

Public Procurement Bill
Call for Comments

30 June 2020



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Mr Simon Manyama

National Treasury
40 Church Square
Old Reserve Bank Building
2nd Floor
Cnr Madiba and Paul Kruger Streets,
Pretoria

15 June 2002

Our Ref: Government Gazette Vol 656, No. 43030, Public Procurement Bill

Dear Mr Manyama,


We hereby enclose a submission to the Draft Public Procurement Bill Published on the 19 February 2020. It is our intention to provide you with a submission to support the legislative process in strengthening the Public Procurement Policy to uphold the objectives and the intent of the policy.

Our submission seeks to provide direct comments addressing specific provisions in the proposed bill as well as proposed suggestions to better shape the overarching policy to ensure it has more gravitas and is “Future Proofed” to support the modernisation of supply chain in the 4th Industrial revolution. Lastly, we seek to ensure that the bill will serve as a catalyst for the role that the state plays in local economic development and ensuring that taxpayers contributions are effectively spent.

As one of the largest professional services firms operating in Africa, we are compelled by our responsibility to support the pan-African agenda in building towards a capable and developmental state. It is in this spirit that we have co-ordinated a response through experts from the supply chain, governance, strategy and digital practice in providing you with some critical considerations in finalising the tabled bill.

We are keen to engage and discuss these recommendations with you and support you with any points of clarity required to ensure that the final policy will lead to a more ethical, efficient and effective public procurement regime.

Yours sincerely,



Gregory Rammego
Director | Risk Advisory Africa

Executive Summary

The proposed bill serves to bring to the realisation many recommendations that have been made through the review of the existing public procurement function incorporating learnings that were implemented in practice notes. The effort to harmonise various legal prescripts such as BBBEE and the appointment of the national regulator are evident in the proposed bill. Lastly the bill also sets the tone for a strong central procurement capability that will be extended through the provinces to ensure a more tightly governed and standardised procurement discipline. These revisions are critical when the public spend has been severely criticised of misuse and abuse and there are drastic constraints on the fiscus.

At the very outset in the objectives of the proposed bill, there is insufficient emphasis of the section in the constitution 21. C that subscribe to; equity, fairness and transparency. These values which should be directly referenced in the objectives are the principles outlined in the policy to ensure that they are adhered to in all aspects of procurement undertaking/process. This will also support the PPPFA being repealed by this proposed bill by creating a shared set of pre-scripts that will guide all procurement processes in effectively using policy to address structural reforms. This will be particularly important as the compliance to the BBBEE is currently based on achieving different levels and clarity will be required in terms of what will be regarded as compliant under the bill. A comprehensive Enterprise and Supplier Development strategy should be addressed to outline preferential procurement, local procurement and supplier development framework which should include targets for each of the above categories and be accompanied by a detailed implementation roadmap.

In the submission, we have highlighted a number of opportunities through which the bill can enhance its objective by making a shift towards value for money such as embracing the Total Cost of Ownership as a measure for assessing bids to provide a more comprehensive view of the cost of purchase. We have also explored how better alignment across different procurement structures can enhance operational procedures and visibility of spend for government to leverage economies of scale.

This can all be accelerated by embracing digitalisation across the value chain and empowering procurement officials with deep analytics to make better informed decisions. While such a transformation does take time, clear ownership of the technology strategy must be clear to avoid fragmentation of system solutions that will only perpetuate further silos. The policy must be written in a manner that encourages adoption rather than entrenching current limitations such as opening of physical bids.

The bill does recognise the responsibility of the state to catalyse local economic development and create opportunities to enhance local production. However, with limited co-ordination prescribed, this becomes an aspiration left to individual officials and their teams to push forward and motivate for implementation. In so

doing, we need to be cognisant of the environmental declarations that have been signed to ensure we are able to meet the intended targets during the economic acceleration.

In an effort to regain the trust of the public and efforts by the Auditor General, more focus needs to be placed on sufficient risk and control measures so that we pre-empt non-compliance and fraud to minimise leakage of the system. While the policy does not prescribe the specific risk and control measures the directives included should serve to enforce the management of the risks and controls.

One of the major proposals in the draft bill include the establishment of a Regulator. From our analysis it seems that the intended regulator is to be housed within the National Treasury, chosen this may lend itself to lack of independence of the Regulator since it would be dependent on the functions and people within National Treasury to exercise its duties. Further limitations of this are the close link between information sharing systems with National Treasury and the potential for influence by the National Treasury depending on the reporting structure of the proposed Regulator. This is an area that may require further review and consultation to determine which structure may be most effective based on the role of the Regulator.

This submission seeks to support and strengthen the final proposed bill and ensure that all stakeholders are able to meaningful apply the policy in its envisaged intent. We expect that the proposed bill will further enhance the state's developmental agenda and transition into a future resilient regulator in the 4th industrial revolution.

Chapter outline

There are five chapters outlined in this submission, in each chapter the context of the issue being covered is addressed including our observations on how these are addressed in the bill. We then proposed a set of key recommendations to the draft bill in alignment to the objectives set out. The details of these are included in a table in each section for a more comprehensive list of recommendations. The five chapters include:

- Material Changes to the Bill
- Making the shift towards "Value for Money"
- Enabling Digital Procurement Capability
- Using Government spend to catalyse Local Economic Development
- Appropriate Risk and Governance Measures to Minimise Leakage and Corruption

Material Changes to the Bill

The draft Bill may be commended for its intended objectives to regulate public procurement to the extent that it closes gaps and inefficiencies of current legislative and regulatory prescripts. The draft Bill also offers further guidance on specific roles; accountability and responsibilities across public procurement spheres. It has attempted to capture and address a variety of concerns and improvements raised by numerous AG audits; NT Practice Notes; and other SCM review findings. Notwithstanding these improvements, we have identified potential areas that are still unclear and would require additional clarity to avoid misinterpretation and unaligned implementation. One such area is Performance within the proposed SCM Framework, where performance of officials is not clearly linked to individual KPI's and remuneration structures. Globally, when such an approach is adopted, it mostly results in optimal operational efficiencies and quicker turnaround times. For example, make attendance of appointed officials at Bid Committees mandatory using a rotating schedule and measured for individual year-end performance reviews. We have also offered possible solutions and work-arounds to addressing these and other gaps in our detailed commentary table section.

The table below summarises the key recommendations that we believe should be considered for amendment in the Public Procurement bill to address points of clarification.

<i>Proposal Name</i>	<i>Description</i>
Establishment of a Centre of Excellence	<p>To ensure full compliance and consistency in implementation of the bill it is recommended as part of the Regulator's functions to establish a Centre of Excellence on Procurement to provide:</p> <ul style="list-style-type: none"> • Advice on public procurement matters. • Drive standardisation of procurement training. • Drive standardisation of specifications across institutions. • Provide Subject Matter Expertise on key procurement matters. • Drive lessons learnt, knowledge exchange, best practice and critical skills. • Drive consistency on technology, systems and tools across public institutions. • Own the digital topic and provide model to execute on digitalisation of public procurement. • Own the BBBEE Act implementation and provide guidance on objective criteria on set-asides.

<p>Independence of the Regulator</p>	<p>Formation of a Regulator within national department could lead to the independence of that regulator being compromised due to the influence that department could exercise over the proposed Regulator. A greater degree of independence is achieved where the proposed Regulator is accountable to the National Assembly. This also achieves a degree of transparency in reporting. Linked to ensuring the independence of the proposed Regulator is the funding thereof (as provided for in section 106 of the bill). The proposed Regulator should not be beholden to any one national department for funding as this could impair its independence in reporting.</p>
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Proposed amendment by chapter and section

BILL CHAPTERS AND SECTIONS	BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
CHAPTER 1: DEFINITIONS, OBJECTS, APPLICATION AND ADMINISTRATION OF ACT				
1	Definitions	9		
			In order to set a comprehensive understanding and uniform application of the terminology "close relative" as contemplated in sub-paragraph 18, it is recommended to explicitly define it as its magnitude is currently not clear.	EU defines relatives as: a person to whom one is engaged to be married, spouse, domestic partner, lineal relations by blood and by marriage, siblings, children of siblings, spouses and domestic partners of siblings and siblings of spouses and domestic partners, siblings of the parents or foster parents and foster children.
2	Objects of Act	11	The act is developed to assimilate regulatory framework for public procurement to provide uniform guidance, eliminate fragmentation and conflicting prescripts realised in the current legislation.	
3	Application and administration of Act	12	Various legislative prescripts relating to procurement of goods, services and infrastructure are together intended to provide a common framework supporting SA procurement, these legislative pieces may in some situation conflict with the Bill. To achieve the correct balance, the Bill is designed as a principal tool that will take presidency in the event of such conflict during the implementation of procurement proceedings.	
CHAPTER 2 PUBLIC PROCUREMENT REGULATOR, PROVINCIAL TREASURIES AND PROCURING INSTITUTIONS				
Part 1 Public Procurement Regulator				
4	Establishment of Public Procurement Regulator	13	The Bill provides for the recasting of the National Treasury OCPO as a Public Procurement Regulator (PPR), a juristic person with jurisdiction throughout the Republic of South Africa on public procurement/SCM.	Formation of a Regulator within national department could lead to the independence of that regulator being compromised due to the influence that department could exercise over the proposed Regulator.
				The Information Regulator in terms of the Protection of Personal Information Act, 4 of 2013, has been established in the abovementioned manner and could be consulted for reference.

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
			Section 4(1) proposes the formation of the Regulator within the National Treasury.	A greater degree of independence is achieved where the proposed Regulator is accountable to the National Assembly. This also achieves a degree of transparency in reporting. Linked to ensuring the independence of the proposed Regulator is the funding thereof (as provided for in section 106 of the bill). The proposed Regulator should not be beholden to any one national department for funding as this could impair its independence in reporting.	
4	Establishment of Public Procurement Regulator	13	Section 4 is silent on the appointment of the Head of the proposed Regulator and also on the ground for the removal of such proposed Regulator.	A greater degree of impartiality is achieved where the regulator is appointed by the President on the recommendation of the National Assembly as this provides both transparency as to the candidates and allows for greater debate on the suitability of the candidates. However, other regulators are appointed by the appropriate Minister, which in this case would be the Minister of Finance. It is also practice that grounds for the removal of a Regulator are provided. We are supportive of this in light of the recent governance failures at certain public departments and state owned enterprises.	
5	General functions of Regulator	13	The Bill provides to the PPR powers of policy review, audit, investigation, and the establishment of reporting requirements will be granted to the PPR. The PPR may refer investigations to relevant authorities, order procuring entities to comply with the Bill and require the procuring entity to take appropriate actions. The PPR may recommend that public officers be sanctioned. The PPR may initiate criminal	To ensure full compliance and consistency in implementation of the bill it is recommended as part of the Regulator's functions to establish a Centre of Excellence on Procurement to: <ul style="list-style-type: none"> • Provide advice on public procurement matters. • Drive standardisation of procurement training. • Drive standardisation of specifications across institutions. 	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
			proceedings. The PPR may annul, revise and substitute decisions or policies of procuring entities. The PPR may, pending investigations, suspend or terminate procurement processes and activities. The PPR may recommend to the appropriate authority that the exercise of the procurement function by an Accounting Officer or Authority be suspended. Political office-bearers will be prohibited from interfering in the procurement systems of procuring entities, being confined to a policy-setting and oversight role. In terms of the Bill persons in the employ of the State are prohibited from trading with the State.	<ul style="list-style-type: none"> • Provide Subject Matter Expertise on key procurement matters. • Drive lessons learnt, knowledge exchange, best practice and critical skills. • Drive consistency on technology, systems and tools across public institutions. • Own the digital topic and provide model to execute on digitalisation of public procurement. • Own the BBBEE Act implementation; and Provide guidance on objective criteria on set-asides. 	
6	Declaration by Regulator of certain practices as undesirable	14	Empowerment of the Regulator for declaration of certain practices as undesirable		
8	Protection of information	15	No material change between current legislation and proposed Bill		
Part 2: Provincial Treasuries					
9	Functions of Provincial Treasuries	15	No material change between current legislation and proposed Bill	For smooth running of the Regulator's office and extended support to ensure that institutions are fully capacitated in the implementation of the bill it is recommended to establish a Provincial Centre of Excellence on Procurement, aligned to the Regulator CoE, to provide: Advise on public procurement matters Drive standardisation of procurement training Drive standardisation of specifications across institutions Provide Subject Matter Expertise on key	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
				<p>procurement matters</p> <p>Drive lessons learnt, knowledge exchange, best practice and critical skills</p> <p>Drive consistency on technology, systems and tools across public institutions</p> <p>Own the digital topic and provide model to execute on digitalisation of public procurement</p> <p>Own the BBBEE Act implementation and provide guidance on objective criteria on set-asides</p>	
Part 3: Procuring institutions					
13	Instructions inconsistent with Act	17	The bill provides for the speak up platform to make good-faith reports of any procurement process breach for further investigations, however there must be a mechanism for protection of officials who report wrongdoing with fear of reprisal or retaliation for complying with his/her duties.	<p>From our viewpoint it is recommended to have a provision for anonymous reporting to the Minister to prevent victimisation and ill treatment of the affected persons.</p> <p>Management must be counselled to support this speak-up, open-door culture where officials feel comfortable bringing their concerns to light.</p> <p>It is recommended to establish an ethics office which will be empowered to provide confidential advice and guidance, and protect officials, as well as suppliers from retaliation for good-faith reporting of misconduct or for cooperating with duly authorised investigations.</p> <p>- a hotline/whistle blow platform</p>	The UN supports an open environment where such good faith reporting is viewed as a positive action in protecting the best interests of the state.
CHAPTER 4: PREFERENTIAL PROCUREMENT					
26	Framework for preferential treatment	23	The repeal of the PPPFA.	It is of our opinion that the Regulator should adopt a comprehensive and rigorous approach into communication with SMEs on public procurement to address challenges faced by SMEs at every stage of the procurement process, such as lack of information about potential contracts, inability to draw up business plans, mismatch between the size of the enterprise and the large size of many contracts,	The EU Commission has adopted a strategy that intends, in particular, developing the possibilities of improving access to information, crucial for SME, by consistent application of information and communications technology.
			This Act is considered as outdated, too rigid, stringent and constrained particularly on the application of preferential points system.		

