

OVERVIEW OF THE PUBLIC PROCUREMENT BILL

STANDING AND SELECT COMMITTEES ON
FINANCE

Informal briefing by National Treasury

PRESENTED BY:

National Treasury

Title:

Date:
23 May 2023



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

VACCINATE TO SAVE SOUTH AFRICA

- NT Officials present
 - Ismail Momoniat (Acting DG)
 - Mendoe Ntswahlana (CPO)
 - Laura Mseme (Acting COO)
 - Empie Van Schoor (CD: Legislation)
 - Willie Mathebula (CD: SCM Policy, Norms & Standards)
 - Estelle Setan (CD: Strategic Procurement)
 - Mpho Nxumalo (Dir: SCM Policy)
- The version of the Public Procurement Bill presented today is subject to the certification of the State Law Advisor, and some clauses will be amended during the certification process

Problem Statement: What is wrong with our procurement system

- **Public Procurement System is not working!**
 - Government is unable to deliver services efficiently and effectively
- Zondo Commission has demonstrated how it is being abused, **is opaque and prone to massive corruption**
 - Many goods and services are over-priced, often many times over the price available to a private retail customer.
- **Complicated, fragmented, and inconsistent legal prescripts** that results in operational inefficiency, non-compliance and confusion in application.
 - Too complex, highly decentralised or delegated to tens of thousands of divisions, field offices, schools, hospitals
 - Hundreds of thousands of registered suppliers entering into over two million transactions annually.
- **Inflexible, incoherent and rigid prescripts** that hamper development and service delivery.
- **A lack of capacity** at both regulatory and operational levels. Lack of sufficiently skilled public procurement personnel employed within poorly designed organisational structures.
- **An overburdened procurement system** that causes a mismatch between applying the rules of procurement law and achieving government's commitment to **social and developmental objectives**.

Approach to overcome the problems

1. **Establish a Single regulatory system and oversight authority (Public Procurement Office)** with jurisdiction over the whole public procurement system, including all organs of state currently under the Public Finance Management Act and the Municipal Finance Management Act.
2. **Improve and COMPEL MORE data transparency.** Compel reporting on various aspects of the public procurement system. Facilitate the use of information technology to improve transparency and comparability.
3. **A strategic and differentiated approach to procurement.** Strategic procurement often involves a more pragmatic, flexible and differentiated approach to procurement.
4. **Capacitating and professionalising public procurement.** In the area of professionalisation, a roadmap is developed for public sector supply chain professionalisation.
5. **Enhanced compliance and enforcement mechanisms.** Currently enforcement is done through various law enforcement agencies and a combination of legal mechanisms scattered throughout the administration and remedies enforced only via the courts. Need for enhanced compliance measures, and a dispute resolution and enforcement mechanisms.

ZONDO COMMISSION ON PUBLIC PROCUREMENT IN SOUTH AFRICA

- Volume One Chapter 4 devoted to "Public Procurement in South Africa"
- Covers patterns of abuse at each stage of the procurement cycle and collapse of governance in State-Owned Entities
 - Eskom, Transnet, Denel, SAA and PRASA
- Biggest procurement budgets were with SOEs, and hence a target for corruption and state capture
- "The public procurement system must operate in a way which advances the national interest. It must do so in accordance with a system which, in the words of s217 of the Constitution, is fair, equitable, transparent, competitive and cost effective. It must simultaneously address the exclusions and the discrimination of the past. In sum, the Constitution requires the economic and efficient use of public funds in order to promote good service delivery, that is to say, value for money achieved by way of a fair process and an equitable outcome>" (par 328 on page 738)
- "International experience suggests that of all Government activities, public procurement is one of the most vulnerable to fraud and corruption. " (par 320)
 - It "will only be fit for purpose if it is founded on good governance and good management and enforced through effective monitoring and oversight measures which ensure accountability. Anything less renders the system open to abuse"
- Refers to 10 principles outlined by OECD in a 2009 report entitled "Principles for Integrity in Public Procurement"
- Commission makes 9 recommendations, including need for a national charter against corruption, establishment of an independent agency against corruption in public procurement, protection of whistle blowers, deferred prosecution agreements, enhancement of transparency, protection of accounting officers/authorities acting in good faith, suggested anti-bribery amendments to PRECCA, suggested amendment to political party funding legislation, greater centralization and harmonization.

RESPONSE BY PRESIDENT RAMAPHOSA TO ZONDO COMMISSION RECOMMENDATIONS ON PUBLIC PROCUREMENT (OCT 2022)

CONSIDERATIONS

1. Abuse of the procurement system is one of the principal vehicles through which taxpayer funds are illicitly diverted to private interests instead of providing value to the public. **Abuses are evident across all steps in the procurement value-chain**, from the conception of public projects to the drafting of tenders, from the process of evaluating bids to the management of concluded contracts.
2. According to the Commission, one of the inherent problems with the current procurement regime is that it does not make clear whether the **primary intention** of the Constitution is for **goods to be procured at least cost** – OR – for the procurement system to **prioritise transformation**. The Commission recommends that “maximum value for money” must be primary. **Both policy goals are important and it is not possible to completely avoid the potential trade-offs and policy tensions.**
3. Procurement is utilised to advance a range of public interest goals, which include the promotion of local industrialisation or local enterprises. In the case of South Africa, the high levels of unemployment and inequality necessitate that all available measures be used to **improve local business development, empowerment and job creation**. A law that provides for **set-aside of procurement for local industrialists or designated groups** is not incapable of taking into account competitive pricing within the cohort of qualifying enterprises.

