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Enhancing governance through the application of the rule of law.

COMMENTS ON THE DRAFT GENERAL PUBLIC PROCUREMENT REGULATIONS, 2026, IN TERMS OF SECTION 63(1) OF THE PUBLIC PROCUREMENT ACT 28 OF 2024

1. Introduction

1.1. The Institute for Governance and Law (IGL) is a non-profit, public benefit organisation that aims to improve governance through the application of the rule of law. The scope of the IGL's activities includes submissions to Parliament on a range of issues, including impending legislation and regulations.

1.2. The Public Procurement Act 28 of 2024 (PPA), under which the General Public Procurement Regulations operate, is of particular interest to the IGL. Procurement is a vital function of government. However, it is vulnerable to abuses where corruption leads to state pillage. Former Chief Justice Raymond Zondo described procurement as the "centrepiece of state capture" and that, as it stands, "the current regulatory framework governing public procurement is highly fragmented and excessively complicated, undermining compliance and effective consequence management."[1]

1.3. State procurement corruption leads to public distrust in the state and its institutions. The cost of procurement abuse produces direct losses through inflated prices, duplicate payments, defective delivery, and unlawful rewards. Additionally, the indirect losses from procurement abuse include but are not limited to delayed infrastructure, emergency re-procurement, increased litigation and related costs, poor maintenance, institutional instability, and declining supplier confidence.[2] A procurement system that has unclear governance structures and poor accountability procedures cripples the system, hinders economic growth, and discourages future investments.

1.4. The General Public Procurement Regulations under consideration do well to introduce measures centred on reducing corruption by shifting to competence-

[1] Klaaren, J. (2021). Reforming Public Administration in South Africa. Cape Town: Siber Ink.

[2] van den Heever, A. (2026). Public Procurement, State Capability and Constitutional Accountability: Breaking the Patronage-Procurement Cycle in South Africa. *Wits School of Governance*

based bidding and creating a unified framework. On the other hand, the Regulations raise several areas of concern that need to be addressed. The IGL would like to draw National Treasury's attention to a few of these pertinent issues, as set out below.

2. The General Public Procurement Regulations allow excessive discretion and set asides, creating room for collusion and corruption.

2.1. Discretion is important for flexible and responsive procurement, but this should come with strict and careful guidelines. Excessive and unbounded discretion increases the risk of collusion and corruption as it creates avenues for manipulation.

2.2. The Regulations allow so much discretion that the procurement system is vulnerable to manipulation. This is especially the case with the poorly defined concept of "good grounds" that is open to abuse. This phrase appears in four sub-regulations:

2.2.1. Regulation 26(5) allows for extending the bid period under(sic) "good grounds."

2.2.2. Regulation 27(5) provides for extending the vetting period on "good grounds."

2.2.3. In Regulation 29(4), an accounting officer or accounting authority could allow for a contract to exceed the percentage limits for price increases in 29(3) when varying the scope on "good grounds."

2.2.4. Regulation 83(2) concerns the use of "good grounds" to reduce or revoke a period of debarment.

2.3. The "extension period" as contemplated in Regulation 26 can be used to manipulate bidding processes to allow for collusion and price inflation. The extension period can also work as a tool to remove "unwanted" bidders. All extensions should be strictly overseen.

2.4. Potential price increases that stem from extensions should follow rational paths. Competent and independent experts should be used to evaluate both whether the grounds are legitimate and what the rational response is.

2.5. Changes to price allowed by Regulation 29, that are above the percentages stipulated in 29(3) and based on “good grounds,” should be submitted for automatic review by the Public Procurement Tribunal.

2.6. It would be difficult and limiting to define “good grounds” precisely, but the general nature of this phrase is open to abuse. Therefore, any decisions taken on “good grounds” should be communicated with detailed explanations to all the persons involved and published transparently.

3. The General Public Procurement Regulations do too little to detect and prevent collusion and corruption.

3.1. As a starting point, Section 217(1) of the Constitution states that, “When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.” The General Public Procurement Regulations must meet this constitutional obligation.

3.2. Procurement should use open and transparent processes that leverage digital technology.

3.2.1. Transparency should be a part of procurement processes by default, rather than being left to discretion. This should involve creating a digital process for procurement that makes transparency automatic when relevant.

3.2.2. It is only exceptions, either clearly provided by the legislation or submitted with explanations, where transparency should not be the default.