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
				anxiety about currency fluctuations, and the need to meet standards, certification and qualification requirements and also delays in payment that arise in the post award stage.	
CHAPTER 5: PROCUREMENT METHODS AND BIDDING PROCESS					
Part 2: Bidding process					
	Provision of bid documents		The bill is silent on the provision of bid documents	It is recommended for the Bill to cater for the subsection on provision of Bid documents with an intentionintention of providing suppliers with information they need to prepare their bids and to inform them of the rules and procedures according to which the bidding proceedings will be conducted. All suppliers expressing an interest in participating in the bidding proceedings and that comply with the procedures set forth by the institution should be provided with tender documents. Additionally, institutions may charge the price for provision of bid documents for the purpose of recovering its costs of printing and providing those documents, but to avoid excessively high charges that could inhibit qualified suppliers from participating in the bidding proceedings.	
	Pre-Bid information sessions		The Bill does not address the bid briefing.	The Bill must cater for bid clarification sessions. Where applicable, particulars of information sessions and presentation meetings are to be conducted and it must be clearly stated if these sessions are compulsory. Institutions must maintain and make publicly available the records of these sessions	
31	Deadline for submission of bids	25	In accordance with the Treasury Regulations 2005, bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids	Further clarification is required on the rationale behind changing days into weeks, it is suggested to use days throughout the document/bill for consistency and be explicit on business/working days and	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
			may be advertised for such shorter period as the accounting officer or accounting authority may determine as opposed to the Bill which recommends four weeks with no provision for a shorter advertising period for urgent/emergency cases etc,	<p>weekends</p> <p>It is also recommended to provide timelines for:</p> <ul style="list-style-type: none"> - reporting emergency cases. 4 weeks is a blanket timeline and does not consider type of goods/services, complexity and ease of supply in the marketplace. Consider shorter timelines for routine and leverage goods/services. - submission of quotations which has shown prejudice of suppliers on many occasions. <p>In summary, the bill should provide for different timelines for each type of bidding process and add provision for extension of deadlines.</p> <p>It is also suggested to add provision for a clear definition of tender box, and how to handle the bid register.</p>	
32	Withdrawal and modification of bids	25	This section addresses the withdrawal and modification of bids by the bidders only, it does not provide guidelines where the withdrawal or modification of bids is initiated by the institutions.	<p>It is important for the Regulator to establish procedures for withdrawal and modification of bid by the institution.</p> <p>Withdrawal and modification of bids must be communicated by the institution to all suppliers/ bidders to whom the institution provided bid documents.</p> <p>Prompt communication of modifications enables suppliers to exercise their right to modify or withdraw their bids prior to the deadline for submission of bids.</p>	
33	Bid validity period	25	The maximum bid validity period is not specified in the current legislation. it is expected that bidders are to submit bids valid for a period specified in the bidding documents which should be sufficient to enable the institution to complete the	It is recommended for the Bill to provide for a 180-day bid validity period, however this is the maximum validity, and other procurement bid could stipulate less time than 180 days. This will be applied per bid opportunity.	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
			comparison and evaluation of bids, review the recommendation and award the contract.	Institutions must document and report on any extensions to govern the 180 days and extension process (as having 180 days validity should give enough time to complete the bidding internal processes and should not follow by a lot of extensions).	
38	Rejection of bid or proposal	27	The Bill has made provision for inclusion of subsection 38 (2)(d)(i),(ii), (iii) where the bid may be rejected where the bidder has a member that is an official of the institution where this Bill applies.	<p>It is recommended to stipulate in the Bill that the institution shall not incur any liability, solely by virtue of its invoking subsection 38 (1) of this Bill, towards suppliers that have submitted bids or proposals,</p> <p>To foster transparency and accountability by the institutions, a notice of the rejection of all bids or proposals must be given promptly to all suppliers that submitted bids or proposals.</p>	
41	Verification of bidders or suppliers	28	Institutions are required to forward a written request to the Regulator to verify if a preferred bidder, or any of that bidder's directors, members, trustees or partners, is listed on the register for bidders and suppliers debarred in terms of section 22(1) whereas in the current legislation the institutions are directed to verify the preferred bidder directly from the National Treasury (NT) list of defaulters or list of blacklisted suppliers without submission of written request to NT.		
42	Award of procurement contracts	28	The current practice on waiting period after the publication of the bid award for reconsideration/appeals is two weeks as opposed to 10 days as proposed in this Bill.	<p>It is recommended to include the following elements when conducting contract negotiations:</p> <ul style="list-style-type: none"> - Provision of principles for negotiations with bidders for prices, quality and contract terms & conditions. <p>Provision of negotiations with bidders who are not the cheapest in order to realise value for money in cases</p>	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
				where other bidders have proposed the most effective solution but are not the cheapest.	
Part 3: Transversal procurement					
43	Panel term contracts			<p>In order to address these challenges, it is recommended for the Regulator to include in the bill a subsection for the appointment of the panel term contracts</p> <p>Institutions may maintain a panel of suppliers by inviting interested suppliers through the competitive bidding process to apply for inclusion on the panel.</p>	
Part 6: SUPPLY CHAIN MANAGEMENT					
Part 1: Supply Chain Management System					
52	Supply chain management system	34	The Bill addresses all areas from a legislation point of view as well as functionality across the supply chain sphere	<p>Amendment to Treasury Regulations (clause 16A3.2)</p> <p>It is recommended for the Bill to cater for the:</p> <ul style="list-style-type: none"> - development of Master Data Management function, that will drive the implementation of different data management elements, this will assist in providing data accuracy and drive true insights on spend management and contract management functions of procurement; and development of Analytics function, that will drive big data analysis and ensure sharing of insights to make decisions in procurement e.g. category segmentation, strategic sourcing, spend management, contract compliance and drive claims in terms of non-performance 	
Part 2: Institutional arrangements					

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
62	Composition of bid adjudication committees	37	<p>Minimum number members reduced from 4 to 3.</p> <p>Currently the CFOs are chairing the BAC where practically possible, however the Bill now states that the chair only needs to have the requisite skills.</p> <p>Quorum required was at least 60%, however the Bill does not address minimum prescribed.</p>	<p>The following elements are not covered in the bid committees:</p> <p>(a) Quorum – guidance must be provided to the institutions to minimise decision-taking where a committee does not constitute a quorum.</p> <p>(b) Levels/powers of committee members – this is important to ensure involvement of officials/members with right set of skills, competency, and knowledge to minimise incorrect decisions by committees due to lack of capabilities and reduce appeals.</p>	
64	Decisions of accounting officer or accounting authority on recommendations of bid adjudication committee	38	As per current Treasury Regulation, tenders are awarded based on institutions own internal tender process.		
CHAPTER 9: DISPUTE RESOLUTION					
Part 1: Reconsideration and review					
94	Reconsideration or review of decision	51	Current legislation does not detail contract dispute resolution.	The proposed changes of inclusion of the dispute resolution section as per the proposed procurement bill is much appreciated. The section gives clear guidance and procedures as to how the dispute resolution should be implemented.	<p>The proposed bill is benchmarking with countries such as Singapore, whereby tribunals are established for dispute resolutions with clear processes in place. For EU, Independent Authorities are established however challenges are experienced with regard to resolving issues before contracts are executed or end of contract lifecycle.</p> <p>Reference: Public Procurement Bill in the European Union (Brussels,11.03.1998, COM 1998, 143 final)</p> <p>Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)</p>
95	Prohibition on contract award during reconsideration or review proceedings	51			
Part 2: Reconsideration by procuring institution					

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
96	Reconsideration by institution	51	Current legislation does not detail contract dispute resolution.	The proposed changes of inclusion of the dispute resolution section as per the proposed procurement bill is much appreciated. The section gives clear guidance and procedures as to how the dispute resolution should be implemented.	<p>The proposed bill is benchmarking with countries such as Singapore, whereby tribunals are established for dispute resolutions with clear processes in place. For EU, Independent Authorities are established however, challenges are experienced in regard to resolving issues before contracts are executed or end of contract lifecycle.</p> <p>Reference: Public Procurement Bill in the European Union (Brussels,11.03.1998, COM 1998, 143 final) Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)</p>
Part 3: Provincial reconsideration procedure					
97	Reconsideration by provincial treasuries	52	Current legislation does not detail contract dispute resolution.	The proposed changes of inclusion of the dispute resolution section as per the proposed procurement bill is much appreciated. The section gives clear guidance and procedures as to how the dispute resolution should be implemented.	<p>The proposed bill is benchmarking with countries such as Singapore, whereby tribunals are established for dispute resolutions with clear processes in place. For EU, Independent Authorities are established however challenges are experience regarding resolving issues before contracts are executed or end of contract lifecycle.</p> <p>Reference: Public Procurement Bill in the European Union (Brussels,11.03.1998, COM 1998, 143 final) Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)</p>
Part 4: National reconsideration procedure					
98	Reconsideration by Regulator	53	Current legislation does not detail contract dispute resolution.	The proposed changes of inclusion of the dispute resolution section as per the proposed procurement bill is much appreciated. The section gives clear guidance and procedures as to how the	The proposed bill is benchmarking with countries such as Singapore, whereby tribunals are established for dispute resolutions with clear processes in place.

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
				dispute resolution should be implemented.	For EU, Independent Authorities are established however challenges are experienced regarding resolving issues before contracts are executed or end of contract lifecycle. Reference: Public Procurement Bill in the European Union (Brussels,11.03.1998, COM 1998, 143 final) Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)
Part 5: Review					
99	Establishment of Tribunal	53	Current legislation does not detail contract dispute resolution.	The proposed changes of inclusion of the dispute resolution section as per the proposed procurement bill is much appreciated. The section gives clear guidance and procedures as to how the dispute resolution should be implemented. It would be valuable from a mandate and clarity perspective to include a substantive right of appeal to the Tribunal. The appointment of members by the President could be considered with accountability to National Assembly.	The proposed bill is benchmarking with countries such as Singapore, whereby tribunals are established for dispute resolutions with clear processes in place. For EU, Independent Authorities are established however challenges are experience regarding resolving issues before contracts are executed or end of contract lifecycle. Reference: Public Procurement Bill in the European Union (Brussels,11.03.1998, COM 1998, 143 final) Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)
100	Review process	54	The tribunal is only mandated to review the administrative process followed during reconsideration or review by the Regulator and/or the provincial treasury. Accordingly, no mechanism exists for an appeal of the reconsideration decision by the Regulator and/or the provincial treasury. Extensive provisions exist for the functioning of the Tribunal (where the Tribunal is merely dealing with review scenarios) but no such comprehensive provisions exist for the decisions made by the Regulator. A greater degree of transparency is sometimes achieved by ensuring that the member appointment to the Tribunal is not exclusively done by the Minister, however, this has worked in certain circumstances.		
101	Composition of Tribunal	54			
102	Qualification of members	54			
103	Functions of Chairperson and Deputy Chairperson	54			
104	Disclosure of interest by member of Tribunal	55			
105	Term of office, termination of membership and conditions of service	55			
106	Finances of Tribunal	56			
107	Resources of Tribunal	56			
108	Conduct of persons involved in work of Tribunal	56			
109	Panels of Tribunal	56			
110	Tribunal rules	57			The Competition Act, 89 of 1998, provides for the Presidential appointment of the Chairperson of the Competition Tribunal and the members thereto. The Protection of Personal Information Act, 4 of 2013, provides for Presidential appointment of the members of the Regulator on recommendation from National Assembly. The

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the material changes to the Bill	Proposed amendments	Best practice
111	Proceedings for review	57	Section 105(1) of the bill provides that the Minister can determine a shorter period of office for the Regulator once appointed without a reference to the reasons for such shorter period.	Section 105(4) should be referenced in section 105(1) so as to clarify that the arbitrary removal of the Minister is only permitted on the grounds listed in section 105(4), and not merely at the Ministers discretion as section 105(1) currently reads	The strength of the Regulator will lie in their independence and their ability to conduct investigations without interference. Should the Minister be able to arbitrarily remove the Regulator, this could undermine any current investigations which the Minister may not approve of.
112	Tribunal orders	57			
113	Judicial review and enforcement of Tribunal orders	58			
Chapter 10: General provisions					
114	Delegation	59	Current legislation does not detail general provisions	The proposed changes regarding establishment of tribunals and independent authorities will ensure effectiveness of the National Treasury towards public procurement.	The proposed bill is benchmarking with countries such as Singapore, whereby tribunals composition, term and processes are clearly defined. Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)
115	Limitation of liability	59			
116	Documents to be made available	59			
117	Database of prospective suppliers	60			
118	Offences	60			
119	Exemption	60			
120	Deviation	61			
121	Regulations	61			
122	Transitional measures	64			
123	Repeal of laws and saving	64			
124	Short title and commencement	64			

Making the shift towards “Value for Money”

The current platform on how public procurement is being facilitated is dramatically changing. To give effect to this draft Bill, National Treasury and the Regulator need to put in place appropriate measures to ensure that the outcome of the procurement process brings about value for money to government since cheapest price can no longer be the only factor to be considered. A Total Cost of Ownership (TCO) is required as opposed to short-sighted commercial offerings alone, where operating budgets are inadequate due to factors such as maintenance; transport; fluctuating exchange rates and special operating conditions are not factored in. Consequently, numerous audit findings translate into fruitless and wasteful expenditure, as well as non-compliance and poor governance processes. Service Delivery is a cornerstone and at the heart of public sector procurement, and it therefore needs a serious focus on achieving value for money for each rand spent. Our assessment of the draft Bill indicates that there are potential improvement areas required to ensure value for money through process and operational efficiencies. One such example is the fragmentation of standard operating procedures (SOPs) across National; Provincial; and Local spheres, as well as limited visibility of centralised transversal spend versus decentralised spend. In some instances, the same product or service is procured from the same supplier at varying inflated prices, making the state a net price taker. Furthermore, specifications are not well articulated at the outset, resulting in inferior responses; provision of poor-quality goods/services; and increased costs. Essentially, standardisation and embedding of good SCM practices will translate into improved efficiencies and ultimately value for money objectives. We offer further insights into value for money improvements in our commentary table section.