RESPONSE BY PRESIDENT RAMAPHOSA TO ZONDO COMMISSION RECOMMENDATIONS ON PUBLIC PROCUREMENT (OCT 2022)

4. Apart from the abuse of procurement, the country's procurement system currently faces challenges of **professional capacity, fragmentation and operational flexibility**. The introduction of preferential procurement goals, which is an economic and **social imperative**, adds a **layer of complexity** that some have used to manipulate procurement outcomes.
5. Several of the Commission's proposals are already reflected to varying degrees in the draft Public Procurement Bill, which has been consulted with the social partners at NEDLAC. Other recommendations are already covered by existing rules.
6. National Treasury has initiated a modernisation and automation of supply chain management systems that will significantly contribute to effective data management and allow for information analysis across government and public entities.
7. The **centralisation** of procurement will be pursued **where it is feasible** and where the benefits are likely to outweigh the costs. A return to a fully centralised system is unlikely to improve the integrity and efficacy of procurement. However, it is recognised that extreme decentralisation has also made the procurement system more vulnerable. A **hybrid approach** is required, which builds the state's capacity in transversal contracts, reduces fragmentation, consolidates legislation, ensures enhanced regulatory and oversight capacity, and enhances transparency

The reforms to public procurement legislation currently underway provide an opportunity to implement the Commission's recommendations.

NATIONAL TREASURY RESPONSE TO PROBLEMS IN PROCUREMENT AND ZONDO COMMISSION

- MODERNISATION OF THE PROCUREMENT SYSTEM
 - LEARNING FROM BEST PRACTICES INTERNATIONALLY
 - Working Closely with World Bank and OECD
- ADOPTING A MORE STRATEGIC APPROACH TO PUBLIC PROCUREMENT
- E-PROCUREMENT SYSTEM, GREATER TECHNOLOGY AND DATA
- SOUTH AFRICA IS CONDUCTING A MAPS ASSESSMENT –Methodology for Assessing Procurement Systems assessment, to assess current procurement systems in SOEs, national, provincial and local governments
 - MAPS is an OECD TOOL, an international standard and tool to evaluate public procurement systems across the world.
- This assessment will greatly assist with drafting subordinate legislation and overcoming operational gaps, improving management capacity and improved accountability, integrity and transparency.

WORLD BANK: PP Reform for Better Outcomes



Public Procurement

- Transparency & Efficiency
- Accessibility & Participation
- Performance
- Compliance & Integrity
- Evidence-based policy & decision making



Effective Government

- Value for taxpayers' money
- Modernization
- Transparent, efficient, and accountable institutions
- Better service delivery
- Political trust



Political Economy

- Economic Growth
- Job Creation
- Promotion of local industry, including MSMEs and vulnerable groups
- Climate change/sustainable procurement

Transform public procurement into a strategic function for better public infrastructure and service delivery with focus on growth and sustainable development outcomes

WORLD BANK: PP Reform Elements



Strategy



Legal Framework



Institutional Setup



Professionalization



Technology & Data

Example: E-Procurement Impact



Enhancing Transparency & Integrity

- **Bangladesh:** online citizen portal for contract monitoring
- **Estonia:** open access to PP information, status, contracts
- **Georgia:** public portal for contract monitoring & analysis
- **Rwanda:** UMUCYO system = Transparency
- **Ukraine:** CSO engagement for PP monitoring



Reducing Fraud & Corruption

- **Rwanda:** online complaints handling, no in-person contacts
- **Romania:** PREVENT reduced CoI cases by **65%** within **2** years
- **Spain:** blockchain eliminates bribery and corrupt tendering
- **Ukraine:** AI helped identify **20k** procurement irregularities



Increased Competition

- **Albania:** bid participation increased by factor of **5**
- **Bangladesh:** bid participation by factor of **4**
- **India:** start-up participation increased by **2** bids per tender



Better Service Delivery

- **Ghana:** drones deliver health products to **14 million** people
- **India:** quality of roads increased by up to **19%** and e-catalogue as quick COVID response with over **100k** items
- **Indonesia:** reduction of probability of project delays by **16%**
- **Spain:** 3D printing for up to **100** Ventilators/week
- **USA:** 3D printing for **4 million** COVID testing swabs/week



Socio-Economic Benefits

- **India:** **58%** of public spend in GeM to MSMEs/Women-Owned Businesses
- **Korea:** **75%** of total government contracting in KONEPS awarded to SMEs
- **Malawi:** WB ASA on e-GP Marketplace with focus on local MSMEs
- **Mexico:** share of SMEs in winning public contracts increased by **20%**
- **South Africa:** SMME Clearing House initiative in Gauteng Province



Efficiency/Savings

- **Australia:** AI/ML raised category accuracy by **27%** and saves **160 days** a year
- **Bangladesh:** e-GP revenue generation of **\$99 million** in FY18-FY20 and reduction of procurement time from **100** to **58 days**
- **Brazil:** Big Data reduced time for cost estimates from **20 days** to **11 minutes**
- **Chile:** e-GP price savings of **8.3%** for drugs and **9.1%** for medical devices
- **India:** reduced procurement lead time generates **9.75%** savings
- **Korea:** annual savings of **\$21 million** by using AI/ML for demand forecast
- **USA:** Bots modify over **1,000** public contracts in **3 days** instead of **1 year** and automate eligibility check from **15 minutes** to **10 seconds** per vendor



Economic Growth

- **Bangladesh:** **\$1.1bn** savings due to use of e-GP in FY19 (**6%** of public spend)
- **Brazil:** Big Data helped identify savings in Rio of up to **17%** of public spend
- **Korea:** annual savings of **\$8bn** in transaction costs
- **UK:** Survey found **\$100** savings for every **\$14** invested in e-GP = ROI of **720%**
- **USA:** Big Data in New York State for evidence-based strategies save **\$156 million** annually

