



AISCR'S POSITON ON THE DRAFT PROCUREMENT BILL

DETAILED COMMENTS SUBMITTED TO THE NATIONAL TREASURY JUNE 2020

Background

AISCR acknowledges and appreciate the steps and measures taken by the National Treasury to improve accountability and effectiveness of public procurement and supply chain management professionalisation in the country.

On the 08 April 2020, AISCR held a webinar to review and provide input on the draft public procurement bill issued by the Office of the Chief Procurement Officer, National Treasury on the 19th March 2020. The draft bill aims to simplify the confusing and fragmented rules that regulate the public procurement process into a single, unified process that is easy for service providers and supply chain management (SCM) practitioners to understand and apply. A summary of AISCR's input to the draft bill is as follows:

Position of AISCR on the Draft Public Procurement Bill

Name of the Bill

- It is recommended that the Bill be named **Supply Chain Management Bill**. The procurement function is located as an element of SCM (Acquisition Management). The bill in Chapter 6, calls for a supply chain system. However, it requires the development of a "Procurement Policy by public institutions". Chapter 5 of the Bill talks to procurement methods and bidding processes which are under Acquisition Management. Moreover, chapter 6 of the same Bill talks to SCM which outlines all its elements. Therefore, referring to the document as Procurement Bill undervalues the framework for SCM introduced in 2004. The purpose of the Bill as articulated on page 2 is stated as: To regulate public procurement; to prescribe a framework for procurement policy envisaged in section 217(3) of the Constitution; and to provide for matters connected therewith. Also, the definition of "**procurement**" as revealed in chapter 1, means the acquisition of goods, services or infrastructure by purchasing, renting, leasing or other means. The current draft bill is structured and designed towards a **Supply Chain Management Bill**.



Chapter 1 Interpretation, Objects, Application and Administration of Act: The chapter provides interpretation and administration of the Bill. The chapter further contains definitions used throughout the Bill.

Chapter 2 – Public Procurement Regulator, Provincial Treasuries and Institutions: The chapter introduces the establishment of the Procurement Regulator to be housed within National Treasury. The role and functions of the Regulator are explained. Furthermore, it provides for the functions of provincial treasuries and as well as institutions are outlined. Brief recourse is provided for employees in addressing inconsistent instructions. It concludes by briefly mentioning the use of technology where possible.

Position:

- There is a need to clarify the specificities regarding the roles and area of responsibilities and accountability of the National Treasury (NT) and that of the Regulator. Herein this chapter and other chapters, it appears there are overlaps.
- Further, the Bill does not explicitly outline the role of the National Treasury. It is therefore recommended that to avoid confusion and ambiguity the two functions be clearly distinguished.
- The independency of the Regulator is strongly encouraged. The motivation of independency of the Regulator is discussed in the comments below.
- It is concerning that the role of the head or Chief Supply Chain officer is not mentioned in the entire Bill as the implementer of the Bill. It is thus recommended that the role of the Chief Supply Chain Office/Head of Supply Chain be outlined in the Bill.

Chapter 3 – Procurement Integrity: This chapter provides guidance on procurement integrity measures for the procurement process, officials and suppliers.

Position:

- The management and enforcement of procurement integrity must be the function of the Regulator. It is suggested that the required skills for those occupying SCM office are addressed in this chapter.
- It is recommended that the role and responsibilities of a South African Supply Chain Management Council be included under this chapter. The Council should be entrusted with the function of driving the delivery of a strategic SCM across all SOC and Government owned entities.
- Procurement and Supply Chain Management is a highly integrative process and involves several actors across the value chain as such makes it a challenge to pro-



actively detect and address irregularities. This chapter can be utilized to decode the value chain, outlines guidelines that should be employed by institutions to ensure integrity of the procurement and supply process.

- Debarment procedure are an integral part in the procurement process. However, the manner in which these procedures are outlined within the bill will create a bottleneck and delays, thereby increase in-efficiencies within the system. It is therefore recommended that the debarment procedures be automated and the live database be made available to organisations for quicker decision making and turnaround times.

Chapter 4 – Preferential Procurement: This is a brief chapter. The framework for preferential procurement is provided similar to in section 217 of the Constitution. The Minister is given powers to prescribe a framework for preferential procurement.

Position:

- This chapter is brief, considering that this preferential procurement deals with one of the most contested aspect of supply chain management. Detail is most required to provide directions taking current and past lessons. This chapter can be used effectively to address misalignment and conflict of socio-economic policies. It must also be utilised effectively to address the most required participation of black businesses in government expenditure to advance some of the National Development Plan goals. The use of public procurement as a lever for socio-economic development must be evident in this chapter.
- NB: There need to be a clear guideline on how preferential procurement will enhance socio-economic development, localisation and industrialisation rather than leave for the Minister to determine. This will assist with implementation once the regulations are developed. It is important that this bill determining categories of contracts (Tiers of contracts) to the various designated categories of suppliers to support transformation and black businesses.

Chapter 5 – Procurement Methods and Bidding Process: The procurement principles and bidding process is provided in detail including the use of Transversal contracts, and procurement done through public-private partnerships.