The table below summarises the key recommendations that we believe should be considered for amendment in the Public Procurement bill to ensure the shift towards “Value for Money”.

<i>Proposal Name</i>	<i>Description</i>
Elevation of the Central Supplier Database	To put more emphasis on CSD prominence, it is recommended for the bill to clearly stipulate the obligation of suppliers that are interested in conducting business with the state institutions to register with the Regulator's supplier database and that the State institutions shall not be permitted to have their own internal supplier databases.
Promotion of Enterprise Supplier Development	Notwithstanding the responsibilities of the Minister as contemplated in subsection (1), it is recommended for the Regulator to:

	<p>Set forth the principal method that may be used by the institutions for procurement of goods, services and infrastructure which is a competitive tendering method.</p> <p>Set provision for institutions to stipulate objective criteria aligned to BBBEE Act, to advance the Enterprise Supplier Development (ESD) objective.</p>
Guiding the negotiating process	<p>It is recommended to include the following elements when conducting contract negotiations:</p> <ul style="list-style-type: none"> - Provision of principles for negotiations with bidders for prices, quality and contract terms & conditions. <p>Provision of negotiations with not the cheapest bidders in order to realise value for money in cases where other bidders have proposed the most effective solution but are not the cheapest.</p>
Standing Bid Committees and oversight thereof	<p>It is recommended that institutions appoint cross functional standing committee members for the Bid Specification and Adjudication Committees for at least three (3) years as this will bring efficiency to the process.</p> <p>We are suggesting that the Bill should at least address the following elements of the bid committees as they currently pose challenges in the management of these committees:</p> <ul style="list-style-type: none"> (a) Quorum – guidance must be provided to the institutions to minimise decision-taking where a committee does not constitute a quorum. (b) Levels/powers of bid committee members – this is important to ensure involvement of officials/members with right set of skills, competency, and knowledge to minimise incorrect decisions by committees due to lack of capabilities and reduce appeals.
Contract Renewals	<p>It is recommended that of number contract extensions be limited as the current practice within institutions is to renew contracts without testing the market. Value for money must considered at the time</p>

	<p>considering renewals.</p> <p>Will the Regulator determine the % contract variation that may be considered by the institution and Regulator (>20% NT currently).</p> <p>It is recommended for institutions to report to the Regulator at least on a quarterly basis all contract renewals and reasons for extending these contracts.</p>
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Proposed amendment by chapter and section

BILL CHAPTERS AND SECTIONS	BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
CHAPTER 1: DEFINITIONS, OBJECTS, APPLICATION AND ADMINISTRATION OF ACT				
2	Objects of Act	11	The bill is developed to support ongoing procurement reform and harmonisation efforts in the SA system, maximise economy and efficiency in procurement, foster and encourage participation of suppliers in procurement proceedings, promote competition among suppliers for the supply of the goods, services and infrastructure, provide for the fair and equitable treatment of all suppliers, promote the integrity, and achieve transparency in the processes relating to procurement.	
CHAPTER 2: PROCUREMENT REGULATOR, PROVINCIAL TREASURES AND PROCURING INSTITUTIONS				
Part 1 Public Procurement Regulator				
4	Establishment of Public Procurement Regulator	13	The PPR is enabled to exercise its powers independently and impartially, without fear, favour or prejudice, and guarantee the necessary organisational independence to uphold the constitutional principles in Section 217 on procurement	
6	Declaration by Regulator of certain practices as undesirable	14	Bring efficiencies, as the Regulator becomes the custodian of the principle and ensures consistency in the interpretation and implementation of the practice across the government institutions.	
7	Access to information held by Regulator	14	It is recommended to include the provision of access to information to institutions outside of RSA, with aim to drive the necessary due diligence in cases of opportunities of investment and expansions on the particular supplier(s)	
Part 3: Procuring Institutions				

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
10	General procurement requirements	16	The Regulator can assist with advancement of Government's objectives on economic transformation and provide instructions that enable the BBBEE Act application to be effective and efficient in driving economic transformation.	The Regulator needs to use this Act to also advance the BBBEE Strategy, Objectives, Act, Regulations. The Regulator can amend the general conditions of 10 (3)t, "An institution may only contract with bidders that are (c) Comply with the BBBEE Act.	
13	Instructions inconsistent with Act	17	Speaking up for possible misconduct, wrongdoing protects the best interests of the state, therefore should support the basis for "value for money"	<p>From our viewpoint it is recommended to have a provision for anonymous reporting to the Minister to prevent victimisation and ill treatment of the affected persons.</p> <p>Management must be counselled to support this speak-up, open-door culture where officials feel comfortable bringing their concerns to light.</p> <p>It is recommended to establish an ethics office which will be empowered to provide confidential advice and guidance, and protect officials, as well as suppliers from retaliation for good-faith reporting of misconduct or for cooperating with duly authorised investigations. - a hotline/whistle blow platform</p>	The UN supports an open environment where such good faith reporting is viewed as a positive action in protecting the best interests of the state.
CHAPTER 3: PROCUREMENT INTEGRITY					
17	General conduct of officials in procurement	19	The Bill has clearly outlined the expected conduct of the officials, suppliers/bidders and other role players involved in the procurement proceedings.		
19	Conduct of bidders and suppliers	19	Such bidders may be subjected to exclusion from the procurement processes to eliminate transgression of the public procurement rules.	The Bill must address the sanctioning of suppliers who fail to comply with the requirements of subsections 19(a)(b)(c).	The UN procurement laws are designed to support procurement integrity with certain rules addressing the code of conduct for officials and suppliers, disclosure of conflict of interest, unfair procurement practices and appropriate sanctions to deal with misconduct and corruption

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20	Declarations of interest by bidders and applicants for registration on database	20	This is to emphasise the importance of registration of suppliers on the Regulator supplier database (referred to as CSD)	To put more emphasis on CSD prominence, it is recommended for the bill to clearly stipulate the obligation of suppliers that are interested in conducting business with the state institutions to register with the Regulator's supplier database and that the State institutions shall not be permitted to have their own internal supplier databases.	The UN procurement laws are designed to support procurement integrity with certain rules addressing code of conduct for officials and suppliers, disclosure of conflict of interest, unfair procurement practices and appropriate sanctions to deal with misconduct and corruption
21	Undue Influence	20	The bill must make provision of a central platform (whistle blow) to report any procurement process breach for further investigations and mechanisms to prevent reprisal or retaliation of officials or suppliers that have been reported. The current system of reporting the bidders is not as effective, many suppliers that commit unlawful acts are still conducting business with the state institutions. Centralised/Direct monitoring of suppliers by an independent regulator's office.	It is recommended to include the following aspects in this section: Reporting timelines for institutions where an institution intends to report a bidder/supplier who committed any of the acts listed in subsection (1) for possible debarment for a service that was rendered a couple of years back but only came to light recently? The publication of each debarment order, and amendments should include publication of bidders/suppliers that have finished serving their sentence. Prohibition of officials who discriminate suppliers that have finished serving their debarment period from conducting business with institutions. Conducting business with cross-border debarred suppliers.	
22	Debarment	20	The bill must make provision of a central platform (whistle blow) to report any procurement process breach for further investigations and mechanisms to prevent reprisal or retaliation of officials or suppliers that have been reported. The current system of reporting the bidders is not as effective, many suppliers that commit unlawful acts are still conducting business with the state institutions. Centralised/Direct monitoring of suppliers by an	It is recommended to include the following aspects in this section: Reporting timelines for institutions where an institution intends to report a bidder/supplier who committed any of the acts listed in subsection (1) for possible debarment for a service that was rendered a couple of years back but only came to light recently? The publication of each debarment order, and amendments should include publication of	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
			independent regulator's office.	<p>bidders/suppliers that have finished serving their sentence.</p> <p>Prohibition of officials who discriminate suppliers that have finished serving their debarment period from conducting business with institutions.</p> <p>Conducting business with cross-border debarred suppliers.</p>	
23	Consultation before making debarment order	21	It is not efficient and effective to only deliver the debarment to a bidder's last known email or physical business or home address. The bidder can still contest the validity of the delivery, however, if it is delivered to all the three (3) channels that would eliminate any contest by the bidder/supplier.	Amendment of "If the Regulator after taking all reasonable steps, including through electronic means, cannot locate a bidder or supplier to be given a provisional debarment notice, delivering the document or information to the bidder or supplier's last known e-mail, physical business or residential address constitutes delivery" to ensure that delivery is when the documents are delivered to all forms i.e. e-mail, physical business and residential address.	
24	Automatic exclusion from procurement processes	22	Automatic exclusion from procurement processes of an employee of any organ of state, instead of an employee of that particular institution, might be limiting growth and economic transformation. Economic transformation also involves innovation and participation to opportunity by different individuals. The current statement suggests that an employee of State can't start, build and manage a business, in which it can grow and hire other people	Automatic exclusion from procurement processes must be with the employee working for the particular institution performing the procurement opportunity.	
25	Publication of debarred bidders or suppliers	22	Publication of debarred bidders or suppliers on a central repository or portal, would bring efficiencies as it will eliminate situations where a bidder/supplier keeps working with a government institution while it is debarred. Inefficiencies can arise in case where the bidder gets awarded a contract while debarred by another institution, then	It is recommended for the Regulator to establish an online debar publication portal integrated with other public sector digital tools.	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
			flagged which could cause rework and other sittings of adjudication committee to appoint an alternative bidder/supplier		
23	Consultation before making debarment order	21	It is not efficient and effective to only deliver the debarment to a bidder's last known email or physical business or home address. The bidder can still contest the validity of the delivery, however, if it is delivered to all the three (3) channels that would eliminate any contest by the bidder/supplier.	Amendment of "If the Regulator after taking all reasonable steps, including through electronic means, cannot locate a bidder or supplier to be given a provisional debarment notice, delivering the document or information to the bidder or supplier's last known e-mail, physical business or residential address constitutes delivery" to ensure that delivery is when the documents are delivered to all forms i.e. e-mail, physical business and residential address.	
24	Automatic exclusion from procurement processes	22	Automatic exclusion from procurement processes of an employee of any organ of state, instead of an employee of that particular institution, might be limiting growth and economic transformation. Economic transformation also involves innovation and participation to opportunity by different individuals. The current statement suggests that an employee of State can't start, build and manage a business, in which it can grow and hire other people	Automatic exclusion from procurement processes must be with the employee working for the particular institution performing the procurement opportunity.	
25	Publication of debarred bidders or suppliers	22	Publication of debarred bidders or suppliers on a central repository or portal, would bring efficiencies as it will eliminate situations where a bidder/supplier keeps working with a government institution while it is debarred. Inefficiencies can arise in case where the bidder gets awarded a contract while debarred by	It is recommended for the Regulator to establish an online debar publication portal integrated with other public sector digital tools.	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
			another institution, then flagged which could cause rework and other sittings of adjudication committee to appoint an alternative bidder/supplier		
CHAPTER 4: PREFERENTIAL PROCUREMENT					
26	Framework for preferential treatment	23	<p>Lack of guidance on principles on how to assist Small Medium Enterprises with regard to capabilities and capacity issues to respond to public procurement brings a lot of inefficiencies.</p> <p>Preferential procurement must also align and bring to effect the objects of BBBEE Act, especially with regard to Enterprise & Supplier Development. Through effective channels the institutions must align with other government agencies e.g. SEDA, SEFA, IDC etc. to provide financial and non-financial supports so to ensure that the bidders/suppliers can execute on their contracts and commitments</p>	It is of our opinion that the Regulator should adopt a comprehensive and rigorous approach into communication with SMEs on public procurement to address challenges faced by SMEs at every stage of the procurement process, such as lack of information about potential contracts, inability to draw up business plans, mismatch between the size of the enterprise and the large size of many contracts, anxiety about currency fluctuations, and the need to meet standards, certification and qualification requirements and also delays in payment that arise in the post-award stage.	The EU Commission has adopted a strategy that intends, in particular, developing the possibilities of improving access to information, crucial for SME, by consistent application of information and communications technology.
CHAPTER 5: PRECUREMENT METHODS AND BIDDING PROCESS					
Part 1: General methods					
27	Procurement methods and principles	24	This will set the tone for transparency, best value maximum competition and fair distribution of work to the suppliers,	<p>Notwithstanding the responsibilities of the Minister as contemplated in subsection (1), it is recommended for the Regulator to:</p> <p>Set forth the principal method that may be used by the institutions for procurement of goods, services and infrastructure which is a competitive tendering method. Set provision for institutions to stipulate objective criteria aligned to BBBEE Act, to advance the Enterprise</p>	It is a common practice adopted by the EU to consider open tender process as a primary method for procurement of goods, services and infrastructure.

