa theetso ya kopo, Modulasetulo o ka—
- (a) baya tokololo e nngwe mo boemong jwa gagwe;
- (b) laela gore ditsamaiso di tswelole pele fa pele ga ditokololo tse di setseng tsa panele; kgotsa 20
- (c) tlhama panele e ntšhwa le go laela panele e ntšhwa go tswelole ka ditsamaiso kgotsa go simolola ditsamaiso sešwa.

Melawana ya Lekgotla

46. (1) Lekgotla le tshwanetse go dira melawana mabapi le ditsamaiso tsa dikopo, tse di bonelwang pele mo dikarolong 47 le 48, go akaretsa le go konotelwa ga tsona, e bile o ka tlhabolola kgotsa a phimola melawana eo. 25
- (2) Melawana ya Lekgotla e tshwanetse go laola gape go dira ga dipanele, go umakilweng mo karolong 45, go akaretsa le go dira ga tsona mo lekaleng la bosetšhaba kgotsa la porofense la puso go nolofatsa phitlhelelo e e bonolo ya modirakopo.
- (3) Lekgotla le tshwanetse go dira kitsiso mo Lokwalodikgannyeng la Puso kgotsa mo webesaeteng ya lona e mo go yona go fitlhelwang melawana ya Lekgotla, le ditlhabololo le dikgogelomorago tsa melawana ya Lekgotla. 30

Karolo 3 Thulaganyo ya go sekaseka

Tshekatsheko ya tshwetso ya ditheo tse di senkelang 35

47. (1) Fa mosenki a sa kgotsofatswa ke tshwetso e e dirilweng ke setheo se se senkelang go ya ka karolo 35, mosenki yoo o ka, mo matsatsing a le 10 a go itsisiwe ka ga tshwetso ya setheo se se senkelang, romela kopo mabapi le tshekatsheko kwa Lekgotleng.
- (2) Go sa nyatswe paka e e boletsweng mo karolwaneng (1), mosenki o ka lopa Lekgotla go tsaya tsia kopo ya tshekatsheko e e dirilweng morago ga go ya bokhutlong ga paka e e umakilweng mo karolwaneng (1), mme e seng morago ga matsatsi a le 15 a go itsisiwe ga tshwetso ya setheo se se senkelang, ka lebaka la gore kopo e tsaya tsia kgatlhego ya setšhaba. 40
- (3) Lekgotla le tshwanetse go itsise mosenki ka tshwetso ya lona go ya ka karolwana (2) le ka mabaka mo matsatsing a le matlhano go tloga ka letlha la kamogelo ya kopo. 45

Tshekatsheko ya tshwetso ya kganelo

48. (1) Motho yo o kganetsweng go ya ka karolo 15(3) o ka, mo matsatsing a le 10 a go itsisiwe ka ga tshwetso ya kganelo, romelela Lekgotla kopo ya tshekatsheko.
- (2) Go sa nyatswe paka e e boletsweng mo karolwaneng (1), mosenki o ka lopa Lekgotla go tsaya tsia kopo ya tshekatsheko e e dirilweng morago ga go ya bokhutlong ga paka e e umakilweng mo karolwaneng (1), mme e seng morago ga matsatsi a le 15 a go itsisiwe ka ga tshwetso ya setheo se se senkelang, ka lebaka la gore kopo e tsaya tsia kgatlhego ya setšhaba. 50
- (3) Lekgotla le tshwanetse go itsise mosenki ka ga tshwetso go ya ka karolwana (2) le mabaka mo matsatsing a le matlhano go tloga ka letlha la kamogelo ya kopo. 55

Fee

49. A bidder or a person debarred seeking a review of a decision in terms of this Part must pay the prescribed fee.

Review proceedings

50. (1) In review proceedings— 5
- (a) the Chairperson of the panel must determine the procedure for proceedings, subject to this Act and Tribunal rules;
 - (b) the panel must strive to ensure that proceedings are conducted with as little formality and technicality, and as expeditiously, as the requirements of this Act and a proper consideration of the matter permit; and 10
 - (c) any party may be represented by a legal representative during the proceedings.
- (2) The Chairperson of a panel may give directions to facilitate the conduct of proceedings subject to subsection (1) and the Tribunal rules.
- (3) A panel must conduct a hearing in public, but the Chairperson of the panel may direct that a person be excluded from a hearing on any ground on which it would be proper to exclude a person from civil proceedings before the High Court. 15
- (4)(a) The Chairperson of a panel—
- (i) may, on good cause shown, by order, subpoena a specified person to appear before the panel at a time and place specified in the order to give evidence, to be questioned or to produce any document; and 20
 - (ii) must administer an oath to, or accept an affirmation from, any person called to give evidence.
- (b) A person subpoenaed in terms of paragraph (a) may not—
- (i) without just cause, fail to appear before the panel at the time and place specified in the subpoena; 25
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) without just cause, fail to answer fully and satisfactorily to the best knowledge of the person all questions lawfully put to the person; or
 - (iv) fail to produce any object or information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which the person has been required to produce. 30
- (c) A person subpoenaed in terms of paragraph (a) must be reimbursed for incidental costs for providing information and appearing before the panel by the person who requested the subpoena. 35
- (5) A person giving evidence or information, or producing documents, has the protections and liabilities of a witness giving evidence in civil proceedings before the High Court.

Tribunal orders

51. (1) In review proceedings envisaged in section 47, the panel may, by order— 40
- (a) confirm a decision made in terms of section 35;
 - (b) set aside a decision made under section 35 and refer the matter back to the relevant procuring institution for further consideration;
 - (c) direct a procuring institution not to make an award or cancel an award made for the procurement under review; 45
 - (d) direct that the procurement proceedings be terminated;
 - (e) take such alternative action as is appropriate in the circumstances;
 - (f) require the payment of compensation for any reasonable costs incurred by the bidder submitting an application as a result of an act or decision of, or procedure followed by, the procuring institution in procurement that does not comply with this Act; or 50
 - (g) dismiss the application.
- (2) In review proceedings envisaged in section 48, the panel may, by order—
- (a) confirm the debarment order of the procuring institution;

Tuelo

49. Mosenki kgotsa motho yo o kganetsweng yo o batlang tshekatsheko ya tshwetso go ya ka Karolo eno o tshwanetse go duela tuelo e e beilweng.

Ditsamaiso tsa tshekatsheko

50. (1) Mo ditsamaisong tsa thadiso— 5
- (a) Modulasetulo wa panele o tshwanetse go tlhomamisa tsamaiso ya ditsamaiso, go latela Molao ono le melawana ya Lekgotla;
- (b) panele e tshwanetse go leka ka gotlhe go netefatsa gore ditsamaiso di dirwa e seng ka tsenelelo e kgolo le setegeniki, le ka bonako, jaaka ditlhokego tsa Molao ono le kelotlhoko e e nepagetseng ya morero di letla; le 10
- (c) moamegi ofe o ka emelwa ke moemedi wa semolao ka motsi wa ditsamaiso.
- (2) Modulasetulo wa panele o ka neelana ka dikaelo go nolofatsa ka moo ditsamaiso di tllileng go tshwarwa ka teng go latela karolwana (1) le melawana ya Lekgotla.
- (3) Panele e tshwanetse go tshwara theetso mo phatlhalatseng, mme Modulasetulo wa panele o ka laela gore motho a se akaretswe mo theetsong ka lebaka lefe le ka lona go tla nnang maleba go se akaretswe motho mo ditsamaisong tsa selegae fa pele ga Kgotlatshekelokgolo. 15
- (4)(a) Modulasetulo wa panele—
- (i) o ka, ka mowa o montle o o bonagetseng, ka taelo, biletsa motho yo o rileng kwa pele ga panele ka nako le kwa lefelong le le totobaditsweng mo taelong go neelana ka bosupi, go botsolotswa kgotsa go tlhagisa lokwalo lefe; e bile 20
- (ii) o tshwanetse go ikana, kgotsa go amogela netefatso go tswa, mo mothong ofe yo o bileditsweng go naya bosupi.
- (b) Motho yo o bileditsweng go ya ka temana (a) o ka se—
- (i) ntle le lebaka le le utlwalang, retelelwe ke go tlhagelela fa pele ga panele ka nako le kwa lefelong le le totobaditsweng mo piletsong; 25
- (ii) gane go ikaniswa kgotsa go netefatswa jaaka mosupi;
- (iii) ntle le lebaka le le utlwalang, retelelwe ke go araba ka botlalo le ka kgotsofatso go ya ka bogolo jwa kitso ya motho dipotso tsotlhe tse semolao di boditsweng motho; kgotsa 30
- (iv) retelelwe ke go tlhagisa selo kgotsa tshedimisetso efe, go akaretsa mme go sa lekanyetswa go dipampiri tsa tiro, dikanego, tlhaeletsano, dibuka kgotsa makwalo a mangwe ao a a tshotseng kgotsa a a mo tlhokomelong kgotsa mo taolong ya gagwe, ao motho a tlhokwang gore a a tlhagise.
- (c) Motho yo o bileditsweng go ya ka temana (a) o tshwanetse go busetswa madi mabapi le ditshenyegelo tse di sa ipaakanyetswang tsa go tlamela tshedimisetso le go tlhagelela fa pele ga panele ke motho yo o kopileng pileliwa. 35
- (5) Motho yo o neelanang ka bosupi kgotsa tshedimisetso, kgotsa yo o tlhagisang makwalo, o na le ditshireletso le maikarabelosemolao a mosupi yo o nayang bosupi mo ditsamaisong tsa selegae fa pele ga Kgotlatshekelokgolo. 40

Ditaelo tsa Lekgotla

51. (1) Mo tshekatshekong ya ditsamaiso e e bonelwang pele mo karolong 47, panele e ka, ka taelo—
- (a) netefatsa tshwetso e e dirilweng go ya ka karolo 35;
- (b) beela kwa thoko tshwetso e e dirilweng ka fa tlase ga karolo 35 le go busetsa morero kwa setheong se se senkelang se se maleba gore o sekasekwe gape; 45
- (c) laela setheo se se senkelang gore se se abe kgotsa se phimole kabo e e dirilweng mabapi le tshenkelo e e sekasekwang;
- (d) laela gore ditsamaiso tsa tshenkelo di emiswe;
- (e) tsaya kgato eo e nngwe jaaka e bona go le matshwanedi mo maemong ao; 50
- (f) tlhoka tuelo ya phimolakeledi mabapi le ditshenyegelo dife tse di utlwalang tse di bonweng ke mosenki yo o dirang kopo ka ntlha ya tiro kgotsa tshwetso ya, kgotsa tsamaiso e e latetsweng ke, setheo se se senkelang mo tshenkelong e e sa obameleng Molao ono; kgotsa
- (g) kgaphela kopo kwa thoko. 55
- (2) Mo ditsamaisong tsa tshekatsheko tse di bonelwang pele mo karolong 48, panele e ka, ka taelo—
- (a) tlhomamisa taelo ya kganelo ya setheo se se senkelang;

- (b) substitute the debarment order for its own order;
 - (c) set aside the debarment order of the procuring institution; or
 - (d) dismiss the application.
- (3)(a) The panel for review proceedings, envisaged in section 47 or 48, must make an order in terms of subsection (1) within 30 days after the submission of the application for review. 5
- (b) On request by the chairperson of the panel, the Chairperson of the Tribunal may extend the 30-day period for not more than 30 days.
- (4)(a) The decision of the majority of the members of the panel constitutes a decision of the panel. 10
- (b) The chairperson of the panel has a casting vote in the event of an equality of votes.
- (5) The Tribunal may, in exceptional circumstances, make an order that a party to proceedings on an application for review of a decision pay some or all of the costs reasonably and properly incurred by the other party in connection with the proceedings.
- (6) The Tribunal may, by order, summarily dismiss an application for review of a decision if the application is frivolous, vexatious or trivial. 15
- (7) The decision of a panel in terms of subsection (1) is regarded as a decision of the Tribunal.

Judicial review and enforcement of Tribunal orders

52. (1) Any party that is dissatisfied with an order of the Tribunal may institute proceedings for judicial review in terms of the Promotion of Administrative Justice Act or any applicable law. 20
- (2) A party to proceedings may file with the registrar of a competent court a certified copy of an order made in terms of section 51(1) or (2) if—
- (a) no proceedings in relation to the making of the order have been commenced in a court by the end of the period for commencing such proceedings; or 25
 - (b) the proceedings have been finally disposed of.
- (3) The order, on being filed, has the effect of a judgment in civil proceedings, and may be enforced as if lawfully given in that court.

