



**THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA**



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

REVISED (2020): FINAL IMPACT ASSESSMENT TEMPLATE –PHASE 2

NAME OF THE PROPOSAL: PUBLIC PROCUREMENT BILL

DATE: 15 DECEMBER 2022

1. Please DO NOT ALTER the template and questionnaire
2. Draft SEIAS report should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
3. FINAL report will be in PDF format and will be inclusive of the sign-off
4. Sign off forms are only valid for a period of six months.
5. Bills and Regulations that introduce permitting, licensing and registration system must be accompanied by a streamlined process map and indicate the proposed turnaround time for processing of such.

PART ONE: ANALYSIS FOR FINAL SEIAS REPORT

Please keep your answers as short as possible. Do not copy directly from any other document.

1. Conceptual Framework, Problem Statement, Aims and Theory of Change

1.1. What socio-economic problem does the proposal aim to resolve?

Currently, procurement is legislated through the Public Finance Management Act, No.1 of 1999, (PFMA) applicable to National and Provincial spheres of government, however, Chapter 16A of the PFMA Regulations on Supply Chain Management applies to National and Provincial organs of state excluding schedule 2, 3b and 3d public entities listed in the PFMA. The Municipal Finance Management Act No 56 of 2003 further legislate procurement for local spheres of government.

However, there isn't any distinct difference between the PFMA and MFMA on procurement. To give effect to the constitutional requirement of providing for preferential procurement with the aim of addressing socio-economic imbalances of the past, a Preferential Procurement Policy Framework Act, 2000, No 5 of 2000 (PPPFA) was enacted and applied to all organs of state. In addition to the above-mentioned legislation, there are 29 other pieces of legislation dealing directly/indirectly with or regulating certain specificities in public procurement. These numerous pieces of procurement regulatory tools have created fragmentation resulting in the following:

- Overlap and duplication between different regulatory instruments;
- uncertainty as to which precedes the other or to follow, leading to inconsistency in the approach to similar issues at the different levels or spheres of government;
- Undermines integrated and comprehensive national oversight functions;
- Impacts on service delivery;
- Challenges in addressing government broader socio-economic objectives such as development of SMME's, amongst others;
- Increasing the opportunities for corruption related activities.

In South Africa, government has identified public procurement as a lever that will enable improved access for small and medium enterprises to opportunities, thereby promoting local economic activities and creating jobs. Thus, in December 2014, Cabinet directed National Treasury to accelerate modernisation of the public procurement system in South Africa through a legal framework that introduces broader policy reforms. The Public Procurement Bill is thus one of the processes aimed

Commented [PK1]: Please provide background to the Bill and the socio-economic problem that prompted the need for this Bill

at effecting Cabinet's decision.

1.2. What are the main root causes of the problem identified above?

Preferential Procurement Policy Framework Act (PPPFA) is the only statutory legislation that explicitly regulates procurement throughout Government although it is too constrained in its approach in attaining government policy objectives. The points system in particular, is inflexible at statutory level, generating rigidities that have stymied well-conceived local industrialisation and empowerment initiatives. The Bill in its intent elevates and mainstreams preferential procurement into the broader public procurement / SCM regime by enhancing more flexible preferential provisions and repealing the PPPFA. The Bill envisages governing public procurement across the public sector, carving out and elevating the procurement clauses of the Public Finance Management Act (PFMA) and Municipal Finance Management Act (MFMA), harmonising them with the remaining public finance management provisions of those statutes, and building the procurement function into a professional work-stream within the statute framework of the Bill. The Bill, intended as the highest statutory legal instrument on public procurement / SCM, is an effort to consolidate and simplify regulation on public procurement across Government. It will be applicable to all 'organs of state', as per the definition provided in Section 239 of the Constitution, including initially those to which the PFMA and the MFMA applies, along with Parliament and the Provincial Legislatures.

What socio-economic problem does the proposal aim to resolve	What are the main roots or causes of the problem
<p>Procurement has been identified as a lever to address socio-economic objectives of government and section 217(2) of the Constitution makes provision for organs of state to implement a policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination.</p> <p>Historically there was a racial discrimination applied in the broader economic activities of the country, which largely excluded black people. And this discrimination created an imbalance in the country such that only few persons were advantaged while the majority remained disadvantaged and poor. Thus section 217 of the Constitution makes provision for organs of state to implement a policy providing for categories of preference in the allocation of contracts and the</p>	<p>The historical discrimination in the allocation of government contracts in terms of race, gender, disability etc.</p>

protection or advancement of persons or categories of persons disadvantaged by unfair discrimination. Therefore, the object of the Bill is with due regard to section 217 of the Constitution to ensure that the State utilises and leverages procurement that promotes and support policy objectives to advance historically disadvantaged persons and businesses. This intervention will indirectly alleviate unemployment and poverty.	