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
				Supplier Development (ESD) objective.	
	Thresholds for Procurement		It is of importance to set timelines for review of financial thresholds to meet the market demands.	It is recommended that the Bill should cater for a committee that will be responsible for setting and reviewing of bid financial thresholds. The institutions are to adhere to the prevailing thresholds at all times.	
Part 2: Bidding process					
28	Invitation to bid	24	The principles covered will minimise the cancellation of bids which is normally caused by ambiguous/omission of relevant information in the invitation to bid document (advert) and bid document.	To minimise inconsistencies on information contained in bid advertisements, it is suggested for the Regulator to standardise invitation to bid document (adverts) to be used by the institutions. In order to promote efficiency and transparency, invitations to bid should contain the information required for suppliers to be able to ascertain whether the goods and services being procured are of a type that they can provide and, if so, how they can participate in the tendering proceedings. The specified information requirements are only the required minimum so as not to preclude the procuring entity from including additional information that it considers appropriate	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
	Publication of invitation to bid		This will promote widespread awareness to suppliers of procurement opportunities for attraction of relevant audience and to provide an effective level of competition.	We suggest the inclusion of the invitation to bid in the Bill where bids can be publicised by means of medium that is wide and accessible enough to promote competition. These might include, for example, by posting the invitation on official notice boards, institution website, media etc.	
30	Qualifications criteria for bidders	24	Provision of objective criteria aligned to BBBEE Act, Enterprise & Supplier Development objectives	The institutions are not required necessarily to apply each of the criteria in every instance of procurement. In the interests of transparency, however, the institutions are to apply the same criteria to all bids in a given procurement proceeding and they should be precluded from applying criteria that have not been pre-disclosed to the suppliers in the invitation to bid and tender document	
34	Withdrawal and modification of bids	25	In order to foster efficient, fair and successful conduct of bidding proceedings, it is equally important to address withdrawal and modification of bids from both bidders and institutions angle.	It is important for the Regulator to establish procedures for withdrawal and modification of bid by the institution. Withdrawal and modification of bids must be communicated by the institution to all suppliers/ bidders to whom the institution provided bid documents. Prompt communication of modifications enables suppliers to exercise their right to modify or withdraw their bids prior to the deadline for submission of bids.	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
35	Bid validity period	25	<p>It is of importance that the validity period of tenders should be stipulated in the bid documents, taking into account the circumstances peculiar to the particular bidding process although it is not a viable solution to fix a generally applicable long validity period for the sake of covering the bidding process needs which has a potential to erode the value for money benefits.</p> <p>Excessively long bid validity periods may result in higher bid prices since suppliers would have to include in their prices an increment to compensate for the costs and risks to which they would be exposed during such a period.</p> <p>Increasing to 180 days drives efficiencies as it limits procurement resources from lengthy communications with suppliers for extensions, however might also bring inefficiencies as resources might take longer to complete activities.</p>	<p>It is recommended for the Bill to provide for a 180-day bid validity period, however this is the maximum validity, and other procurement bids could stipulate lesser time than 180 days. This will be applied per bid opportunity.</p> <p>Institutions must document and report on any extensions to govern the 180 days and extension process (as having 180 days validity should give enough time to complete the bidding internal processes and should not follow by a lot of extensions).</p>	
37	Examination and evaluation of bids	26	<p>The purpose for inclusion of this subsection is to promote accuracy and objectivity in the decision of the institutions</p> <p>Understanding and application of Total Cost of Ownership when compiling bid specifications and evaluation criteria, would ensure that bids are evaluated in an objective perspective, and not only looking at the cheapest bid.</p> <p>Cheapest bid does not translate to value for money, as the bidder could have under-priced or not proposed the most effective solution, which could result to institutions putting in more money to ensure that the cheap bidder executes on the contract(s).</p>	<p>It is proposed that the Bill caters for the conversion of currency in bid prices. i.e. When bid prices are expressed in two or more currencies, the bid prices of all bids must be converted to a single currency which is the South African currency, and according to the rate specified in the bid documents for the purpose of evaluating and comparing bids.</p> <p>It is recommended to regulate the permission of bidders to attend the bid evaluation process as observers for the purpose of transparency and minimisation of potential appeals</p>	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
41	Verification of bidders or suppliers	28	The approach taken in subsection 41 may result in undue delays of the award of contract.	<p>Provision of a digital portal to check and verify bidders/ suppliers on debar and also other matters.</p> <p>The portal should be able to integrate with other existing platforms to check due diligence of the bidders/ suppliers.</p>	
42	Award of procurement contracts	28	The shorter period for the publication of awards automatically minimises the bidding process hence the institutions will be able to finalise the bidding process before the expiration of the bids validity.	<p>It is recommended to include the following elements when conducting contract negotiations:</p> <ul style="list-style-type: none"> - Provision of principles for negotiations with bidders for prices, quality and contract terms & conditions. <p>Provision of negotiations with not the cheapest bidders in order to realise value for money in cases where other bidders have proposed the most effective solution but are not the cheapest.</p>	
Part 3: Transversal procurement					
	Panel term contracts		The institutions have seen various challenges in the process of appointment, maintenance and termination of panel of suppliers, hence these panels end up being ineffective and redundant. In order to address these challenges, it is recommended for the Regulator to include in the bill a subsection for the appointment of the panel term contracts	<p>In order to address these challenges, it is recommended for the Regulator to include in the bill a subsection for the appointment of the panel term contracts.</p> <p>Institutions may maintain a panel of suppliers by inviting interested suppliers through the competitive bidding process to apply for inclusion on the panel.</p>	
Part 4: Public-Private Partnership					
44	Public-private partnership approvals and agreement	30	The proposed PPP guidelines and principles align to the object of delivering value for money for the Regulator and the institutions through provision of creation of function that possesses the necessary skills, capabilities,	The Bill and current legislation cover the establishment of PPP through competitive procurement processes, there is a gap when an institution received an unsolicited bid proposing such relationship. It is	
45	Project inception	30			
46	Feasibility study	30			

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
47	Procurement for public-private partnerships	31	<p>and knowledge to provide guidance to transactions of Public-Private-Partnerships.</p> <p>The function provides advice on the effective completion of the PPP procurement process by the institution and aims to ensure that the transactions bring value with respect to price, quality, quantity, risk transfer, value for money, affordability and sustainability.</p> <p>Utilising a function like Government Technical Advisory Centre (GTAC) to support to finance management on technical, programme management, procurement processes to the institutions brings efficiencies and drives value for money for the Regulator and the institutions.</p>	<p>proposed to include in the Bill the details on PPP relationship through an unsolicited bid process.</p>	
48	Concluding public-private partnership agreements	32			
49	Management of public-private partnership agreements	32			
50	Amendment and variation of public-private partnership agreements	33			
51	Binding public-private partnership agreements	33			
CHAPTER 6: SUPPLY CHAIN MANAGEMENT					
Part 1: Supply Chain Management System					
52	Supply chain management system	34	<p>Since institutions are given permission to develop their own supply chain systems and policies, with the requirement to align to this Act, there exists a situation where there would be duplication in processes, resourcing, systems and people, this presents a situation where there is erosion to the value for money principles.</p> <p>As much as there are benefits to a decentralised procurement system, there is a need to still drive centralisation (through transversal term contracts), but also standardisation of processes to allow to bring a standardised technology.</p>	<p>Amendment to Treasury Regulations (clause 16A3.2)</p> <p>It is recommended for the Bill to cater for the:</p> <ul style="list-style-type: none"> - development of Master Data Management function, that will drive the implementation of different data management elements, this will assist in providing data accuracy and drive true insights on spend management and contract management functions of procurement; and development of Analytics function, that will drive big data analysis and ensure sharing of insights to make decisions in procurement e.g. category segmentation, strategic sourcing, spend management, contract compliance and drive claims in terms of non-performance 	
Part 2: Institutional arrangements					

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
53	Establishment of procurement units	34	Creation of procurement units and driving the units to share knowledge, lessons learnt, and best practices across the institutions could yield value for money, as the procurement units would be sharing pricing strategies, sourcing strategies and pricing benchmarks to ensure delivery of value through price, quality and use of resources while achieving the intended outcome.	It is recommended to establish a digital platform/portal that will be shared by institutions, particularly procurement units for the purpose of driving knowledge exchange, lessons learnt and best practice across the institutions	
54	Establishment of committees	35	<p>To have standing cross functional committees will bring efficiency to the process as members gain experience in their respective roles</p> <p>There is still value missed through legacy of not having standardised specifications across institutions, this limits the opportunity to influence pricing and Service Level Agreements through negotiation aligned to economies of scale or buying powers</p>	<p>It is recommended that institutions appoint cross functional standing committee members for the Bid Specification and Adjudication Committees for at least three (3) years as this will bring efficiency to the process.</p> <p>We are suggesting that the Bill should at least address the following elements of the bid committees as they currently pose challenges in the management of these committees:</p> <p>(a) Quorum – guidance must be provided to the institutions to minimise decision-taking where a committee does not constitute a quorum.</p> <p>(b) Levels/powers of bid committee members – this is important to ensure involvement of officials/members with right set of skills, competency, and knowledge to minimise incorrect decisions by committees due to lack of capabilities and reduce appeals.</p> <p>The Bill is instructing institutions to establish bid committees. In support of these committees, it is recommended for the Regulator to:</p> <p>- establish a centralised bid committee that will be responsible for monitoring</p>	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
				<p>of institutions bid committees performance, provide standardised trainings, workshops and general support.</p> <p>establish a Centralised Specification Standardisation Committee, to work through standardising standardised specifications across the different institutions.</p>	
55	Appointment of bid committee members	35	To have cross functional bid committee members appointed for at least period of three (3) years will improve efficiency	It is proposed for the Bill to make provision to link the appointment of bid committee members to their KPI's with clear performance areas	
59	Functions and proceedings of bid specification committees	36	<p>Institutions must develop and establish a centralised repository of approved specifications for goods/services which can be accessed with ease. This will improve efficiency, reduce duplication of effort and waste of resources.</p> <p>The Regulator must further establish a centralised repository of specifications for goods/services which can be accessed by procuring institutions with ease. This will improve efficiency, reduce duplication of effort and waste of resources.</p> <p>The Regulator must provide principle on BBEE Act, ESD to allow the institutions to add the objective criteria that is aligned to driving economic transformation.</p> <p>The Regulator and institutions are not realising the value for money benefits in procurement initiatives where awarding contract based on cheapest price. The cheapest price does not allow</p>	<p>It is recommended for the Regulator and Institutions to establish central repository for the approved specifications for goods/services which can be utilised for procurement event without re-inventing the wheel.</p> <p>The Regulator and institutions must have objective criteria to drive economic transformation and enable the implementation of BBEE Act through Enterprise & Supplier Development.</p> <p>Application of Total Cost of Ownership (TCO) to the solutions and development of specifications and scope of services / supply is very important, through this approach, the specifications will ensure that the solutions are rigorous and answer to the TCO, which should reduce situations of bidders underpricing just to win a contract</p>	The EU includes realistic budget when compiling specification for goods/services

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
			to translate to value for money, as it could happen that this solution does not address Total Cost of Ownership principle and might end up costing the institutions more money than what is originally quoted or contracted.		
61	Functions and proceedings of bid evaluation committees	37	<p>Efficiency can be achieved if RFX are evaluated online as it will reduce the manual process, limited possible manipulation of the procurement process.</p> <p>It is recommended that the Bill cater for suppliers not to resubmit the basic standard documents, i.e. Tax Clearance Certificate, B-BBEE, company registration documents as these documents are a pre-requisite to register on the Regulator's database. During the evaluation process, the members can use the Regulator's database to verify this information which will reduce the amount of paperwork and bring efficiency to process not only for an institution's perspective but also for suppliers participating in the procurement event</p>	<p>Expertise is critical for bid evaluation committee members and it is recommended that training be provided to these members to ensure that they understand their role and responsibility. This will yield better results in evaluation and selection of the best eligible supplier.</p> <p>It is proposed from transparency perspective to include observers when conducting evaluations</p> <p>The Bill needs to provide guidelines on the principles of disqualifying bids during evaluation process (i.e. pre-compliance and evaluation processes)</p>	<ul style="list-style-type: none"> - NZ applies the principle that the panel should consist of at least 3–5 people to judge the proposals under consideration against the set criteria and select a preferred provider. - The evaluation must include technical specialists, cultural, financial or legal expertise depending on the project requirements. - European Commission establishes BEC once approval given to proceed with procurement event. <p>The UN appoints external subject-matter expert to the evaluation committee as observers in technical evaluation and record their observation in writing.</p>
62	Composition of bid adjudication committees	37	<p>SCM function falls under Finance, it is recommended that the CFO be the chairperson where relevant.</p> <p>Need to include the appointment of alternative members to prevent situation where adjudication meetings are postponed due to lack of quorum.</p>	<p>The following elements are not covered in the bid committees:</p> <p>(a) Quorum – guidance must be provided to the institutions to minimise decision-taking where a committee does not constitute a quorum.</p> <p>(b) Levels/powers of committee members – this is important to ensure involvement of officials/members with right set of skills, competency, and knowledge to minimise incorrect decisions by</p>	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
				committees due to lack of capabilities and reduce appeals	
67	Measures to prevent abuse of supply chain management system	38	Value for money and efficiency can be greatly achieved when SCM systems are automated as this will contribute toward reducing manipulation of the procurement processes, however this must be done in a phased manner to accommodate small to medium enterprises with no access to technology	It is suggested that the Bill provides for automation of procurement processes in a phased manner to prevent exclusion of emerging suppliers from accessing opportunities	
Part 3: Demand management					
69	Approval of procurement plan	39	<p>Currently, some institutions still do not have demand plans and/or the demand plans are not updated and approved due to a change in circumstances.</p> <p>Compiling a demand plan, based on a needs assessment for the goods/services, will force institutions to forecast on their requirements which will enhance efficiency that goods/services are procured timely.</p> <p>Consolidation of demand plan will enhance efficiency in the institutions to eliminate repetitive quotes.</p> <p>Institutions need to review their procurement plan on at least a quarterly basis to amend and update the procurement plan where required. This will prevent "emergency procurement" which under most circumstances is due to poor planning.</p>	It is recommended for the Regulator to enforce submission of approved procurement plans at least sixty (60) days prior to commencement of new financial year	It is best practice to review the demand plans on a quarterly basis and amend if possible. If any changes were made, submit for approval. (P37 UN Procurement Manual)