Part 4 **Stand still process**

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Prohibition on concluding contract during reconsideration or review proceedings

53. (1) If a procurement process is subject to—
- (a) a reconsideration in accordance with section 35, a procuring institution may not conclude a contract with the successful bidder within 10 days after completion of the reconsideration; or 35
 - (b) review in accordance with section 47, a procuring institution may not conclude a contract with the successful bidder prior to completion of the review process.
- (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 63(1)(a)(xi). 40

CHAPTER 7 **GENERAL PROVISIONS**

Investigation by Public Procurement Office

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- 54.(1) The Public Procurement Office may, if requested by the relevant treasury, a procuring institution, a member of the public or on its own initiative, investigate any alleged non-compliance with this Act, other than an alleged commission of an offence, referred to in section 60, if it has reasonable cause to suspect that non-compliance has occurred. 50
- (2) The Public Procurement Office must, if an investigation in terms of subsection (1) indicates—

- (b) emisetsa taelo ya kganelo ka taelo ya yona;
- (c) beela thoko taelo ya kganelo ya setheo se se senkelang; kgotsa
- (d) kgaphela kopo kwa thoko.
- (3)(a) Panele ya tshekatsheko ya ditsamaiso, e e bonetsweng pele mo karolong 47 kgotsa 48, e tshwanetse go dira taelo go ya ka karolwana (1) mo matsatsing a le 30 morago ga go romelwa ga kopo ya tshekatsheko. 5
- (b) Ka kopo ya modulasetulo wa panele, Modulasetulo wa Lekgotla o ka atolosa paka ya matsatsi a le 30 ka matsatsi a a sa feteng a le 30.
- (4)(a) Tshwetso ya bontsi jwa ditokololo tsa panele e tsewa jaaka tshwetso ya panele.
- (b) Modulasetulo wa panele o dira boutu ya makgaolakang mo lebakeng la fa go na le tekatekano ya diboutu. 10
- (5) Lekgotla le ka, mo mabakeng a a kgethegileng, dira taelo ya gore moamegi mo ditsamaisong tsa kopo ya tshekatsheko ya tshwetso a duele bontlhabongwe kgotsa ditshenyegelo tsotlhe tse di bonweng ke moamegi yo mongwe ka mabaka le ka nepagalo mabapi le ditsamaiso. 15
- (6) Lekgotla le ka, ka taelo, kgaphela thoko ka boripana kopo ya tshekatsheko ya tshwetso fa kopo e sena mosola, e tena kgotsa e se ya bothokwa.
- (7) Tshwetso ya panele go ya ka karolwana (1) e tsewa jaaka tshwetso ya Lekgotla.

Tshekatsheko ya boatlhodi le kgatelelo ya ditaello tsa Lekgotla

52. (1) Moamegi ofe yo o sa kgotsofatswang ke taelo ya Lekgotla o ka dira ditsamaiso tsa tshekatsheko ya boatlhodi go ya ka Molao wa Tsweletso ya Bosiamisi jwa Tsamaiso kgotsa molao ofe o o diriswang. 20
- (2) Moamegi mo ditsamaisong o ka faela kwa mokwaleding wa kgotlatshekelo e e nang le bokgoni khopi e e kanetsweng ya taelo e e dirilweng go ya ka karolo 51(1) kgotsa (2) fa— 25
- (a) go se ditsamaiso dipe mabapi le go dirwa ga taelo tse di simolotseng kwa kgotlatshekelong kwa bokhutlong jwa paka ya go simololwa ga ditsamaiso tseo; kgotsa
- (b) ditsamaiso di kgaphetswe kwa thoko kwa bofelong.
- (3) Taelo, fa e sena go faelwa, e utlwala jaaka katlholo mo ditsamaisong tsa selegae, e bile e ka gatelelwa jaaka e neilwe semolao kwa kgotlatshekelong eo. 30

Karolo 4

Thulaganyo ya kemiso

Thibelo mo go konoteleleng konteraka ka motsi wa go sekasekwa gape kgotsa wa ditsamaiso tsa tshekatsheko 35

53. (1) Fa tsamaiso ya tshenkelo e—
- (a) sekasekwa gape go tsamaelana le karolo 35, setheo se se senkelang se ka se konotelele konteraka le mosenki yo o atlegileng mo matsatsing a le 10 morago ga go khutliswa ga tshekatsheko kgotsa tsamaiso ya tshekatsheko; kgotsa
- (b) sekasekwa go tsamaelana le karolo 47, setheo se se senkelang se ka se konotelele konteraka le mosenki yo o atlegileng pele ga go wediwa ga tsamaiso ya tshekatsheko. 40
- (2) Fa ka tshoganyetso go tlhokega tshenkelo ya morero o o sekasekwang gape kgotsa o o sekasekwang jaaka go bonelwa pele mo karolwaneng (1), tshenkelo ya tshoganyetso e ka dirwa jaaka go bonelwa pele mo karolong 63(1)(a)(xi). 45

KGAOLO 7

DITAELO KA KAKARETSO

Patlisiso ka Kantorotshenkelo ya Puso

54. (1) Kantorotshenkelo ya Puso e ka, fa e kopilwe ke matlotlo a a maleba, setheo se se senkelang, tokololo ya baagi kgotsa ka boyona, batlisisa magatwe afe a bothoka kobamelo jwa Molao ono ntle le magatwe a go tloiswa ga molao, ao a umakilweng mo karolong 60, fa e na le mabaka a a utlwalang go belaela gore go nnile le bothokakobamelo. 50
- (2) Kantorotshenkelo ya Puso e tshwanetse, fa patlisiso go ya ka karolwana (1) e tlhagisa— 55

- (a) non-compliance with this Act—
- (i) instruct the procuring institution to take steps to stop or prevent the non-compliance; and
 - (ii) direct that appropriate action be taken against the official responsible for the non-compliance; and
- (b) an alleged commission of an offence, referred to in section 60, refer the matter to the relevant law enforcement body.
- (3) Where a procuring institution is required to act in terms of subsection (2), the procuring institution must, as required by the Public Procurement Office, report on the progress made.

Power to enter and search premises

55. (1) The Public Procurement Office may, for purposes of section 54, authorise one or more suitably qualified persons (herein referred to as “the authorised person”) to enter and search any premises of—
- (a) a procuring institution without any prior consent or warrant;
 - (b) an official of a procuring institution in accordance with subsection (2); or
 - (c) a bidder, or supplier to whom a bid has been awarded in terms of this Act, in accordance with subsection (2).
- (2) The authorised person referred to in subsection (1) may enter premises of an official referred to subsection (1)(b) or a bidder or supplier referred to in subsection (1)(c)—
- (a) with the prior consent of—
 - (i) in the case of a private residence—
 - (aa) of an official, bidder or supplier, as the case may be; or
 - (bb) the person apparently in control of the business reasonably believed to be conducted at the private residence, and the occupant of the private residence or the part of the private residence to be entered; or
 - (ii) in the case of any other premises, the person apparently in control of the premises, after informing that person that—
 - (aa) granting consent will enable the authorised person to enter the premises and for the authorised person to subsequently search the premises and to do anything envisaged in subsection (8); and
 - (bb) he or she is under no obligation to admit the authorised person in the absence of a warrant; or
 - (b) without prior consent and without prior notice to any person if the entry is authorised by a warrant.
- (3)(a) The Public Procurement Office must issue the person authorised in terms of subsection (1) with a certificate stating that the person has been authorised in terms of subsection (1).
- (b) When exercising powers in terms of this section, the authorised person must—
- (i) be in possession of a certificate of appointment; and
 - (ii) immediately show that certificate to any person who is affected by the authorised person’s actions in terms of this section or who requests to see the certificate.
- (4) The authorised person has the authority to search the premises and to do anything envisaged in subsection (8).
- (5) The authorised person exercising powers in terms of this section must do so with strict regard to—
- (a) an affected person’s right to—
 - (i) dignity;
 - (ii) freedom and security;
 - (iii) privacy; and
 - (iv) other constitutional rights; and

- (a) botlhoka kobamelo jwa Molao ono—
- (i) go laela setheo se se senkelang go tsaya dikgato tse di maleba go emisa kgotsa go thibela botlhoka kobamelo; le
- (ii) go laela gore kgato e e maleba e tsewe kgatlhanong le modiredi yo o rwalang maikarabelo a botlhoka kobamelo; le 5
- (b) magatwe a go tlolwa ga molao, go go umakilweng mo karolong 60, go romela morero kwa setheong se se maleba sa kgatelelo ya molao.
- (3) Fa setheo se se senkelang se tlhokega go dira go ya ka karolwana (2), setheo se se senkelang se tshwanetse, jaaka go tlhokega go ya ka Kantorotshenkelo ya Puso, go bega ka tswelelopele e e dirilweng. 10

Thata ya go tsena mo le go phuruphutsa mo lefelong

55. (1) Kantorotshenkelo ya Puso e ka, mabapi le maitlhommo a karolo 54, rebolela a le mongwe kgotsa go feta wa batho ba ba siametseng (yo fano a bidiwang “motho yo o reboletsweng”) go tsena le go phuruphutsa mafelo afe—
- (a) a setheo se se senkelang ntle le tumelelo kgotsa tetla e e dirilweng pele; 15
- (b) motlhankedi wa setheo se se senkelang go tsamaelana le karolwana (2); kgotsa
- (c) mosenki, kgotsa mothelesi yo o abetsweng maitekotheke go ya ka Molao ono, go tsamaelana le karolwana (2).
- (2) Motho yo o reboletsweng yo o umakilweng mo karolwaneng (1) o ka tsena mo lefelong lefe la motlhankedi yo o umakilweng mo karolwaneng (1)(b) kgotsa mosenki kgotsa mothelesi yo o umakilweng mo karolwaneng (1)(c)— 20
- (a) ka tumelelo ya pele ya—
- (i) mo lebakeng la lefelobonno la poraefete—
- (aa) motlhankedi, mosenki kgotsa mothelesi, ka moo go leng ka teng; kgotsa 25
- (bb) motho yo o ka tswang a le mo taolong ya kgwebo e ka mabaka go dumelwang gore e direlwa kwa kwa lefelong la bonno la poraefete, le monni mo lefelobonng la poraefete kgotsa mo karolong ya lefelobonno la poraefete e e tshwanetseng go tsenwa; kgotsa 30
- (ii) mo lebakeng la mafelo mangwe le mangwe afe, motho yo o ka tswang a le mo taolong ya mafelo, morago ga go itsise motho yoo gore—
- (aa) go neelana ka tumelelo go tlile go kgontsha motho yo o reboletsweng go tsena mo lefelong le gore motho yo o reboletsweng o tlile go phuruphutsa lefelo le go dira sengwe le sengwe se se bonelwang pele mo karolwaneng (8); le 35
- (bb) ga a patelesege go dumelela motho yo o reboletsweng a sena tetla; kgotsa
- (b) ntle le tumelelo ya pele le ntle le kitsiso ya pele go motho ofe fa go tsena go reboletswa ka tetla. 40
- (3)(a) Kantorotshenkelo ya Puso e tshwanetse go rebolela motho yo o reboletsweng go ya ka karolwana (1) setifikeiti se se bontshang gore motho o reboletswa go ya ka karolwana (1).
- (b) Fa a diragatsa dithata go ya ka karolo eno, motho yo o reboletsweng o tshwanetse— 45
- (i) go tshola setifikeiti sa go thapiwa; le
- (ii) ka bonako go bontsha motho ofe yo o angwang ke dikgato tsa motho yo o reboletsweng setifikeiti seo go ya ka karolo eno kgotsa yo o kopang go bona setifikeiti. 50
- (4) Motho yo o reboletsweng o na le thata ya go phuruphutsa mafelo le go dira sengwe le sengwe se se bonelwang pele ka karolwana (8).
- (5) Motho yo o reboletsweng yo o diragatsang dithata go ya ka karolo eno o tshwanetse go dira jalo ka kelotlhoko e e tseeneletseng go—
- (a) tshwanelo ya moamegi ya— 55
- (i) seriti;
- (ii) kgololosego le tshireletsego;
- (iii) sephiri; le
- (iv) ditshwanelo tse dingwe tsa semolao; le

- (b) decency and good order as the circumstances require, in particular by—
- (i) entering and searching only such areas or objects as are reasonably required for the purposes of the investigation;
 - (ii) conducting the search discreetly and with due decorum;
 - (iii) causing as little disturbance as possible; and
 - (iv) concluding the search as soon as possible.
- (6) An entry or search of premises in terms of this section may be done with or without the prior notification of the accounting officer or accounting authority of the relevant procuring institution.
- (7) The authorised person may be accompanied and assisted during the entry and search of any premises for an investigation by a person designated by the Public Procurement Office.
- (8)(a) While on the premises in terms of this section, the authorised person has access to any part of the premises and to any document or item on the premises, and may do any of the following—
- (i) open or cause to be opened any strongroom, safe, cabinet or other container in which the authorised person reasonably suspects there is a document or item that may afford evidence required for the investigation;
 - (ii) examine, make extracts from and copy any document on the premises;
 - (iii) question any person on the premises to find out information relevant to the investigation;
 - (iv) require a person on the premises to produce to the authorised person any document or item that is relevant to the investigation and is in the possession or under the control of the person;
 - (v) require a person on the premises to operate any computer or similar system on or available through the premises to—
 - (aa) search any information in or available through that system; and
 - (bb) produce a record of that information in any media that the authorised person reasonably requires;
 - (vi) if it is not practicable or appropriate to meet a requirement in terms of subparagraph (v), operate any computer or similar system on or available through the premises for a purpose set out in that subparagraph;
 - (vii) take possession of, and take from the premises, a document or item that may afford evidence required for the investigation; and
 - (viii) take photographs and videos of equipment and documents.
- (b) The authorised person must, on request, allow the person apparently in control of the premises a reasonable opportunity to make copies of any document or item before it is taken as mentioned in paragraph (a)(vii).
- (c) The authorised person must give the person apparently in control of the premises a written receipt for documents or items taken as mentioned in paragraph (a)(vii).
- (d) Subject to paragraph (e), the Public Procurement Office must ensure that any document or item taken by the authorised person as mentioned in paragraph (a)(vii) is returned to the procuring institution when—
- (i) retention of the document or item is no longer necessary to achieve the object of the investigation; or
 - (ii) all proceedings arising out of the investigation have been finally disposed of.
- (e) A document or item need not be returned to the procuring institution which produced it if it is not in the best interest of the public or any member or members of the public for the documents or items to be returned.
- (f) A procuring institution from whose premises a document or item was taken as mentioned in paragraph (a)(vii), or its authorised representative, may, during normal office hours and under the supervision of the authorised person or another person designated by the Public Procurement Office, examine, copy and make extracts from the document or item.
- (9) The authorised person or any person assisting that person as provided for in subsection (6), may use reasonable force to exercise any power in terms of this section.