1.3. Summarise the **aims** of the proposal and **how** it will address the problem in no more than five sentences.

The current legislation, namely the Preferential Procurement Policy Framework Act, no 5 of 2000, is too constrained in its approach to attaining government’s policy objectives. The preference points system has been inflexible at statutory level, generating rigidities that have stifled local industrialisation and empowerment initiatives. This proposal makes provision for measures to advance a category or categories of person, businesses or a sector, including measures for preference to set aside the allocation of contracts to promote a category or categories of person, businesses or a sector; goods that are manufactured in the republic; services that are provided by citizen or citizens of the republic.

The Public Procurement Bill seeks to eliminate existing fragmentation in the public procurement regulatory environment and consolidate various pieces of legislation into a single overarching national procurement regulatory framework. When there is uniformity, impact can be measured as fragmentation does not support measurement of the effectiveness of the policy objectives due to institutions not applying uniform standards. Therefore, the proposal provides, amongst others, a uniform mechanism for monitoring procurement efficiency and effectiveness in government.

Commented [PK2]: After this being achieved then what?

How is this proposal contributing to the following national priorities?

National Priority	Impact
1. Building a capable, ethical and developmental state	The Public Procurement Bill provides for integrity and ethical conduct in procurement, code of conduct for officials, bidders, suppliers, members of the Tribunal and any other person involved in procurement.

National Priority	Impact
2. Economic transformation and job creation	Chapter 4 of the Public Procurement Bill provides for preferential procurement to advance categories of persons historically disadvantaged by unfair discrimination in keeping with s217(2) and (3) of the Constitution. Further, it provides, among others, local industrialization for job creation.
3. Education, skills and health	The Public Procurement Bill provides for the capacity building of procurement practitioners, and professionalization of the supply chain management discipline
4. Consolidating Social wage through reliable and quality basic services	Not applicable, not within the mandate of this proposal.
5. Spatial integration, human settlements and local government	Not applicable, not within the mandate of this proposal.
6. Social cohesion and safe communities	Not applicable, not within the mandate of this proposal.
7. A better Africa and world.	Not applicable, not within the mandate of this proposal.

1.4. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.

Option 1.	Amendments to the following pieces of legislation: <ul style="list-style-type: none"> • Preferential Procurement Policy Framework Act, • Public Finance Management Act, and • Municipal Finance Management Act, and • Amendments to other pieces of legislation that deal with procurement to provide the necessary alignment.
Option 2.	<ul style="list-style-type: none"> • Provide for a blanket conditional exemption from the above policy frameworks as far as they relate to procurement.

	<ul style="list-style-type: none"> • This option, however, has its limitations in that it is always linked to specific conditions.
	<ul style="list-style-type: none"> •

PART TWO: IMPACT ASSESSMENT

2. Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
Act No. 86 of 1968 State Tender Board Act, 1968	National Treasury	Procurement	1.Repeal of the whole Act
No. 89 of 1970 National Supplies Procurement Act, 1970	National Treasury	Procurement	2 Repeal of the whole Act.
Act No. 107 of 1997 Housing Act, 1997	Human Settlements	Procurement	3.Amendment of section 3 by the substitution in subsection (2) for paragraph (cA) of the following paragraph: "(cA) [determine a procurement policy, by no later than April 2002, which is consistent with section 217 of the Constitution in relation to housing development] subject to the Public Procurement Act, 2022, review the procurement policy on housing development and determine a new policy by no later than a date set by the Minister;"
Act No. 36 of 1998 National Water Act, 1998	Water and Sanitation	Procurement	4.The amendment of section 26 by the substitution in subsection (1) for paragraph (n) of the following paragraph: "(n) subject to the Public Procurement Act, 2022, prescribing procedures for the allocation of water by means of a bid [public tender] or auction;" 5.The amendment of section 45 by the substitution in subsection (2) for paragraph (f) of the following paragraph: "(f) allocated to every other applicant by means of a bid [public tender] or auction:'.
Act No. 88 of 1998 State Information Technology Agency Act, 1998	Public Service Administration	Procurement	6.The amendment of section 7-(a) by the substitution in subsection (4)(a) for subparagraph (ii) of the following paragraph:

