

The New Procurement Order: Inside the Public Procurement Act Rollout

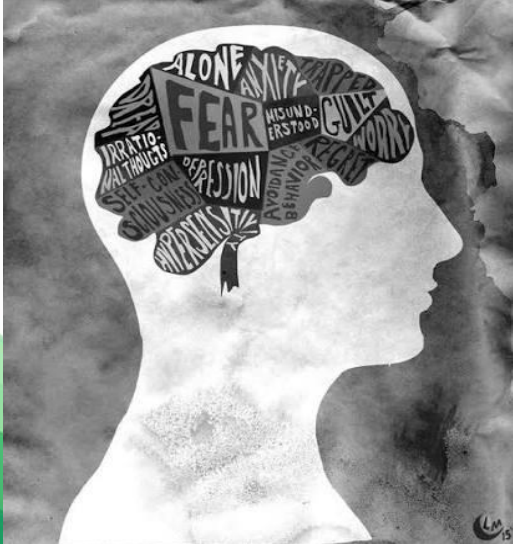
WHAT IS IN STORE

20 August 2026



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MEET GENERATION Z

A group of five young adults, three men and two women, are standing side-by-side against a solid blue background. They are all smiling and looking towards the camera. From left to right: a Black man in a grey sweater, a woman with dark hair in a tan sweater, a white man in a plaid shirt, a woman with brown hair in a light blue cardigan, and a Black woman with curly hair in a denim jacket over a striped shirt.

NEW CONCEPT – *Your new wisdom*

“GEOTECTONICS” *(Jeffrey Sachs)*

1. Geopolitical changes
2. Ecological changes
3. Technological changes
4. Economical changes
5. Demographic changes

“STRATEGIC EXAGON”

(Prof Roberto Poli)

Same concept as Jeffrey Sachs with “geotectonics” describing global change in areas of society, ecosystems, geopolitical, climate, technological, economic, and demographic



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PURPOSE OF SESSION



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PURPOSE OF THE SESSION

To discuss the New Procurement Order: Inside the Public Procurement Act and Draft Regulations

Ray Mahlaka in Daily Maverick quotes an annual estimated procurement expenditure of R1-trillion Rand for all state entities and spheres of government.

The Auditor-General (12 August 2024), there is a general lack of compliance with legislation (mostly SCM related) with 86% of SA's municipalities receiving material compliance findings, with fruitless and wasteful expenditure surging to R7.4bn in 2022/23



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LEGAL FRAMEWORK

The President signed the Public Procurement Act into law on 23 July 2024
Draft Tribunal Regulations and General Regulations published for public comment

CURRENT REALITY

The Act was signed, not yet commenced and is being constitutionally contested



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STATUTORY LANDSCAPE

1. Constitution, section 217.

2. Current statutory framework:

- i. PFMA & Treasury Regulation 16A/MFMA, Chapter 11 and SCM Regulations.*
- ii. Preferential Procurement Policy Framework Act, 2000.*
- iii. Broad Based Black Economic Empowerment Act, 2003.*
- iv. Construction Industry Delivery Board Act (CIDBA), 2000.*

3. New statutory framework:

- i. Public Procurement Act, 2024, not yet in operation.*
- ii. The Infrastructure Development Act, 2014.*
- iii. Public Procurement Amendment Bill (B7-2026) currently before Parliament. Proposes the repeal of set-asides, prequalification preferences, mandatory subcontracting and local content designations.*
- iv. Draft General Public Procurement Regulations*
- v. Draft Tribunal Regulations*



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OBJECTIVES OF THE PPA

PPA, section 2



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PPA OBJECTIVES

1. Introduce uniform treasury norms and standards for all procuring institutions.
2. 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.
3. To ensure efficient, effective and economic use of public resources through, among others, the assessment of the costs, benefits and risks.
4. To advance ethical conduct and combat corruption through access to procurement information and other transparency measures and introducing enforcement measures and appropriate sanctions for transgressors.