- (b) tlotlo le taelo e e siameng jaaka maemo a tlhoka, segolobogolo ka go—
- (i) tsena le go phuruphutsa fela mo mafelong ao kgotsa dilo jaaka go tlhokega go ya ka mabaka mabapi le maitlhommo a patlisiso;
 - (ii) phuruphutsa ka tidimalo le ka maitseo;
 - (iii) se bake kgoreletso ka moo go kgonagalang; le 5
 - (iv) khutlisa phuruphutsa ka bonako jo bo kgonagalang.
- (6) Go tsena kgotsa go phuruphutsa mo mafelong go ya ka karolo eno go ka dirwa ka kgotsa ntle le kitsitsiso ya pele ya motlhankedi yo o rwalang maikarabelo kgotsa bothati jo bo rwalang maikarabelo jwa setheo se se senkelang se se maleba.
- (7) Motho yo o reboletsweng o ka patwa le go thuswa ka motsi wa go tsena le go phuruphutsa mo lefelong mabapi le patlisiso ka motho yo o romilweng ke Kantorotshenkelo ya Puso. 10
- (8)(a) Fa a le mo lefelong go ya ka karolo eno, motho yo o reboletsweng o letlilwe go tsena mo karolong efe ya lefelo le go lokwalo lefe kgotsa selo sefe se se mo lefelong, e bile o ka dira efe ya tse di latelang— 15
- (i) bula kgotsa o ka dira gore phaposi e e bolokegileng, bobeele, khabinete kgotsa seduti se sengwe seo motho yo o reboletsweng a belaelang ka mabaka gore se na le lokwalo kgotsa selo se se ka nnang bosupi jo bo tlhokegang mabapi le patlisiso;
 - (ii) tlhatlhoba, ntsha go tswa mo le go gatisa lokwalo lefe le le mo lefelong; 20
 - (iii) botsolotsa motho ofe mo lefelong go bona tshedimotsetso e e amanang le patlisiso;
 - (iv) kopa motho yo o mo lefelong go bontsha motho yo o reboletsweng lokwalo kgotsa selo sefe se se amanang le patlisiso kgotsa se se mo tsholong kgotsa ka fa tlase ga taolo ya motho; 25
 - (v) kopa motho yo o mo lefelong go dirisa khomputara efe kgotsa sediriswa sefe se se jalo mo kgotsa se se fitlhelegang ka lefelo go—
 - (aa) batla tshedimotsetso efe e e mo kgotsa e e fitlhelelwang ka thulaganyo eo; le
 - (bb) tlhagisa rekoto ya tshedimotsetso eo ka kgatiso efe e motho yo o reboletsweng a e tlhokang ka mabaka; 30
 - (vi) fa go sa kgonagale kgotsa go se maleba go fitlhelela tlhokego go ya ka temanatlaleletso (v), dirisa khomputara efe kgotsa sediriswa se se jalo mo kgotsa se se fitlhelelwang ka lefelo mabapi le maitlhommo a a tlhagisitsweng mo temanatlaleletsong eo; 35
 - (vii) gapa, le go tsaya go tswa mo lefelong, lokwalo kgotsa selo se se ka diriswang jaaka bosupi jo bo tlhokegang mabapi le patlisiso; le
 - (viii) tsaya ditshwantsho le dibidio tsa didiriswa le dikwalo.
- (b) Motho yo o reboletsweng o tshwanetse, ka kopo, go letla motho yo go lebegang e kete o mo taolong ya lefelo tšhono e e bonagalang go dira dikhopi tsa lokwalo kgotsa selo sefe pele se tsewa jaaka go umakilwe mo temaneng (a)(vii). 40
- (c) Motho yo o reboletsweng o tshwanetse go naya motho yo go lebegang a le mo taolong ya lefelo rasiti e e kwetsweng ya kamogelo ya makwalo kgotsa dilo tse di tserweng jaaka go umakilwe mo temaneng (a)(vii).
- (d) Go latela temana (e), Kantorotshenkelo ya Puso e tshwanetse go netefatsa gore lokwalo kgotsa selo sefe se se tserweng ke motho yo o reboletsweng jaaka go umakilwe mo temaneng (a)(vii) se busetswa setheo se se senkelang fa— 45
- (i) go tsewa ga lokwalo kgotsa selo go sa tshole go tlhokega go fitlhelela maitlhommo a patlisiso; kgotsa
 - (ii) ditsamaiso tsothe tse di tlhageletseng go tswa mo patlisisong di latlilwe kwa bofelong. 50
- (e) Lokwalo kgotsa selo ga se tlhoke go busetswa setheo se se senkelang se se tlhagisitseng fa go se mo kgatlhegelong ya setšhaba kgotsa ya tokololo efe kgotsa ditokololo tsa setšhaba gore lokwalo kgotsa selo se busetswe morago.
- (f) Setheo se se senkelang se go tswa mo lefelong la sona lokwalo kgotsa selo se tserweng jaaka go umakilwe mo temaneng (a)(vii), kgotsa kemedi e e reboletsweng ya sona, o ka, ka nako ya tiro e e tlwaelegileng le ka kelotlhoko ya motho yo o reboletsweng kgotsa motho yo mongwe yo o romilweng ke Kantorotshenkelo ya Puso, tlhatlhoba, gatisa le go ntsha dikarolo mo lokwalong kgotsa mo selong. 55
- (9) Motho yo o reboletsweng kgotsa motho ofe yo o thusang motho yoo jaaka go laetswe mo karolwaneng (6), o ka dirisa maatla a a rileng go diragatsa thata efe go ya ka karolo. 60

(10) The law relating to privilege, as applicable to a witness subpoenaed to provide a book, document or object in a civil trial before a court applies, with the necessary changes, in relation to the production of any information, including but not limited to any working papers, statements, correspondence, books or other documents, to the Public Procurement Office acting in accordance with this section. 5

(11)(a) A person who is questioned or required to produce a document or information during an investigation in terms of this section, may object to answering the question or to producing the document or the information on the grounds that the answer, the contents of the document or the information may tend to incriminate the person.

(b) The authorised person must inform the person of the right to object in terms of this section at the commencement of the investigation. 10

(c) On such an objection, the authorised person may require the question to be answered or the document or information to be produced, in which case the person must answer the question or produce the document.

(d) Subject to paragraph (e), an answer given or a document or information produced, as required in terms of paragraph (c), may be used for the purposes of an investigation or other legal proceedings in terms of this Act. 15

(e) An incriminating answer given, and an incriminating document or information produced, as required in terms of paragraph (c), is not admissible in evidence against the person in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for a contravention of section 60(1)(a) based on the false or misleading nature of the answer. 20

Warrants

56. (1)(a) A judge or magistrate who has jurisdiction may issue a warrant for the purposes of section 55(2)(b) on application by a person authorised in terms of section 55(1). 25

(b) The judge or magistrate may issue a warrant in terms of this section—

(i) on written application by the person authorised in terms of section 55(1) setting out under oath or affirmation why it is necessary to enter and search the premises; and 30

(ii) if it appears to the judge or magistrate from the information under oath or affirmation that—

(aa) there are reasonable grounds for suspecting that non-compliance with this Act has occurred; and

(bb) entry and search of the premises are likely to yield information pertaining to the non-compliance with this Act. 35

(2) A warrant must be signed by the judge or magistrate issuing it.

(3) The person authorised in terms of section 55(1) who enters premises under the authority of a warrant must—

(a) if there is apparently no one in charge of the premises when the warrant is executed, fix a copy of the warrant on a prominent and accessible place on the premises; and 40

(b) on reasonable demand by any person on the premises, produce the warrant or a copy of the warrant.

(4) The warrant must identify the premises that may be entered and searched and specify the parameters within which the person authorised in terms of section 55(1) may perform an entry, search or seizure. 45

(5) A warrant is valid only until—

(a) the warrant is executed;

(b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority; 50

(c) the purpose of issuing it has lapsed; or

(d) the expiry of one month after the date it was issued,

whichever occurs first.

(10) Molao o o amanang le tshiamelo, jaaka o diriswa mo mosuping yo o bileditsweng go tlamela buka, lokwalo kgotsa selo mo tshelong ya baagi fa pele ga kgotlatshekelo o a diriswa, ka diphetogo tse di tlhokegang, mabapi le tlhagiso ya tshedimisetso efe, go akaretsa mme go sa lekanyetswa go dipampiri dife tsa tiro, dikanego, tlhaeletsano, dibuka kgotsa makwalo a mangwe, kwa Kantorotshenkelong ya Puso e e dirang go tsamaelana le karolo eno. 5

(11)(a) Motho yo o botsolotswang kgotsa yo o tlhokegang go tlhagisa lokwalo kgotsa tshedimisetso ka motsi wa patlisiso go ya ka karolo eno, o ka ema kgatlhanong le go araba dipotso kgotsa go tlhagisa lokwalo kgotsa tshedimisetso ka ntlha ya fa karabo, diteng tsa lokwalo kgotsa tshedimisetso e ka mmofelela. 10

(b) Motho yo o reboletsweng o tshwanetse go itsise ka ga tshwanelo ya go ema kgatlhanong go ya ka karolo eno kwa tshimololong ya patlisiso.

(c) Mo kemokgatlanong eo, motho yo o reboletsweng o ka lopa gore potso e arabiwe kgotsa lokwalo kgotsa tshedimisetso e tlhagiswe, mo lebakeng la fa motho a tshwanetse go araba potso kgotsa go tlhagisa lokwalo. 15

(d) Go latela temana (e), karabo e e neilweng kgotsa lokwalo kgotsa tshedimisetso e e tlhagisitsweng, jaaka go tlhokega go ya ka temana (c), e ka diriswa mabapi le maitlomo a patlisiso kgotsa ditsamaiso tse dingwe tsa semolao go ya ka Molao ono.

(e) Karabo e e bofelelang e e neilweng, le lokwalo le le bofelelang kgotsa tshedimisetso e e tlhagisitsweng, jaaka go tlhokega go ya ka temana (c), ga e amogelesege mo bosuping kgatlhanong le motho mo ditsamaisong dife tsa bosenyi, ntle le mo ditsamaisong tsa bosenyi tsa go ikana maaka kgotsa tse mo go tsona motho yoo a sekisetwang tlolomolao ya karolo 60(1)(a) ka ntlha ya mofuta wa karabo e e fosagetseng kgotsa e e timetsang. 20

Makwalotetla 25

56. (1)(a) Moatlhodi kgotsa magiseterata yo o nang le taolo o ka rebola lekwalotetla mabapi le maitlomo a karolo 55(2)(b) ka kopo ya motho yo o reboletsweng go ya ka karolo 55(1).

(b) Moatlhodi kgotsa magiseterata o ka rebola lekwalotetla go ya ka karolo eno—

(i) ka kopo e e kwetsweng ke motho yo reboletsweng go ya ka karolo 55(1) e e tlhagisang ka fa tlase ga maikano kgotsa netefatso gore goreng go tlhokega go tsena le go phuruphutsa mo lefelong; le 30

(ii) fa go lebege mo moatlhoding le mo go magiseterata go tswa mo tshedimisetso e e ikanetsweng kgotsa e e mo netefatsong gore—

(aa) go na le mabaka a a utlwalang a go belaela gore go sa obameleng Molao ono go diragetse; le 35

(bb) go tsena le go phuruphutsa mo lefelong go ka lere tshedimisetso e e amanang le go sa obameleng ga Molao ono.