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
			<p>"(ii) procure that service in accordance with the Public Procurement Act, 2022, [through the Agency in terms of subsection (3)] if the Agency indicates in writing that it is unable to provide the service itself;"</p> <p>(b) by the substitution in subsection (4)(b) for subparagraph (ii) of the following paragraph: "(ii) procure that in accordance with the Public Procurement Act... [service through the Agency in terms of subsection (3)];"</p> <p>(c) by the substitution for the word "and" of the word "or" at end of paragraph (a) of subsection (5); and</p> <p>(d) by the substitution in subsection (5) for paragraph (b) of the following paragraph: "(b) procure any information technology goods or services in accordance with the Public Procurement Act, 2022 [through the Agency];".</p> <p>7.The amendment of section 23 by the substitution in subsection (1) for paragraph (a) of the following: "must, subject to the Public Procurement Act, 2022, make regulations regarding the manner in which procurement in terms of section 7(3) to (7) must take place, with the concurrence [subject to the approval] of the Minister of Finance; and".</p>
Act No. 111 of 1998 Correctional Services Act, 1998	Correctional Services	Procurement	<p>8.The amendment of section 103 by the substitution for subsection (1) of the following subsection: "(1) The Minister may, [subject to any law governing the award of contracts by the State] subject to the Public Procurement Act, 2022, with the concurrence of the Minister of Finance and the Minister of Public Works, enter into a contract with any party to design, construct, finance and operate any correctional centre or part of a correctional centre established or to be established in terms of section 5."</p>
Act No. 1 of 1999 Public Finance Management Act, 1999	National Treasury	Procurement	<p>9.The amendment of section 38— (a) by the deletion in subsection (1)(a) of subparagraph (iii); (b) by the substitution in subsection (1) for paragraph (g) of the following paragraph: “(g) on discovery of unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the [relevant tender board] Public Procurement Office established by section 4 of the Public Procurement Act, 2022;”.</p>

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
			<p>10. The amendment of section 51 by the deletion in subsection (1)(a) of subparagraph (iii).</p> <p>11. The amendment of section 76- (a) by the substitution in subsection (1) for paragraph (k) of the following paragraph: "(k) the alienation[,] or letting [or other disposal] of state assets;" and (b) by the deletion in subsection (4) of paragraph (c).</p>
Act No. 20 of 1999 Road Traffic Management Corporation Act, 1999	Transport	Procurement	<p>12. The substitution for section 43 of the following section:</p> <p style="text-align: center;">"Procurement</p> <p>43. Any procurement under this Act must be undertaken in [terms of the prescribed procedures] accordance with the Public Procurement Act, 2022."</p>
Act No. 5 of 2000 Preferential Procurement Policy Framework Act, 2000	National Treasury	Procurement	<p>12. The repeal of the whole.</p>
Act No. 32 of 2000 Local Government: Municipal Systems Act, 2000	COGTA	Procurement	<p>13. The amendment of section 83 by the substitution in subsection (1) for paragraph (a) of the following paragraph: "(a) comply with the Public Procurement Act, 2022;"</p>
Act No. 38 of 2000 Construction Industry Development Board Act, 2000	Public Works	Procurement	<p>15. The amendment of section 5— (a) by the substitution in subsection (3) for paragraph (c) of the following paragraph: "(c) must, within the framework of the procurement policy of Government, and in consultation with the Public Procurement Office established by section 4 of the Public Procurement Act, 2022 [promote the standardisation of] standardise the procurement process with regard to the construction industry;" (b) by the substitution in subsection (4) for paragraph (b) of the following paragraph: "(b) may, after consultation with the Public Procurement Office established by section 4 of the Public Procurement Act, 2022, initiate, promote and implement national programmes and projects aimed at the standardisation of procurement documentation, practices and procedures." (c) by the addition of the following subsection after subsection (1): "(1A) The Board must, in consultation with the Public Procurement Office, develop procurement policies that promote procurement reform contemplated in section 5(1)(a)(vii)."</p>

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
			<p>16. The amendment of section 16 by substitution for subsection (3) of the following subsection: “(3) The Minister must, with the concurrence of the Minister of Finance, prescribe the manner in which public sector construction contracts may be invited, awarded and managed within the framework of the register and [within the framework of the policy on procurement] the Public Procurement Act, 2022.”.</p> <p>17. The amendment of section 33 by the substitution for subsection (1) of the following: “(1)(a) The Minister may, by notice in the Gazette, make regulations not inconsistent with this Act with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or function or duty imposed by this Act. (b) The Minister may, with the concurrence of the Minister of Finance, make regulations regarding procurement in terms of this Act.”.</p>
Act No. 51 of 2003 Armaments Corporation of South Africa, Limited Act, 2003	Defence and Military Veterans	Procurement	<p>18. The amendment of section 2 by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: “(4) Subject to [this Act] the Public Procurement Act, 2022, the Corporation may—”.</p>
Act No. 53 of 2003 Broad-Based Black Economic Empowerment Act, 2003	the dtic	Procurement	<p>19. The amendment of section 9- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) qualification criteria for [preferential purposes for procurement and other] economic activities;” and (b) by the substitution of subsection (5) for the following subsection: “(6) If requested to do so, the Minister may by notice in the Gazette permit organs of state or public entities to specify qualification criteria for [procurement and other] economic activities which exceed those set by the Minister in terms of subsection (1).”.</p> <p>20. The amendment of section 10 by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) developing and implementing a preferential procurement policy, subject to the Public Procurement Act, 2022;”.</p>