3.2.3. It is also important to be alert to the development of Artificial Intelligence (AI) technologies in procurement. This can both add benefits and complications, which the Regulations fail to address.

3.3. Procurement committees should independent and competent appointments.

3.3.1. The Regulations do not provide that checking should happen with independent expertise to identify reasonableness for pricing.

3.3.2. Competence requirements under Chapter 6 of the Regulations should follow the International Organisation for Standardisation (ISO) to which South

Africa already proscribes. This should include ISO 55000 that provides a globally recognised framework for effective asset management.

3.4. There should be clear, concurrent consequences for failures in procurement processes.

3.4.1. A lack of consequences for incompetence and bad actors has created a system of impunity.

3.4.2. It would be possible to leverage a digital procurement system to make reviews and other types of consequences automatic. Concurrent consequences would allow for preventing large financial losses rather than trying to recover lost or wasted funds.

4. Too many regulations are overcomplicating the tender processes that could hinder economic development.

4.1. This was highlighted in an International Monetary Fund (IMF) report[3] that found, “Not only are South African business leaders spending significant time dealing with government regulations, but this extra burden has been increasing over time and is among the highest relative to comparable economies.” This, the IMF finds, leads to a situation where, “a one percentage point increase in management time spent dealing with regulations is associated with a one percent reduction in job growth.” For businesses with fewer than 20 employees, “regulatory burdens have nearly twice the impact on productivity.” This hampers growth of the economy, growth of companies, and employment.

4.2. There is a need for simpler, refined general regulations that focus on being understandable and easy to implement. Each sector should make its own precise regulations that are suitable to that sector’s requirements.

5. Conclusion

5.1. While the IGL supports transformation and upliftment, the nature in which Broad-Based Black Economic Empowerment (B-BBEE) requirements have been set out complicates the entire bidding process. This can only

[3] Kinda, T. and Mavee, N. (March 11, 2026). Enhancing South Africa’s Business Environment to Boost Growth and Create Jobs. *IMF Country Focus* available at *https://www.imf.org/en/news/articles/2026/03/11/cf-south-africa-enhancing-south-africas-business-environment-to-boost-growth-and-create-jobs*

overcomplicate and paralyse the procurement process. The degree of bureaucracy forced upon companies to fit into the legislative framework of B-BBEE in regulations is beyond the capacity of most small to mid-sized companies. This only serves to hinder the intended boost to B-BBEE.

5.2. In the case of small companies, an assumption can be made that they do not have the expertise and staff to do the work that is a requirement of the regulation. It can only be counterproductive to require companies to do work that they are unable to complete in an efficient manner.

5.3. The primary focus of government policy should be on creating jobs in general, rather than on attaining specific B-BBEE ownership requirements. A substantial increase in economic growth in South Africa will logically result in more jobs for all population groups. B-BBEE ownership requirements may have created wealth for a small portion of South Africa's black, coloured, and Indian populations. However, it has not had the effect of widespread job creation for South Africa's population, including groups targeted for upliftment. This chart shows the comparative unemployment situation between the year in which BEE legislation was implemented and the first quarter of 2026:

Comparative Unemployment Rate (Source: StatsSA)		
	Q1: 2004	Q1: 2026
Overall unemployment rate	27.8%	32.7%
Black African	33.5%	36.4%
Other	17.1% (Not broken down into individual population groups)	White 9.2% Indian 13.6% Coloured 23.9%

5.4. As far as economic growth in South Africa after 2020/21 (the COVID period) is concerned, it needs to be pointed out that GDP growth has been extremely modest: 2.1% (2022), 0.8% (2023), 0.5% (2024), and 1.1% (2025).[4]

5.5. Against this background, it is misplaced that Government continues to use B-BBEE ownership as an important element in its economic policy, as reflected in the draft General Public Procurement Regulations. Instead, pursuing a policy of vigorously supporting general economic growth would benefit all groups. Such a policy should include incentives and measures to boost growth and jobs, rather than trying to promote black empowerment with bureaucratic regulations. Complying with these increased regulations, in the end, requires excessive time and effort, with associated costs – as demonstrated by the draft General Public Procurement Regulations.

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[4] World Bank Group (2026). GDP Growth (Annual %) – South Africa. *World Bank Group* available at *https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=ZA*