

National Development Plan - Procurement Bill

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Final Impact Assessment Template (Phase 2) Public Procurement Bill states that:

The Bill expands upon the NDP's focus of the efficiency and effective public procurement system and contextualises the strategic role of SCM in service delivery and social objectives

National Development Plan (NDP) proposed that the **focus** in **designing a procurement system that is better able to deliver value for money, while minimising the scope for corruption** should be on:

- the **differentiation between different types of procurement** (e.g. procurement of infrastructure versus procurement of other goods and services),
- the **adoption of a strategic approach** to procurement,
- the **building of trust and understanding with suppliers** in supply chain management activities, and
- the **building of enabling support structures to develop professional procurement capacity**; and
- the incorporation of effective and transparent **procurement oversight functions**

It expressed the need for supply-chain management staff **to support technical and other specialists**, rather than displace the involvement of technical and other specialists in the procurement process

Findings of NDP background study 2020

Greater efficiency in government expenditure on infrastructure has **not been achieved**

The focus on **procedural compliance** in infrastructure procurement, which places an **excessive burden on weak support functions rather than on value for money**, has increased rather than decreased.

The identified crisis within the public sector relating to the **lack of professional built environment expertise to plan, specify, procure and oversee delivery** has worsened due to inappropriate SCM practices which marginalise such expertise

Despite all the procurement reforms and improvement initiatives, the fundamental issues relating to the delivery of infrastructure remains unchanged. **Course correction is necessary**

Procurement Bill – high level observations

Category 1

Primary objectives for procurement are that it uses procurement to leverage empowerment opportunities and ensures **value for money** in the use of public funds

Value for money

*Definition 1: means **increasing output for the inputs used** or **minimising inputs used to attain the output** or reducing **the cost of inputs used to attain the output** while maintaining quality and achieving the intended outcomes;*

75 -80% of procurement spend

Characteristics

Commonly measured against **lowest price** (adjusted for a preference) satisfying the **requirements of the specifications** in a **single transaction**

Category 2

*Definition 2: in relation to infrastructure, means the **optimal use of resources to achieve intended outcomes.***

18 – 23% of procurement spend

Optimal' speaks to the **most desirable possible outcome from the use of resources** (finances, people, equipment, plant, materials etc.) that can be drawn upon, given expressed or implied restrictions or constraints (e.g. **risks and costs**). Likely **outturn project cost is more important that an initial tender price**

Category 3

*Definition 3: in relation to a public-private partnership agreement, means the provision of the institutional function or the use of State property by a private party in terms of a public-private partnership agreement which **results in a net benefit to the relevant institution with respect to cost, price, quality, quantity, risk transfer or a combination thereof;***

2% of infrastructure procurement spend

Focuses on the **net benefit of the agreement in terms of a combination of factors. The likelihood (risk) of achieving a net benefit** for the project is the overriding consideration in the evaluation of tenders received.

Procurement Bill

Defines "procurement" as the **acquisition** of goods, services or infrastructure by purchasing, renting, leasing or other means

Uses the term procurement professionals / supply chain management practitioners

What is a procurement professional / supply chain management practitioner?



CIPS, the **Chartered Institute of Procurement and Supply**, is the world's largest organisation dedicated to the profession, with a global community of over 200,000 has a standard structured around 5 levels of competencies:

Level	Tactical	Operational	Managerial	Professional	Advanced professional
Position	Assistant buyer Stock controller Assistant contracts officer	Buyer Procurement specialist Contracting officer	Senior / chief buyer Contract officer Logistics manager Supply chain executive	Senior category manager Supply chain manager Head of logistics	Procurement director Supply chain director Head of sourcing Chief procurement officer

Bill requires the establishment of procurement units to **implement functions** allocated to the unit in terms of this Act and the **supply chain management system** of the institution

Act deals with the detail of Supply chain management and appears to **prescribe a procurement system** for basic goods and services and **allows more strategic procurement on an exception basis**. **A principles-based, flexible and enabling approach to the regulation of procurement would have been preferred**

The Act also has very detailed requirements for PPPs based on current practices which although being robust have to date had a limited impact. **A more flexible and supply driven approach should be pursued.**

Procurement as part of other professions (not a buying function)

Procurement is the process which creates, manages and fulfils contracts

Categories 2 and 3

Procurement comprises the following phases

- a **planning phase** during which decisions are made as to what, where and when goods and services are required, how the market is to be approached and what is the number, type, nature and timing of the required contracts;
- an **acquisition phase** during which contracts are entered into following the execution of a selection procedure; and
- a **contract management phase** during which compliance with requirements, **changes in requirements and risk events** which manifest during the execution of contracts are managed.

Procurement is one of the 10 knowledge areas/ subject groups in the Project Management Institute's PMBOK®Guide and the ISO 21500 guide to project management.