(2) Lekwalotetla le tshwanetse go saenwa ke moatlhodi kgotsa magiseterata yo o le rebolang. 40

(3) Motho yo reboletsweng go ya ka karolo 55(1) yo o tsenang mo lefelong ka fa tlase ga taolo ya lekwalotetla o tshwanetse—

(a) fa go ka tswa go se ope yo o tlhokometseng lefelo fa lekwalotetla le diragatswa, go ngaparetsa khopi ya lekwalotetla mo lefelong le le bonagalang e bile le fitlhelega; le 45

(b) ka topo e e utlwalang ka motho ofe yo o mo lefelong, go tlhagisa lekwalotetla kgotsa khopi ya lekwalotetla.

(4) Lekwalotetla le tshwanetse go tlhagisa mafelo a a ka tsenwang le go phuruphutsa le go totobatsa diparamethara tse mo go tsona motho a di reboletsweng go ya ka karolo 55(1) a ka tsenang, a phuruphutsa le go gapa. 50

(5) Lekwalotetla le dira fela go fitlhela—

(a) lekwalotetla le diragatswa;

(b) lekwalotetla le phimolwa ke motho yo o le rebotseng kgotsa, fa motho yoo a seyo, ke motho wa taolo e e tshwanang;

(c) maitlomo a go le rebola a feletswe ke nako; kgotsa 55

(d) go felelwa ke nako kgwedi e le esi morago ga letlha la thebolo, nngwe le nngwe efe e e diregang pele.

Delegation

57. (1)(a) The Minister may—
- (i) delegate to the Director-General: National Treasury any power conferred on the Minister by this Act, except the making of regulations and a decision by notice in the *Gazette*; or 5
 - (ii) authorise that Director-General to perform any duty imposed on the Minister by this Act.
- (b) The Director-General: National Treasury may—
- (i) delegate to any official of the National Treasury any power delegated to the Director-General in terms of paragraph (a); or 10
 - (ii) authorise that official to perform any duty he or she is authorised to perform in terms of paragraph (a).
- (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 20; or 15
 - (ii) authorise the Director-General responsible for trade, industry and competition to perform any duty imposed on the Minister by section 20, except a decision by notice in the *Gazette*;
- (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 the Director-General in terms of paragraph (a); or 20
 - (ii) authorise that official to perform any duty he or she is authorised to perform in terms of paragraph (a).
- (3) The accounting officer or accounting authority of a procuring institution may—
- (a) delegate to any official of the procuring institution any power conferred on the accounting officer or accounting authority by this Act; or 25
 - (b) authorise that official to perform any duty imposed on the accounting officer or accounting authority by this Act.
- (4) The Head of the Public Procurement Office may, except the issuance of instructions— 30
- (a) delegate to an official of the Public Procurement Office any power conferred on the Head Public Procurement Office by this Act;
 - (b) authorise an official of the Public Procurement Office to perform any duty imposed on the Head of the Public Procurement Office by this Act;
 - (c) delegate to a provincial treasury any power conferred on the Head of the Public Procurement Office by this Act; or 35
 - (d) authorise a provincial treasury to perform any duty imposed on the Head of the Public Procurement Office by this Act.
- (5) The Head of a provincial treasury may, except the issuance of instructions—
- (a) delegate to any of its officials any power conferred on the Head of the provincial treasury by this Act; or 40
 - (b) authorise any of its officials to perform any duty imposed on the Head of the provincial treasury by this Act.
- (6) Any person to whom a power has been delegated or who has been authorised to perform a duty under this section must exercise that power or perform that duty subject to the conditions imposed by the person who made the delegation or granted the authorisation. 45
- (7) Any delegation of a power or authorisation to perform a duty in terms of this section—
- (a) must be in writing; 50
 - (b) does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
 - (c) may at any time be withdrawn in writing by that person.

Limitation of liability

55

58. 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.

Tholelo

- 57.** (1)(a) Tona o ka—
- (i) rolela Mokaedikakaretso: Matlotlo a Bosetšhaba thata efe e e neilweng Tona ka Molao ono, ntle le go dirwa ga melawanataolo le tshwetso ka kitsiso mo Lokwalodikgannyeng la Puso; kgotsa 5
 - (ii) rebola gore Mokaedikakaretso a dire tiro efe e e pateletswang Tona ka Molao ono.
- (b) Mokaedikakaretso: Matlotlo a Bosetšhaba o ka—
- (i) rolela modiredi ofe wa Matlotlo a Bosetšhaba thata efe e a e neilweng go ya ka temana (a); kgotsa 10
 - (ii) rebola gore modiredi a dire tiro efe e a e letleletsweng go e dira go ya ka temana (a).
- (2)(a) Tona yo o rwalang maikarabelo a kgwebisano, madirelo le kgaisano o ka—
- (i) rolela Mokaedikakaretso yo o rwalang maikarabelo a kgwebisano, madirelo le kgaisano thata e e neilweng go ya ka karolo 20; kgotsa 15
 - (ii) rebolela Mokaedikakaretso yo o rwalang maikarabelo a kgwebisano, madirelo le kgaisano go dira tiro efe e e pateletswang Tona ka karolo 20, ntle le tshwetso ka kitsiso mo Lokwalodikgannyeng la Puso;
- (b) Mokaedikakaretso yo o rwalang maikarabelo a kgwebisano, madirelo le kgaisano o ka— 20
- (i) rolela modiredi ofe wa lefapha la kgwebisano, madirelo le kgaisano thata efe e e roletsweng Mokaedikakaretso go ya ka temana (a); kgotsa
 - (ii) rebola gore motlhankedi a dire tiro efe e a reboletsweng go e dira go ya ka temana (a).
- (3) Motlhankedi yo o rwalang maikarabelo kgotsa bothati jo bo rwalang maikarabelo jwa setheo se se senkelang bo ka— 25
- (a) rolela motlhankedi ofe wa setheo se se senkelang thata efe e e neilweng motlhankedi yo o rwalang maikarabelo kgotsa bothati jo bo rwalang maikarabelo ka Molao ono; kgotsa
 - (b) rebola gore motlhankedi a dire tiro efe e e pateletswang motlhankedi yo o rwalang maikarabelo kgotsa bothati jo bo rwalang maikarabelo ka Molao ono. 30
- (4) Tlhogo ya Kantorotshenkelo ya Puso o ka, ntle le thebolo ya melawana—
- (a) rolela motlhankedi wa Kantorotshenkelo ya Puso thata efe e e neilweng Tlhogo ya Kantorotshenkelo ya Puso ka Molao onoby this Act;
 - (b) rebolela motlhankedi wa Kantorotshenkelo ya Puso go dira tiro efe e e pateletswang Tlhogo ya Kantorotshenkelo ya Puso ka Molao ono; 35
 - (c) rolela matlotlo a diporofense thata efe e e neilweng Tlhogo ya Kantorotshenkelo ya Puso ka Molao ono; kgotsa
 - (d) rebolela matlotlo a diporofense go dira tiro efe e e pateletswang Tlhogo ya Kantorotshenkelo ya Puso ka Molao ono. 40
- (5) Tlhogo ya Matlotlo a diporofense o ka, ntle le thebolo ya melawana—
- (a) rolela modiredi ofe wa ona thata efe e e neilweng Tlhogo ya matlotlo a diporofense ka Molao ono; kgotsa
 - (b) rebolela ofe wa batlhankedi ba ona go dira tiro efe e e pateletswang Tlhogo ya matlotlo a diporofense ka Molao ono. 45
- (6) Motho ofe yo o roletsweng thata kgotsa yo o reboletsweng go dira tiro ka fa tlase ga karolo eno o tshwanetse go diragatsa thata eo kgotsa go dira tiro eo go ya ka dipeelo tse di beilweng ke motho yo o roletseng kgotsa yo o rebotseng.
- (7) Tholelo efe ya thata kgotsa thebolo ya go dira tiro go ya ka karolo eno—
- (a) e tshwanetse go kwalwa; 50
 - (b) ga e kganele motho yo o roletseng kgotsa yo o rebotseng mo go diragatseng thata eo kgotsa mo go direng tiro eo ka boena; e bile
 - (c) ka nako efe e ka gogelwa morago ka go kwala ke motho yoo.

Tekanyetso ya maikarabelosemolao

- 58.** Ga go motho ope yo o rwalang maikarabelosemolao a bosenyi kgotsa selegae mabapi le sengwe le sengwe se se dirilweng ka mowa o montle mo go dirweng kgotsa mo go diragatsweng ga thata kgotsa tiro efe go ya ka Molao ono. 55

Financial misconduct

59. (1) An accounting officer or accounting authority of a procuring institution commits financial misconduct if that officer or authority fails to take reasonable steps to implement this Act or the procurement system of the procuring institution in accordance with this Act. 5

(2) A charge of financial misconduct, referred to in subsection (1), must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority.

Offences

60. (1) A person who— 10

- (a) knowingly gives false or misleading information under this Act;
- (b) interferes with or exerts undue influence on any official of a procuring institution or member of the Tribunal in the performance of a duty or in the exercise of a power under this Act;
- (c) without authorisation opens a sealed bid, whether submitted electronically or otherwise, or discloses their contents prior to the official public opening of the bid; 15
- (d) conspires to commit extortion or a corrupt, fraudulent, collusive or coercive or obstructive act related to procurement under this Act;
- (e) contravenes section 10(b) or (c), 12 or 15(11)(a); or 20
- (f) causes loss of public assets or funds as a result of a wilful act or gross negligence in the implementation of this Act,

commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding 10 years or to both, and in addition to the penalty imposed in this section, the court may order that the amount of loss incurred by the complainant be compensated, failure of which the court may issue an order of confiscation of personal property of the person convicted in order to recover the loss. 25

(2) A person who—

- (a) without reasonable explanation fails or refuses to give information, produce any document, records or reports required in terms of this Act; 30
- (b) delays, without justifiable cause, the evaluation of a bid or the awarding of a bid;
- (c) fails to comply with a subpoena issued in terms of section 50(4),

commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding three years or both. 35

(3) A member of the Tribunal who fails to disclose an interest in terms of section 40(2) commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding three years or both.

Exemption

61. (1) The Minister may, with or without conditions, by notice in the *Gazette*, exempt a procuring institution from any provision of this Act, if— 40

- (a) national security could reasonably be expected to be compromised;
- (b) the procurement is to be funded partially or in full by donor or grant funding and such exemption will benefit the public in general or a section of the public; 45
- (c) a disaster is declared in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002);
- (d) a state of emergency as envisaged in section 37 of the Constitution is declared; or
- (e) it is uneconomical to comply with any provision of this Act. 50

Tlalomolao ya tsa ditšhelete

59. (1) Motlhankedi yo o rwalang maikarabelo kgotsa bothati jo bo rwalang maikarabelo jwa setheo se se senkelang o tlola molao wa tsa ditšhelete fa motlhankedi kgotsa bothati bo retelwa ke go tsaya dikgato tse di maleba go tsenya Molao ono mo tirisong. 5

(2) Tatofatso ya tlalomolao ya tsa ditšhelete, e e umakilweng mo karolwaneng (1), e tshwanetse go batlisiswa, go reetswa le go tshololwa go ya ka molao kgotsa mabaka a mangwe a go thapiwa kgota a tiro a a diriswang mo motlhankeding kgotsa mo bothating joo.

Ditlalomolao 10

60. (1) Motho yo—

- (a) ka kitso a neelanang ka tshedimose tso e e fosagetseng kgotsa e e timetsang ka fa tlase ga Molao ono;
- (b) o itshunyang kgotsa a susumetsang modiredi ofe wa setheo se se senkelang kgotsa tokololo ya Lekgotla mo go direng tiro kgotsa mo go diragatseng thata ka fa tlase ga Molao ono; 15
- (c) ntle le thebolo a bulang maitekotheke a a tswetsweng, a ka tswa a rometswe seileketeroniki kgotsa ka mokgwa ofe, kgotsa yo o senolang diteng tsa ona pele ga nako ya semmuso e e beetsweng go bulwa ga maitekotheke mo phatlhalatseng; 20
- (d) o rerisanelang go dira bomenemene, tsietso, therisanobosula kgotsa tiro ya pateletso e e kgoreletsang e e amanang le tshenkelo ka fa tlase ga Molao ono;
- (e) o tloang karolo 10(b) kgotsa (c), 12 kgotsa 15(11)(a); kgotsa
- (f) o bakang tatlhegelo ya thoto kgotsa matlole a puso ka ntlha ya go itlhokomolosa ka tsela e e feteletseng mo go tsenyeng Molao ono mo tirisong, 25

o tlola molao e bile o rwala maikarabelosemolao fa a bonwe molato a tuediso kgotsa go golegwa sebaka sa paka e e sa feteng dingwaga tse 10 kgotsa ka bobedi, e bile mo godimo ga kotlhao e e pateletswang mo karolong eno, kgotlatshekelo e ka laela gore boleng jwa tatlhegelo e e bonweng ke mongongoregi bo duelwe, go retelwa ke go dira jalo kgotlatshekelo e ka rebola taelo ya kgapelo ya thoto ya bowena ya motho yo o bonweng molato gore go busetswe ditatlhegelo. 30

(2) Motho yo—

- (a) ntle le tlhaloso e e utlwalang a retelwang kgotsa yo o ganang go neelana ka tshedimose tso, go tthagisa lokwalo lefe, direkoto kgotsa dipegelo tse di tlhokegang go ya ka Molao ono; 35
- (b) diegisang, ntle le lebaka le le utlwalang, tshekatsheko ya maitekotheke kgotsa go abiwa ga maitekotheke;
- (c) o retelwang ke go obamela piletsotshekong e e rebotsweng go ya ka karolo 50(4),

o tlola molao e bile o rwala maikarabelosemolao fa a bonwe molato a tuediso kgotsa go golegwa sebaka sa paka e e sa feteng dingwaga tse tharo kgotsa ka bobedi. 40

(3) Tokololo ya Lekgotla yo o retelwang ke go senola kgatlhegelo go ya ka karolo 40(2) o tlola molao e bile o rwala maikarabelosemolao fa a bonwe molato a tuediso kgotsa go golegwa sebaka sa paka e e sa feteng dingwaga tse tharo kgotsa ka bobedi.