WORLD BANK: Public Procurement Methods



Competitive

Direct



- Open tendering
- Restricted tendering
- Request for quotations
- Request for proposals
 - without negotiation
 - with consecutive negotiations
 - with dialogue
- Two-stage tendering
- Competitive negotiations
- Electronic reverse auction
- Single-source procurement



- Open procedure
- Restricted procedure
- Competitive procedure with negotiation
- Competitive dialogue
- Negotiated procedure without prior publication



- Open
- Limited
- Direct
- International vs. National
- BAFO & Negotiation
- RFP vs. RFB vs. RFQ
- Single-stage vs. Multi-stage
- On-envelope vs. Two-envelope
- Competitive dialogue
- E-Auction
- Consultancy selection: QCBS, QBS, FBS, CQS, LCS, DS

Standard Procurement Documents for Goods, Works, Non-Consulting & Consulting Services

PUBLIC PROCUREMENT BILL LAYS FRAMEWORK FOR MODERNISING PROCUREMENT

- **PUBLIC PROCUREMENT IS PART OF THE BROADER BUT BIGGER PROCUREMENT MODERNISATION PROCESS**
- **MANY QUESTIONS TO BE ANSWERED IN DESIGNING A NEW PROCUREMENT SYSTEM**
 - What is the best balance between key strategic objectives?
 - Value-for-Money (VFM), Transformation, Empowerment, Localisation, Sustainability objectives
 - Centralisation vs decentralisation
 - Devolution of responsibility and accountability
 - What are the preventive systems to prevent corruption?
 - SYSTEM DESIGN, INTERNAL CONTROLS, AUDIT COMMITTEES, MONITORING, DATA COMPARISONS
 - Differentiating between corrupt/suspicious transactions vs minor rule transgressions and irregular expenditure
 - HOW DOES PP BILL RELATE TO PFMA AND MFMA?
- **TECHNOLOGY AND BIG DATA CRITICAL TO MODERNISE AND IMPLEMENT A NEW PROCUREMENT SYSTEM – role of IFMS a CRITICAL element to replace current systems**
- **Public Procurement Bill will not answer these questions, and there may be different answers for different types of procurement**

PURPOSE of PUBLIC PROCUREMENT BILL

PURPOSE OF BILL

The aim of the Bill is to regulate public procurement and to prescribe a framework within which preferential procurement must be implemented.

BACKGROUND

- In terms of section 216(1) of the Constitution, national legislation must prescribe measures to ensure both transparency and expenditure control in each sphere of government by introducing, among others, uniform treasury norms and standards.
- Section 217(1) of the Constitution stipulates that, procurement by organs of state and identified institutions, must occur in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
- Section 195 of the Constitution of the Republic of South Africa (“the Constitution”) requires national legislation must, among others, ensure the promotion in public administration of the following principles:
 - (a) A high standard of professional ethics;
 - (b) efficient, economic and effective use of resources; and
 - (c) development-oriented, accountability and transparency.

Process followed before finalizing Bill for Tabling to Parliament

- In December 2014, Cabinet directed NT to accelerate modernisation of public procurement system through legal framework that introduces broader policy reforms;
- OCPO developed conceptual framework for draft Public Procurement Bill for discussions with stakeholders;
- Engaged with stakeholders at national, provincial & local spheres of government incl professional bodies in auditing & accounting to obtain ideas, and to consider pros and cons of policy proposals and obtain consensus on strategic intent of Bill;
- Cabinet approved a Draft Bill in February 2020 for publication for public comment for a period of three months;
- Comment period was extended to June 2020;
- NT assessed more than 4000 submissions received and revised Bill was prepared;
- Bill revised in 2020-21 to take account of submissions

Process followed before finalizing Bill for Tabling to Parliament (cont)

- The Bill was submitted for engagement at Nedlac on 13 April 2022. The Nedlac Public Finance and Monetary Policy Chamber in collaboration with Industry Chamber established a task team comprised of Government, Business and Labour.
- The task team held 15 sittings from 06 May 2022 to 07 October 2022.
- The actual deliberations on the Bill commenced on 02 June 2022.
- In addition to these engagements, there were several outside discussions held between social partners for further alignment on key issues.
- The task team reviewed the Bill focusing on thematic areas in accordance with the chapters of the Bill.
- Final Nedlac report was signed on 25 October 2022 and submitted to Minister of Finance.
- The Bill has been legally vetted by OCSLA and issued with a preliminary opinion for the Cabinet process.
- The Presidency also issued a SEIAS certificate, subject to consultation with FOSAD prior to submission for the Cabinet consideration.
- FOSAD engagement was conducted on 4 & 8 May 2023.
- Cabinet approved the Bill on 10 May 2023 to be tabled to Parliament.

Public Procurement Bill takes account of President Ramaphosa's response to the Zondo Commission recommendations

ACTIONS ON RECOMMENDATIONS

The Public Procurement Bill addresses the Zondo Commission's recommendations with respect to:

1. a Code of Conduct setting out the ethical standards which apply in the procurement of goods and services for the public;
2. protecting Accounting Officers or Accounting Authorities from criminal or civil liability for anything done in good faith unless such person acts negligently;
3. harmonisation of the legislation applying to public procurement;
4. better guidance and training of public procurement officials;
5. regulations to provide clear guidance on the processes to be followed when procuring from a sole source;
6. setting standards of transparency for inclusion in every procurement system;
7. providing appropriate management, contracting, reporting and enforcement guidelines for those who implement projects on behalf of government;
8. ensuring compliance with transformation imperatives;
9. institutionalising lifestyle audits for all senior managers and officials involved in supply chain management;
10. the establishment of a professional body to which all officials who work in the area of public procurement should belong.