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
			<p>21. The amendment of section 13P by the substitution for subsection (1) of the following subsection: “(1) Any person convicted of an offence in terms of this Act may not, for a period of 10 years from the date of conviction, contract or transact any business with any organ of state or public institution and must for that purpose be entered into the register of [tender] bid defaulters [which the National Treasury may maintain] established and maintained by the Public Procurement Office in terms of the Public Procurement Act, 2022, for that purpose.”</p>
Act No. 56 of 2003 Local Government: Municipal Finance Management Act, 2003	National Treasury	Procurement	<p>22. The amendment of section 1 by the substitution for paragraph (d) of the definition of ‘irregular expenditure’ of the following paragraph: “(d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, the Public Procurement Act, 2022, a requirement of the supply chain management [policy] system of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law.”.</p> <p>23.The amendment of section 2 by the deletion of paragraph (f).</p> <p>24.The amendment of section 14 by the substitution for subsection (5) of the following subsection: “(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of [section 111] the Public Procurement Act, 2022.”.</p> <p>25.The amendment of section 33 by, among others, the deletion of subsection (4).</p> <p>26.The amendment of section 65 by the substitution in subsection (2) for paragraph (i) of the following paragraph: “(i) that the municipality’s supply chain management system [policy referred to in section 111] complies with the Public Procurement Act, 2022[is implemented in a way that is fair, equitable, transparent, competitive and cost-effective]; and”.</p> <p>27.The amendment of section 75 by the deletion of subsection 1(j).</p>

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
			<p>28.The amendment of section 81 by the substitution for paragraph (e) of subsection (1) of the following paragraph: “(e) must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may in terms of section 79 or other legislation be delegated by the accounting officer to the chief financial officer.”.</p> <p>29.The amendment of section 90 by the substitution for subsection (5) of the following subsection: “(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent and competitive and consistent with the supply chain management policy which the municipal entity must have and maintain in terms of [section 111] the Public Procurement Act, 2022.”.</p> <p>30. The amendment of section 99 by the deletion of subsection 2(h).</p> <p>31.The repeal of Chapter 11.</p> <p>32.The amendment of section 173 by the deletion in subsection 1(a) of sub-paragraph (ii).</p>
Act No. 4 of 2006 Electricity Regulations Act, 2006	Mineral Resources and Energy	Procurement	<p>33. The amendment of section 34 by the substitution in section (1)(e) for subparagraph (i) of the following subparagraph: “(e) subject to the Public Procurement Act, 2022, be established through a [tendering] bid procedure which is fair, equitable, transparent, competitive and cost-effective;”.</p>
Act No. 23 of 2014 Infrastructure Development Act, 2014	the dtic	Procurement	<p>34.The amendment of section 8 by the substitution of subsection (2) for the following: “(2) If the Commission designates a strategic integrated project which must be implemented, it must determine whether the state has the capacity to implement the project or whether the whole or part of the project must be [put out to tender or] procured [through another form of procurement allowed by the Public Finance Management Act, 1999 (Act No. 1 of 1999)] in terms of the Public Procurement Act, 2022.”. 35.</p> <p>The amendment of section 12 by the substitution of subsection (4) for the following:</p>

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
			<p>“(4) The Director-General or accounting authority of a public entity responsible for an aspect of infrastructure remains the accounting officer or accounting authority in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) [, the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000),] or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).”.</p>

- a. Proposals inevitably seek to change behaviour in order to achieve a desired outcome. Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.
- a) What and whose behaviour does the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?

Commented [PK3]: To be reworked

The proposal seeks to address the behaviour of organs of states when contracting for goods and services by ensuring that the principles of fairness, transparency, competitiveness, equitability and cost-effectiveness, in the allocation of contracts as enshrined in the Constitution are upheld. The preferential treatment in the allocation of contracts for categories of persons by organs of state will contribute to advance historically disadvantaged persons and thereby addressing the socio-economic problems addressed. Furthermore, the proposal introduces an alternative dispute resolution mechanism and the establishment of the Tribunal for reconsideration and review of decisions to award a bid by procuring institutions as well as administrative actions taken by Provincial Treasuries and Public Procurement Office respectively. This will benefit historically disadvantaged persons as they could not access the court system due the cost implications of addressing unconstitutional behaviour of organs of state when allocating contracts.

- b) How does the proposal aim to bring about the desired behavioural change?
- Internal alternative dispute resolution mechanism which is less costly as aggrieved parties may lodge an application for review with the Tribunal without resorting to the court.

b. Consultations

- a) Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g. business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.