Kgololo 45

61. (1) Tona o ka, ka dipeelo kgotsa ntle le dipeelo, ka kitsiso mo Lokwalodikgannyeng la Puso, golola setheo se se senkelang mo taelong efe ya Molao ono, fa—

- (a) tshireletso ya bosetšhaba e ka nna mo kotsing ka mabaka a a utlwalang;
- (b) tshenkelo e tlile go thuswa ka matlole ka gotlhe kgotsa ka karolwana ke moabi kgotsa thusotlole e bile kgololo eo e tlile go tswela setšhaba ka kakaretso mosola kgotsa karolo ya setšhaba; 50
- (c) matlhothapelo a goeleditswe go ya ka *Disaster Management Act, 2002* (Molao 57 wa 2002);
- (d) maemo a tshoganyetso jaaka go bonetswe pele mo karolong 37 ya Molaotheo a goeleditswe; kgotsa 55
- (e) go sa tle go somarela madi go obamela taelo efe ya Molao ono.

(2) If a request for an exemption is made in terms of subsection (1), the Minister must make a decision within 30 days after receipt of all the relevant documents.

(3) An exemption referred to in subsection (1) may apply to any procuring institution to which this Act applies or a category of procuring institutions.

(4) For purposes of this section, this Act excludes an instruction. 5

Departures

62. (1) The Public Procurement Office may, with or without conditions, authorise a departure from a provision of an instruction, issued terms of section 5(2) if—

- (a) it is impractical to comply with the instruction;
- (b) market conditions or behaviour do not allow effective application of the instruction; or 10
- (c) national security could reasonably be expected to be compromised.

(2) The Public Procurement Office must, with or without conditions, authorise a departure from a provision of an instruction, issued terms of section 5(2) if it is impossible or uneconomical to comply with the instruction. 15

(3) If a request for a departure is made in terms of subsection (1) or (2), the Public Procurement Office must make a decision within 30 days after receipt of all the relevant documents.

(4) If a departure is authorised in terms of subsection (1), the Public Procurement Office must, within 14 days, inform the Auditor-General and publish the departure. 20

(5) Subsections (1) to (4) apply with the necessary changes to an instruction issued by a provincial treasury in terms of section 6(2).

Regulations

63. (1) The Minister, by notice in the *Gazette*—

- (a) must make regulations regarding— 25
 - (i) any matter required by this Act to be prescribed;
 - (ii) competency requirements for officials involved in procurement;
 - (iii) the requirements for security vetting of—
 - (aa) members of the Tribunal; and
 - (bb) a bidder before the award of a bid; 30
 - (iv) the use of information and communications technology in procurement;
 - (v) procedures for bid specification, invitation, submission, opening, evaluation, adjudication and awarding of bids and cancellation of procurement processes;
 - (vi) procurement funded partially or in full by donor or grant funding; 35
 - (vii) measures for the participation of a manufacturer of goods in a bid to supply the goods it manufactures;
 - (viii) circumstances and procedures for pre-qualification of bidders;
 - (ix) the completion of the procurement process during the bid validity period and the extension of the period to prevent undue delays or unjustified cancellations; 40
 - (x) transversal term contracts and public private partnerships;
 - (xi) emergency procurement, which may include—
 - (aa) the different types of emergency procurement that may be used and the circumstances under which the different types may be used; 45
 - (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 during emergencies; 50
 - (dd) options available to the procuring institution during an emergency and the preferred methods of procurement; and

(2) Fa kopo ya kgololo e dirilwe go ya ka karolwana (1), Tona o tshwanetse go tsaya tshwetso mo matsatsing a le 30 morago ga go amogela dikwalo tsotlhe tse di maleba.

(3) Kgololo e e umakilweng mo karolwaneng (1) e ka diriswa mo setheong sefe se se senkelang se mo go sona Molao o diriswang kgotsa setlhophha sa ditheo tse di senkelang.

(4) Mabapi le maitlhomho a karolo eno, Molao ono ga o akaretse taelo.

5

Pharologanyo

62. (1) Kantorotshenkelo ya Puso e ka, ka dipeelo kgotsa ntle le dipeelo, rebola pharologanyo go tswa mo taelong, e e rebotsweng go ya ka karolo 5(2) fa—

(a) go sa kgonagale go obamela taelo;

(b) maemo a mebaraka kgotsa maitsholo a sa letle tiriso e e nonofileng ya taelo; 10 kgotsa

(c) tshireletso ya bosetšhaba e ka tswa e le mo kotsing go ya ka mabaka a a utlwalang.

(2) Kantorotshenkelo yay a Puso e tshwanetse, ka dipeelo kgotsa ntle le dipeelo, rebola pharologanyo mo taelong ya molawana, e e rebotsweng go ya ka karolo 5(2) fa go sa kgonege kgotsa go sa somarele madi go obamela taelo. 15

(3) Fa kopo ya pharologanyo e dirilwe go ya ka karolwana (1) kgotsa (2), Kantorotshenkelo ya Puso e tshwanetse go tsaya tshwetso mo matsatsing a le 30 morago ga go amogela dikwalo tsotlhe tse di maleba.

(4) Fa pharologanyo e rebotswe go ya ka karolwana (1), Kantorotshenkelo ya Puso e tshwanetse, mo matsatsing a le 14, go itsise Morunikakaretso le go phasalatsa pharologanyo. 20

(5) Dikarolwana (1) go fitlha go (4) di diriswa ka diphetogo tse di tlhokegang mo taelong e e rebotsweng ke matlotlo a porofense go ya ka karolo 6(2).

Melawanataolo

25

63. (1) Tona, ka kitsiso mo Lokwalodikgannyeng la Puso—

(a) o tshwanetse go dira melwanataolo mabapi le—

(i) morero ofe o o tlhokang go laelwa ka Molao ono;

(ii) ditlhokego tsa bokgoni tsa batlhankedi ba ba amegang mo tshenkelong;

(iii) ditlhokego mabapi le go tlhatlhobelwa tshireletsego ga— 30

(aa) ditokololo tsa Lekgotla; le

(bb) mosenki pele ga go abiwa ga maitekotheke;

(iv) tiriso ya thekenoloji ya tshedimosetso le ditlhaeletsano mo tshenkelong;

(v) ditsamaiso tsa totobatso ya maitekotheke, taletso, thomelo, pulo, tshakatsheko, boatlhodi le go abiwa ga maitekotheke le go phimolwa ga ditsamaiso tsa tshenkelo; 35

(vi) tshenkelo e e thuswang ka matlole e seng ka botlalo kgotsa ka botlalo ke moabi kgotsa thusotlole;

(vii) dikgato tsa botsayakarolo jwa batlhagisi ba dithoto mo maitekotheke go thelesa dithoto tse ba di tlhagisang; 40

(viii) mabaka le ditsamaiso mabapi le tshiamelo pele ya basenki;

(ix) go konotelwa ga tsamaiso ya tshenkelo ka motsi wa paka ya tlhomamiso ya maitekotheke le katoloso ya paka go thibela ditiego tse di sa lebelelwang kgotsa diphimolo tse di sa tshwanelang;

(x) dikonteraka tse di rulaganyeditsweng mafapha a le mantsi le dimphato tsa poraefete tsa botlhe; 45

(xi) tshenkelo ya tshoganyetso, eo e ka akaretsang—

(aa) mefuta e e farologaneng ya tshenkelo ya tshoganyetso e e ka diriswang le maemo ao ka fa tlase ga ona mefuta e e farologaneng e ka diriswang; 50

(bb) tlhaloso ya matsapa a go loga maano a setheo se se senkelang go lekanyetsa tlhokego ya tshenkelo ya tshoganyetso le go tokafatsa tsibogelo ka motsi wa tshoganyetso;

(cc) ditlhokego tsa go aba maitekotheke le go tsamaiswa ga dikonteraka ka motsi wa tshoganyetso; 55

(dd) mekgwa e mengwe e setheo se se senkelang se ka e dirisang ka motsi wa tshoganyetso le mekgwa e e batlwang ya tshenkelo; le

- (*ee*) procedures to be followed in respect of emergency procurement processes, including the recording of deliberations and the making of recommendations and awards;
- (xii) percentages for contract variations or amendments;
- (xiii) complaints by a member of the public regarding procurement in terms of this Act; and 5
- (xiv) fees for a review by the Tribunal;
- (b) may make regulations—
- (i) permitted by this Act to be prescribed;
- (ii) regarding negotiations with a preferred bidder or bidders before the award of the bid; 10
- (iii) regarding requirements for bidders to comply with specified legislation;
- (iv) regarding lifestyle audits of persons automatically excluded in terms of section 13 and their immediate family members and related persons, if an immediate family member or a related person is awarded a bid or bids above a threshold stipulated in the regulations; 15
- (v) regarding the retention of procurement data;
- (vi) regarding contracting methods for any category of procurement; and
- (vii) regarding any procedural or administrative matters that are necessary to implement this Act. 20
- (2) The Minister must, before complying with subsection (3), consult—
- (a) the relevant Minister on a draft regulation affecting the portfolio of that Minister; and
- (b) organised local government on a draft regulation affecting municipalities or municipal entities. 25
- (3) Before making a regulation, the Minister must publish—
- (a) a draft of the regulation;
- (b) a statement explaining the need for and the intended operation of the regulation;
- (c) a statement of the expected impact of the regulation; and 30
- (d) a notice inviting submissions in relation to the regulation and stating where, how and by when submissions are to be made.
- (4) The Minister must submit regulations to be made to Parliament for parliamentary scrutiny at least 30 days before their promulgation.
- (5) A regulation takes effect— 35
- (a) on the date that it is published in the *Gazette*; or
- (b) if the regulation provides that it takes effect on a later date, on the later date.
- (6)(a) With each regulation, the Minister must publish a consultation report.
- (b) A consultation report must include—
- (i) a general account of the issues raised in the submissions made during the consultation; and 40
- (ii) a response to the issues raised in the submissions.
- (7) The Minister—
- (a) may make different regulations for—
- (i) different categories of procuring institutions; and 45
- (ii) different categories of procurement; and
- (b) must make regulations regarding the procurement of—
- (i) infrastructure and capital assets; and
- (ii) goods or services related to infrastructure and capital assets.

Instructions 50

- 64.** (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; 55
- (c) a statement of the expected impact of the instruction; and