PUBLIC PROCUREMENT BILL – ARRANGEMENT OF SECTIONS

The Constitutional requirements of fairness, equitability, transparency, competitiveness and cost-effectiveness are universal procurement requirements and will remain the core principles

CHAPTER 1	CHAPTER 2	CHAPTER 3	CHAPTER 4	CHAPTER 5	CHAPTER 6	CHAPTER 7
DEFINITIONS, OBJECTS, APPLICATION AND ADMINISTRATION OF THE ACT	PUBLIC PROCUREMENT OFFICE, PROVINCIAL TREASURIES AND PROCURING INSTITUTIONS Part 1: Public procurement Office Part 2: Provincial Treasuries Part 3: Procuring Institutions	PROCUREMENT INTEGRITY, DEBARMENT AND DECLARING PROHIBITED PRACTICES <ul style="list-style-type: none"> • Codes of Conduct • Disclosures • Declarations • Undue influence • Automatic exclusions • Undesirable practices • Debarment • Etc. 	PREFERENTIAL PROCUREMENT Preferential Procurement Policy	PROCUREMENT MANAGEMENT <ul style="list-style-type: none"> • Procurement system and methods • Measures to prevent abuse • Establishment of procurement units • Bid Committee System 	DISPUTE RESOLUTION Part1: Reconsideration of decision to award Part 2: Public Procurement tribunal Part 3: Review Process Part 4: Stand still process	GENERAL PROVISIONS

Chapter 1 - Definitions, objects, application and administration of Act (clauses 1-3)

For purposes of the interpretation of the Bill, various terms are defined.

The objects of the Bill which are to—

- (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.

The Bill is to apply to—

- (a) national and provincial departments and government components;
- (b) a constitutional institution listed in Schedule 1 to the Public Finance Management Act;
- (c) municipalities and municipal entities
- (d) public entities listed in Schedule 2 and 3 to the Public Finance Management Act.

Provision is also made for the application of Chapter 4 (preferential procurement) to Parliament and provincial legislatures.

Chapter 2 - Public Procurement Office, provincial treasuries and procuring institutions (clauses 4-8)

- This Chapter provides for the establishment of a Public Procurement Office within the National Treasury and provides for its functions.
- The functions of provincial treasuries and procuring institutions are also stipulated.
- The functionary responsible for making decisions on behalf of a procuring institution in line with the Public Finance Management and Municipal Finance Management Acts, is provided for.

Chapter 3 - Procurement integrity, debarment and declaring prohibited practices (clauses 9-16)

- Chapter 3 provides for measures to protect the integrity of the procurement process through codes of conduct for various role-players, persons automatically excluded from procurement, declaration of interest, prohibiting unduly influencing a procurement process and a process for debarment of bidders and suppliers.
- Provision is also made for the protection for employees who refuse to take directions inconsistent with the Bill.

Chapter 4 - Preferential procurement (clause 17)

- Chapter 4 regulates preferential procurement and requires that when a procuring institution implements 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,
it must do so in accordance with the objects in clause 2, Chapter 4 and section 10(1)(b) of the Broad-Based Black Economic Empowerment Act, 2003.
- This Chapter also sets out the minimum requirements for the content of the procurement policy of a procuring institution. Clause 17(4) and (5) specifies preferences like small enterprises, enterprises in townships, rural or underdeveloped areas, black people, women, persons with disabilities and the youth.
- The Chapter requires the regulations to be made on one or more preference point systems and thresholds as well as goods that are produced in SA and services provided in SA.

Chapter 5 - Procurement system and methods and related matters (clauses 18-30)

- The Chapter provides that the Minister of Finance prescribe by regulation—
 - (a) a **procurement system** for—
 - (i) procurement and strategic sourcing of goods or services;
 - (ii) procurement and strategic sourcing of infrastructure and capital assets and goods or services related to infrastructure and capital assets; and
 - (iii) the disposal and letting of assets of a procuring institution;
 - (b) **types of procurement methods** including but not limited to public-private partnerships and transversal term contracting;
 - (c) methods for **disposal and letting of assets** by a procuring institution; and
 - (d) the requirements and **procedure** to be followed **for each prescribed method**
- This Chapter also regulates the **use of another organ of state** by a procuring institution to obtain needs.

Chapter 5 - Procurement system and methods and related matters (clauses 18-30)

- Provision is also made for a procuring institution to **establish a procurement unit** as part of its procurement system.
- A **bid committee system** is to be determined by regulation.
- Public Procurement Office must progressively **develop an information and communication technology-based procurement system** for all procurement to enhance efficiencies, effectiveness, transparency and integrity and to combat corruption.
- Public Procurement Office must determine by instruction **measures for the public, civil society and the media to access procurement processes**. Provision is made for measures to ensure candid deliberations and protecting officials from undue influence and threats.
- The Chapter contains provisions regarding **access to, and disclosure and the protection of, information**.

Chapter 6 - Dispute resolution (clauses 31-49)

- The Chapter provides for a right of the bidder to seek a reconsideration by a procuring institution of its decision to award a bid and, if dissatisfied, then a review by a Tribunal.
- This Chapter provides for the establishment of a Public Procurement Tribunal; its composition; the qualifications of the members; and other relevant provisions for the functioning of the Tribunal.
- The Tribunal may also review a debarment order issued by the Public Procurement Office against a bidder or supplier.