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PPA OBJECTIVES

5. To advance transformation, beneficiation and industrialization.
6. To stimulate economic development by supporting—
 - (i) Goods that are produced and services provided in the Republic.
 - (ii) Procurement which is developmental in nature.
 - (iii) Investment.
7. To improve efficiency and effectiveness in procurement by streamlining procurement processes, amongst others, using technology.
8. To provide for effective and expedited dispute resolution of procurement related decisions.
9. To promote innovation, sustainable development and the environmental rights.



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STRUCTURE OF THE PPA & DRAFT REGULATIONS



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STRUCTURE OF THE PPA *(7 Chapters and 69 sections)*

CHAPTER 1: APPLICATION AND ADMINISTRATION OF THE ACT

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

Part 1 - Public Procurement Office

Part 2 - Provincial treasuries

Part 3 - Procuring institutions

CHAPTER 3: PROCUREMENT INTEGRITY AND DEBARMENT

CHAPTER 4: PREFERENTIAL PROCUREMENT



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STRUCTURE OF THE PPA *(7 Chapters and 69 sections)*

CHAPTER 5: GENERAL PROCUREMENT REQUIREMENTS

Part 1 - Procurement system, methods and related matters

Part 2 - Use of technology in procurement

Part 3 - Access to procurement processes and information

CHAPTER 6 - DISPUTE RESOLUTION

Part 1 - Reconsideration of decision to award

Part 2 - Public Procurement Tribunal

Part 3 - Review process

Part 4 - Stand still process

*34 Matters to be prescribed via
Regulations and Instructions
(sections 63 and 64)*

CHAPTER 7 - GENERAL PROVISIONS



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STRUCTURE OF TRIBUNAL REGULATIONS *(7 Regulations & 8 pages)*

1. Short title and commencement
2. Definitions
3. Tribunal fee
4. Security vetting of members of Tribunal
5. Appointment of Tribunal members
6. Code of conduct
7. Contravention of code of conduct



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STRUCTURE OF GENERAL REGULATIONS *(8 Chapters & 86 Regulations)*

CHAPTER 1: GENERAL PROVISIONS

CHAPTER 2: GENERAL PROCUREMENT REQUIREMENTS

Part 1 - Procurement framework for procuring institutions

Part 2 - Prospective supplier database

Part 3 - Procurement methods, requirements and procedures

Part 4 - Open competitive methods

Part 5 - Direct procurement method

Part 6 - Framework agreement method

Part 7 - Transversal term contracts

Part 8 - Other procurement procedures

Part 9 - Criteria for evaluation of bids

Part 10 - Other matters to be provided in the procurement system

Part 11 - Use of another organ of state

Part 12 - Bid committee system

Part 13 - Access to procurement processes and information



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STRUCTURE OF GENERAL REGULATIONS (86 Regulations = 102 pages)

CHAPTER 3: INFRASTRUCTURE, CAPITAL ASSETS AND GOODS AND SERVICES RELATED TO MAINTENANCE OF INFRASTRUCTURE OR CAPITAL ASSETS

Part 1 - Definition and classification

Part 2 - Portfolio, programme and project levels

Part 3 - Infrastructure and capital asset procurement phases

Part 4 - Project phasing

CHAPTER 4 - PROCUREMENT OF TRAVEL AND ACCOMMODATION, LEGAL SERVICES AND LEASES

Part 1 - Travel and accommodation

Part 2 - Legal services

Part 3 - Leases



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STRUCTURE OF GENERAL REGULATIONS (86 Regulations = 102 pages)

CHAPTER 5: PREFERENTIAL PROCUREMENT

Part 1 - Determination when preferential procurement not possible

Part 2 - Set-asides in terms of section 17 of the Act

Part 3 - Pre-qualification under section 18 of the Act

Part 4 - Subcontracting as condition of bid

Part 5 - Measures in terms of sections 21 to 23 of the Act

CHAPTER 6 PUBLIC PROCUREMENT OFFICE, PROVINCIAL TREASURIES AND PROCURING INSTITUTIONS

Part 1 - Interventions by Public Procurement Office or provincial treasury

Part 2 - Procuring institutions



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STRUCTURE OF GENERAL REGULATIONS (86 Regulations = 102 pages)