The proposal was gazetted for public comments and workshop held with organs of state, in the national, provincial and local sphere of government through their relevant fora. following the review of the proposal after public comments, further consultation was conducted with DG Cluster, internally with the National Treasury’s Executive Committee. National Treasury submitted the Bill for engagement at Nedlac on 13 April 2022, the Nedlac Public Finance and Monetary Policy Chamber in collaboration with the trade and industry chamber established a task team comprised of government, business and labour to engage on the Bill.

Consulted Government Departments, Agencies and Other Organs of State

Department’s name	What do they see as main <u>benefits</u>, <u>Implementation/ Compliance costs</u> and <u>risks</u>?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these <u>amendments</u> been <u>incorporated</u> in your proposal? If yes, under which section?
the dtic	Menu of options for preferential procurement	Support	None	No amendments made, thus not applicable
Technical Committee on Finance (Heads of Provincial	The benefit is that the Bill takes into cognisance the current structure of SCM and	Support	None	No amendments made, thus not applicable

Commented [PK4]: Why only DTIC comments included, what about other Departments and Provinces?

Commented [IM5R4]: The process followed was gazetting the proposal for public comments and more than 4500 comments were received from various interested parties such as departments, provinces, public entities, including the private sector as well as other international and independent bodies. These comments were consolidated into a matrix and each one of them considered, which resulted in a revised Bill. The Bill was thereafter subjected to the NEDLAC consultation, and inputs received during this engagement were incorporated.

Treasuries and SCM)	the authority that it provides			
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Consulted stakeholders outside government

Name of Stakeholder	What do they see as main benefits, Implementation/ Compliance costs and risks?	Do they support or oppose the proposal?	What amendments do they propose?	Have these amendments been incorporated in your proposal?
Nedlac	Efficiency in procurement especially with regards to streamlining of processes	Support the proposal	<ul style="list-style-type: none"> More details on the methods of procurement in the proposal, infrastructure procurement in the proposal. Provision for incentivised whistleblowing in the Bill. 	Yes, but not in detail as the details will be provided through regulations. Whistleblowing is not within the mandate of the Bill, thus will not be provided for in the Bill

Commented [PK6]: Concern that only one stakeholder is captured in this table

Commented [IM7R6]: The stakeholder encompasses business, labour and civil society and the broader stakeholders had an opportunity to provide comments during the public comments stage and engagements with NEDLAC is a legislative process that gets followed.

Commented [PK8]: NEDLAC is wary that the Bill in its current form is not strong enough to curb fraud and corruption and also or efficient delivery of services <https://www.xagta.com/nedlac-publishes-its-draft-report-on-the-public-procurement-bill/>

Commented [IM9R8]: Noted. However, the report published was a joint report following the consultation process. Furthermore, the issue about curbing fraud and corruption is not a direct mandate of procurement legislation but is subject to the Prevention and Combatting of Corrupt Activities Act (PRECCA), which the Department of Justice is the custodian of. The proposal makes provision in clause 61(5) for compliance with PRECCA by all organs of state, thus supporting the mandate of the Department of Justice.

It is the function of the organ of state to ensure the efficient delivery of services and that is the responsibility of the accounting officers and authorities.

b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position

Refer to table above.

c. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: NO law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth, women, SMME), but not limited to other groups.

List of beneficiaries (groups that will benefit)	How will they benefit?
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Citizens	Improved service delivery; Preferential procurement of services from local professionals
Black Businesses (Black persons, women, youth, township and rural)	Preferential access to government business opportunities
Local Businesses	Developmental opportunities for SMMEs
Local Industry	Bill provides for setting aside contracts to support designated persons and for goods manufactured in South Africa and services that are provided by citizens of South Africa
SCM practitioners	Professionalisation and recognition as a specialist discipline
Government	Savings (expenditure reduction) on fiscus, value for money on contracts
Country	Improved credit ratings, investor confidence and corruption rankings

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
Untransformed businesses	Losing out on government contracts.
National Treasury	Establishment of the Tribunal

- d. Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes relate to whether the particular group is expected to gain or lose from the solution of the problem.

For instance, when the UIF was extended to domestic workers:

- *The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.*
- *The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.*
- *To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and benefits from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched, but pay part of the cost through levies; (b) employers pay*

for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
National Departments and constitutional institutions	Increase in human resources to cater for new functions; Increase in ICT infrastructure to enable better performance of new functions and service delivery; Increase in budget to cater for additional Human resources, ICT, change management & Capacitation of staff through training	Training Change management Organisation Design and processes	Reduction of regulatory and administrative burden thus bringing about efficiencies in delivery of services	Delays in the delivery of departmental objectives due to adaptation to new processes
Provincial Departments	Increase in human resources to cater for new functions; Increase in ICT infrastructure to enable better performance of new functions and service delivery; Increase in budget to cater for additional Human resources, ICT, change management & Capacitation of staff through training	Training Change management Organisation Design and processes	Reduction of regulatory and administrative burden thus bringing about efficiencies in delivery of services	Delays in the delivery of departmental objectives due to adaptation to new processes

Commented [PK10]: Concern that the Bill has implications to these groups but we do not have their comments on the above stakeholder table

Commented [IM11R10]: The proposal provides for the procurement process and the functions of the different levels of the organs of state. It does not prescribe on the capacity requirements of the organs of state as this is not within its mandate. However, despite this cost implication, during the engagement with TCF the resource requirements (Human and ICT resources) was seen as a benefit as it would assist organs of state in the effective and efficient delivery of services, thus supported. Public Finance within National Treasury responsible for budget allocation was also engaged on this and noted the budgetary adjustments that policy implementation would require.