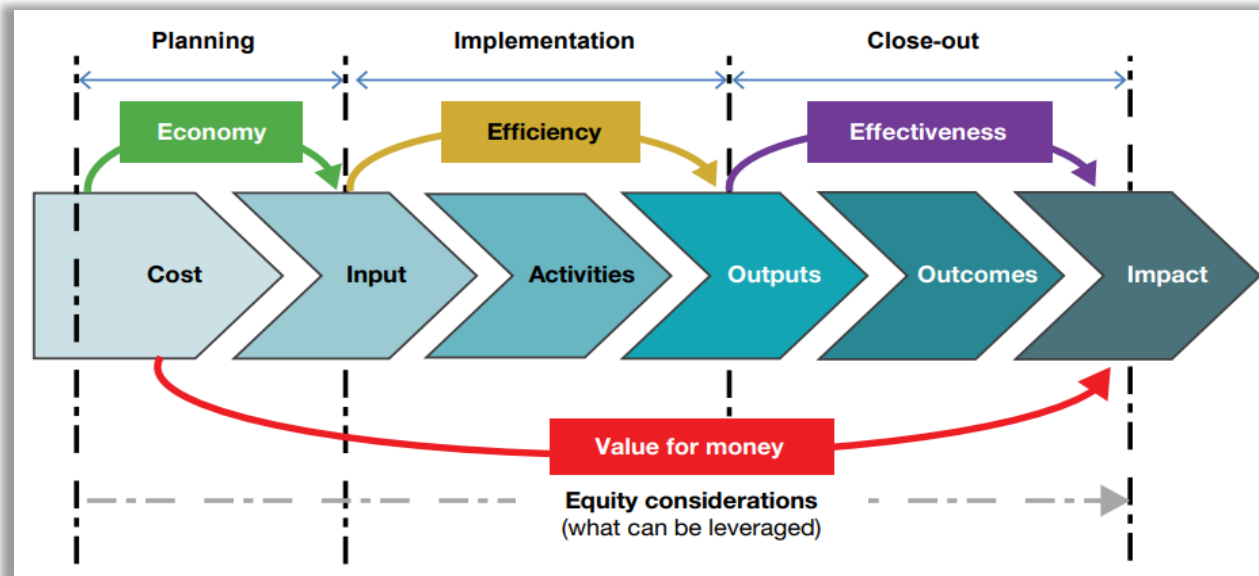
Chapter 7 - General provisions (clauses 50-61)

- Provision is made for the Public Procurement Office to **investigate** any procurement related matter for purposes of investigating any non-compliance with the Act.
- The Chapter empowers the Minister, the Director-General: National Treasury, the accounting officer or accounting authority of a procuring institution and the Public Procurement Office to **delegate functions** conferred by the Bill.
- Provision is made for certain acts to constitute **criminal offences**.
- Chapter 7 provides for limited powers to grant **exemptions from the Act** and for **deviations** from regulations and instructions.
- **The Minister of Finance is to make regulations** regarding all matters specified for regulations elsewhere in the Bill such as a preferential procurement matters, a procurement system, procurement methods including public-private partnership and transversal term contracting and the use of another organ of state for goods and services.
- Provision is also made for **regulations** on variation of contracts, procedure for lodging procurement complaints by public and procurement using donor or grant funding.
- A **public consultation** process as well as **Parliamentary scrutiny** of draft regulations are contained in this Chapter.
- It is proposed that the Minister may make **regulations for different categories of procurement institutions and different categories of procurement**. It is required that specific regulations must be made for infrastructure and capital assets, and goods or services related to infrastructure and capital assets.
- Proposed amendments and the **repeal of certain laws** provided for in this Chapter and are contained in the Schedule to the Bill. It includes the repeal of the Preferential Procurement Policy Framework Act, 2000.
- As to **commencement**, it is provided that the provisions may be brought into operation **on different dates** and also on different dates for different categories of procuring institutions or different categories of procurement.

