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Eswatini Public Procurement Regulatory Agency

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ESPPRA CIRCULAR NO.: 1/2026

ADDRESSED TO:	**ALL CONTROLLING OFFICERS AND CHIEF EXECUTIVE OFFICERS OF PROCURING AND REQUESTING ENTITIES**
SUBJECT:	**REGULATORY CIRCULAR — INTERPRETATION AND GUIDANCE ON SECTION 5 OF THE PUBLIC PROCUREMENT ACT, 2011 (ACT NO. 7 OF 2011): INTERNATIONAL OBLIGATIONS AND THE REQUIREMENT TO SEEK THE OPINION OF THE AGENCY PRIOR TO ENTERING INTO AGREEMENTS INVOLVING ALTERNATIVE PROCUREMENT ARRANGEMENTS**
EFFECTIVE DATE:	**APRIL 02ND, 2026**
STATUTORY REFERENCE:	**SECTION 66 AND SECTION 10(b)(ii) OF THE PROCUREMENT ACT, 2011**

1. INTRODUCTION

1.1 Eswatini Public Procurement Regulatory Agency (EPPRA/the Agency) has, in the exercise of its regulatory and oversight functions under the Public Procurement Act, 2011 (the Act/PPA), observed a recurring pattern across procuring entities in which international grant and loan-funded procurement activities are commenced or

concluded without the prior opinion of the Agency as required under Section 5(2) of the Act.

1.2 The Agency has accordingly resolved to issue this Circular to provide formal interpretation and guidance to all procuring entities on the application of Section 5 of the Act. This Circular is issued pursuant to the Agency's mandate under Section 10(b)(ii) and Section 66 of the Act to issue public procurement manuals, circulars, and instructions for the guidance of procuring entities.

1.3 All procuring entities are required to read this Circular carefully, disseminate it to all relevant procurement and finance staff, and to comply with its provisions forthwith.

2. LEGAL FRAMEWORK — SECTION 5 OF THE PUBLIC PROCUREMENT ACT, 2011

2.1 For ease of reference, Section 5 of the Public Procurement Act, 2011 provides as follows:

"5(1) Where this Act conflicts with an obligation of the Government of Eswatini arising out of an agreement with one or more States or with an international organisation, the provisions of the agreement shall, to the extent that this Act conflicts with that obligation, prevail over this Act; but in all other respects, the procurement shall be governed by this Act.

(2) Government entities shall seek the opinion of the Agency before entering into any agreement which requires the application of procurement procedures or arrangements other than those in this Act."

2.2 Section 5 establishes two distinct but complementary rules: (a) a conflict-resolution rule under subsection (1) which determines the hierarchy of norms where domestic procurement law conflicts with an international agreement; and (b) a procedural obligation under subsection (2) which imposes a mandatory pre-commitment requirement on all government entities to seek the Agency's opinion

before entering into any agreement that involves alternative procurement arrangements.

3. INTERPRETATION OF SECTION 5(1) — THE CONFLICT RESOLUTION RULE

3.1 Section 5(1) recognises that the Government of Eswatini may, from time to time, enter into agreements with foreign states, (such as the World Bank, the African Development Bank, the European Union, or similar bodies) that carry their own procurement frameworks and regulations. Where such frameworks conflict with the provisions of the Act, the international agreement prevails, but only to the extent of that conflict.

3.2 The Act expressly and emphatically provides that "in all other respects, the procurement shall be governed by this Act." This is a critical qualification. The existence of an international procurement framework or the procurement guidelines of any other donor, does not constitute a blanket or wholesale exemption from the Act and the Public Procurement Regulations, 2020 (PPR 2020). The exemption is limited strictly to areas of genuine, identified conflict.

3.3 Procuring entities must therefore not treat the receipt of a loan, donor funding or the existence of a loan agreement in whatsoever form, donor procurement framework as an automatic licence to operate outside the Act entirely. Such an approach is inconsistent with the law and exposes the procuring entity, its officers, and the Government to legal, financial, and reputational risk.