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
Part 5: Contracts and contract management					
73	Contract management	41	<p>To enhance efficiency, it is recommended that institutions review at least on an annual basis the top 50 suppliers of the goods/services procured and value spend to determine if contracts should not be established.</p> <p>Institutions are required to have contracts repository. Efficiency are brought into the contract management system when the contract repository are centralised, easily accessed, contracts classified according to goods/services delivered.</p>	<p>It is recommended that number contract extensions be limited as the current practice within institutions is to renew contracts without testing the market. Value for money must be considered when considering renewals.</p> <p>Will the Regulator determine the % contract variation that may be considered by the institution and Regulator (>20% NT currently).</p> <p>It is recommended for institutions to report to the Regulator at least on a quarterly basis all contract renewals and reasons for extending these contracts.</p>	
Part 7: Movable asset management					
77	Movable asset management system	43	<p>The guidelines align to bringing value for money and the necessary efficiencies as the guidelines look at; acquisition plans, operational plans, maintenance plans, and disposal plans.</p>		
78	Movable asset management plans	43			
CHAPTER 7: INFRASTRUCTURE DELIVERY MANAGEMENT					
Part 1		46	<p>The institutions should align to the Infrastructure Delivery Management System (IDMS) and realise efficiencies and value for money.</p> <p>The other alignment to ensure value for money</p>	<p>There is a need for reliance on the Infrastructure Delivery Management System (IDMS) on this section.</p>	<p>The IDMS has been developed and promulgated by government whereby clear and concise guidelines regarding Infrastructure Delivery Management</p>
81	Application of this Chapter	46			
Part 2		46			

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
Infrastructure procurement and delivery management by departments, constitutional institutions and 3A and 3C public entities		46	<p>includes:</p> <p>1) Institutions can use the already existing Procurement Units, Procurement Systems and Supply Chain Systems to plan, execute, evaluate, contract Infrastructure related procurements.</p> <p>2) Institutions can utilise the Government Technical Advisory Centre for specialised technical support.</p>		System have been developed
82	Supply chain management system for infrastructure	46			
83	Infrastructure functions of procurement units	46			
84	Infrastructure procurement	47			
85	Implementation by another institution	47			
86	Use of contract of another organ of state	47			
Part 3		47			
Infrastructure procurement and delivery management by major public entities, government business enterprises, municipalities and municipal entities		47			
87	Supply chain management system	47			
88	Feasibility studies for major capital projects	48			
Part 4		48			
Gateway review process		48			
89	Review process	48			
CHAPTER 9: DISPUTE RESOLUTION					
Part 1		51	This ensures efficiencies whereby institutions would not have to constantly engage National Treasury for guidance on contract disputes.	The proposed changes of inclusion of the dispute resolution section as per the proposed procurement bill is much appreciated. The section gives clear guidance and procedures as to how the dispute resolution should be implemented.	The proposed bill is benchmarking with countries such as Singapore, whereby tribunals are established for dispute resolutions with clear processes in place. For EU, Independent Authorities are established however challenges are experience with regard to resolving issues before
Reconsideration and review		51			
94	Reconsideration or review of decision	51			
95	Prohibition on contract award during reconsideration or review proceedings	51			
Part 2		51			

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
Reconsideration by procuring institution		51			contracts are executed or end of contract lifecycle. Reference: Public Procurement Bill in the European Union (Brussels,11.03.1998, COM 1998, 143 final) Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)
96	Reconsideration by institution	51			
Part 3		52			
Provincial reconsideration procedure		52			
97	Reconsideration by provincial treasuries	52			
Part 4		53			
National reconsideration procedure		53			
98	Reconsideration by Regulator	53			
Part 5		53			
Review		53			
99	Establishment of Tribunal	53			
100	Review process	54			
101	Composition of Tribunal	54			
102	Qualification of members	54			
103	Functions of Chairperson and Deputy Chairperson	54			
104	Disclosure of interest by member of Tribunal	55			
105	Term of office, termination of membership and conditions of service	55			
106	Finances of Tribunal	56			
107	Resources of Tribunal	56			
108	Conduct of persons involved in work of Tribunal	56			
109	Panels of Tribunal	56			
110	Tribunal rules	57			
111	Proceedings for review	57			
112	Tribunal orders	57			
113	Judicial review and enforcement of Tribunal orders	58			
CHAPTER 10: GENERAL PROVISIONS					

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the value for money & efficiency to the Bill	Proposed amendments	Best practice
114	Delegation	59	This will ensure ethical and fair reviews of public procurement process leading to accountability and effectiveness through establishment of the regulator and tribunals	The proposed changes regarding establishment of tribunals and independent authorities will ensure effectiveness of the National Treasury towards public procurement	The proposed bill is benchmarking with countries such as Singapore, whereby tribunals composition, term and processes are clearly defined. Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)
115	Limitation of liability	59			
116	Documents to be made available	59			
117	Database of prospective suppliers	60			
118	Offences	60			
119	Exemption	60			
120	Deviation	61			
121	Regulations	61			
122	Transitional measures	64			
123	Repeal of laws and saving	64			
124	Short title and commencement	64			

Enabling Digital Procurement Capability

The introduction of technology and the standardisation of technology throughout the spheres of government will bring about increased efficiency and will support better reporting through system driven parameters and no longer a manual cumbersome month-end activity. The draft Bill does not fully articulate a technology strategy for public sector, and we envisage that SITA plays a more active role in this area, especially around centralisation and fit-for-purpose technology solutions and the procurement thereof. In many instances, entities move ahead with procuring their own technology support and solutions in isolation, which oftentimes results in escalated costs and implementation risks. Furthermore, after implementation of systems, most end-users do not use these system applications effectively and in some cases these systems are not used at all resulting in a ‘white elephant’ situation. We have also seen multiple systems used for various cross-functional applications without clear integration, giving rise to manual interventions and data manipulation to derive reports, amongst others. The benefits of technology (including e-Tendering; e-Procurement; Blockchain; RPA; AI; e-Auctions; etc.) will be achieved if there is a holistic approach across the public sector. Service Delivery will also be greatly enhanced as evidenced by global standards and public sector best practices.

These focus areas were reviewed and further assessed against Public Sector Procurement best practices and principles, where relevant and applicable. The following material was used:

1. European Union - Public Procurement in the European Union, Commission of the European Communities, Brussels, 11.03.1998, Com (1998) 143 Final, Communication from the Commission in the European Union
2. United Nations - The UN Procurement Practitioner’s Handbook (PPH), www.ungm.org. October 2017
3. Republic of Singapore - Government Procurement Act (Chapter 120, Section 4), Government Procurement Regulations 2014, (Original Enactment: Act 14 of 1997), Revised Edition 1998
4. Germany - Ordinance on the Award of Public Contracts, (Procurement Ordinance (Vergabeverordnung – VgV)), in the version of the Ordinance on the Modernisation of Public Procurement Law of 12 April 2016, Federal Law Gazette I of 14 April 2016, p. 624
5. Public Procurement Act Croatia, (Official Gazette no. 117/2001 & 197/2003), Enacted by the Croatian, Parliament at its session held on 14 December 2001
6. European Commission - Public Procurement Guidance for Practitioners, European Commission, 2015 (PDF ISBN 978-92-79-51749-5)
7. United Nations - United Nations Procurement Manual, Department of Operation Support, Office of Supply Chain Management, 2019

Our view looked at the three (3) spheres that drive organisations that strive for efficiencies through capability improvements, the three (3) spheres are people, processes and technology.

The table below summarises the key recommendations that we believe should be considered for amendment in the Public Procurement bill to enable a digital procurement capability for the state.

Proposal Name	Description
Use of Technology	In addition, it is recommended to take into consideration a strategic viewpoint on how government assesses, plans and deploys fit-for-purpose technology platforms that cut across the different institutions, this would yield not only efficiencies but also drive the value for money as it would eliminate duplications.
Publication of debarment of suppliers	It is recommended for the Regulator to establish an online debar publication portal integrated with other public sector digital tools.
Engagement with SME	It is of our opinion that the Regulator should adopt a comprehensive and rigorous approach into communication with SMEs on public procurement to address challenges faced by SMEs at every stage of the procurement process, such as lack of information about potential contracts, inability to draw up business plans, mismatch between the size of the enterprise and the large size of many contracts, anxiety about currency fluctuations, and the need to meet standards, certification and qualification requirements and also delays in payment that arise in the post award stage.
Visibility of Spend	It is commended to include the establishment of a digital platform (ERP) to drive visibility on spend management and provide insights to make decisions
Master Data management	Development of Master Data Management function, that will drive the implementation of different data management elements, this will assist in providing data accuracy and drive true insights on spend management and contract management functions of procurement; and development of Analytics function, that will drive big data analysis and ensure sharing of insights to make decisions in procurement e.g.

	category segmentation, strategic sourcing, spend management, contract compliance and drive claims in terms of non-performance
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Proposed amendment by chapter and section

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
CHAPTER 2: PUBLIC PROCUREMENT REGULATOR, PROVINCIAL TREASURIES AND PROCURING INSTITUTIONS					
Part 3: Procuring institutions					
1	Instructions inconsistent with Act	17	The reporting process might compromise the timelines for service delivery, hence digital reporting is recommended to expedite the process.	<p>From our viewpoint it is recommended to have a provision for anonymous reporting to the Minister to prevent victimisation and ill treatment of the affected persons.</p> <p>Management must be counselled to support this speak-up, open-door culture where officials feel comfortable bringing their concerns to light.</p> <p>It is recommended to establish an ethics office which will be empowered to provide confidential advice and guidance, and protect officials, as well as suppliers from retaliation for good-faith reporting of misconduct or for cooperating with duly authorised investigations. - a hotline/whistle blow platform</p>	The UN supports an open environment where such good faith reporting is viewed as a positive action in protecting the best interests of the state.
2	Use of technology	18	The Bill does provide context for the Regulator, Treasuries and Institutions to propose and make use of technology.	In addition, it is recommended to take into consideration a strategic viewpoint on how government assesses, plans and deploys fit-for-purpose technology platforms that cut across the different institutions, this would yield not only efficiencies but also drive the value for money as it would eliminate duplications.	
CHAPTER 3: PROCUREMENT INTEGRITY					
3	Publication of debarred bidders or suppliers	22	The publication of debarred bidders or suppliers can be executed through a central repository, portal or platform. Bring a digital solution to the portal, which would be easily accessed by the government institutions.	It is recommended for the Regulator to establish an online debar publication portal integrated with other public sector digital tools.	
CHAPTER 4: PREFERENTIAL PROCUREMENT					
4	Framework for preferential treatment	23	There is a need for implementation of an	It is of our opinion that the Regulator should adopt a	The EU Commission has adopted a strategy that

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
			<p>integrated procurement technology, that will drive analytics, spend management, sourcing, and contracts management to bring efficiencies and value for money.</p> <p>The technology will also bring efficiencies in the capability building of Small Medium Enterprises through an integrated Enterprise & Supplier Development platform which will allow SMEs to have access to funding and training ecosystem.</p>	<p>comprehensive and rigorous approach into communication with SMEs on public procurement to address challenges faced by SMEs at every stage of the procurement process, such as lack of information about potential contracts, inability to draw up business plans, mismatch between the size of the enterprise and the large size of many contracts, anxiety about currency fluctuations, and the need to meet standards, certification and qualification requirements and also delays in payment that arise in the post award stage.</p>	<p>intends, in particular, developing the possibilities of improving access to information, crucial for SME, by consistent application of information and communications technology.</p>
CHAPTER 5: PROCUREMENT METHODS AND BIDDING PROCESS					
Part 1: General methods					
5	Procurement methods and principles	24	<p>There is a need for implementation of an integrated procurement technology, that will drive analytics, spend management, sourcing, and contracts management to bring efficiencies and value for money.</p> <p>The technology will also bring efficiencies in the capability building of Small Medium Enterprises through an integrated Enterprise & Supplier Development platform which will allow SMEs to have access to funding and training ecosystem.</p>	<p>Notwithstanding the responsibilities of the Minister as contemplated in subsection (1), it is recommended for the Regulator to:</p> <p>Set forth the principal method that may be used by the institutions for procurement of goods, services and infrastructure which is a competitive tendering method.</p> <p>Set provision for institutions to stipulate objective criteria aligned to BBEE Act, to advance the Enterprise Supplier Development (ESD) objective.</p>	<p>It is a common practice adopted by the EU to consider open tender process as a primary method for procurement of goods, services and infrastructure.</p>
Part 2: Bidding process					
6	Invitation to bid	24	<p>There is a need for implementation of an integrated procurement technology, that will drive analytics, spend management, sourcing, and contracts management to bring efficiencies and value for money.</p> <p>The technology will streamline the bid invitation process, this would be executed through the platform, e.g. ERP, Spend Management Tool, or iBPM</p>	<p>To minimise inconsistencies on information contained in bid advertisements, it is suggested for the Regulator to standardise invitation to bid document (adverts) to be used by the institutions.</p> <p>In order to promote efficiency and transparency, invitations to bid should contain the information required for suppliers to be able to ascertain whether the goods and services being procured are of a type that they can provide and, if so,</p>	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
			<p>to drive efficiencies. The technology solution also provides value for money as it will remove duplicates and streamline activities to the platform.</p> <p>The institutions can still continue with running procurement even under Disaster Management declarations, e.g. current COVID 19 pandemic most institutions can't carry-on with procurement activities as most procurement activities are manually executed instead of technology driven.</p>	<p>how they can participate in the tendering proceedings. The specified information requirements are only the required minimum so as not to preclude the procuring entity from including additional information that it considers appropriate</p>	
7	Bid documents	24	<p>Automation of the Standard Bid Documents through digital solution. There are inefficiencies in completing the SBD documents via a manual process, the bidder could be responding to opportunities from the same institution and always need to complete the SBD documents every time. A digital solution would involve portal where these SBD documents can be completed online, saved, printed and submitted to the institution, where there is another opportunity, the bidder access the portal and makes the necessary amendments, print and submit the documents again. The respective institution evaluators can access the portal and review and approve the submitted documents.</p>	<p>A list of the minimum information that should be contained in the bid documents in order to assist the suppliers or contractors in preparing their bids and to enable the institutions to compare the responses on an equal basis, the following subsections are recommended to be included:</p> <ul style="list-style-type: none"> - where the institution will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of bids by electronic means; - where the institution will hold an electronic auction, the rules, including identification of the elements of the bid related to the evaluation criteria, on which the auction will be conducted; - any other terms or conditions, including terms of payment and any limitation on the means by which bids may be submitted, such as whether on paper or by electronic means; and - Any other requirements established by the institution in conformity with this Bill relating to the preparation and submission of bids and to 	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
				other aspects of the procurement proceedings.	
8	Submission of bids	25	Automation of the submission of bids through digital solution	.	
9	Deadline for submission of bids	25	Provision on a digital bid registration form	<p>Further clarification is required on the rationale behind changing days into weeks, it is suggested to use days throughout the document/bill for consistency and be explicit on business/working days and weekends</p> <p>It is also recommended to provide timelines for:</p> <ul style="list-style-type: none"> - reporting emergency cases. 4 weeks is a blanket timeline and does not consider type of goods/services, complexity and ease of supply in the marketplace. Consider shorter timelines for routine and leverage goods/services. - submission of quotations which has shown prejudice of suppliers on many occasions. <p>In summary, the bill should provide for different timelines for each type of bidding process and add provision for extension of deadlines.</p> <p>It is also suggested to add provision for a clear definition of tender box, and how to handle the bid register</p>	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
10	Examination and evaluation of bids	26	<p>Initiatives with standardised specifications can go through e-auctioning, these would be aligned to mostly items that are of low value and large volumes.</p> <p>Drive digitalisation of the high-volume items</p>	<p>It is proposed that the Bill caters for the conversion of currency in bid prices. i.e. When bid prices are expressed in two or more currencies, the bid prices of all bids must be converted to a single currency which is the South African currency, and according to the rate specified in the bid documents for the purpose of evaluating and comparing bids.</p> <p>It is recommended to regulate the permission of bidders to attend the bid evaluation process as observers for the purpose of transparency and minimisation of potential appeals</p>	
11	Verification of bidders or suppliers	28	<p>Provision of a digital portal to check and verify bidders/ suppliers on debar and also other matters.</p> <p>The portal should be able to integrate with other existing platforms to check due diligence of the bidders/ suppliers.</p>		
Part 3: Transversal procurement					
12	Transversal term contracts	29	<p>Provision of a digital portal of contract repository where it is easy to access the transversal term contracts.</p> <p>Digital spend management tool will drive analytics and spend trends that will provide critical insights on demand management to the Treasuries and Regulator to setup group contracts</p>	<p>It is commended to include the establishment of a digital platform (ERP) to drive visibility on spend management and provide insights to make decisions</p>	.
Part 4: Public-Private Partnership					
13	<i>Public-private partnership approvals and agreement</i>	30	<p>Alignment to the proposed digital solution for public procurement to also enable PPP transactions</p>	<p>The Bill and current legislation cover the establishment of PPP through competitive procurement processes, there is a gap when an institution received</p>	
14	<i>Project inception</i>	30			