HOW THE BILL WILL ENHANCE PROCUREMENT MODERNISATION

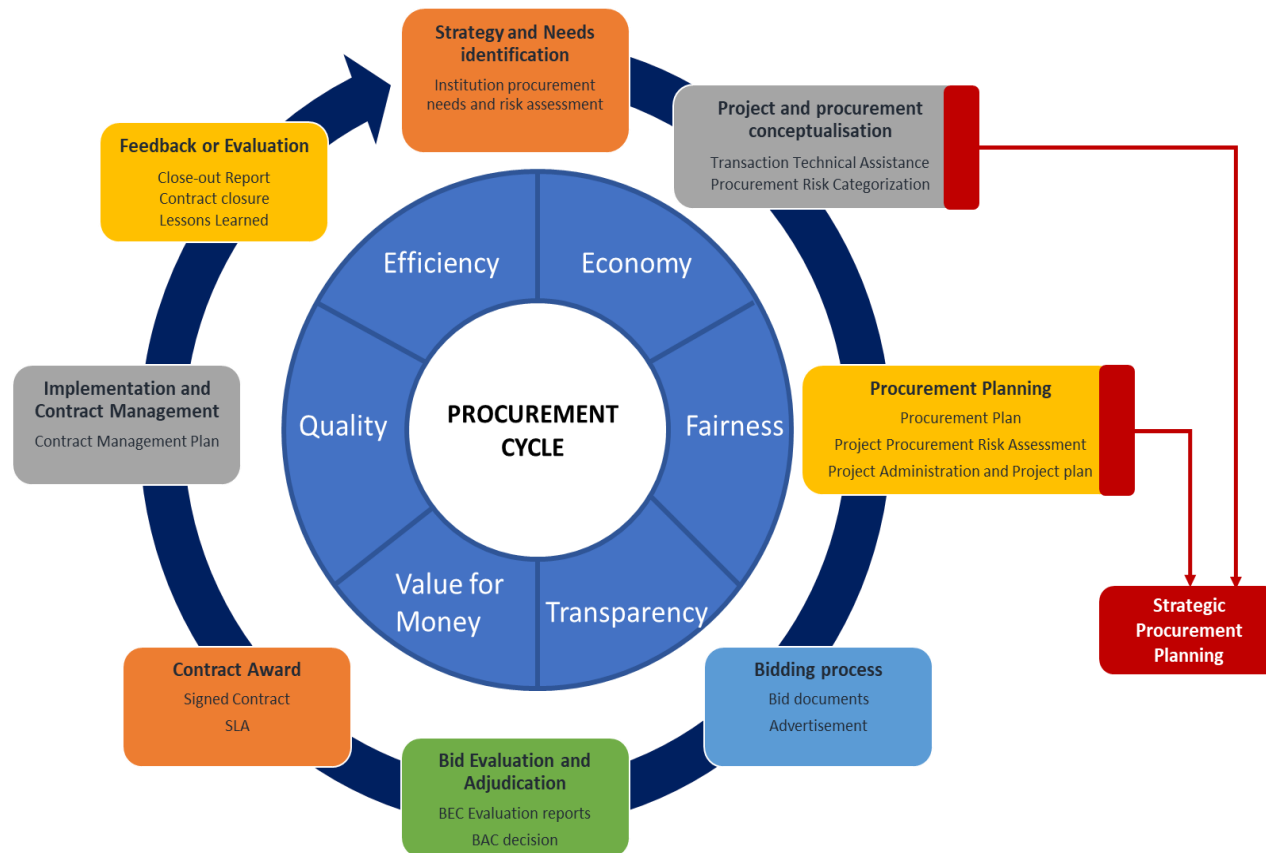
VALUE FOR MONEY: Value for money will be assessed during the delivery cycle using the so-called three “E’s” – Economy, Efficiency and Effectiveness at the end of the planning, implementation and close-out phases of a project, respectively. An overarching fourth ‘E’ also needs to be considered when delivering public funded projects, namely Equity.

Value for money and preferential treatment are not mutually exclusive and can be achieved at the same time, but some trade-offs to be expected.



HOW THE BILL WILL ENHANCE PROCUREMENT MODERNISATION

VALUE FOR MONEY IN THE PROCUREMENT CYCLE



VFM considerations apply throughout the procurement cycle

Achieve VFM in the four key stages of the procurement cycle:

- i. Appropriate levels of **planning** to develop a suitable procurement plan, including design of the procurement approach;
- ii. Identifying the requirements (**specifications** and/or terms of reference) to be delivered through the contract;
- iii. Appropriate use of **evaluation criteria**; and
- iv. Proper management of the **contract**.

HOW THE BILL WILL ENHANCE FLEXIBILITY

NEW

OWN PROCUREMENT POLICIES: The Bill sets the basic parameters within which transformation should take place. It provides a menu of enabling provisions such as allowing **institutions to implement their own procurement policy** that provides for categories of preference in the allocation of contracts and the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination.

- The use of the public procurement system to pursue secondary objectives (SOCIO-ECONOMIC GOALS) **balanced** against primary objective (VALUE FOR MONEY).

NEW

DIFFERENTIATED PROCUREMENT SYSTEMS: The Minister must prescribe a **procurement system** for procuring institutions for:

- Procurement of **goods and services**
- Procurement of **infrastructure and capital assets** and Goods and Services related to it;
- Disposal and letting of assets**

FLEXIBILITY: S17(2)(a) - This policy must include **one or more preference point systems** and thresholds (prerogative of the Organ of State to determine).

- E.g. DOH may have a different Preference Point System for Pharmaceuticals, Medical Equipment, ARV programmes, Vaccine programmes, etc. (Not a one-size-fits-all)

HOW THE BILL WILL ENHANCE PREFERENTIAL PROCUREMENT

- The 80/20 and 90/10 system will become redundant. The preference point system can now be customised based on what is critical for the institution for a specific commodity, whether it be specific socio-economic goals, quality, price, etc. It is however advised that the price element should not be lower than 50.
- Example:
 - 70/30 where 70 is for price and 30 which can be broken down into 20 for specific goals and 10 for quality (70/20/10).
 - 50/50 where 50 is for price and 50 can be broken down into 15 for local content, 10 women, 25 for quality (50/15/10/25)
- The choice of the preference point system will depend on the criticality of what the institution will want to promote (not a one-size-fits-all). An institution may have more than one preference point system.

HOW THE BILL DEALS WITH SET ASIDES

NEW

SET ASIDES: The policy **must** include measures to **set aside** the awarding of bids to give preference to categories of persons or enterprises or a sector (including black people, women, youth and people with disabilities, co-ops); goods produced in the Republic; and services provided in the Republic.