Position:

- 4IR needs to be addressed considerably in order to realise efficiencies in SCM and to take advantage of technology within supply chain. In the Supply Chain 4.0 era, manual submission of bid documents must be phased out. Electronic methods must be encouraged as such electronic platforms come with limited human intervention, which goes a long way curbing unlawful gatekeeping that may be perceived to be



practiced by some officials, example is corrupt practices by officials in replacing or inserting a document after bid closure that was not part of the original bid response submission.

- The poor positioning and consolidating of SCM activities under the same system have been a major contributor to inefficiencies and relegation of SCM functions to mere back office and compliance management, resulting in loss of revenue for institutions. Unfortunately, this chapter seemingly perpetuates the fragmentation of SCM within institutions. It is recommended that SCM be formalized under one system, positioned to report to the highest office of the organisation in order to deliver the strategic value and improved cost management.
- If the bill is left in its current format, the roles and responsibilities of SCM remain neonate and that perpetuates the risk currently faced by many organisations.

Chapter 6 – Supply Chain Management: This chapter provides for institutions to develop and establish an effective supply chain management which must establish a procurement unit. The supply chain value process is explained including the need of contract management. The chapter also by provides for the maintenance of movable asset management.

Position:

- This chapter is presented as an administrative support. SCM is much more than administrative. It is strongly recommended that SCM is defined to provide one standard definition.
- This chapter must also deal with the positioning of SCM within institutions and departments. Chapter 5 is a subset of this chapter and not a standalone as is presented in this Bill. The chapter on supply chain management should incorporate all the elements which procurement falls within one of the elements (Acquisition Management)

Chapter 7 – Infrastructure Delivery Management: The application of Infrastructure delivery management is provided and the institutions that are required to apply and implement the standard.

Position:

- A preamble to this chapter is required which refers to the applicability of acts that are applicable to infrastructure delivery management. This is CIDB Act, SIPDIM/FDIM, Infrastructure standard, etc.
- Expand chapter 7 of the Bill to further simplify what is stated on the Infrastructure procurement policy and standard or reference the Bill to both Policy and Standard



for Infrastructure Procurement and Delivery Management to avoid unnecessary confusion when comes to implementation of the new Bill.

- There are number of key principles the Bill is silent on and in particular on Infrastructure procurement policy and standards. The application of the new Bill will cause number of confusion when considering infrastructure procurement policy and standard.
- Addressing Infrastructure procurement on its own gives perception that it is more important than the procurement of other goods and services
- It is recommended that supply chain management be an umbrella chapter, and all aspects of supply chain management be addressed independently as such. Separating procuring one particular category (infrastructure) and being silent on the others (consultancy services) creates unintended consequences which become a nightmare for the SCM officials to implement.

Chapter 8 – Disposal of assets: This chapter discusses the application and regulation of asset disposal, and management of asset disposal system.

Position:

- It is recommended that the title be called Investment Recovery in line with best practice. Investment Recovery involves recoupment of value of unused assets, assets that have reached their end of life, reuse, dispose etc.
- The disposal process is informed by the management of the asset. As such this chapter should be used to outline the aspects of Supplier Relationship Management (SRM) up until the disposal and recovery. This will ensure the elimination of fragmentation that currently exist within organizations. It will also give effect to the clarification and addressing the displacement of the role of SRM. This is huge area of concern for many organisations.

Chapter 9 - Dispute Resolution: The chapter provides process for relief to be followed by suppliers. The establishment of a Procurement Tribunal is provided.

Position:

- Clarification of where the review process is housed must be addressed. Furthermore, while a Tribunal is established and is independent, however, it is not clear where the Tribunal reports to or is housed. There is also a need for the Regulator to make a ruling or part of supply chain process for institutions not to make an award immediately after conclusion of the adjudication process. This is to make allowance for the reconsideration period.



- There is also a need for protection of supply chain professionals to be addressed in this chapter. In this aspect, to encourage SC professionals to execute their functions without prejudice or fear. Suppliers can approach the Regulator and the Tribunal. Who can be approached by prejudiced SCM officials who refuse to implement unlawful instructions?
- Furthermore, the whistleblowing aspect, its process thereof must also be addressed in this chapter.
- It is suggested that a Supply Chain (SC) Court be established – this is in the best interest of the public at large. Looking at the amount of litigation involving SC system. Suggestion for an establishment of a SC (Procurement court) looking at the magnitude of litigation cases involving SC, for example like the tax, competition appeals court. Specialised courts, time lag between a review and decision made and what happens to essential services required once litigation proceeds. Clogged system which takes long to resolve has cost the country significantly.
- The view is that this solution will take away case management from the civil courts on public procurement issues – designated court of public procurement. It will also limit costs of litigation, reduce judicial courts case load regarding public procurement.

Chapter 10 – General Provisions: The chapter gives the power to the Minister, Regulator and officials in the institutions to delegate functions conferred by the Bill.

Position:

- To give effect to amendment proposed in section 4(1), the Minister of Finance will have two national institutions under the Ministry to administrator or perform such functions conferred by this Act or delegated by the Minister, that is, the National Treasury of South Africa and the Public Procurement Regulator. Both these arms of the Ministry are relevant for the separation and segregation of certain functions within the envisaged scope of this Act.