CHAPTER 7 PROCUREMENT INTEGRITY AND DEBARMENT

Part 1 – Code of Conduct

Part 2 - Due diligence and declarations of interest

Part 3 - Directions inconsistent with Act

Part 4 – Debarment

CHAPTER 8 GENERAL



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NEW PREFERENTIAL PROCUREMENT REGIME



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PREFERENTIAL PROCUREMENT REGIME

PREVIOUS

STEP 1: ACCEPTABLE TENDER - GATE

STEP 2: TECHNICAL AND FUNCTIONALITY - GATE

STEP 3: PRICE AND PREFERENCE

STEP 4: ADDITIONAL OBJECTIVE CRITERIA - GATE

NEW REGIME

STEP 1: PREFERENCE PRE-QUALIFICATION (PPA sections 17-19) - GATE

STEP 2: CAPABILITY, TECHNICAL AND FUNCTIONALITY MUST EACH SCORE 70% - GATE

STEP 3: PRICE

PREFERENTIAL PROCUREMENT REGIME – Gate 1

Set-asides

PPA s 17 + Regs 56–58

Contracts below R 20m

The contract is set aside for firms 100% owned by members of one of the designated categories – black people, black women, women, people with disabilities, military veterans, small enterprises, co-operatives, and so on.

Prequalification

PPA s 18 + Regs 59–61

Contracts R20m–R100m:

Bidders must pre-qualify by demonstrating at least 40% of their past procurement went to 51%-black-owned and -managed enterprises, OR that they will subcontract 30% of the contract to 100%-owned enterprises in one of the identified categories.

Subcontracting

PPA s 19 + Regs 62–66

Contracts ≥ R100m:

May, after a feasibility assessment, make subcontracting a condition of the bid; where it does, every bidder must subcontract at least 25% of the contract value to 100%-owned enterprises in the identified category.

Reg 64(6) = Direct-payment rights to subcontractors.

PREFERENTIAL PROCUREMENT REGIME – Gate 2

ANNEXURE 2 SETS A FURTHER LAYER OF OBLIGATIONS:

*MINIMUM SET-ASIDE TARGETS ACROSS 21 DESIGNATED-GROUP PERMUTATIONS,
EXPRESSED AS A SHARE OF THE INSTITUTION'S ANNUAL PROCUREMENT BUDGET*

HEADLINE TARGETS:

- ☐ 30% to black-owned firms
- ☐ 15% to black-women-owned,
- ☐ 18% to women-owned,
- ☐ 4% to firms owned by people with disabilities,
- ☐ 2% to firms owned by military veterans, 30% to small enterprises

An institution does not apply all twenty-one: it selects up to 5 categories and must meet the Annexure 2 targets for those it picks. The targets overlap – a black woman can count towards several rows – and summed they far exceed any budget, so the real burden is not arithmetical impossibility but administrative complexity, audit risk, and the pull towards chasing measurable categories over delivery.



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IMPACT OF THE ACT AND DRAFT REGULATIONS ON PROCURING INSTITUTIONS



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CAPACITY IMPACT

- ❖ **Strategic procurement plan [Reg 4]:** Data-driven spend analysis, MTEF alignment, integration with infrastructure procurement plan to be published within 7 days.
- ❖ **Bid committee architecture [Reg 34]:** New optional probity committee for complex high-value procurement.
- ❖ **Mandatory competency certification [Reg 73]:** PPO to adopt Procurement Technical Competency Dictionaries. Officials must meet competency requirements before performing a procurement function.
- ❖ **Independent gateway reviews [Reg 41]:** Multidisciplinary panels for major, high-value & high-risk projects with the following specialists: *engineering, project management, SCM, law, finance & EIA*.
- ❖ **Risk management for infrastructure [Regs 47–48]:** Quarterly updates, supplier risk plans, anti-extortion measures and whistleblower channels.
- ❖ **Provincial treasury intervention [Reg 71]:** Formalised enforcement pathway with escalation to AGSA, Executive Authority & SAPS.