ECONOMIC DEVELOPMENT: The policy **must** include measures to enhance economic development such as:

- **sub-contracting as a bid condition** to promote any of the preferences mentioned in the previous paragraph;
- Allowing **awarded bidders to sub-contract** to promote any of the preferences mentioned;
- advancing **transformation, beneficiation, industrialisation, innovation**, creation of jobs, intensification of labour absorption and economic development;
- measures to give preference to citizens or permanent residents; enterprises owned by citizens or permanent residents;
- **enterprises based in townships, rural or underdeveloped areas or in a particular province or municipality;**
- Advancing a sustainable **environment**

NEW

HOW THE BILL WILL ALLOW FOR DIFFERENT TYPES OF PROCUREMENT (eg. INFRASTRUCTURE)



NEW

INFRASTRUCTURE SYSTEM and PROCUREMENT STRATEGIES:

- Chapter 5 (S18(1)(a)(ii)) stipulates that Minister must prescribe a procurement system for the procurement of **infrastructure and capital assets** and goods and services related to it.
- This procurement system will be prescribed in regulations:-
 - Social infrastructure (Schools, roads, clinics, etc)
 - Mega project infrastructure
 - Network infrastructure
 - Use of implementing agents
 - Improved integrated planning, robust business cases and front-end engineering
 - Establishing of project pipelines
 - Infrastructure procurement strategies
 - Efficient use of standard tender documents and contracts
 - Sustainable operation and maintenance of infrastructure assets (Life time cost)
 - Strengthening government and political engagement
 - Collaboration between private and public sector on infrastructure projects
 - The use of technology and data more effectively

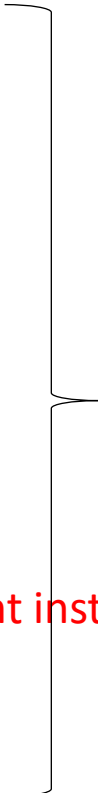
HOW THE BILL MAKE PROCUREMENT MORE FIT FOR PURPOSE

NEW

EXPANDING PROCUREMENT METHODS: Government is currently limited to an open competitive tender process as a default. Anything else is considered as a deviation or departure or procurement by other means which needs approval from AO/AA.

- Chapter 5 of the Bill will allow government to expand on allowable procurement methods, e.g.

- Less formal procedures (quotations)
- Open competitive bidding procedure
- Limited bidding procedure,
- Single-source procurement
- Sole-source procurement
- Reverse auctions
- PPPs
- Transversal contracts
- Framework agreements
- Panel arrangements
- Unsolicited bids
- Obtaining goods and services from other government institutions
- Disposal methods
- Any of the above with negotiations



Uniform procedures and circumstances under which the procurement methods may be used will be taken up in regulations

HOW THE BILL PROMOTE STRATEGIC PROCUREMENT

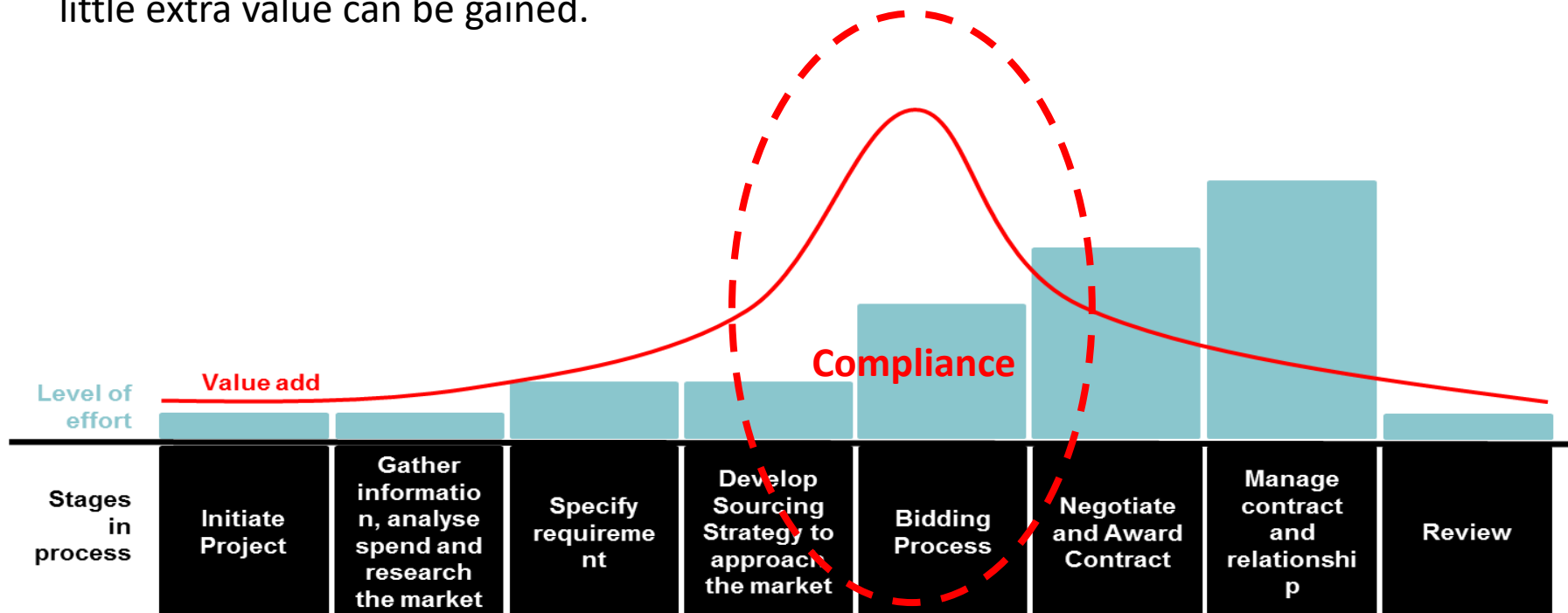
NEW

INSTITUTIONALISE STRATEGIC PROCUREMENT:

- The traditional approach to procurement views it as day-to-day buying of goods and services. Irrespective of how critical a transaction may be, government currently uses competitive bidding as the default method of buying.
- A strategic approach involves a combination of understanding the importance of procurement to enable government to achieve its objectives; identifying suppliers and managing relationships with them; and obtaining value for money.
- The Bill will allow government to move from transactional buying to commercial decision-making.
- Strategic Procurement is NOT the purchase of goods and services on a day-to-day, transactional basis. Instead, Strategic Procurement is the opposite: it is a long term and all encompassing means of achieving procurement and strategic business goals.
- It is a process of understanding categories of goods and services, their intended use and their supply markets based on rigorous analysis, in order to identify the leverage points and to develop the appropriate sourcing strategy which reduces the total cost to government and or increase the benefits of the service or commodity to government.