4. INTERPRETATION OF SECTION 5(2) — THE MANDATORY PRE-OPINION REQUIREMENT

4.1 Section 5(2) imposes a clear statutory obligation on all government entities to seek the opinion of the Agency before entering into any agreement that requires the use of procurement procedures or arrangements other than those in the Act. This obligation is proactive, mandatory, and arises prior to the acceptance or execution of such an agreement.

4.2 Where the Agency's opinion is sought at the appropriate stage, the Agency is in a position to:

- Assess the proposed international or donor procurement framework against the provisions of the Act and the PPR 2020;
- Identify specific areas of conflict between the two frameworks and those areas where the Act continues to apply;
- Issue a formal opinion providing regulatory certainty to the procuring entity on its procurement obligations;
- Advise on appropriate governance safeguards to protect the integrity of the procurement process; and
- Assist the procuring entity in preparing for audit and accountability requirements under both frameworks.

5. GUIDANCE TO ALL PROCURING ENTITIES — REQUIRED ACTIONS

5.1 In view of the foregoing, the Agency hereby directs all procuring entities as follows:

(a) Pre-Agreement Engagement with the Agency

Where a Ministry, Department, public enterprise, or local government authority is in negotiations with, or anticipates entering into an agreement with, a foreign government, international organisation that includes or requires the use of a procurement framework other than the Act and the PPR 2020, it must approach the Agency for a formal opinion before any commitment is made or the agreement is signed or accepted.

(b) Submission of Documents to the Agency

The request for an opinion shall be submitted in writing to the Agency and shall be accompanied by: (i) the proposed agreement; (ii) the applicable international procurement regulations or guidelines; and (iii) any other relevant documents that the Agency may require.

(c) The Act Remains Applicable in Non-Conflict Areas

Procuring entities are reminded that the Act and the PPR 2020 remain fully applicable to all aspects of procurement not in conflict with the international agreement. This includes, without limitation, the ethical obligations of public officers under Part VII of the Act, conflict of interest declarations, record-keeping obligations, and reporting requirements.

(d) Compliance by Entity Tender Boards

Entity Tender Boards and the Government Tender Board shall not approve procurement proceedings under an international framework unless documentary evidence of the Agency's opinion under Section 5(2) has been obtained.

6. CONSEQUENCES OF NON-COMPLIANCE

6.1 Failure to comply with the requirements of Section 5(2) of the Act constitutes a breach of the Act. The Agency draws particular attention to the following consequences:

Responsible public officers may be liable for the offence under Section 62(l) of the Act (contravening or failing to comply with a provision of the Act), which carries a penalty of up to ten million Emalangeni or a term of imprisonment not exceeding ten years, or both.

Consistent non-compliance will be reported to the relevant budget and oversight authorities and service commissions and recorded in the Agency's Annual Report in accordance with Section 63(3) of the Act.

Procurement conducted without the Agency's opinion may be subject to audit queries, suspension, or legal challenge, which may jeopardise donor funding and project implementation.

7. CONCLUSION

7.1 The Agency issues this Circular in the spirit of regulatory partnership and transparency. The objective is not to create unnecessary administrative burden, but to ensure that procurement under all funding arrangements domestic and international remains lawful, accountable, and aligned with both domestic and applicable international standards.

7.2 All procuring entities are strongly encouraged to engage the Agency at the earliest opportunity when entering into agreements with international partners. The office of the CEO is available to assist and can be contacted at info@esppra.co.sz or on +268 2404 7527.

7.3 This Circular shall take effect immediately upon issuance and shall remain in force until withdrawn or amended by the Agency.

V. Matsebula

CHIEF EXECUTIVE OFFICER

ESWATINNI PUBLIC PROCUREMENT REGULATORY AGENCY

ESWATINI PUBLIC PROCUREMENT REGULATORY AGENCY
CEO'S OFFICE
02 APR 2026