- (ee) ditsamaiso tse di tshwanetseng go latelwa mabapi le dithulaganyo tsa tshenkelo ya tshoganyetso, go akaretsa le go gatiswa ga dipuisano le go dirwa ga dikatlanegiso le dikabo;
- (xii) diphesente tsa dipharologantsho kgotsa ditlhabololo tsa dikonteraka;
- (xiii) dingongorego ka tokololo ya baagi mabapi le tshenkelo go ya ka Molao ono; le 5
- (xiv) dituelo tsa tshekatsheko ka Lekgotla;
- (b) o ka dira melawanataolo—
- (i) e e letlwang ke Molao ono go laelwa;
- (ii) mabapi le ditherisano le mosenki kgotsa basenki ba ba batlwang pele ga go abiwa ga maitekotheke; 10
- (iii) mabapi le ditlhokego tsa basenki go obamela melao e e tlhalositsweng;
- (iv) mabapi le go runwa ga mkgwa wa botshelo wa batho ba go se akaretswe ga bona go itiragaletseng go ya ka karolo 13 le ditokololo tsa lelapa le balosika, fa mongwe wa lelapa kgotsa wa losika a abetswe boitekotheke kgotsa maitekotheke a a kwa godimo ga selekanyo se se beilweng mo melawanataolong; 15
- (v) mabapi le go tsholwa ga dinewa tsa tshenkelo;
- (vi) mabapi le mekgwa ya go aba dikonteraka ya setlhophha sefe sa tshenkelo; le 20
- (vii) mabapi le merero ya tsamaiso e e tlhokegang go tsenya Molao ono mo tirisong.
- (2) Tona o tshwanetse, pele a obamela karolwana (3), go rerisana le—
- (a) Tona e e maleba mabapi le molawanataolo o o thadilweng o o amang lefapha la Tona eo; le 25
- (b) pusoselegae e e rulagantsweng mabapi le molawanataolo o o thadilweng o o amang bomasepala kgotsa ditheo tsa masepala.
- (3) Pele a dira melwanataolo, Tona o tshwanetse go phasalatsa—
- (a) molawanataolo o o thadilweng;
- (b) polelo e e tlhalosang tlhokego ya le tiriso e e ikaeletseng ya molawanataolo; 30
- (c) polelo ya kutlwalo e e solofetsweng ya molawanataolo; le
- (d) kitsiso e e laletsang ditlhagiso mabapi le molawanataolo le go neelana ka dintlha mabapi le lefelo, mkgwa le letlha le ditlhagiso di tshwanetseng go dirwa ka lona.
- (4) Tona o tshwanetse go romelela Palamente melawanataolo e e tshwanetseng go dirwa gore Palamente e e sekaseke bonnye matsatsi a le 30 pele ga kgoeletso ya yona. 35
- (5) Molawanataolo o tsena mo tirisong—
- (a) ka letlha le o phasaladitsweng mo Lokwalodikgannyeng la Puso ka lona; kgotsa
- (b) fa molawanataolo o laela gore o tsena mo tirisong ka letlha le le kwa moragonyana, ka letlha le le kwa moragonyana. 40
- (6)(a) Ka molawanataolo mongwe le mongwe, Tona o tshwanetse go phasalatsa pegelo ya ditherisano.
- (b) Pegelo ya ditherisano e tshwanetse go akaretsa—
- (i) botsayamaikarabelo ka kakaretso jwa dintlha tse di tlhagistsweng mo ditlhagisong tse di dirilweng ka motsi wa ditherisano; le 45
- (ii) tsibogelo ya dintlha tse di tlhagisitsweng mo ditlhagisong.
- (7) Tona—
- (a) o ka dira melwanataolo e e farologaneng mabapi le—
- (i) ditlhophha tse di farologaneng tsa ditheo tse di senkelang; le 50
- (ii) ditlhophha tse di farologaneng tsa tshenkelo; e bile
- (b) o tshwanetse go dira melawanataolo mabapi le tshenkelo ya—
- (i) mafaratlhatlha le thoto ya matlotlo; le
- (ii) dithoto kgotsa ditirelo tse di amanang le mafaratlhatlha le thoto ya matlotlo. 55

Ditaelo

64. (1) Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a tshwanetse, pele e dira taelo, go phasalatsa—
- (a) taelo e e thadilweng;
- (b) polelo e e tlhalosang tlhokego ya le tiriso e e ikaeletseng ya taelo; 60
- (c) polelo ya kutlwalo e e solofetsweng ya taelo; le

- (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— 5
- (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.

In writing requirement

65. Any request, decision, approval, authorisation, determination, direction or notification or report in terms of this Act must be in writing. 10

Transitional measures

66. A bid awarded or advertised before the commencement of the applicable provision or provisions of this Act must be dealt with in terms of the law applicable at the time of the award or advertisement. 15

Amendment and repeal of legislation and saving

67. (1) Subject to subsection (2), the legislation mentioned in the Schedule are hereby amended or repealed as set out in that Schedule.

(2) Anything done under any law repealed by subsection (1) and which could be done under a provision of this Act must be regarded as having been done under that provision. 20

Review of Act

- 68.** The Minister must—
- (a) within 24 months after this Act is first published as an Act in the *Gazette*, review the implementation of this Act and the need for amendments to this Act; 25
 - (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.

Short title and commencement

69. (1) This Act is called the Public Procurement Act, 2024, and takes effect on a date determined by the President by proclamation in the *Gazette*. 30

(2) Different dates may be determined by the President in respect of the effective date of—

- (a) different provisions of this Act;
- (b) different provisions of this Act in respect of different categories of procuring institutions; and 35
- (c) the repeal or amendment of different provisions of a law repealed or amended by this Act.

- (d) kitsiso e e laletsang ditlhagiso mabapi le taelo le go tlhagisa mofuta le mokgwa o ditlhagiso di tla dirwang.
- (2)(a) Ka taelo nngwe le nngwe, Kantorotshenkelo ya Puso kgotsa matlotlo a diporofense a tshwanetse go phasalatsa pegelo ya ditherisano.
- (b) Pegelo ya ditherisano e e umakilweng mo temaneng (a) e tshwanetse go akaretsa— 5
- (i) botsayamaikarabelo ka kakaretso jwa dintlha tse di tlhagisitsweng mo ditlhagisong tse di dirilweng ka motsi wa ditherisano; le
- (ii) tsibogelo ya dintlha tse di tlhagisitsweng mo ditlhagisong.

Tlhokego e e kwetsweng 10

65. Kopo, tshwetso, thebolo, tetla, tlhomamiso, kaelo kgotsa kitsiso kgotsa pegelo efe go ya ka Molao ono e tshwanetse go kwalwa.

Dikgatokgabaganyo

66. Maitekotheko a a abilweng kgotsa a a bapaditsweng pele ga tshimololo ya taelo e e diriswang kgotsa ditaello tsa Molao ono a tshwanetse go sekasekwa go ya ka molao o o diriswang ka motsi wa kabo kgotsa phasalatso. 15

Tlhabololo le phimolo ya melao le go boloka

67. (1) Go latela karolwana (2), melao e e umakilweng mo šejuleng e a tlhabololwa fano kgotsa e a phimolwa jaaka go tlhagisitswe mo Šejuleng eo.

(2) Sengwe le sengwe se se dirilweng ka fa tlase ga molao ofe o o phimotsweng ka karolwana (1) le seo se ka dirwang ka fa tlase ga taelo ya Molao ono se tshwanetse go tsewa jaaka se se dirilweng ka fa tlase ga taelo eo. 20

Tshekatsheko ya Molao

- 68.** Tona o tshwanetse—
- (a) mo dikgweding tse 24 morago ga Molao ono o sena go phasalatswa la ntlha jaaka Molao mo Lokwalodikgannyeng la Puso, go sekaseka go tsenngwa mo tirisong ga Molao ono le tlhokego ya ditlhabololo tsa Molao ono; 25
- (b) rerisana le bannaleseabe, go akaretsa le Nedlac, ka motsi wa tshekatsheko; le
- (c) mo dikgweding tse 27 morago ga Molao ono o sena go phasalatswa la ntlha jaaka Molao mo Lokwalodikgannyeng la Puso, go dira pegelo ya phatlhalatsa ka ga tshekatsheko le go e romelela Palamente. 30

Setlhogokhutswe le tshimololo

69. (1) Molao ono o bidiwa Molao wa Tshenkelo ya Dithoto le Ditirelo ka Puso, 2024, e bile o tsena mo tirisong ka letlha le le tlhomamisitsweng ke Moporesidente ka ggoeletso mo Lokwalodikgannyeng la Puso. 35

(2) Matlha a a farologaneng a ka tlhomamiswa ke Moporesidente mabapi le letlha la tshimololo la—

(a) ditaello tse di farologaneng tsa Molao ono;

(b) ditaello tse di farologaneng tsa Molao ono mabapi le ditlhopho tse di farologaneng tsa ditheo tse di senkelang; le 40

(c) phimolo kgotsa tlhabololo ya ditaello tse di farologaneng tsa molao o o phimotsweng kgotsa tse di tlhabolotsweng ka Molao ono.

SCHEDULE

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

AMENDMENTS AND REPEALS OF LEGISLATION

(Section 68)

Item No.	No. and year of law	Short title	Extent of repeal or amendment
1.	Act No. 86 of 1968	State Tender Board Act, 1968	1. The repeal of the whole.
2.	Act No. 89 of 1970	National Supplies Procurement Act, 1970	2. The repeal of the whole.
3.	Act No. 107 of 1997	Housing Act, 1997	3. The substitution in section 3(2) for paragraph (cA) of the following paragraph: “(cA) determine a procurement policy[, by no later than April 2002, which is consistent with section 217 of the Constitution] in relation to housing development <u>subject to the Public Procurement Act, 2024</u> .”
4.	Act No. 36 of 1998	National Water Act, 1998	4. The substitution in section 26(1) for paragraph (n) of the following paragraph: “(n) prescribing procedures for the allocation of water by means of [public tender] a bid, as defined in section 1 of the Public Procurement Act, 2024, or an auction, <u>subject to the Public Procurement Act, 2024</u> .” 5. The substitution in section 45(2) for paragraph (f) of the following paragraph: “(f) allocated to every other applicant by [public tender] means of a bid, as defined in section 1 of the Public Procurement Act, 2024, or an auction, <u>subject to any regulation made under section 26(1)(n)</u> .”
5.	Act No. 88 of 1998	State Information Technology Agency Act, 1998	6. The insertion after section 7(7) of the following subsection: “(7A) <u>When information technology goods or services are procured through the Agency in terms of this section, the Agency must comply with the Public Procurement Act, 2024</u> .” 7. The substitution in section 23(1) for paragraph (a) of the following paragraph: “ <u>must, subject to the Public Procurement Act, 2024, make regulations regarding the manner in which procurement in terms of section 7(3) to (7) must take place, [subject to the approval] with the concurrence of the Minister of Finance; and</u> ”.

ŠEJULE

NTLHATLHALOSO YA KAKARETSO:

[] Mafoko a a kwetsweng ka bontsho jo bo gateletsweng a a mo masakaneng a sekwere a bontsha tse di tlogetsweng mo melaong e e leng teng.

Mafoko a a thaletsweng ka mola o o kopaneng a bontsha tse di tsentsweng mo melaong e e leng teng.

DITLHABOLOLO LE DIPHILOLO TSA MELAO

(Karolo 68)

Ntlha	Nmr. le ngwaga wa molao	Setlhogokhutswe	Bogolo jwa phimolo kgotsa tlhabololo
1.	Wet No. 86 van 1968	Wet op die Staatstenderraad, 1968	1. Die herroeping van die Wet as 'n geheel.
2.	Wet No. 89 van 1970	Wet op die Verkryging van Landsvoorrade, 1970	2. Die herroeping van die Wet as 'n geheel.
3.	Wet No. 107 van 1997	Behuisingswet, 1997	3. Deur die vervanging in artikel 3(2) van paragraaf (cA) deur die volgende paragraaf: “(cA) [teen nie later nie as April 2002] 'n verkrygingsbeleid [wat met artikel 217 van die Grondwet bestaanbaar is,] bepaal met betrekking tot behuisingsontwikkeling behoudens die 'Public Procurement Act, 2024';”.
4.	Wet No. 36 van 1998	Nasionale Waterwet, 1998	4. Deur die vervanging in artikel 26(1) van paragraaf (n) deur die volgende paragraaf: “(n) prosedures voorskryf vir die toewysing van water by wyse van [openbare tender] 'n bod, soos omskryf in artikel 1 van die 'Public Procurement Act, 2024', of veiling, behoudens die 'Public Procurement Act, 2024'; en.”. 5. Deur in subartikel 45(2) paragraaf (f) deur die volgende paragraaf te vervang: “(f) behoudens enige regulasie kragtens artikel 26(1)(n) uitgevaardig, toegewys staan te word aan elke ander aansoeker deur [openbare tender] by wyse van 'n bod, soos omskryf in artikel 1 van die 'Public Procurement Act, 2024, of 'n veiling;”.
5.	Wet No. 88 van 1998	Wet op die Staatsinligtings-tegnologie-agentskap, 1998	6. Die invoeging van die volgende subartikel na artikel 7(7): “(7A) Wanneer inligtingstechnologie-goedere of dienste ingevolge hierdie artikel deur die Agentskap verkry word, moet die Agentskap aan die 'Public Procurement Act, 2024', voldoen.”. 7. Die vervanging van paragraaf (a) in artikel 23(1) paragraaf (a) deur die volgende paragraaf te vervang: “moet, behoudens die 'Public Procurement Act, 2024', regulasies uitvaardig betreffende die wyse waarop verkryging ingevolge artikel 7(3) tot (7) moet plaasvind, [behoudens die goedkeuring] met die instemming van die Minister van Finansies; en”.