HOW THE BILL WILL COVER ENTIRE PROCESS CYCLE

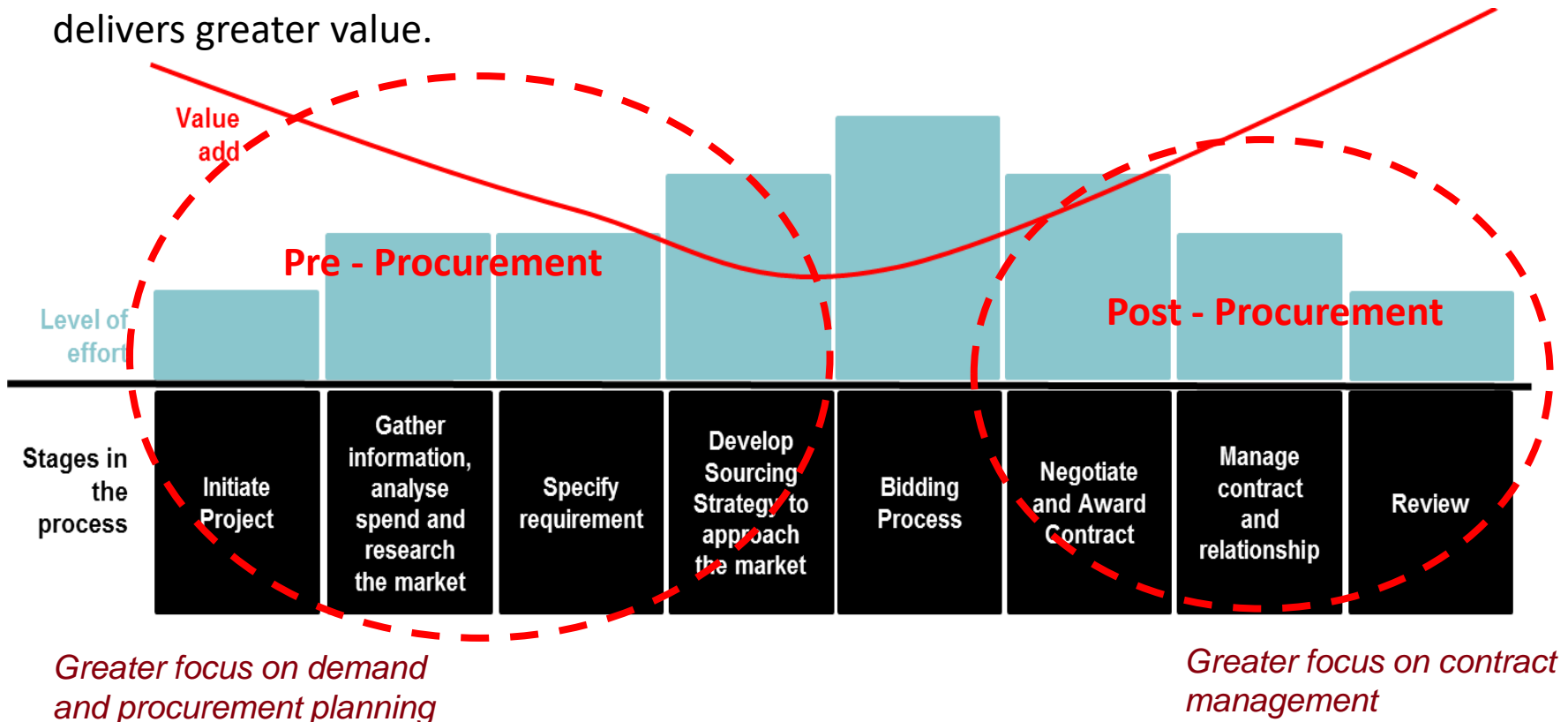
In the **traditional approach to procurement**, a relatively small percentage of the overall effort goes into the initial planning phase. Due to insufficient analysis in the planning stage, effort tends to increase in the bidding phase. In turn, this results in greater levels of effort in the contract and relationship management phases, where little extra value can be gained.



There is a need to move from transactional buying to commercial decision-making

HOW THE BILL WILL COVER ENTIRE PROCESS CYCLE

The **strategic approach to procurement** works methodically through each stage in the process. The initial effort spent on planning, research and analysis helps significantly in identifying solutions that meet the needs. The focus on developing and managing relationships with suppliers after awards have been made, means that less time is spent resolving issues and more on assessing the quality of delivery and on identifying opportunities for cost savings and benefit gains. A strategic approach delivers greater value.



CONCLUSION

- Procurement Bill is part of a broader PROCUREMENT MODERNISATION PROCESS, involving a more strategic, differentiated and flexible approach, built on technology and big data and a modern IFMS system
- Procurement Bill lays the framework for a better and more modern procurement system, but does not provide all the answers (eg. best balance between different objectives, extent of centralization / decentralization)
- More important question to answer – how will any new procurement system protect the public sector from corruption and abuse?
- National Treasury welcomes a deep consultation process via Parliament before finalizing and adopting this bill, as there are many views on how and what the public procurement system should be implemented

Thank You!