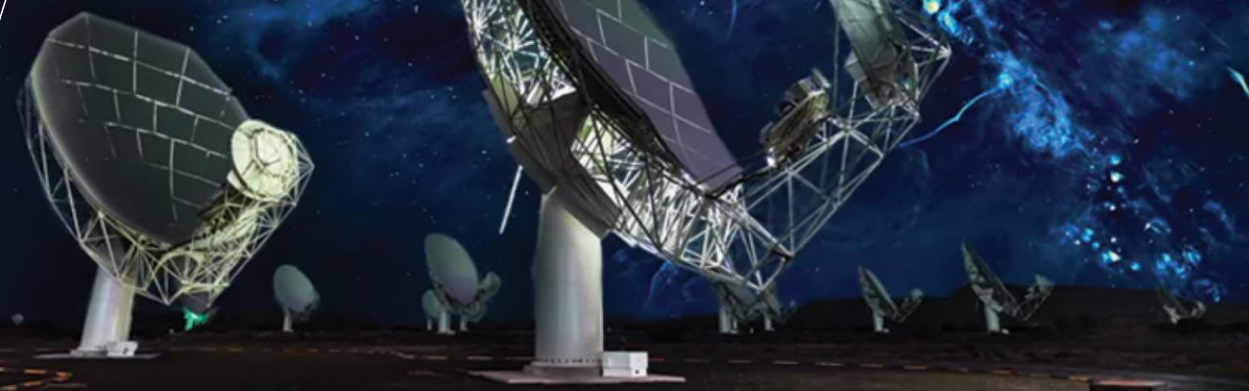




National System of Innovation (NSI) and the Public Procurement Bill

NATIONAL COUNCIL OF PROVINCES

23 FEBRUARY 2024



science & innovation

Department:
Science and Innovation
REPUBLIC OF SOUTH AFRICA



National
Research
Foundation

Introduction to the National Research Foundation (NRF)

- **PFMA Schedule 3A public entity, however mandate extends to all 3 spheres of government**
- Host the largest science project in the world, and the largest science infrastructure on the African continent - Square Kilometre Array (SKA) (DSI, 2019:7)
 - NRF mandate: “...*provision of the necessary research infrastructure, in order to facilitate the creation of knowledge, innovation and development in all fields of science and technology, including humanities, social sciences and indigenous knowledge*” (NRF, 2019:s3(a))
 - NRF mandate “...***promoting the development and maintenance of the national science system and support Government priorities...***” (NRF, 2019:s3(d))

Sources: DSI (Department of Science and Innovation). 2019. *White paper on science, technology and innovation*.
NRF (National Research Foundation). 2019. *National Research Foundation Amendment Act 19 of 2018*.

Introduction to the National Science System

- *“It is a system of interconnected institutions that create, store and transfer the knowledge, skills and artefacts that define new STI [Science, Technology and Innovation] (DSI, 2022:7)*
 - Across Departments of Agriculture; Land Reform & Rural Development; Communications and Digital Technologies; Defence; Forestry; Fisheries & the Environment; Health; Mineral Resources and Energy; Public Service & Administration; Public Works & Infrastructure; Science & Innovation; Trade, Industry & Competition; and Water & Sanitation.
 - Related funding entities (such as SEDA, the South African Biodesign Initiative; Support Programme for Industrial Innovation (SPII); and the Technology Innovation Cluster Programme.
 - Provincial & municipal entities (e.g. Gauteng’s Innovation Hub, Mahikeng Innovation Hub (MIHub)).

Sources: DSI. 2022. *Science, Technology and Innovation Decadal Plan*.

Appreciation

Opportunity to provide comments and present to the NCOP

Early consultation by National Treasury on the Draft Public Procurement Bill (2020)

Including Innovation in the Public Procurement Bill (Sections 2(2)(d)(iii), 5(1)(f), 17(2)(c)(iv) & 24(1)(a))

Elevate innovation

Problem statement

“While the reference to innovation is certainly welcomed, the Act as a whole does very little to advance innovation.

In fact, a strong argument can be made that the Act will stifle innovation by creating a narrowly controlled and rule-bound procurement environment, rather than an enabling environment for innovation. It is well-known that innovation cannot flourish in narrowly controlled, rule-bound environments.

It is thus not clear how this subsection is actually borne out by the Act if this is meant to be an object of the Act.” (Prof. Geo Quinot)



Elevate innovation

Recommendation

Innovation, not as a subcategory in section 2(2)(g), but elevated to the same level as subsections (a) to (g), to read “*promote innovation*”

Innovation-enabled environment

Problem statement

17(2 a) largely removes any discretion that procuring institutions may have under sections 7 and 8 by granting the Minister far-reaching powers to prescribe to institutions how they should procure.

Sections 25 and section 29 seem to grant the same powers/functions to different entities:

- In section 16, the power is granted to procuring institutions to develop their own procurement system,
- In section 17 the power is granted to the Minister to prescribe the procurement system.

