

30 SEPTEMBER 2026

MUNICIPALITIES**ATT: MUNICIPAL MANAGERS****RE: FORMAL NOTICE REGARDING THE INVALIDITY OF THE PUBLIC
PROCUREMENT ACT 28 OF 2024 AND RELATED PROCUREMENT
INSTRUMENTS****1. PURPOSE OF THIS NOTICE**

- 1.1 This letter serves as formal notice that the Public Procurement Act 28 of 2024 ("the PPA") has been declared constitutionally invalid and may not be treated as an operative source of procurement authority. Institutions must accordingly refrain from relying on the PPA, or on any regulation, draft instrument, directive, policy, tender condition, criterion or administrative practice whose legal force depends on it, unless that measure is independently authorised by legislation and regulations currently in force.

2. THE CONSTITUTIONAL COURT JUDGMENT AND CURRENT LEGAL POSITION

- 2.1 On 17 September 2026, the Constitutional Court delivered its unanimous judgment in the Public Procurement Act 28 of 2024 matter.¹

¹ Premier of the Western Cape Government and Another v Speaker of the National Assembly and Others; City of Cape Town and Others v Speaker of the National Assembly and Others, CCT 103/25 and CCT 144/25, [2026] ZACC 37.

- 2.2. The Court held that Parliament had failed to comply with sections 59(1)(a) and 72(1)(a) of the Constitution by not facilitating reasonable public involvement before passing the PPA and consequently declared the Act invalid because it had been adopted inconsistently with the Constitution.
- 2.3. The PPA had not commenced and therefore did not replace the existing procurement regime. Organs of state and other institutions exercising public procurement powers remain bound by section 217 of the Constitution and by the legislation, regulations and supply-chain-management prescripts presently applicable to them, including, where relevant, the Public Finance Management Act 1 of 1999, the Local Government: Municipal Finance Management Act 56 of 2003, the Preferential Procurement Policy Framework Act 5 of 2000 and the Preferential Procurement Regulations, 2022.

3. EFFECT OF THE JUDGMENT ON PROCUREMENT MEASURES

- 3.1 The judgment invalidates the PPA of 2024 because of the constitutionally defective process by which it was enacted. Every procurement measure must nevertheless be authorised by the legal framework currently in force, adopted by a competent decision-maker and implemented consistently with section 217 of the Constitution and the principle of legality.
- 3.2 Institutions must therefore refrain from implementing or enforcing any regulation, draft regulation, framework, directive, circular, policy, tender condition, prequalification criterion, set-aside, designated-beneficiary measure, subcontracting obligation, local-content condition, bidder-eligibility restriction or administrative practice merely because it was contemplated, developed or purportedly authorised under the invalid PPA. Such a measure may be applied only where it has a distinct and lawful basis in operative legislation and regulations.

4. NOTICE TO REFRAIN FROM RELIANCE ON THE INVALID ACT

- 4.1 Institutions are hereby placed on formal notice that the PPA may not be cited, applied or relied upon as authority for any current or future procurement process. The same applies to any subordinate, preparatory or administrative instrument whose validity or operation depends on the PPA, unless the relevant requirement can be sustained independently under the procurement law presently in force.
- 4.2 Each institution should review its active and pending procurement processes, policies and standard documentation to identify provisions based on the PPA or dependent instruments. Where no independent lawful authority exists, the affected provision should not be used and should be withdrawn, amended or reconsidered under the applicable legal framework, while procurement measures lawfully grounded in the existing regime may continue.

5. IMPLEMENTATION OF THIS NOTICE

- 5.1. This notice should be brought to the attention of accounting officers, accounting authorities, bid specification, evaluation and adjudication committees, procurement officials and legal advisers. These functionaries should ensure that procurement documents and decisions identify the operative legal authority for every material requirement imposed on bidders and do not refer to the PPA or any dependent instrument as though it were legally effective.
- 5.2 Institutions are requested to acknowledge receipt of this notice and, where an affected process or policy is identified, to record the legal basis relied upon and any corrective action taken. Such acknowledgement is intended to promote consistent administration and does not alter any statutory remedy, review right or obligation arising under applicable law.

6. RECORDS AND LEGAL CONSEQUENCES

6.1 Institutions should preserve documents, electronic records and communications relevant to any procurement measure potentially affected by the judgment, including policies, tender documents, specifications, evaluation and adjudication records, legal opinions, Treasury correspondence, internal memoranda, committee minutes, bidder communications and records identifying the legal authority relied upon.

6.2 Continued reliance on the invalid PPA, or on an instrument lacking an independent lawful basis, may render the resulting procurement requirement or decision susceptible to challenge under the principle of legality or the applicable administrative law framework. This notice is intended to ensure that institutions are aware of the judgment and have an opportunity to align their procurement administration with the law presently in force.

7. CONCLUSION

7.1 Institutions are accordingly notified to refrain from treating the PPA or any dependent instrument as operative law and to administer procurement solely under the constitutional and statutory framework currently in force. Nothing in this notice prevents the application of a procurement measure that is independently and lawfully authorised.

Yours faithfully,



Solidarity Legal Services

Tel: (012) 644 4300