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Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
Municipalities and Municipal Entities	Increase in human resources to cater for new functions; Increase in ICT infrastructure to enable better performance of new functions and service delivery; Increase in budget to cater for additional Human resources, ICT, change management & Capacitation of staff through training	Training Change management Organisation Design and processes	Reduction of regulatory and administrative burden thus bringing about efficiencies in delivery of services	Delays in the delivery of departmental objectives due to adaptation to new processes
Public Entities listed in the PFMA	Increase in human resources to cater for new functions; Increase in ICT infrastructure to enable better performance of new functions and service delivery; Increase in budget to cater for additional Human resources, ICT, change management & Capacitation of staff through training	Training Change management Organisation Design and processes	Reduction of regulatory and administrative burden thus bringing about efficiencies in delivery of services	Delays in the delivery of departmental objectives due to adaptation to new processes
National Treasury	Increase in human resources to cater for new functions; Increase in ICT infrastructure to enable better performance of new functions and service delivery; Increase in budget to cater for additional Human resources, ICT,	Change management training Consistent publication of new reforms in various media including national, local, regional and local newspapers	Uniform understanding and implementation of the new legislation Direct contact with affected stakeholders- organs of state, civil society, bidders etc.	There may be a need for re-engineering of the current OCPO to align with the new functions that will need to be performed in line with the Bill

Commented [PK10]: Concern that the Bill has implications to these groups but we do not have their comments on the above stakeholder table

Commented [IM11R10]: The proposal provides for the procurement process and the functions of the different levels of the organs of state. It does not prescribe on the capacity requirements of the organs of state as this is not within its mandate. However, despite this cost implication, during the engagement with TCF the resource requirements (Human and ICT resources) was seen as a benefit as it would assist organs of state in the effective and efficient delivery of services, thus supported. Public Finance within National Treasury responsible for budget allocation was also engaged on this and noted the budgetary adjustments that policy implementation would require.

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Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
	change management & Capacitation of staff through training Unique costs relating to additional responsibilities – Tribunal and Ombudsman Roll out and implementation costs e.g. travel and accommodation; training material, media campaigns, venue hire			
Provincial Treasuries	Increase in human resources to cater for new functions; Increase in ICT infrastructure to enable better performance of new functions and service delivery; Increase in budget to cater for additional Human resources, ICT, change management & Capacitation of staff through training Roll out and implementation costs e.g. travel and accommodation; training material, media campaigns, venue hire	Change management training Consistent publication of new reforms in various media including national, local, regional and local newspapers	Uniform understanding and implementation of the new legislation Direct contact with affected stakeholders- organs of state, civil society, bidders etc.	There may be a need for re-engineering of the current SCM transversal support units within provincial treasuries to align with the new functions that will need to be performed in line with the Bill

Commented [PK10]: Concern that the Bill has implications to these groups but we do not have their comments on the above stakeholder table

Commented [IM11R10]: The proposal provides for the procurement process and the functions of the different levels of the organs of state. It does not prescribe on the capacity requirements of the organs of state as this is not within its mandate. However, despite this cost implication, during the engagement with TCF the resource requirements (Human and ICT resources) was seen as a benefit as it would assist organs of state in the effective and efficient delivery of services, thus supported. Public Finance within National Treasury responsible for budget allocation was also engaged on this and noted the budgetary adjustments that policy implementation would require.

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2.6 Cost to government: Describe changes that the proposal will require and identify where the affected agencies will need additional resources

- a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and
- b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP)

Not applicable; currently in terms of the PFMA and the MFMA that regulates SCM, there is a requirement for institutions to establish an SCM unit. Therefore, the functions outlined by the proposal will utilise existing resources.

Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

2.7 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.

For groups outside of government (add more lines if required)

The proposal introduces modernisation of SCM which includes ICT, thus minimising the cost of persons doing business with the state, as it promotes electronic submission of documentation.

Group	Nature of cost (from question 2.6)	What has been done to minimise the cost?
None		

For government agencies and institutions:

The proposal introduces modernisation of SCM which includes ICT, thus minimising the administrative cost of government agencies and institutions as data standards applied and accessibility of information will be easily available electronically.