Item No.	No. and year of law	Short title	Extent of repeal or amendment
6.	Act No. 111 of 1998	Correctional Services Act, 1998	8. The substitution in section 103 for subsection (1) of the following subsection: “(1) The Minister may, subject to [any law governing the award of contracts by the State] <u>the Public Procurement Act, 2024</u> , with the concurrence of the Minister of Finance and the Minister of Public Works, enter into a contract with any party to design, construct, finance and operate any correctional centre or part of a correctional centre established or to be established in terms of section 5.”.
7.	Act No. 1 of 1999	Public Finance Management Act, 1999	9. The deletion of section 38(1)(a)(iii). 10. The substitution in section 38(1) for paragraph (g) of the following paragraph: “(g) on discovery of unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the [relevant tender board] <u>Public Procurement Office established by section 4 of the Public Procurement Act, 2024</u> .”. 11. The deletion of section 51(1)(a)(iii). 12. The deletion of section 76(1)(k). 13. The deletion of section 76(4)(c).
8.	Act No. 20 of 1999	Road Traffic Management Corporation Act, 1999	14. The substitution for section 43 of the following section: “ Procurement 43. Any procurement under this Act must be undertaken in [terms of the prescribed procedures] <u>accordance with the Public Procurement Act, 2024</u> .”.
9.	Act No. 5 of 2000	Preferential Procurement Policy Framework Act, 2000	15. The repeal of the whole.
10.	Act No. 32 of 2000	Local Government: Municipal Systems Act, 2000	16. The substitution in section 62 of subsection (6) for the following subsection: “(6)(a) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law. (b) This section does not apply to disputes provided for in Chapter 6 of the <u>Public Procurement Act, 2024</u> .”. 17. The substitution in section 83 of— (a) paragraph (a) of subsection (1) for the following paragraph: “(a) comply with [Chapter 11 of the Municipal Management Act] <u>the Public Procurement Act, 2024</u> ”; and (b) subsection (2) for the following subsection: “(2) Subject to the provisions of the [Preferential Procurement Policy Framework Act, (Act No. 5 of 2000)] <u>Public Procurement Act, 2024</u> , a municipality may determine a preference for categories of service providers in order to advance the interest of persons disadvantaged by unfair discrimination, as long as the manner in which such preference is exercised does not compromise or limit the quality, coverage, cost and developmental impact of the services.”.

Ntlha	Nmr. le ngwaga wa molao	Setlhogokhutswe	Bogolo jwa phimolo kgotsa tlabololo
6.	Wet No. 111 van 1998	Wet op Korrektiewe Dienste, 1998	8. Die vervanging van subartikel (1) in artikel 103 deur die volgende subartikel: “(1) Die Minister mag, behoudens [enige wet wat die toestaan van kontrakte deur die Staat reël en] die ‘Public Procurement Act, 2024’, met die instemming van die Minister van Finansies en die Minister van Openbare Werke, ’n kontrak aangaan met enige party vir die ontwerp, bou, finansiering en bedryf van enige korrektiewe sentrum of enige gedeelte van ’n korrektiewe sentrum, ingestel of ingestel te word ingevolge artikel 5.”.
7.	Wet No. 1 van 1999	Wet op Openbare Finansiële Bestuur, 1999	9. Artikel 38(1)(a)(iii) word geskrap. 10. Paragraaf (g) in artikel 38(1) word deur die volgende paragraaf vervang: “(g) moet, by ontdekking van enige ongemagtigde, onreëlmatige of vrugtelose en verkwiste uitgawe, dadelik besonderhede van die uitgawe skriftelik aan die betrokke tesourie rapporteer, en in die geval van onreëlmatige uitgawe by die verkryging van goedere of dienste, ook aan die [betrokke tenderraad] Staatsverkrygingskantoor by artikel 4 van die ‘Public Procurement Act, 2024, ingestel;”; 11. Artikel 51(1)(a)(iii) word geskrap. 12. Artikel 76(1)(k) word geskrap. 13. Artikel 76(4)(c) word geskrap.
8.	Wet No. 20 of 1999	Wet op die Padverkeersbestuurskorporasie, 1999	14. Die vervanging van artikel 43 deur die volgende artikel: “ Verkryging 43. Enige verkryging kragtens hierdie Wet moet ooreenkomstig die [voorgeskrewe prosedures] ‘Public Procurement Act, 2024’, onderneem word.”.
9.	Wet No. 5 van 2000	Wet op die Raamwerk vir Voorkeurverkrygingsbeleid	15. Herroeping van die geheel.
10.	Wet No. 32 van 2000	Wet op Plaaslike Regering: Munisipale Stelsels	16. Die vervanging in artikel 62 van subartikel (6) deur die volgende subartikel te vervang: “(6)(a) Die bepalings van hierdie artikel doen nie afbreuk aan ’n gepaste appèlprosedure waarvoor in enige ander toepaslike wet voorsiening gemaak is nie. (b) Hierdie artikel is nie van toepassing op geskille waarvoor in Hoofstuk 6 van die ‘Public Procurement Act, 2024’, voorsiening gemaak word nie.”. 17. Die vervanging in artikel 83 van— (a) paragraaf (a) van artikel (1) deur die volgende paragraaf: “(a) voldoen aan [Hoofstuk 11 van die Munisipale Finansiële Bestuurswet] die ‘Public Procurement Act, 2024;” (b) subartikel (2) deur die volgende subartikel te vervang: “(2) Behoudens die bepalings van die [Wet op die Raamwerk vir Voorkeurverkrygingsbeleid, (Wet No. 5 van 2000)] ‘Public Procurement Act, 2024’, kan ’n munisipaliteit ’n voorkeur bepaal vir kategorieë diensverskaffers ten einde die belange te bevorder van persone wat deur onbillike diskriminasie benadeel is, solank die wyse waarop sodanige voorkeur uitgeoefen word nie die gehalte, dekking, koste en ontwikkelingsinslag van die dienste kompromitteer of beperk nie.”.

Item No.	No. and year of law	Short title	Extent of repeal or amendment
11.	Act No. 38 of 2000	Construction Industry Development Board Act, 2000	<p>18. The insertion in section 1 after the definition of “project” of the following definition: “Public Procurement Office’ means the Public Procurement Office, established by section 4 of the Public Procurement Act, 2024;”;</p> <p>19. The insertion after section 5(1) of the following subsection: “(1A) When acting in terms of subsection (1) on matters regulated by the Public Procurement Act, 2024, the Board must comply with that Act and consult the Public Procurement Office.”.</p> <p>20. The substitution in section 5(3) for paragraph (c) of the following paragraph: “(c) must, [within the framework of the procurement policy of Government] subject to the Public Procurement Act, 2024, and in consultation with the Public Procurement Office, promote the standardisation of the procurement process with regard to the construction industry”</p> <p>21. 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, in consultation with the Public Procurement Office, initiate, promote and implement national programmes and projects aimed at the standardisation of procurement documentation, practices and procedures.”;</p> <p>22. The substitution in section 16 for subsection (3) of the following subsection: “(3) The Minister must, with the concurrence of the Minister of Finance, prescribe the manner in which public sector construction contracts may be invited, awarded and managed within the framework of the register and [within the framework of the policy on procurement] the Public Procurement Act, 2024.”.</p> <p>23. The substitution in section 33 for subsection (1) of the following subsection: “(1)(a) The Minister may, by notice in the <i>Gazette</i>, make regulations not inconsistent with this Act with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or function or duty imposed by this Act. (b) Regulations in terms of subsection (1) on matters regulated by the Public Procurement Act, 2024, must be made with the concurrence of the Minister of Finance.”.</p>
12.	Act No. 51 of 2003	Armaments Corporation of South Africa, Limited Act, 2003	<p>24. The substitution in section 2(4) for the words preceding paragraph (a) of the following words: “(4) Subject to this Act and the Public Procurement Act, 2024, the Corporation may—”.</p>

Ntlha	Nmr. le ngwaga wa molao	Setlhogokhutswe	Bogolo jwa phimolo kgotsa tlhabololo
11.	uMthetho 38 wezi-2000	uMthetho Webhodi Ethuthukisa Imboni Yezokwakha, wezi-2000	<p>18. Ukushutheka esigabeni soku-1 ngemuva kwencazelo “umsebenzi” le ncazelo elandelayo: <u>“iHhovisi Lokuthenga Impahla Kahulumeni” lichaza iHhovisi Lokuthenga Impahla Kahulumeni, elisungulwe ngokwesigaba sesi-4 soMthetho Wokuthenga Impahla Kahulumeni, 2024;”;</u></p> <p>19. Ukushutheka ngemuva kwesigaba sesi-5(1) isigatshana esilandelayo: <u>“(1A) Uma ubambe isikhundla ngokwesigatshana soku-(1) ezindabeni ezilawulwa uMthetho Wokuthenga Impahla Kahulumeni, 2024, iBhodi kufanele lilandele lowo Mthetho futhi lixhumane neHhovisi Lokuthenga Impahla Kahulumeni.”;</u></p> <p>20. Ukufaka endaweni yesigaba se-5(3) endimeni (c) le ndima elandelayo: <u>“(c) kufanele, [ngaphansi kohlaka lomgomo wokuthenga impahla kaHulumeni] ngokulandela uMthetho Wokuthenga Impahla Kahulumeni, 2024, futhi ngokuxhumana neHhovisi Lokuthenga Impahla Kahulumeni, akhuthaze ukufaniswa kohlelo lokuthenga impahla ezimbonini zokwakha”</u></p> <p>21. Ukufaka endaweni yesigaba sesi-5 esigatshaneni sesi-(4) lesi sigatshana esilandelayo: <u>“(4) Ukukhuthaza ukufana nenkambiso yamazanga embonini yokwakha, iBhodi (a) kufanele, ngokuxhumana neHhovisi Lokuthenga Impahla KaHulumeni, lishicilele inkambiso yokuziphatha yayo yonke imikhakha yokwakha kahulumeni ehambisana nokuthenga impahla nabo bonke ababambe iqhaza abathinteka ohlelweni lomkhakha wokuthenga kukahulumeni; futhi (b) ngokuxoxisana neHhovisi Lokuthenga Impahla KaHulumeni, linqaqa, likhuthaze, lithuthukise futhi liqale uhlelo lukazwelonke kanye nemisebenzi okuhloswe ngayo ukufaniswa kwemiqulelo yokuthenga impahla, izinkambiso nenqubo.”;</u></p> <p>22. Ukufaka endaweni yesigaba se-16 esigatshaneni sesi-(3) isigatshana esilandelayo: <u>“(3) UNgqongqoshe kufanele, ngokuxhumana noNgqongqoshe weziMali, anqume indlela lapho izinkontileka zokwakha emkhakheni kahulumeni zingamenywa, zinikezwe futhi ziphathwe ngaphansi kohlaka lokubhalisa [ngaphansi kohlaka lwenqubo yokuthenga impahla kaHulumeni] noMthetho Wezokuthenga kukaHulumeni, 2024.”;</u></p> <p>23. Ngokufaka endaweni yesigaba sama-33 esigatshaneni soku-(1) isigatshana esilandelayo: <u>“(1)(a) UNgqongqoshe ngesaziso kuSomqulu, angenza izimiso zomthetho ezingashayisani nalo Mthetho kunoma oluphi udaba olufanele noma okufanele lunqunywe ngokwemigomo yalo Mthetho nanoma oluphi udaba ukuze kusetshenziswe kangcono lo Mthetho noma oluhambisana namandla anikeziwe noma umsebenzi noma ijoka elithwesiwe ngalo Mthetho. (b) Izimiso zomthetho ezimayelana nesigatshana soku-(1) ezindabeni ezilawulwa uMthetho Wezokuthenga KaHulumeni, 2024, kufanele zenziwe ngokuvumelana noNgqongqoshe wezeziMali.”;</u></p>
12.	Wet No. 51 van 2003	Wet op die Krygstuigkorporasie van Suid-Afrika, Beperk	24. Die vervanging van die woorde wat paragraaf (a) in artikel 2(4) voorafgaan, deur die volgende woorde: <u>“(4)Behoudens hierdie Wet en die ‘Public Procurement Act, 2024’, kan die Korporasie—”;</u>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
13.	Act No. 53 of 2003	Broad-Based Black Economic Empowerment Act, 2003	<p>25. The insertion after section 9(1) of the following subsection (1):</p> <p>“(1A)(a) The Minister must review a code of good practice insofar as applicable to organs of state and public entities regarding qualification criteria for preferential purposes for procurement, envisaged in subsection (1)(b), to ensure alignment with the Public Procurement Act, 2024.</p> <p>(b) When issuing a new or revised code envisaged in paragraph (b), ensure alignment with the Public Procurement Act, 2024.”;</p> <p>25. The substitution in section 9 for subsection (5) of the following subsection:</p> <p>“(6) If requested to do so, the Minister may, with the concurrence of the Minister of Finance and by notice in the <i>Gazette</i>, permit organs of state or public entities to specify qualification criteria for procurement and other economic activities which exceed those set by the Minister in terms of subsection (1).”.</p> <p>26. The substitution in section 10(1) for paragraph (b) of the following paragraph:</p> <p>“(b) developing and implementing a preferential procurement policy aligned with the Public Procurement Act, 2024.”.</p> <p>27. The substitution in section 13P for subsection (1) of the following subsection:</p> <p>“(1) Any person convicted of an offence in terms of this Act may not, for a period of 10 years from the date of conviction, contract or transact any business with any organ of state or public institution and must for that purpose be entered into the [register of tender defaulters which the National Treasury may maintain for that purpose] Register for Tender Defaulters established in terms of section 29 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).”.</p>
14.	Act No. 56 of 2003	Local Government: Municipal Finance Management Act, 2003	<p>28. The substitution in section 1 for paragraph (d) of the definition of ‘irregular expenditure’ of the following paragraph:</p> <p>“(d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, the Public Procurement Act, 2024, a requirement of the [supply chain management policy] procurement system of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law.”.</p> <p>29. The deletion of section 2(f).</p> <p>30. The substitution in section 14 for subsection (5) of the following subsection:</p> <p>“(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the [supply chain management] procurement policy which the municipality must have and maintain in terms of [section 111] the Public Procurement Act, 2024.”.</p>