RESOURCES IMPACT

- ❑ **ICT baseline** [Reg 85]: ISO 27001-aligned framework, geographically distant backups, AI ethical review, three official languages, mobile and text-to-speech access & system upgrades require PPO approval.
- ❑ **Supplier database** [Reg 5]: Centralised at PPO. Mandatory self-registration for suppliers, though institutions must verify beneficial ownership against the Companies Act s 56(7)(aA) thresholds and other verifications pending CSD updates.
- ❑ **Records retention** [Reg 84]: 5-year retention & 3-years for online publications. Requirements for encrypted archiving, vetting of custodians & alignment with National Archives Act.
- ❑ **Contract management** [Reg 29]: System specification more rigorous than current municipal practice including quantitative and qualitative KPIs, end-user feedback & actual vs planned tracking.
- ❑ **Leases management** [Reg 53]: A procuring institution must enter into a written agreement with a leasing institution regarding roles and responsibilities. Only 'leasing institution' can enter into leases.



RESOURCES IMPACT

❑ **Seven-day publication rule:** Applies across various Regulations — *most institutions cannot meet this consistently even today.*

- ❖ *Regulation 4(7) — strategic procurement plan.*
- ❖ *Regulation 14(5) — direct procurement decisions and reasons.*
- ❖ *Regulation 28(3) — public briefing sessions for awards exceeding R50 million.*
- ❖ *Regulation 29(6) — awards, contracts and variations.*
- ❖ *Regulation 33(5) — asset disposal approvals.*
- ❖ *Regulation 42(6) — gateway reviews.*
- ❖ *Regulation 75(2) — corrections of actions or omissions.*
- ❖ *Regulation 80(5) — awards above R5 000 to immediate family of automatically excluded persons.*
- ❖ *Regulation 83(3) — debarment decisions.*



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FINANCIAL IMPACT – *direct costs*

Material additional spend required on:

- *ICT system upgrades and integration to meet Reg 85.*
- *Competency training and certification of SCM staff and bid committee members under Reg 73.*
- *External advisors for gateway reviews [Reg 41] and probity audits [Reg 34(5)(a)].*
- *Records management and website infrastructure for the 7-day publication regime.*
- *Additional posts or contracted-in capacity for category, contract, risk and infrastructure-procurement management.*



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OTHER CONSIDERATIONS

TO PONDER ON



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MISSING ELEMENTS

- ❑ **Innovation ‘procurement methods’ gaps** – *Innovation partnerships/Design competitions/Community-based Procurement.*
- ❑ **Digitalization gaps** – *Interoperability requirements/ cyber-security/digital accessibility standards/ technical dispute procedures/structured data standards/exit planning.*
- ❑ **State-to-state procurement** – *strict requirements limit collaboration and leveraging from existing skills*
- ❑ **SCM Professionalisation** – *PPA talks about professional development, but Regulation 73 provides for the PPO to develop courses. Zondo-commission recommendation 5 specifically confirmed that procurement failure stems not only from weak rules, but the absence of a professional identity, professional accountability and enforceable standards among those who administer procurement = **Public Sector Procurement Professional Body***



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FATAL FLAWS

1. Procurement methods (Reg 6):

- ❖ *Prescribe RFQ, RFB, RFP, Competitive Dialogue, Framework Agreement and Direct Negotiation (emergency).*
- ❖ *BUT Regulation 6(3) provides that the prescribed methods may: “**be adapted or modified depending on circumstances or conditions or comprise a combination of methods and procedures tailored to the specific requirements of that procurement**”*
- ❖ **FLAW:**
 - *It dissolve the entire regulatory structure.*
 - *Institutions can override the law.*
 - *No procedural accountability rules apply (documentation required, approvals or publication)*

2. Digital public procurement (Reg 37):

- ❖ *Treat ‘digital’ as ICT support and not as the way of doing business = SMART*



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CONSTITUTIONAL CHALLENGE

- ❖ *Western Cape Government, City of Cape Town and amaBhungane launched application to the Constitutional Court that the Act is unconstitutional due to inadequate public consultation.*
- ❖ *Matter was argued on 18-19 May 2026.*
- ❖ *Although a procedural challenge, if it succeeds – the Act will have to be re-introduced and re-consulted resulting in implementation delays.*



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VIEW FROM THE EXPERTS

(Johan Fourie, Geo Quinot, Jonathan Klaaren, Ryan Brunette and Ron Watermeyer)