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
15	<i>Feasibility study</i>	30		an unsolicited bid proposing such relationship. It is proposed to include in the Bill the details on PPP relationship through an unsolicited bid process.	
16	<i>Procurement for public-private partnerships</i>	31			
17	<i>Concluding public-private partnership agreements</i>	32			
18	<i>Management of public-private partnership agreements</i>	32			
19	<i>Amendment and variation of public-private partnership agreements</i>	33			
20	<i>Binding public-private partnership agreements</i>	33			
CHAPTER 6: SUPPLY CHAIN MANAGEMENT					
Part 1: Supply Chain Management System					
21	<i>Supply chain management system</i>	34	<p>There is a need for implementation of an integrated procurement technology, that will drive analytics, spend management, sourcing, and contracts management to bring efficiencies and value for money.</p> <p>The technology will streamline the bid invitation process, this would be executed through the platform, e.g. ERP, Spend Management Tool, or iBPM to drive efficiencies. The technology solution also provides value for money as it will remove duplicates and streamline activities to the platform.</p> <p>The institutions can still continue with running procurement even under Disaster Management declarations, e.g. current COVID-19 pandemic most institutions can't carry-on with procurement activities as most procurement activities are manually executed instead of technology driven.</p>	<p>Amendment to Treasury Regulations (clause 16A3.2)</p> <p>It is recommended for the Bill to cater for the:</p> <ul style="list-style-type: none"> - development of Master Data Management function, that will drive the implementation of different data management elements, this will assist in providing data accuracy and drive true insights on spend management and contract management functions of procurement; and development of Analytics function, that will drive big data analysis and ensure sharing of insights to make decisions in procurement e.g. category segmentation, strategic sourcing, spend management, contract compliance and drive claims in terms of non-performance 	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
Part 2: Institutional arrangements					
22	<i>Establishment of committees</i>	35	There is a need to create a central skills portal that will showcase the different skills available in the public sector, as these skills could be leveraged on instead of going out to market on everything	<p>It is recommended that institutions appoint cross functional standing committee members for the Bid Specification and Adjudication Committees for at least three (3) years as this will bring efficiency to the process.</p> <p>We are suggesting that the Bill should at least address the following elements of the bid committees as they currently pose challenges in the management of these committees:</p> <p>(a) Quorum – guidance must be provided to the institutions to minimise decision-taking where a committee does not constitute a quorum.</p> <p>(b) Levels/powers of bid committee members – this is important to ensure involvement of officials/members with right set of skills, competency, and knowledge to minimise incorrect decisions by committees due to lack of capabilities and reduce appeals.</p> <p>The Bill is instructing institutions to establish bid committees. In support of these committees, it is recommended for the Regulator to:</p> <ul style="list-style-type: none"> - establish a centralised bid committee that will be responsible for monitoring 	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
				<p>of institutions bid committees performance, provide standardised trainings, workshops and general support.</p> <p>establish a Centralised Specification Standardisation Committee, to work through standardising standardised specifications across the different institutions.</p>	
23	<i>Appointment of bid committee members</i>	35	There is a need to create a central skills portal that will showcase the different skills available in the public sector, as these skills could be leveraged on instead of going out to market on everything	It is proposed for the Bill to make provision to link the appointment of bid committee members to their KPIs with clear performance areas	
24	Composition of bid specification committees	36	There is a need to create a central skills portal that will showcase the different skills available in the public sector, as these skills could be leveraged on instead of going out to market on everything	<p>We are suggesting that the Bill should address the following elements of the bid committees as they currently pose challenges in the management of these committees:</p> <p>(a) Quorum – guidance must be provided to the institutions to minimise decision-taking where a committee does not constitute a quorum.</p> <p>(b) Levels/powers of committee members – this is important to ensure involvement of officials/members with right set of skills, competency, and knowledge to minimise incorrect decisions by committees due to lack of capabilities and reduce appeals.</p>	
25	<i>Functions and proceedings of bid evaluation committees</i>	36	Provision of repository for developed and approved specifications and approved on central database. This would bring efficiency to the procurement process.	It is recommended for the Regulator and Institutions to establish central repository for the approved specifications for goods/services which can be utilised for procurement event without re-inventing the wheel.	The EU includes realistic budget when compiling specification for goods/services

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
				<p>The Regulator and institutions must have objective criteria to drive economic transformation and enable the implementation of BBBEE Act through Enterprise & Supplier Development.</p> <p>Application of Total Cost of Ownership (TCO) to the solutions and development of specifications and scope of services/supply is very important, through this approach, the specifications will ensure that the solutions are rigorous and answer to the TCO, which should reduce situations of bidders underpricing just to win a contract</p>	
26	Composition of bid evaluation committees	37	There is a need to create a central skills portal that will showcase the different skills available in the public sector, as these skills could be leveraged on instead of going out to market on everything	<p>We are suggesting that the Bill should at least address:</p> <ul style="list-style-type: none"> - the levels/powers of bid committee members – this is important to ensure involvement of officials/ members with right set of skills, competency, and knowledge to minimise incorrect decisions by committees due to lack of capabilities and to reduce appeals; and Provision of training to these members to ensure that they understand their role and responsibility. 	
27	Functions and proceedings of bid evaluation committees	37	<p>Provision of RFX platforms, especially for commodities with clear and standardised specifications</p> <p>Usage of online National Treasury databases to obtain pre-requisite documents, which are already uploaded on the National Treasury databases</p>	<p>Expertise is critical for bid evaluation committee members and it is recommended that training be provided to these members to ensure that they understand their role and responsibility. We propose that a database of technical experts from the public who can volunteer their time and expertise to assist in evaluations. This could also promote transparency in the system and overall will yield better results in evaluation and selection of the best eligible supplier.</p> <p>It is proposed from</p>	<ul style="list-style-type: none"> - NZ applies the principle that the panel should consist of at least 3–5 people to judge the proposals under consideration against the set criteria and select a preferred provider. - The evaluation must include technical specialists, cultural, financial or legal expertise depending on the project requirements. - European Commission establishes BEC once approval given to proceed with procurement event.

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
				<p>transparency perceptive to include observers when conducting evaluations</p> <p>The Bill needs to provide guidelines on the principles of disqualifying bids during evaluation process (i.e. pre-compliance and evaluation processes)</p>	<p>The UN appoints external subject-matter expert onto the evaluation committee as observers in technical evaluation and record their observation in writing.</p>
28	Composition of bid adjudication committees	37	<p>There is a need to create a central skills portal that will showcase the different skills available in the public sector, as these skills could be leveraged on instead of going out to market on everything</p> <p>Levels/powers of committee members – this is important to ensure involvement of officials/members with right set of skills, competency, and knowledge to minimise incorrect decisions by committees due to lack of capabilities and reduce appeals.</p> <p>Training to be provided to these members to ensure that they understand their role and responsibility.</p>	<p>The following elements are not covered in the bid committees:</p> <p>(a) Quorum – guidance must be provided to the institutions to minimise decision-taking where a committee does not constitute a quorum.</p> <p>(b) Levels/powers of committee members – this is important to ensure involvement of officials/members with right set of skills, competency, and knowledge to minimise incorrect decisions by committees due to lack of capabilities and reduce appeals.</p>	
Part 3: Demand management					
29	Demand management system	39	<p>There is a need for implementation of an integrated procurement technology, that will drive analytics, demand management, spend management, sourcing, and contracts management to bring efficiencies and value for money.</p> <p>The technology will streamline demand management process, this would be executed through the platform, e.g. ERP, Demand Management, Inventory Management, Spend Management Tool, or iBPM to drive efficiencies. The technology solution also provides value for money as</p>		

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
			<p>it will remove duplicates and streamline activities to the platform.</p> <p>The institutions can perform demand management, forecasts, budgets, stock levels and development of procurement plans and get insights on price, location, time, quality and quantities in the respective institutions and deliver these insights through technology driven solutions.</p>		
30	Approval of procurement plan	39	Technology will greatly assist with compiling demand plan, e.g. spend history, items frequently procured which can be used to put in place contracts to leverage on economies of scale	It is recommended for the Regulator to enforce submission of approved procurement plans at least sixty (60) days prior to commencement of new financial year	It is best practice to review the demand plans on a quarterly basis and amend if possible. If any changes were made, submit for approval. (P37 UN Procurement Manual)
Part 4: Acquisition management					
31	Acquisition management system	40	There is a need for implementation of an integrated procurement technology, that will drive analytics, demand management, spend management, sourcing, and contracts management to bring efficiencies and value for money.	<p>Automation of low value requirements is recommended, to bring efficiency into the procurement process which will subsequently enhance spend visibility for goods/services procured.</p> <p>Recommend the inclusion of objective criteria to drive economic transformation and enable BBBEE Act, with respect to Enterprise & Supplier Development.</p>	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
32	Strategic procurement	40	There is a need for implementation of an integrated procurement technology, that will drive analytics, spend management, sourcing, and contracts management to bring efficiencies and value for money		
Part 5: Contracts and contract management					
33	Contract management	41	<p>Institutions must have centralised contracts repository (electronic) which will bring about efficiency on the monitoring/flagging of contracts to expire and to commence with a replacement process timeously if the goods/services are still required.</p> <p>Technology can enhance information extracted, as the information will be trustworthy versus extracting information from manual process on e.g. contract spend.</p>	<p>It is recommended that number contract extensions be limited as the current practice within institutions is to renew contracts without testing the market. Value for money must be considered at the time considering renewals.</p> <p>Will the Regulator determine the % contract variation that may be considered by the institution and Regulator (>20% NT currently)?</p> <p>It is recommended for institutions to report to the Regulator at least on a quarterly basis all contract renewals and reasons for extending these contracts.</p>	
Part 6: Logistics management					
34	Logistics management system	41	There is a need for implementation of an integrated procurement technology, that will drive analytics, demand management, spend management, sourcing, contracts management, inventory management and logistics management to bring efficiencies and value for money.	It is recommended to consider the provision of an effective master data management function	
35	Institutional instructions and standard operating procedures for logistics management	42			
36	Inventory management	42			
Part 7: Movable asset management					
37	Movable asset register	44	Provision of an online movable asset register	Provision of an online movable asset register integrated with other systems and tools e.g.	

