



# **Public Procurement Bill**

## **Select Committee on Finance (NCOP)**

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**Project Director: Public Sector**



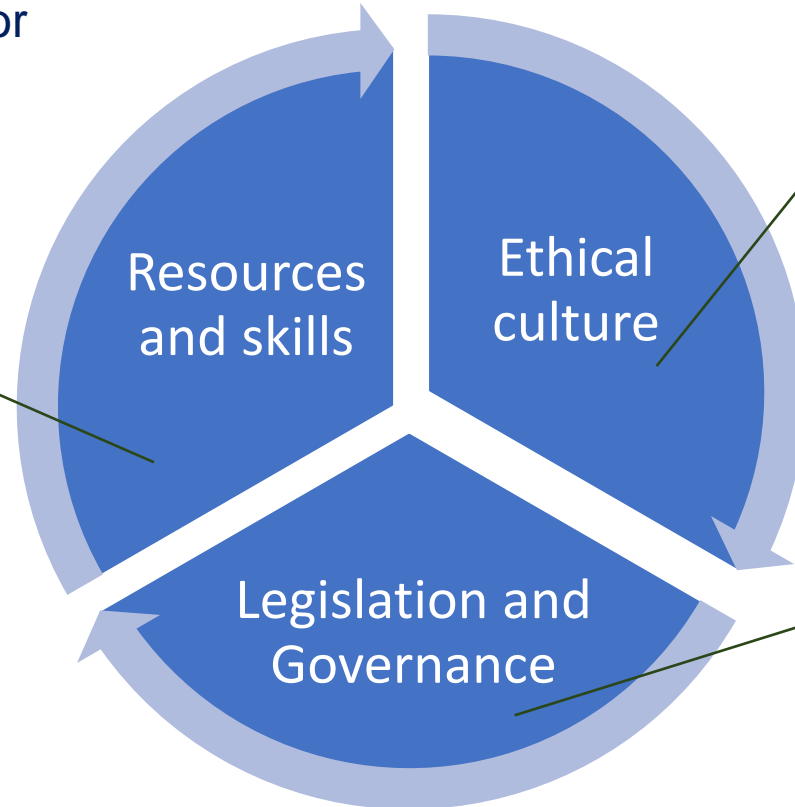
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# Overview

The Procurement Bill should not be considered in isolation to current challenges impacting procurement in the public sector

Inadequate resource with the right skills



**Creates:**  
Enabling environment  
Accountability  
Consequence Management

Implementation/ Monitoring

# Legislation and Governance (section 8)

1. Implementation and monitoring of legislation is a challenge when responsibilities are not adequately documented in the legislation thereby reducing accountability and effectiveness of the legislation.
2. Risks exists where legislations are not adequately supported by processes and policies thereby resulting in the implementation of the legislation not meeting its objective.

## RECOMMENDATION:

1. The duties of procuring institutions must include a requirement for **consequence management** to be implemented where non-compliance with the Act has been identified.
2. Responsibilities should be included for the procuring institutions to implement processes to manage suppliers in an effort to ensure that they receive quality services and goods. In instances where this does not occur the procuring institution has a responsibility to notify the provincial/national treasury and blacklist the supplier, preventing the service provider from doing business with government.

# Skills And Resources (sections 5, 8)

1. Skills and resources are key in the implementation of legislation, policies and processes including the procurement process.
2. Workforce that does not possess the required skills may encounter difficulty in implementing to the desired level, resulting in no change in the status quo.
3. Skills within government should not be fragmented in separate legislation but intertwined to ensure accountability and consequence management can be implemented.

## **RECOMMENDATION:**

1. The Bill should incorporate capacity and skills required for procurement units
2. Responsibility should be included for the National Treasury to implement regulations for minimum competencies for the Head of Procurement and procurement officials
3. Responsibilities should be included for the procuring institutions to ensure that the procurement officials have the required skills based on minimum competencies and that the procurement office is adequately staffed.

# Ethical Culture (sections 9, 10, 14)

1. There is an understanding that whistleblowing processes and legislation resides with the Department of Justice however it is critical that processes are implemented within institutions to promote an ethical culture and it should be part of the operational responsibilities of the institution.
2. Promoting an ethical culture is critical for the implementation and compliance of legislation and attracting and retaining professionals.

## **RECOMMENDATION:**

1. The procuring institution, provincial treasury or national treasury should have the responsibility of implementing a fraud hotline/whistleblowing processes to improve strong internal controls over the procurement process and protection of those who report non-compliance with the Act. This will strengthen the ethical environment of the public sector and reduce procurement fraud.
2. There needs to be specific measures to encourage and protect whistleblowers.
3. The Code of Conduct should be supplemented with additional guidance document or a detailed Code of Conduct which includes application guidance on safeguards to be implemented when threats are identified.
4. The Bill should include measures to be taken in relation to the procurement transaction which has been reported as an unlawful act by an affected and that transaction should not continue until the PPO processes the affected person's reporting.

# Other Key Considerations

1. The written submission recommends sections that should be amended, words to be defined, etc.
2. Processes and regulations will need to be developed or reviewed to support the proposed Bill. E.g. minimum competencies regulations, whistleblower protection
3. Improvements in the use of technology to enhance the procurement process including identifying conflicts of interest
4. Ensuring that the process for debarment is fair and ensuring an efficient and timely sharing information to ensure that debarred suppliers do not continue to do business with government (ensuring an efficient use of IT in this regard)
5. Ensuring that the Bill aligns with the Constitution



THANK YOU