Phase	PMBOK®Guide's purpose for process	ISO 21500 purpose of process
Planning	Plan Procurement Management	Plan procurements
Acquisition	Conduct procurements	Select suppliers
Contract management	Control procurements	Administer procurements

Procurement is a central competency of those responsible for delivering infrastructure

Functions performed as per **Council for the Built Environment's work identification submission to the Competition Commission:**

Engineering Council of South Africa

- management of, procurement within or the implementation of engineering projects and maintenance of engineering infrastructure

South African Council for the Project and Construction Management Professions

- establish project procurement policy, recommend procurement strategy, prepare procurement programme, prepare procurement documentation, manage procurement processes, make recommendations for award and administer contracts

South African Council for the Quantity Surveying Profession

- advise on procurement policy, assist in formulation of procurement strategy, prepare procurement documentation and prepare valuations for payment

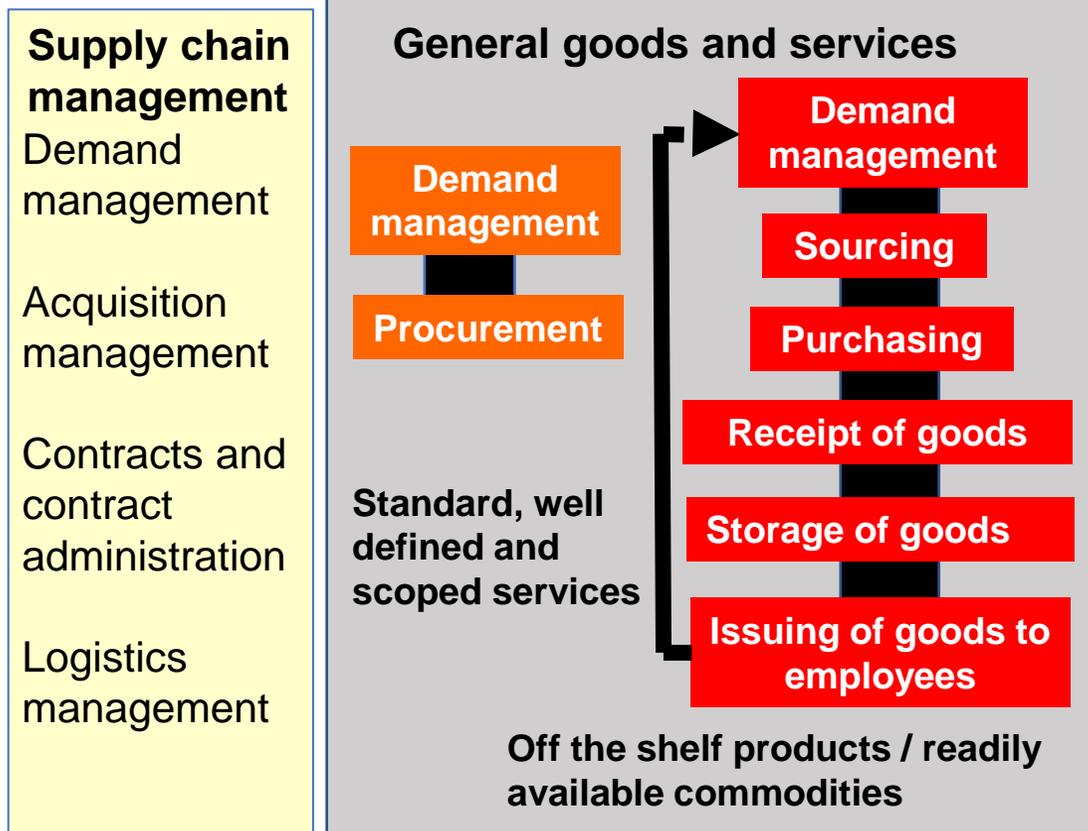
South African Council for the Architectural Profession

- advise on procurement policy, prepare specifications and drawings for the works, prepare contract documents and contract administration