Ntlha	Nmr. le ngwaga wa molao	Setlhogokhutswe	Bogolo jwa phimolo kgotsa tlhabololo
13.	Molao 53 wa 2003	Molao wa Katoloso ya go Nonotsha Ikonomi ya Bantsho, 2003	<p>25. Go tsenngwa morago ga karolo 9(1) ga karolwana (1) e e latelang:</p> <p>“(1A)(a) Tona o tshwanetse go sekaseka khoutu ya tiragatso e e siameng go ya ka moo go diriswang ka teng mo makaleng a puso le mo ditheong tsa puso mabapi le mokgwa wa tshiamelo mabapi le maitlhomho a go baya kwa pele mo tshenkelong, a a bonetsweng pele mo karolwaneng (1)(b), go netefatsa tepanyo le Molao wa Tshenkelo ya Dithoto le Ditirelo ka Puso, 2024.</p> <p>(b) Fa go rebolwa khoutu e ntshwa kgotsa e e boeleditsweng e e bonelwang pele mo temaneng (b), netefatsa tepanyo le Molao wa Tshenkelo ya Dithoto le Ditirelo ka Puso, 2024.”;</p> <p>25. Kemisetso mo karolong 9 ya karolwana (5) ka karolwanan e e latelang:</p> <p>“(6) Fa a lopilwe go dira jalo, Tona o ka, ka tumalano le Tona ya Matlotlo le ka kitsiso mo Lokwalodikgannyeng la Puso, rebolela makala a puso le ditheo tsa puso go totobatsa mokgwa wa selekanyetso sa go abela mabapi le tshenkelo le tse dingwe ditiro tsa ikonomi tse di kwa godimo ga tse di beilweng ke Tona go ya ka karolwana (1).”;</p> <p>26. Kemisetso mo karolong 10(1) ya temana (b) ka temana e e latelang:</p> <p>“(b) go tlhabolola le go tsenya mo tirisong pholisi ya tshenkelo e e batlwang e e lepantsweng le Molao wa Tshenkelo ya Dithoto le Ditirelo ka Puso, 2024.”;</p> <p>27. Kemisetso mo karolong 13P ya karolwana (1) ka karolwana e e latelang:</p> <p>“(1) Motho ofe yo o bonweng molato wa tlolomolao go ya ka Molao ono o ka se, sebaka sa paka ya dingwaga di le 10 go tloga ka letlha la go bonwa molato, dire konteraka kgotsa kgwebo efe le lekala lefe la puso kgotsa setheo sefe sa puso e bile o tshwanetse mabapi le maitlhomho a seo go tsenngwa mo [rejisetaareng ya batlolamolao ba thendara e e ka tsholwang ke Matlotlo a Bosetshaba mabapi le maitlhomho ao] Rejisetara ya Batlolamolao ba Thendara e e tlhomilweng go ya ka karolo 29 ya <i>Prevention and Combating of Corrupt Activities Act, 2004</i> (Molao 12 wa 2004).”;</p>
14.	Wet No. 56 van 2003	Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, 2003	<p>28. Die vervanging van paragraaf (d) van die omskrywing van “onreëlmattige besteding” in artikel 1:</p> <p>“(d) bestedings wat deur ’n munisipaliteit of munisipale entiteit aangegaan is in stryd met, of wat nie in ooreenstemming is nie met, die ‘Public Procurement Act, 2024’, ’n vereiste van die [voorsieningskanaal-bestuursbeleid] verkrygingstelsel van die munisipaliteit of entiteit of enige van die munisipaliteit se verordeninge wat uitvoering gee aan sodanige beleid, en wat nie ingevolge sodanige beleid of verordeninge gekondoneer is nie.”;</p> <p>29. Die skraping van artikel 2(f).</p> <p>30. Die vervanging van subartikel (5) in artikel 14 deur die volgende subartikel:</p> <p>“(5) Enige oordrag van eiendomsreg van ’n kapitale bate ingevolge subartikel (2) of (4) moet regverdig, billik, deursigtig, kompetierend en in ooreenstemming wees met die [voorsieningskanaal-bestuursbeleid] verkrygingsbeleid wat die munisipaliteit ingevolge [artikel III] die ‘Public Procurement Act, 2024’, moet hê en in stand hou.”;</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
			<p>31. The deletion of section 33(4).</p> <p>32. The substitution in section 65(2) for paragraph (i) of the following paragraph: “(i) that the municipality’s [supply chain management policy referred to in section 111] procurement system complies with the Public Procurement Act, 2024 [is implemented in a way that is fair, equitable, transparent, competitive and cost-effective] and”.</p> <p>33. The substitution in section 73 of paragraph (a) for the following paragraph: “(a) any failure by the council of the municipality to adopt or implement a budget- related policy [or a supply chain management policy referred to in section 111]; or”.</p> <p>34. The deletion of section 75(1)(g) and ((j).</p> <p>35. The substitution in section 81(1) for paragraph (e) of the following paragraph: “(e) must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, [supply chain] procurement management, financial management, review and other duties as may in terms of section 79 or other legislation be delegated by the accounting officer to the chief financial officer.”.</p> <p>36. The substitution in section 90 for subsection (5) of the following subsection: “(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent and competitive and consistent with the [supply chain management] procurement policy which the municipal entity must have and maintain in terms of [section 111] the Public Procurement Act, 2024.”.</p> <p>37. The deletion of section 99(2)(h).</p> <p>38. The repeal of Chapter 11.</p> <p>39. The deletion of section 163(2)(b).</p> <p>40. The substitution in section 168(1) for paragraph (g) of the following paragraph: “(g) the alienation, letting or disposal of assets by municipalities or municipal entities, subject to the Public Procurement Act, 2024;”.</p> <p>41. The deletion of section 173(1)(a)(ii) and (a)(iv)(bb).</p> <p>42. The substitution in section 173(2)(a) for subparagraph (iii) of the following subparagraph: “(iii) fails to take all reasonable steps to prevent corruptive practices in the management of the entity’s assets[,] or receipt of money [or supply chain management system];”.</p> <p>43. The substitution in section 173(5) for paragraph (e) of the following paragraph: “(e) contravenes a provision of section [115 (2), 118 or] 126 (5); or”.</p>

Ntlha	Nmr. le ngwaga wa molao	Setlhogokhutswe	Bogolo jwa phimolo kgotsa tlabololo
			<p>31. Die skrapping van artikel 33(4).</p> <p>32. Die vervanging van paragraaf (i) in artikel 65(2) deur die volgende paragraaf: “(i) dat die munisipaliteit se [voorsieningskanaal- bestuursbeleid bedoel in artikel 111 geïmplementeer word op ’n wyse wat regverdig, billik, deursigtig, kompetend en koste-effektief is] verkrygingstelsel voldoen aan die ‘Public Procurement Act, 2024’; en”.</p> <p>33. Die vervanging in artikel 73 van paragraaf (a) deur die volgende paragraaf: “(a) enige versuim deur die raad van die munisipaliteit om ’n begrotingsverwante beleid [of ’n voorsieningskanaal- bestuursbeleid bedoel in artikel 111] aan te neem of te implementeer; of”.</p> <p>34. Die skrapping van artikel 75(1)(g) en (j).</p> <p>35. Die vervanging van paragraaf (e) in artikel 81(1) deur die volgende paragraaf: “(e) moet sodanige begrotings-, rekenkundige, ontledings-, finansiële verslaggewings-, kontantbestuurs-, skuldbestuurs-, [voorsieningskanaal- bestuurs-,] verkrygingsbestuurs-, finansiële bestuurs-, hersienings- en ander pligte uitvoer wat ingevolge artikel 79 of ander wetgewing deur die rekenpligtige beamppte aan die hoof- finansiële beamppte gedelegeer mag word.”.</p> <p>36. Die vervanging van subartikel (5) in artikel 90 deur die volgende subartikel: “(5) Enige oordrag van eiendomsreg van ’n kapitale bate ingevolge subartikel (2) of (4) moet regverdig, billik, deursigtig, kompetend en in ooreenstemming wees met die [voorsieningskanaal- bestuursbeleid] verkrygingsbeleid wat die munisipale entiteit ingevolge [artikel 111] die ‘Public Procurement Act, 2024’, moet hê en in stand hou.”.</p> <p>37. Die skrapping van artikel 99(2)(h).</p> <p>38. Die herroeping van Hoofstuk 11.</p> <p>39. Die skrapping van artikel 163(2).</p> <p>40. Die vervanging in artikel 168(1) van paragraaf (g) deur die volgende paragraaf: “(g) die vervreemding, verbeuring of beskikking oor bates deur munisipaliteite of munisipale entiteite, behoudens die ‘Public Procurement Act, 2024’;”.</p> <p>41. Die skrapping van artikel 173(1)(a)(ii) en (a)(iv)(bb).</p> <p>42. Die vervanging in artikel 173(2)(a) van subparagraaf (iii) deur die volgende subparagraaf: “(iii) versuim om alle redelike stappe te doen om [korruptiewe] sedebederwende praktyke in die bestuur van die entiteit se bates[,] of geldontvangste [of voorsieningskanaal- bestuurstelsel] te voorkom;”.</p> <p>43. Die vervanging in artikel 173(5) van paragraaf (e) deur die volgende paragraaf: “(e) ’n bepaling van artikel [115(2), 118, of] 126(5) oortree; of</p>

Item No.	No. and year of law	Short title	Extent of repeal or amendment
15.	Act No. 4 of 2006	Electricity Regulation Act, 2006	44. The substitution in section 34(1)(e) for subparagraph (i) of the following subparagraph: “(e) subject to the Public Procurement Act, 2024, be established through a [tendering] bid procedure which is fair, equitable, transparent, competitive and cost-effective.”.
16.	Act No. 16 of 2013	Spatial Planning and Land Use Management Act, 2013	45. The substitution in section 49 of subsection (5) for the following subsection: “(5) If external engineering services are installed by an applicant instead of payment of development charges, the [provision of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003)] Public Procurement Act, 2024, pertaining to procurement and the appointment of contractors on behalf of the municipality does not apply.”.
17.	Act No. 23 of 2014	Infrastructure Development Act, 2014	46. The substitution in section 8 for subsection (2) of the following subsection: “(2) If the Commission designates a strategic integrated project which must be implemented, it must determine whether the state has the capacity to implement the project or whether the whole or part of the project must be [put out to tender or] procured [through another form of procurement allowed by the Public Finance Management Act, 1999 (Act No. 1 of 1999)] in terms of the Public Procurement Act, 2024.”. 47. The substitution in section 12 for subsection (4) of the following subsection: “(4) The Director-General or accounting authority of a public entity responsible for an aspect of infrastructure remains the accounting officer or accounting authority in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) [, the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000),] or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).”.

Ntlha	Nmr. le ngwaga wa molao	Setlhogkhutswe	Bogolo jwa phimolo kgotsa tlhabololo
15.	uMthetho wesi-4 wezi-2006	uMthetho Wokulawula Ugesi, wezi-2006	37. Ngokufaka endaweni yesigaba sama-34(1)(e) sendinyana (i), le ndinyana elandelayo: “(e) kuncike kuMthetho Wokuthengwa Kwempahla Kahulumeni, wezi-2024, uzosungulwa [ngethenda] inqubo yebhidi enobulungiswa, elinganayo, esobala, encintisanayo futhi eyongayo;”.
16.	Wet No. 16 van 2013	Wet op Ruimtelike Beplanning en Grondgebruikbestuur, 2013	45. Die vervanging in artikel 49 va subartikel (5) deur die volgende subartikel: “(5) Indien eksterne ingenieursdienste deur ’n aansoeker geïnstalleer word in stede van betaling van ontwikkelingsheffings, is die [bepaling van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, 2003 (Wet No. 56 van 2003)] ‘Public Procurement Act, 2024’, in verband met verkryging en die aanstelling van kontrakteurs namens die munisipaliteit, nie van toepassing nie.”.
17.	Wet No. 23 van 2014	Wet op Infrastruktuur-ontwikkeling, 2014	46. Die vervanging van subartikel (2) in artikel 8 deur die volgende subartikel: “(2) Indien die Kommissie ’n strategiese geïntegreerde projek aanwys wat in werking gestel moet word, moet dit bepaal hetsy die Staat die kapasiteit het om die projek in werking te stel of hetsy [tenders vir] die geheel of ’n deel van die projek [aangevra moet word of deur ’n ander vorm van verkryging deur die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 of 1999), toegelaat,] ingevolge die ‘Public Procurement Act, 2024’, verkry moet word.”. 38. Subartikel (4) in artikel 12 word deur die volgende subartikel vervang: “(4) Die Direkteur-generaal of rekenpligtige gesag van ’n openbare entiteit verantwoordelik vir ’n aspek van infrastruktuur bly die Rekenpligtige Beampte of Rekenpligtige Gesag ingevolge die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) [die Wet op die Raamwerk vir Voorkeurverkrygingsbeleid, 2000 (Wet No. 5 van 2000)], of die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, 2003 (Wet No. 56 van 2003).”.