Agency/institution	Nature of cost (from question 2.6)	What has been done to minimise the cost?
None		

2.8 Managing Risk and Potential Dispute

- a) Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.

Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.

- b) Describe measures taken to manage the identified risks. Add more rows if necessary.

Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.

Identified risk	Mitigation measures
Delays in effecting amendments of impacted pieces of legislation as a result of resistance to change by organs of state as a result	Inter –Ministerial and Governmental intervention fora to expedite the required change to the impacted legislation and to be the champions of the change management required.

- c) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.

Nature of possible dispute (from sub-section above)	Stakeholders involved	Proposed Dispute-resolution mechanism
The proposal makes provision for the PPO to issue prescripts to the institutions that it applies to and currently the SCM prescripts are only applicable to a certain portion of institutions thus this provision might create a dispute when promulgated.	SOCs Municipalities Municipal Entities	A broader consultation on prescripts prior to implementation

2.9 Monitoring and Evaluation

Note: Sound implementation of policy and legislation is due to seamless monitoring and evaluation integration during the policy development phase. Policies and legislation that are proficiently written yet unable to report on implementation outcomes are often a result of the absence of an M&E framework at the policy and legislative planning phase. It is therefore imperative to state what guides your policy or legislation implementation monitoring.

2.9.1 Develop a detailed Monitoring and Evaluation Plan, in collaboration with your departmental M&E unit which should include among others the following:

2.9.1.1 Provide clear and measurable policy or legislative objectives

2.9.1.2 Provide a Theory of Change clearly describing the following components:

- Impact: the organisational, community, social and systemic changes that result from the policy or legislation;
- Outcomes: the specific changes in participants (i.e. beneficiaries) behaviour, knowledge, skills, status and capacity;
- Outputs: the amount, type of degree of service(s) the policy or legislation provides to its beneficiaries;
- Activities: the identified actions to be implemented
- Input: departmental resources used in order to achieve policy or legislative goals i.e. personnel, time, funds, etc.
- External conditions: the current environment in which there's an aspiration to achieve impact. This includes the factors beyond control of the policy or legislation (economic, political, social, cultural, etc.) that will influence results and outcomes.

Commented [PK12]: Please engage your Departmental M&E Practitioner to assist with this section- This is about the plan of making the Act implementable and monitoring its effectiveness

Commented [PT13R12]: Implementation of this policy will not be by the NT only but by the other organs of state. It would not be practical to for the NT M&E unit to advise on M&E of the draft policy, however the draft policy itself makes provision for regular reporting and monitoring of the implementation of it by the Public Procurement Officer.

The objective of this proposal is to introduce uniform Treasury norms and standards to all organs of state to implement their supply chain management system as envisaged in 217(1) read with 216(1) of the Constitution. The application of this proposal is to all organs of state, not specific to National Treasury. Therefore, accounting officers and accounting authorities are responsible for making decisions relating to procurement for their institutions in terms of this Act.

Clause 5(1)(g) provides for the PPO to monitor the implementation of the Act by procuring institutions/ organs of state. Furthermore, clause 5(2)(b) requires the PPO to establish data retention and reporting requirements applicable to procuring institutions/organs of state including the format for such reporting.

- Assumptions: the facts, state of affairs and situations that are assumed and will be necessary considerations in achieving success

2.9.1.3 Provide a comprehensive Logical Framework (LogFrame) aligned to the policy or legislative objectives and the Theory of Change. The LogFrame should contain the following components:

- Results (Impact, Outcomes and Output)
- Activities and Input
- Indicators (A measure designed to assess the performance of an intervention. It is a quantitative or qualitative factor or variable that provides a simple and reliable means to measure achievement, to reflect the changes connected to an intervention, or to help assess the performance of a development actor)
- Baseline (the situation before the policy or legislation is implemented)
- Targets (a specified objective that indicates the number, timing and location of that which is to be realised)

2.9.1.4 Provide an overview of the planned Evaluation, briefly describing the following:

- Timeframe: when it the evaluation be conducted
- Type: What type of evaluation is planned (formative, implementation or summative) – the selection of evaluation type is informed by the policy owners objective (what it is you want to know about your policy or legislation).

2.9.1.5 Provide a straightforward Communication Plan (Note: a common assumption is that the target group will be aware of, and understand how to comply with a policy or legislation come implementation. However, increases in the complexity and volume of new or amendment policy or legislation render this assumption false. Hence, the need for a communication plan to guide information and awareness campaigns to ensure that all stakeholders (including beneficiaries) are informed.

2.10 Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.

The funding for the establishment of the Tribunal and the relevant costs as well as the applicable procedures

PART THREE: SUMMARY AND CONCLUSIONS

1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.