- ❖ Current regime is more appropriate for off-the-shelf procurement and NOT for complex public infrastructure and other complex purchases.
- ❖ They propose graduating rule-strictness to institutional capacity – relaxed rules for mature and trusted institutions and tighter rules for offenders.
- ❖ The policy direction the evidence supports is not more law, but more capacity.
- ❖ A procurement system designed to substitute for a weak state tends, over time, to keep the state weak.
- ❖ There is a parallel risk for the firms the policy means to help. Set-asides can keep firms alive without making them competitive: winners survive on reserved demand rather than rising productivity, showing no measurable productivity premium. A regime meant to build black-owned firms can instead entrench their dependence on the next set-aside.
- ❖ The right test of preferential procurement is whether it builds competitive firms, not whether it reserves contracts.



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VIEW FROM THE EXPERTS

(Johan Fourie relying on Bosio, Djankov, Glaeser & Shleifer (AER 2022))

- ❖ SA spends just under a TRILLION RAND a year on public procurement = 15% of GDP.
- ❖ An assessment of 187 countries analysing their laws versus practice confirmed that practice predicts outcomes. Laws predict practice. But laws, on their own, do not predict outcomes. Meaning that stricter regulation on paper has no measurable association with better procurement performance.
- ❖ Applying the assessment to our current legal framework SA achieved a baseline of 2.1 out of 4 meaning the country is already a bit more heavily regulated than the typical country at its income level.
- ❖ Assessing the new Act and Regulations the scenario changes and SA now has a baseline of 3.07 out of 4 meaning that SA now moves to being alongside countries with considerably weaker public sector capacity.



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VIEW FROM THE EXPERTS

(Johan Fourie relying on Carril, Gonzalez-Lira & Walker (AER 2026))

- ❖ Assessing benefits of more competition in complex tenders and found that when a given contractor wins under more publicity, it does not deliver any worse than the same contractor under less.
- ❖ **Because SA current regime apply uniformly, 3 predictions were made:**
 1. **Costs will rise on average.** *Small-business set-asides raise cost overruns by 16.2%. The more restrictive disadvantaged-business set-asides – those reserved for narrowly defined ownership groups – raise overruns by 30.9%, with delays lengthening by roughly 5% and 9% respectively.*
 2. **Execution on complex contracts is likely to worsen.** *When eligibility for a high-stakes tender is determined by ownership rather than ability to deliver, the firms that win have been selected on the wrong basis, and the cost of that selection error shows up at the execution stage rather than at award.*
 3. **The pre-qualification tier invites collusion, and the compliance burden will slow decisions.** *The Competition Commission documented collusion and cartel behaviour (construction mafia) when forced sub-contracting was introduced. The compliance burden will significantly increase as claims must be tracked and audited with additional mandatory security vetting, criminal background checking, financial due diligence and verification of beneficial ownership.*



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TAKE-AWAY ADVICE IN THIS CHANGING *GEOTECTONICS* WORLD



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10-TIPS

- 1. Stay informed.** *Determine whether the information you receive is accurate, honest, objective, timely, and thorough.*
- 2. Learn something new every day.** *Unless you learn something new every day, you're becoming obsolete.*
- 3. Broaden your horizons.** *Get your information from multiple sources that offer different perspectives.*
- 4. Keep an open mind.** *You'll never know if your ideas are sound until they are challenged.*
- 5. Encourage the free flow of ideas.** *Challenge your own opinions.*
- 6. Ask for feedback.** *Treat feedback as a gift rather than a slap in the face.*
- 7. Scrutinize your habits.** *Practice doesn't make perfect if you're doing it wrong.*
- 8. Discover new ways of doing things.** *Just because something made sense 10 years ago doesn't mean it's valid today.*
- 9. Know when to quit.** *There are times when good intentions don't work out as planned. Cut your losses...or lose more.*
- 10. Learn from your mistakes – and the mistakes of others.** *Making a mistake is acceptable. Just don't let it return for an encore.*

AUTHOR: FRANK SONNENBERG



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THANK YOU

KEEP THE FAITH



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