Innovation-enabled environment

Recommendation

- Minister to prescribe an appropriate and differentiated **framework** At minimum for innovation-centric procuring institutions, ideally for all procuring institutions
- Include specific procurement **methods** to address **innovation**

Capacity building

Recommendation

A Centre for Procurement of Innovation to provide training and support in innovation procurement methods, tools and guidelines:

- Mandated
- Budgeted
- Concurrence of relevant Ministers

Categories

Recommendation

Innovation categories to include (25(2)(b)):

- community and grassroots innovation, social innovation, local innovation and small & micro businesses
- research and development (including dissemination and research collaboration agreements);
- experimentation;
- commercialisation;
- sole suppliers;
- disposals within research projects.

Methods

Problem statement

Innovation procurement requires different methods to conventional procurement

- Dialogue and cooperation early in the tender process
- Focus on outcomes and variants
- Shift to incentives and recognise risk
- Encourage unsolicited offers
- Culture shift

Methods

Recommendations

Methods to support innovation procurement must be continually developed and implemented across procuring institutions.

- Innovation specific procurement methods.
- Innovation friendly methods

Clearly define system, type of methods, methods and procedures.

Trumping innovation out?

Problem statement

- The NRF and other R&D institution are established by own Acts
- *“When 3(4) is read with the definition of “this Act”, which includes regulations and instructions, it is completely inappropriate for provisions of this Act, and even more so regulations and instructions made under this Act, to trump the more specific provisions of the enabling legislation of specific entities, such as the National Research Foundation Act in respect of the NRF. It could never be appropriate for general rules emanating from the National Treasury to trump specific rules setting out the statutory mandate of a specialised entity like the NRF.” Prof Geo Quinot*



Trumping innovation out?

Recommendation

Replace with a new subsection to clarify the need for appropriate differentiated application of the Act:

- *“3(6)(a) This Act must be applied by way of appropriate differentiation between different contexts that merit differentiated procurement regulation.*
- *(b) The differentiation contemplated in subsection (a) must at least include the contexts of procurement of infrastructure and consultants” (Prof. Geo Quinot).*

Refine Policy Objectives: Chapter 4:Transformation

Problem statement

- Preferences (Local content & localisation)
- Innovation
- Sustainable

Chapter 4 includes a range of procedural measures that do not belong at primary law level (e.g. 18(5)(c) states “a bid must be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation; ...)”

Chapter 4: Transformation

Recommendation

Include sufficient definitions as it is impossible to comment if it is uncertain what the intention/definition is.

International research points to many weaknesses in this procedure. The World Bank recognises multiple other procedures.

**s 18(3) is extremely limiting at provincial and local government levels and may retard transformation. Why must a procuring institution trade-off between “black people within a particular geographical area” and other designations such as women or youth. This makes it impossible, for example, for a province or municipality to support black women-owned small businesses within their geographical areas, which they may have identified as a specific transformational need. (DELETE IT) MANAGE
DETAIL VIA REGULATIONS**

Cost Implications

Problem Statement

Section 5 of the Memorandum: “No substantial financial implications for the State are envisaged”.

“Section 35 of the PFMA states that ‘Draft national legislation that assigns an additional function or power to, or imposes any other obligation on, a provincial government, must, in a memorandum that must be introduced in Parliament with that legislation, give a projection of the financial implications of that function, power or obligation to the province.’”

Cost Implications

Problem Statement

Section 5 of the Memorandum: “No substantial financial implications for the State are envisaged”.

Rule 279(1)(c)(iii) of the Rules of the National Assembly (‘NA’) requires that all Bills introduced by a cabinet member in the NA must be accompanied by a supporting memorandum. This memorandum must include, among others, an account of the financial implications of the Bill for the state. The memorandum must also be transmitted to the National Council of Provinces (‘NCOP’) in cases where the NCOP must also process the Bill.

Cost Implications

Problem Statement

The Procurement Bill will involve considerable costs. These costs can be grouped in four categories:

Implementation costs:

Costs associated with setting up new/revised implementation structures of the proposed procurement regime;

Compliance costs: Costs associated with the operation of the procurement regime once it has been set up in terms of the Procurement Bill;

Cost Implications

Problem Statement

Section 5 of the Memorandum: “No substantial financial implications for the State are envisaged”. The Procurement Bill will involve considerable costs.

These costs can be grouped in four categories:

Implementation costs:

Procurement costs: Increases in cost of goods and services procured under the new procurement regime;

Knock-on costs: Costs of changes that will have to be made in non-procurement areas as a result of the implementation and operation of the new procurement regime.

Cost Implications

Recommendations

All these cost implications must be quantified in order to determine what the financial implications for provinces and local government are of enacting the Bill. Without such quantification, the Bill cannot legitimately be passed.

*Enkosi, Thank you,
Re a leboga, Siyabonga, Dankie*