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice			
				financial tools, logistics tools and procurement tools				
CHAPTER 7: INFRASTRUCTURE DELIVERY MANAGEMENT								
Part 1		46	Leveraging on the proposed digital tools e.g. integrated procurement tools, inventory management tools, supply chain management tools to execute on the procurement of infrastructures	There is a need for reliance on the Infrastructure Delivery Management System (IDMS) on this section.	The IDMS has been developed and promulgated by government whereby clear and concise guidelines regarding Infrastructure Delivery Management System have been developed			
38	<i>Application of this Chapter</i>	46						
Part 2		46						
<i>Infrastructure procurement and delivery management by departments, constitutional institutions and 3A and 3C public entities</i>		46						
39	<i>Supply chain management system for infrastructure</i>	46						
40	<i>Infrastructure functions of procurement units</i>	46						
41	<i>Infrastructure procurement</i>	47						
42	<i>Implementation by another institution</i>	47						
43	<i>Use of contract of another organ of state</i>	47						
Part 3		47						
<i>Infrastructure procurement and delivery management by major public entities, government business enterprises, municipalities and municipal entities</i>		47						
44	<i>Supply chain management system</i>	47						
45	<i>Feasibility studies for major capital projects</i>	48						
Part 4		48						
<i>Gateway review process</i>		48						
46	<i>Review process</i>	48						
CHAPTER 8: DISPOSAL OF ASSETS								

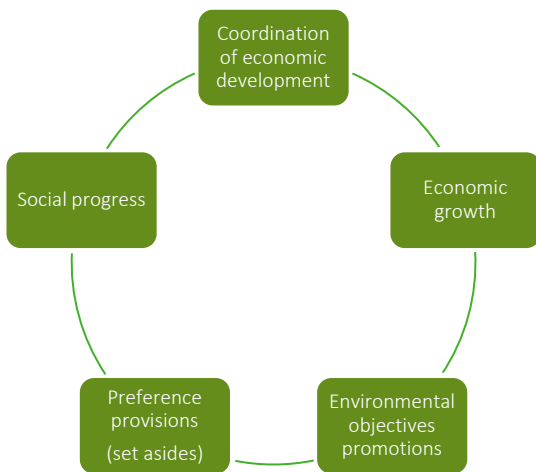
BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
47	Application of this Chapter	49	Leveraging on the proposed digital tools e.g. integrated procurement tools, inventory management tools, supply chain management tools to execute on the disposal of assets.	Electronic Auction and Evaluations will ensure efficiencies in ensuring that bids are accepted and evaluated electronically limiting human intervention. Transversal contracts will ensure that reliable suppliers are appointed due to reliance of the appointing institution regarding the suppliers' performance.	The proposed bill is benchmarking with countries such as Singapore and EU for disposal of assets, in ensure that a quick but effective process is followed. Reference: Public Procurement Bill in the European Union (Brussels, 11.03.1998, COM 1998, 143 final) Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)
48	Disposal of assets	49			
49	Disposal management system	49			
50	Disposal methods and options	50			
CHAPTER 9: DISPUTE RESOLUTION					
Part 1		51	Digital tools that will accelerate the processes of review and reconsideration. This includes leveraging from the proposed technologies that would enable: - Central repository of contracts - Visibility of critical data e.g. contract expiry dates, contract extension cycle and dates - Trigger workflows to the respective resources to perform reviews - Resource selection of tribunal members - Scheduling of tribunal sessions Reporting dashboards on the outcomes of tribunal orders	The proposed changes of inclusion of the dispute resolution section as per the proposed procurement bill is much appreciated. The section gives clear guidance and procedures as to how the dispute resolution should be implemented.	The proposed bill is benchmarking with countries such as Singapore, whereby tribunals are established for dispute resolutions with clear processes in place. For EU, Independent Authorities are established however challenges are experience with regard to resolving issues before contracts are executed or end of contract lifecycle. Reference: Public Procurement Bill in the European Union (Brussels,11.03.1998, COM 1998, 143 final) Reference: The Statutes of the Republic of Singapore: Government Procurement Act (Chapter 120)
<i>Reconsideration and review</i>		51			
51	<i>Reconsideration or review of decision</i>	51			
52	<i>Prohibition on contract award during reconsideration or review proceedings</i>	51			
Part 2		51			
Reconsideration by procuring institution		51			
53	<i>Reconsideration by institution</i>	51			
Part 3		52			
Provincial reconsideration procedure		52			
54	<i>Reconsideration by provincial treasuries</i>	52			
Part 4		53			
National reconsideration procedure		53			
55	<i>Reconsideration by Regulator</i>	53			
Part 5		53			
Review		53			
56	<i>Establishment of Tribunal</i>	53			
57	<i>Review process</i>	54			

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of digital enablement to the Bill	Proposed amendments	Best practice
58	<i>Composition of Tribunal</i>	54			
59	<i>Qualification of members</i>	54			
60	<i>Functions of Chairperson and Deputy Chairperson</i>	54			
61	<i>Disclosure of interest by member of Tribunal</i>	55			
62	<i>Term of office, termination of membership and conditions of service</i>	55			
63	<i>Finances of Tribunal</i>	56			
64	<i>Resources of Tribunal</i>	56			
65	<i>Conduct of persons involved in work of Tribunal</i>	56			
66	<i>Panels of Tribunal</i>	56			
67	<i>Tribunal rules</i>	57			
68	<i>Proceedings for review</i>	57			
69	<i>Tribunal orders</i>	57			
70	<i>Judicial review and enforcement of Tribunal orders</i>	58			
74	<i>Limitation of liability</i>	59			
75	<i>Documents to be made available</i>	59			
76	<i>Database of prospective suppliers</i>	60			
77	<i>Offences</i>	60			
78	<i>Exemption</i>	60			
79	<i>Deviation</i>	61			
80	<i>Regulations</i>	61			
81	<i>Transitional measures</i>	64			
82	<i>Repeal of laws and saving</i>	64			
83	<i>Short title and commencement</i>	64			

Using Government spend to catalyse Local Economic Development

The National Treasury has emphasised that the bill intends to eradicate fragmentation in the legislation that deals with the procurement within the public sector. The bill also aims to generate economic opportunities for those who have been previously disadvantaged by retaining a preferential procurement regime largely informed by the existing Preferential Procurement Framework.

In principle, we believe a Public Procurement Act can catalyse local economic development (LED) through the following interrelated five themes:



Coordination of development

- Coordination of development refers a central point of continuously monitoring and evaluating the impact of development intended by the bills preference regime and making decisionsdecision of ringfencing opportunities to foster development

Economic Growth

- Economic growth refers to preference given to small to medium enterprises, and local manufacturing

Environmental objectives promotion

- Refers to contributing towards the achievement of national environmental objectives, ensuring that government contracts are not awarded to suppliers that significantly harm the environment in their process of manufacturing goods

Preference provisions

- Preference refers to the clarity of legislated and defined methods of set asides to ensure the promotion of economic development at a legislative level

Social progress

- Refers to preference given to transformed suppliers, suppliers whom will create employment, upskill their workforce and local technologies advancement/commercialisation

The table below summarises the key recommendations that we believe should be considered for amendment in the Public Procurement bill to foster local economic development.

Proposal Name	Description
Coordination of Procurement	We believe the bill should make specific reference to coordination of development that enables the National Treasury to continuously monitor economic development gaps and continuously refine development areas of focus.

<p>Environmental Preservation and promotion</p>	<p>The bill should address the achievement of global and national environmental objectives through legislating the state to procure from suppliers who make a considered effort to reduce carbon emissions and, from suppliers who demonstrate responsible sourcing in their value chain.</p>
<p>Maintain defined Preferences “set asides”</p>	<p>It is in our opinion that discretion of defining the preference framework will reduce public confidence in the National Treasury’s seriousness on local economic development.</p> <p>Due to the fact that the bill repeals the PPPFA act entirely, and largely playing a consolidation role of existing legislations, the bill could retain the current definitive model at a legislative level</p>

Proposed amendment by chapter and section

THEME AND BILL CHAPTERS/ SECTIONS		BILL PAGES	Our observation of the bills ability to catalyse Local Economic Development	Proposed amendments	Best practice
1	<p>Theme: Coordination of Development</p> <p>Bill Chapter: Chapter 4: Preferential Procurement</p>	23	<p>Chapter 4 of the The tabled Public Procurement bill, Section 26(1) states that the Minister must prescribe a framework for preferential treatment and in Section 26(2) provide a guideline on what the preferential procurement framework should consider.</p> <p>The bill does however not make mention or provide guideline on how economic development is coordinated which may result in uncoordinated impact monitoring and evaluation.</p>	<p>We believe the bill should make specific reference to coordination of development that enable the National Treasury to continuously monitor economic development gaps and continuously refine development areas of focus.</p> <p>Chapter 10 of the bill delegates duties of the potential Act to the Provincial Treasuries where applicable. In line with these provisions, an opportunity exists to delegate the coordination of development to provincial treasuries to ensure:</p> <ul style="list-style-type: none"> • Coordinated accountability of development • Continuous monitoring and improvement of local economic development progress • Effective ongoing prioritisation of development levers by using preference to ringfence 	

				<p>opportunities where gaps are identified</p> <ul style="list-style-type: none"> Achievement of large-scale economic development impact 	
2	<p>Theme: Economic Growth</p> <p>Bill Chapter: Chapter 4: Preferential Procurement</p>	23	<p>The tabled Public Procurement Bill sufficiently address economic growth in comparisons with both developed and developing in its preference guideline in Chapter 4 of the bill.</p> <ul style="list-style-type: none"> Section 26(2)(f) aims to advance small medium and micro enterprises (SMMEs) in high value procurement The tabled bill intends to advance SMMEs in high value procurement through Public Private Partnerships (PPP) outlined in Chapter 5 of the Public Procurement Bill and incentivises PPP initiatives either through compensation from public funds or fees collected by the private party from the users of a service provided to them or a combination of such compensation such as fees as outlined in Section 44 (2) (b) (i)(ii)(iii) of the Public Procurement Bill The tabled bill, like developing countries also drive local content and advancing industrial development through its set aside mechanisms outlines in Chapter 4, Section 26 (2)(C) 		<p>Developed and developing countries contribute towards local economic development through public procurement legislation by regulating the prioritisation of local businesses, local small to medium enterprises (SMEs), businesses that have reasonable local content to foster the respective countries' industrial development.</p> <p>Developed countries like the European Union in their Public Procurement Law, Sections 2 and 3 regulates the prioritisation of SMEs and the use of public private partnerships when organs of state are procuring from the business community to foster a rapid scale of economic growth.</p> <p>Developing countries fosters economic growth through similar regulations as developed countries, with specific focus on driving local content. The Malaysian Government Contracts Act promote the National Development Policy to stimulate the growth of local industries through the maximum utilisation of local materials and resources</p>

			<ul style="list-style-type: none"> Section 26 (2)(iii) also provides for the local technology and its commercialisation preference 		
3	<p>Theme: Environmental Objectives Promotion</p> <p>Bill Chapter: Chapter 4: Preferential Procurement</p>	23	<p>Chapter 4 of the tabled bill does not in its preference guideline make mention of preference given to suppliers who contribute towards the achievement of national environmental objectives</p> <p>Chapter 2 Section 6(2)(a) states that a regulator may issue a directive to declare a particular procurement practice to be undesirable if the practice concerned is likely to result in fairness, equity, transparency, competitiveness and cost effectiveness or to promote socio economic, industrial and environmental development</p> <p>Chapter 7 Section 88 (1)(ii) of the tabled procurement bill considers environment objectives in feasibility studies of capital procurement and when disposing assets.</p> <p>Chapter 8 Section (92)(2)(e)(e) makes provision for environmental considerations relating to the type of movable asset when disposing assets.</p>	<p>Chapter 4 of the bill can do more by sufficiently addressing the achievement of global and national environmental objectives through legislating the state to procure from suppliers who make a considered effort to reduce carbon emissions and, from suppliers who demonstrate responsible sourcing in their value chain.</p> <p>In 2019, the South African president signed a Carbon Tax Act, which promotes the achievement of our environmental objectives as set out in the National Climate Change Response Policy (NCCRP) of 2011 and the National Development Plan (NDP) of 2012 through Carbon Tax Incentives.</p> <p>Aligning the Public Procurement to the above objective will further assist sustainable local economic development. The Public Procurement Bill may indirectly address the achievement of environmental objectives by legislating that:</p> <ul style="list-style-type: none"> Organs state should require relevant environmental certifications for all tenders, and/or; Where relevant, prioritise suppliers whom demonstrate historic Carbon Tax incentives/or eligibility to qualify for Carbon Tax Incentives 	<p>Developed countries have considered the achievement driving environmental and sustainability goals through the inclusion of 'Greening Public Procurement'.</p> <p>Section 4.2 of the Public Procurement in the European Union outlines the adoptions of the 'Greening Public Procurement' which requires the organs of state to procure from businesses that does its best to protect the environment.</p> <p>The above section essentially states that organs of state must choose the products and services which correspond with its pre-occupations for the protection of the environment, and in their criteria of selection of candidates in so far as these criteria are aimed at testing their economic, financial and technical capacity as regards the award of contracts, environmental elements can serve to identify "the most economically advantageous offer", in cases where these elements imply an economic advantage for the purchasing entity, attributable to the product or service which is the object of the procurement. In evaluating tenders, a purchasing organisation can, for example, take account of costs of maintenance, treatment of waste or re-cycling.</p> <p>Developing countries like Malaysia, their Procurement Act requires state entities to</p>

					<p>prioritise suppliers whom align with the 10th Malaysian Plan(10MP) which addresses the achievement of environmental objectives.</p> <p>In Singapore, the legislative bodies reformed the tax system to promote environmental objectives.</p> <p>The Public Contracts legislation aligned to the revised tax system by legislating the prioritisation of suppliers whom benefit from the reformed tax system</p>
4	<p>Theme: Preference (set asides)</p> <p>Bill Chapter: Chapter 4: Preferential Procurement</p>	23	<p>Chapter 4 of the The tabled Public Procurement bill, Section 26(1) states that the Minister must prescribe a framework for preferential treatment and in Section 26(2) provide a guideline on what the preferential procurement framework should consider.</p> <p>The current Preferential Procurement Policy Framework Act, 2000 (PPPFA) provides preference a definitive preference framework that every procuring entity need to apply.</p>	<p>It is in our opinion that discretion of defining the preference framework will reduce public confidence in the National Treasury’s seriousness on local economic development.</p> <p>Due to the fact that the bill repeals the PPPFA act entirely, and largely playing a consolidation role of existing legislations, the bill could retain the current definitive model at a legislative level</p>	
5	<p>Theme: Social Progress</p> <p>Bill Chapter: Chapter 4: Preferential Procurement</p>	23	<p>The tabled procurement bill sufficiently addresses social progress by providing mechanisms of fostering creation of employment, skills development, demographic preference and development in Chapter 4 of the Public Procurement.</p> <p>Creation of employment In Chapter 4 of the tabled bill, Section 26 (2) says organs of state must consider the Broad-Based Black Economic Empowerment Act (BBBEE) and must include (c) measure for preference to set aside the allocation of contracts to promote (v) the creation of jobs or intensification of labour disruption</p>		<p>Developed and developing countries contribute towards the achievement of social progress through their Public Procurement legislation that regulates the prioritisation of suppliers that create employment, upskill their workforce and advance local technologies.</p> <p>Developing countries place a bigger emphasis in prioritising spend towards transformed suppliers in efforts of addressing any economic exclusion of their history. The Malaysian Government Contracts Act promote the National Development Policy that encourage and support the</p>

		<p>Skills Development Chapter two of the tabled bill requires organs of state to procure from suppliers whom comply with the Employment Equity Act, 1998 (Act No. 55 of 1998) which disqualify suppliers whom do not upskill their workforce</p> <p>Demographic preference Chapter 4 regulates preferential procurement and enables the Minister to prescribe a framework for preferential treatment for categories of preferences, and the protection or advancement of persons, or categories of persons, previously disadvantaged by unfair discrimination, in procurement. The Chapter makes specific reference to women, youth and people with disabilities</p>		<p>involvement of Bumiputera (indigenous) entrepreneurs in efforts to drive transformation</p>
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Appropriate Risk and Governance Measures to Minimise Leakage and Corruption

The management of public funds in South Africa is heavily regulated through key pieces of legislation which govern the interaction with the public sector. Procurement in the public sector has however come under the limelight in recent years with various scandals pertaining to corruption, nepotism and other illegal activities taking place country-wide.