Commented [PK14]: Please complete

The current legislation, namely the Preferential Procurement Policy Framework Act, no 5 of 2000, is too constrained in its approach to attaining government’s policy objectives. The preference points system has been inflexible at statutory level, generating rigidities that have stifled local industrialisation and empowerment initiatives. Furthermore, procurement legislation is fragmented as a result of procurement being regulated through various pieces of legislations and not administered by the Ministry of Finance, thus creating confusion, lack of synergy and difficult to monitor.

The Bill aims to create a single regulatory framework for public procurement and eliminate fragmentation in laws which deal with procurement in the public sector by, among others— (a) determining general procurement requirements; (b) providing for a for preferential procurement framework to address the socio-economic imbalances of the past; (c) establishing a Public Procurement Office within the National Treasury and defining its functions; (d) defining the functions of provincial treasuries; (e) defining the functions of procuring institutions; (f) providing for measures to ensure the integrity of the procurement process; (g) providing for the power to prescribe different methods of procurement and bidding process; (h) providing for dispute resolution mechanisms; and (i) providing for the repeal and amendment of certain laws

2. Identify the social groups that would benefit and those that would bear a cost, and describe how they would be affected. Add rows if required.

Groups	How they would be affected
<i>Beneficiaries</i>	
1. Citizens	Preferential treatment of categories of persons or businesses or sectors as a result of the Preferential Procurement Policy in Chapter 4 of the proposal

2. Designated categories of suppliers	Preferential treatment of categories of persons or businesses or sectors as a result of the Preferential Procurement Policy in Chapter 4 of the proposal
3. Officials of organs of State	Uniform Legislation that will regulate SCM and an alternative dispute resolution mechanism that is defined and centrally driven from the PPO
Cost bearers	
1. National Treasury and other organs of state	The costs associated with the establishment and running of the Tribunal
2. OEMs (foreign monopolies), untransformed local businesses	They may need to partner with local categories of persons, businesses or sectors as a result of the Preferential Procurement Policy in Chapter 4 of the proposal in order for them to be considered for contracts
3. The State	Realignment of resources for the implementation of the proposal

3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (b) inadequate coordination between state agencies?
None anticipated because of the support received during the consultation

4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity. The administration of the proposal will be done by the Division (OCPO) which already exists within the National Treasury but will be recast as the PPO. Within the provincial treasuries there are already existing units that mirror the NT's OCPO and at institutions there are already existing SCM Units, therefore, there are no new costs anticipated.

5. Given the assessment of the costs, benefits and risks in the proposal, why should it be adopted? Procurement has evolved through the years and as a lever in addressing government's socio-economic objectives, this proposal is the best vehicle to support the implementation of the said objectives.

6. Please provide two other options for resolving the problems identified if this proposal were not adopted.

Option 1.	Amend the Preferential Procurement Policy Framework Act, amend the Public Finance Management Act, and amend the Municipal Finance Management Act
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Option 2.	Provide for a broad conditional exemption from the above prescripts in as far as they relate to procurement. This will create a limitation as the exemption will apply to the organs of state to which the above-mentioned legislation applies to only.
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7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?
- Clear communication strategy and targeted awareness campaigns for the groups identified as beneficiaries and cost bearers so that they understand the changes and the implications to them.
 - Capacitation of implementing agents (officials and Institutions) in terms of what their roles are within the SCM space as well as the role of the client that they are procuring the goods and services on behalf of.

c) Is the proposal (mark one; answer all questions)

	Yes	No
a. Constitutional?	X	
b. Necessary to achieve the priorities of the state?	X	
c. As cost-effective as possible?	X	
d. Agreed and supported by the affected departments?	X	

d) What is the impact of the Proposal to the following National Priorities?

National Priority	Impact
1. Building a capable, ethical and developmental state	The Public Procurement Bill provides for integrity and ethical conduct in procurement, code of conduct for officials, bidders, suppliers, members of the Tribunal and any other person involved in procurement
2. Economic transformation and job creation	Chapter 4 of the Public Procurement Bill provides for preferential procurement to advance categories of persons historically disadvantaged by unfair discrimination in keeping with s217(2) and (3) of the

National Priority	Impact
	Constitution. Further, it provides, among others, local industrialization for job creation
3. Education, skills and health	The Public Procurement Bill provides for capacity building of procurement practitioners, and professionalization of the supply chain management discipline
4. Consolidating the social wage through reliable and quality basic services	Not applicable, not within the mandate of the proposal.
5. Spatial integration, human settlements and local government	Not applicable, not within the mandate of the proposal.
6. Social cohesion and safe communities	Not applicable, not within the mandate of the proposal.
7. A better Africa and world.	Not applicable, not within the mandate of the proposal.

For the purpose of building a SEIAS body of knowledge please complete the following:

Name of Official/s	Willie Mathebula
Designation	Chief Director: SCM Policy, Norms and Standards
Unit	Office of the Chief Procurement Officer
Contact Details	082 907 2238
Email address	willie.mathebula@treasury.gov.za