Different supply chains

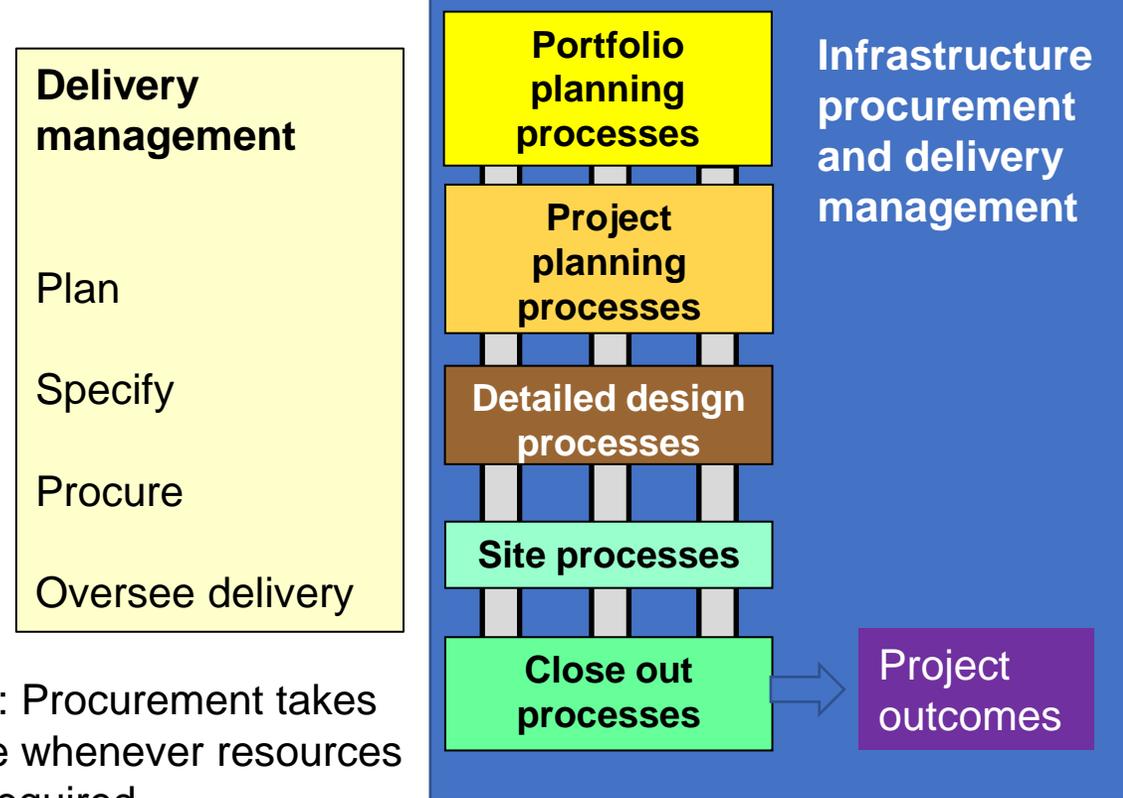
A supply chain can be regarded as the sequence of activities that provides goods or services to the organisation

Procurement and supply of general goods and services



Single contract are commonly required to satisfy needs
 Most often amount due in terms of the contract = budget amount = purchase order value

Infrastructure procurement and delivery management



Note: Procurement takes place whenever resources are required

Multiple contracts commonly lead to project outcomes
 Most often amount due in terms of the contract \neq budget amount \neq purchase order value

Risk (effect of uncertainty on objectives) is the differentiator

Approach to the regulation of infrastructure

Current provisions in the Procurement Bill (Chapter 7) are opened ended as everything is reliant on an instruction relating to an unknown infrastructure procurement and delivery management standard

Approach to regulation: Rigid rule based prescriptive approach?

Principle based or process orientated law ?

Principles-based, flexible and enabling approach?

Differing procurement and delivery management paradigms – which one should the principles be crafted around for infrastructure delivery management?



Administration

Procurement and delivery management is administrative in nature and rule driven

Traditional approach up until the early 2000s

Basic buyer approach

Status quo – poor project outcomes?

Management

Framework for procurement and delivery management **provides a wide range of project delivery routes and methods** enabling a strategic approach to procurement to be adopted to improve project outcomes

Many different standards available post 2004 which provide a wide range of options

Infrastructure approach

Governance

Governance enables alignment of projects and procurement choices with organizational strategic objectives and values and stakeholder aspirations and collaborative relationships between buyer and seller

Modern approach - strategic and differentiated approach requiring leadership and accountability and strong governance

Improved project outcomes?



Procurement bill – provisions for effective and efficient infrastructure delivery

Chapter 7 also needs to **embed** the principles for infrastructure procurement and delivery management

Accounting officers and accounting authorities **in all organs of state** to which the Bill applies must put in place and implement an effective system for infrastructure procurement and delivery management which, **apart from leveraging empowerment opportunities**, at least:

- provides **effective governance processes** which ensure that the institution takes **ownership of infrastructure delivery** and such delivery is managed as **an enterprise**;
- provides for **clear delegations of authority** to enable timeous decision making and organisational accountability;
- **provides control frameworks** which include **decision gates** to enable risks to be proactively managed and renders the system capable of being audited
- assigns **single point accountability** to a suitably qualified and experienced built environment practitioner to **provide executive level leadership** in the planning, specifying, procuring and overseeing of infrastructure delivery
- provides **options which support an appropriate range** of packaging, contracting, pricing and targeting strategies enabling a strategic approach to procurement to be taken to achieve better value for money and desired procurement outcomes
- provides a range of procurement **tactics enabling the identified strategies to be effectively implemented and risks associated with outturn costs to be mitigated**
- makes **appropriate use of the skill and expertise of registered built environmental professionals** in the management and mitigation of risks associated with infrastructure delivery

Delivery of first phase of new universities (2011/16)

143 procurements were planned resulting in the award of 219 contracts against which generally two to six orders were issued per framework contract. Approximately 700 orders were issued. Total expenditure of R1 624 500 495.

At SPU approximately **19,000 furniture items** were procured from **200 unique items**. At UMP approximately **7,000 furniture items** were procured from **250 unique items**.

Fully functional facilities were produced for the 1st (2014), 2nd (2015) and 3rd (2016) intakes

Infrastructure needs to include the delivery of **a fully functional facility**
Infrastructure procurement be recognised as a central competency of those responsible for delivering infrastructure

See NPC Background paper *Public infrastructure delivery and construction sector dynamism in the South African economy* drafted by Watermeyer and Phillips (2020) for further details