The purpose of the review is to provide perspective on the adequacy of the bill to ensure appropriate risk and governance measures to minimise leakage and corruption.

The approach for the review was conducted with the lens of the areas that public entities are exposed to and analysed how the Public Procurement Act appropriately addresses risk and governance measures to minimise leakage and corruption.

Public procurement exposes entities to potential fraud, corruption and reputational risks as a result of unethical business practices or failure to comply with policies and regulatory requirements within the supply chain management and procurement processes.

Fraud and corruption in the procurement function (such as illicit rebates, kickbacks and dubious vendor relationships) are all too common. While the risk can never be fully eliminated, public entities can implement controls to reduce the likelihood of these occurring. Such controls need to be well considered and robust enough to be relevant to the ever-evolving modus operandi of how procurement irregularities are committed.

To mitigate the risk of fraud, existing controls, thresholds and procedures should be regularly reviewed and assessed for relevance, adequacy and effectiveness. This is particularly important with the increasing application of technology and globalisation of businesses.

While the risk of fraud cannot be eliminated entirely in public procurement, it can be greatly reduced through the right approach, recommendations and guiding regulatory principles outlined in the public procurement bill.

In line with developing countries, the bill should highlight and promote:

- Strengthen anti-corruption efforts:** Anti-corruption efforts refers to all the activities aimed to detect, prevent and redress the abuse of power for private gain at each stage of the public procurement cycle. Corruption undermines value for money both directly, by awarding contracts to bid that do not represent the greatest price-quality ratio, and indirectly by suppressing participation rates and thus competition for public contracts.
- Advance modernisation and digitisation:** Digitisation in public procurement refers to the integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process. Modernisation involves the idea of having public procurement information publicly available by posting it online. Benefits of modernisation and digitisation can include cost savings, increase in transparency, and less administrative burden.
- Incorporate strategic procurement:** Strategic procurement refers to the process whereby public authorities seek to procure goods, works and services taking into consideration the social, innovative and environment aspects throughout the procurement lifecycle. In the context of this study, strategic procurement includes green procurement, socially responsible procurement and innovation procurement. Thus, integrating strategic procurement contributes to reaching secondary policy goals that may be important to an organisation.

The table below summarises the key recommendations that we believe should be considered for amendment in the Public Procurement bill for appropriate risk and governance measures to minimise leakage.

<i>Proposal Name</i>	<i>Description</i>
Procurement Integrity	A standard form document should be developed in this regard to guide with additional disclosure of interest. A guideline should be provided to public entities on the various scenarios/use cases that will trigger an investigation in terms of the National Strategic Intelligence Act.
Procurement Methods: Examination of Bids	The emphasis on selecting the price of the lowest bidder should be reconsidered. Audits on bidder’s capabilities (personnel, infrastructure) should be done where necessary to ensure that the bidder is able to meet its obligations should they win the bid.

Infrastructure delivery management	The regulations should contain guidelines in aiding the process of accountability and, more importantly, clearly stipulating which statute will prevail where there is a conflict (i.e. this bill vs the Construction Industry Development Board Act).
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Proposed amendment by chapter and section

BILL CHAPTERS AND SECTIONS		BILL PAGE	Our observation of the bills ability to minimise leakage and corruption	Proposed amendments	Best practice
3	Procurement Integrity	19	<p>18. Disclosure of interest – is this in addition to the interest provided annually by staff members of the institution?</p> <p>19. Conduct of bidders and suppliers – What circumstances would require an investigation as per the National Strategic Intelligence Act?</p>	<p>18. Disclosure of interest – A standard form document should be developed in this regard to guide with additional disclosure of interest.</p> <p>19. Conduct of bidders and suppliers – A guideline should be provided to public entities on the various scenarios/use cases that will trigger an investigation in terms of the National Strategic Intelligence Act.</p>	The bill must promote procurement integrity and disclosure of interest by ensuring transparency, integrity, economy, openness , fairness, competition and accountability principles for public procurement.
5	<p>Procurement Methods & Bidding Process</p> <p>Part 1: General Methods</p> <p>Part 2: Bidding Process</p>	24	<p>27. Procurement methods and principles – the bill states that suppliers may stipulate in their bid documents that quotes must be provided in South Africa currency, will other currencies be allowed? If so, which conversion rate will be applicable? (at the time quote is provided or at the time work has been won)?</p>	<p>27. Procurement methods and principles – the bill states that suppliers may stipulate in their bid documents that quotes must be provided in South Africa currency, will other currencies be allowed? If so, which conversion rate will be applicable.</p> <p>An amendment is required to clearly stipulate this, as this will cause conflict with respect to the correct price to be paid for services rendered [in the event foreign currencies are permitted].</p> <p>28. Invitation to bid – Unless a plausible reason can be provided, an invitation should be drafted for consulting services and infrastructure, to the extent that the invitation relates to the provision of a panel of consulting services.</p> <p>28. Bid security – It is recommended that the</p>	The bill on public on procurement should require public bodies to open up higher-value contract opportunities and also to run a fair and transparent competition to select the winning bid as seen in other developing countries and the EU.

				<p>instances and parameters surrounding the furnishing of security to a bid is required and can be included as part of the regulations to the soon to be Public Procurement Act.</p> <p>34. Withdrawal and modification of bid – A consideration could be made to include a prescribed notice in terms of section 34(1).</p> <p>37. Examination and evaluation of bids</p> <p>It is recommended that, where required, documents should be submitted in terms of the Justice of the Peace and Commissioners of Oaths Act, 1963</p> <p>The BBBEE Act caters for this evaluation, however the emphasis on selecting the price of the lowest bidder should be reconsidered. Audits on bidder’s capabilities (personnel, infrastructure) should be done where necessary to ensure that the bidder is able to meet its obligations should they win the bid.</p> <p>37. Cancelling of procurement</p> <p>Though it is the voluntary act of the bidder to respond to an advertised bid, consideration can be made in looking at more cost-effective ways for bidders to make submissions (i.e. paperless, fully automated approach).</p>	
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6	<p>Supply Chain Management</p> <p>Part 1: Supply Chain Management System</p> <p>Part 2: Institutional Arrangements</p> <p>Part 3: Demand Management</p> <p>Part 4: Acquisition Management</p> <p>Part 5: Contracts and Contract Management</p> <p>Part 6: Logistics Management</p> <p>Part 7: Movable Asset Management</p>	34	<p>52. Supply chain management system</p> <p>– It would be prudent to specify that on top of the procurement policy, the development of an institutional procurement procedural manual.</p> <p>52(3) – Business Continuity Management considerations should be taken into account</p> <p>59. Functions and proceedings of bid specification committees</p> <p>– The rationale as to why trade barriers (requirement for drawings, testing and test methods), to promote competition. However, how are we ensuring that quality won’t be compromised? Will this be further articulated in the procurement agreement?</p> <p>65. The ultimate decision-making authority must be clear when it comes to disagreements between bid evaluation committee and bid adjudication committee.</p>	<p>59. Functions and proceedings of bid specification committees</p> <p>It is recommended that these are in fact not removed but further articulated on in both the bid documents and subsequent briefing sessions. This can also be remedied by, for example, requiring a mandatory two bidder appointments on one project (one bidder being identified as having the skill but limited expertise), which will enable a transfer of skills.</p> <p>71. Strategic procurement</p> <p>It is recommended that principle be included in the procurement procedural policy.</p>	<p>Public strategic procurement should be seen as a crucial pillar of services delivery for governments and a strategic tool for achieving key policy objectives: from budget accountability, to spending efficiency, to buying green and improving outcomes service delivery, to tackling global challenges such as climate change, and promoting socially responsible suppliers into the global value chain.</p> <p>strategic public procurement can also significantly support a more circular economy and transform supply-chain business models, given the magnitude of its size in government spending and its predominant role in delivering some of the most resource-intensive public services such as infrastructure.</p>

			<p>71. Strategic procurement</p> <p>– Where are the strategic sourcing principles meant to be documented, if this is required? It should be considered as that it be drafted in the suggested procurement procedural policy.</p> <p>73. How will contractual disputes be managed and monitored?</p>		
7	<p>Infrastructure Delivery Management</p> <p>Part 1: Applications of this chapter</p> <p>Part 2: Infrastructure procurement and delivery management by depts., constitutional institutions and 3A and 3C public entities</p> <p>Part 3: Infrastructure procurement and delivery management by major public entities, government business enterprises, municipalities and municipal entities.</p>	46	<p>85. The bill states that ‘an accounting officer or accounting authority of a client institution may, subject to any legislation, delegate or assign the responsibility to implement an infrastructure project to another institution’.</p> <p>The procedure and accountability must be clearly defined in this regard.</p> <p>86. The bill states that the accounting officer may make use of a contract arranged by another institution as</p>	<p>85. The regulations should contain guidelines in aiding the process of accountability and, more importantly, clearly stipulating which statute will prevail where there is a conflict (i.e. this bill vs the Construction Industry Development Board Act).</p>	<p>Strategic public procurement can also significantly support a more circular economy and transform supply-chain business models, given the magnitude of its size in government spending and its predominant role in delivering some of the most resource-intensive public services such as infrastructure.</p> <p>This calls for an approach that not only enables efficiency, growth and value for money, but also accomplishes strategic goals linked to a broader understanding of sustainability, cutting across both environmental and social objectives.</p>

	Part 4: Gateway Review Process		<p>prescribed and in accordance with any applicable standard for infrastructure procurement and delivery management.</p> <p>How will they keep track of the different types of Agreements and to also ensure completeness of the applicable T&C from a legal and compliance perspective?</p> <p>88. The feasibility assessment results must be properly documented and any mitigating plans for areas of improvement must be documented and monitored accordingly.</p>		
8	Disposal of Assets	49	<p>92 (3) The bill states that an accounting officer may transfer any movable asset free of charge to any organ of state.</p> <p>How is this going to be reported for tracking and write off purposes?</p>	92 (3) – Consideration must be given to this section of the Act, in light of stern direction in the alleviation of fruitless and wasteful expenditure.	The Bill should also consider aspects of asset disposal in line with the accounting principles.
9	<p>Dispute Resolution</p> <p>Part 1: Reconsideration and review</p>	51	104. How will disclosure of interest by members be tracked and registered?	104. The disclosure of interest by members must be tracked and registered. It is recommended that the tracking obligation be jointly shared by procurement and finance.	<p>Well-defined laws and regulations that are enforceable and open to public scrutiny, transparent advertising and</p> <p>equitable access to tenders, clear standard documents and selection criteria as well as full</p>

	<p>Part 2: reconsideration by procuring institution</p> <p>Part 3: Provincial reconsideration procedure</p> <p>Part 4: National reconsideration procedure</p> <p>Part 5: Review</p>				<p>disclosure of awards and clear appeal mechanisms all contribute to increasing transparency</p> <p>in public procurement thereby minimising disputes in public procurement.</p> <p>Greater transparency allows to deter corruption practices, and</p> <p>encourage an environment of open competition for all.</p>
10	General Provisions	59	117. Are there any consequences for deviation without acceptable reasons for using suppliers outside of the approved database?	104. The disclosure of interest by members must be tracked and registered. It is recommended that the tracking obligation be jointly shared by procurement and finance.	Accountability and disclosure of interest is about having public procurement practitioners held responsible for carrying out a defined set of duties or tasks, and for conforming with rules and standards applicable to their posts. To ensure accountability, transparency mechanisms such as public oversight, monitoring systems and effective sanctions are important. An accountable public procurement system helps reduce abuse, thus increasing the effectiveness of goods, works and services delivery and an effective use of public money.

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Gregory Rammego	Director	Risk Advisory
Nkateko Mabaso	Senior Manager	Risk Advisory
Candice Holland	Director	Risk Advisory
Kavitha Prag	Director	Consulting
Khutso Sekgota	Director	Consulting
Nelson Reddy	Senior Manager	Consulting
Thami Mkhonza	Senior Manager	Consulting
Harsha Desai	Senior Manager	Consulting
Betsho Letsholo	Manager	Consulting
Vuyo Mkhize	Manager	Consulting
Asanda Nkungwana	Senior Consultant	Consulting
Tumelo Tire	Senior Consultant	Consulting
Juanita Wagner	Consultant	Consulting



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