

DRAFT PUBLIC PROCUREMENT REGULATIONS

Part 11 Use of another organ of state



MANDATE AND INSTITUTIONAL STRENGTH

Mandate

Promote **economic development and growth, human and institutional capacity building** for **sustainable development projects and programmes** in the African continent.

Institutional strength

Founded
1983
DBSA
Act 1997

Externally
rated

DBSA foreign
currency rating

Ba3 **BB-**
(Moody's) (S&P)

Owned
100%
by SA
Government

Well
governed

Unqualified audits

AA rating
from AADFI PSGRS

Total Infrastructure
Development Support

R72.9bn

Globally
accredited

Global Environmental
Facility

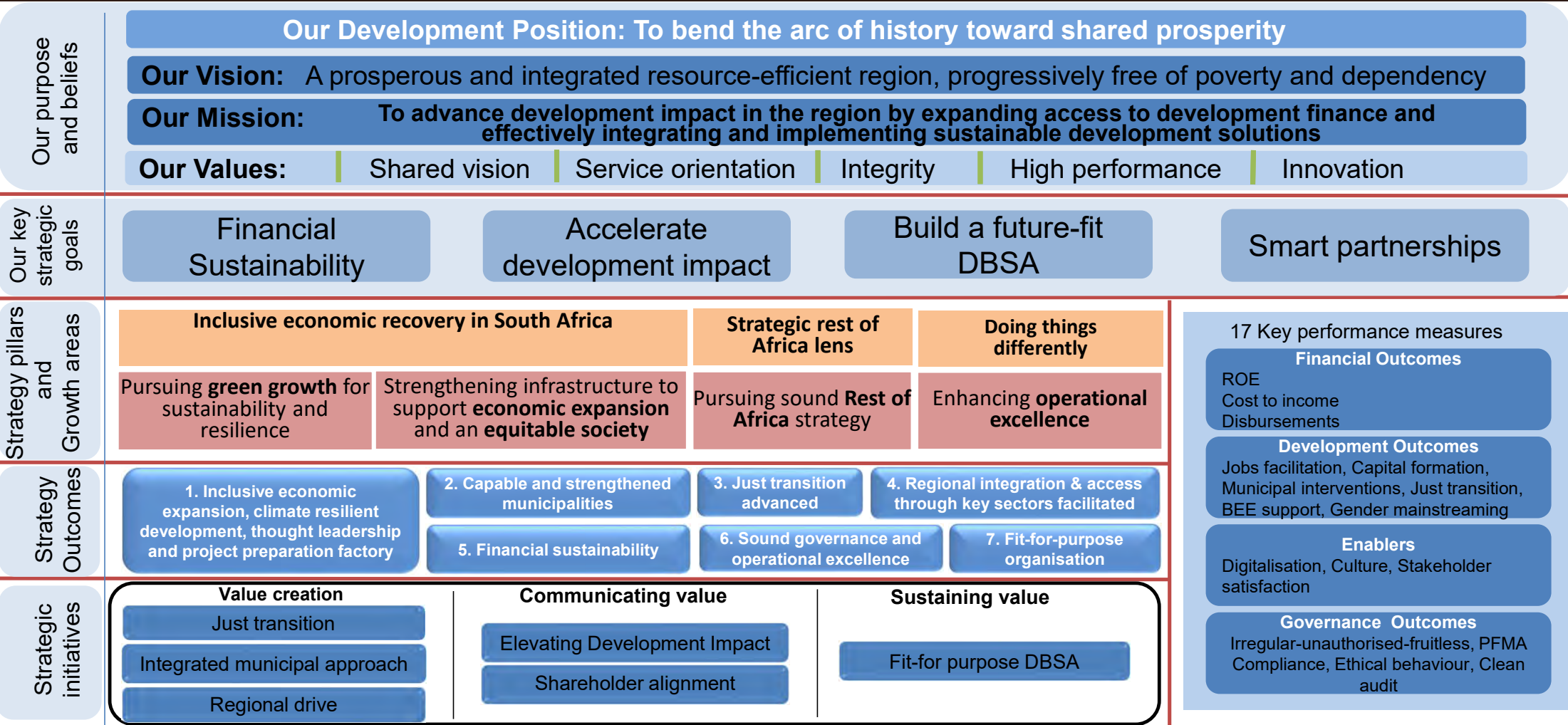
Green Climate Fund

Note: AADFI PSGRS = Association of African Development Finance Institutions Prudential Standards, Guidelines and Rating System

DBSA STRATEGY ON A PAGE



STRATEGY: GROW THE DBSA TO MAXIMISE DEVELOPMENT IMPACT



INFRASTRUCTURE DEVELOPMENT VALUE CHAIN AND KEY SECTORS

1. Plan

- Municipal assessments
- Bulk infrastructure plans
- Infrastructure planning advice

2. Prepare

- Project identification
- Feasibility assessments
- Technical assistance
- Programme development
- Project preparation funds

3. Finance

- Long-term senior and subordinated debt
- Corporate and project finance
- Mezzanine finance
- Structured financing solutions
- Credit enhancement

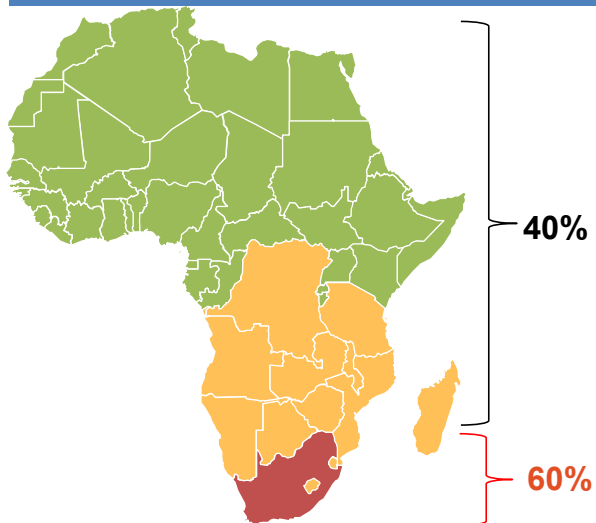
4. Build

- Managing design and construction of projects across energy, water, transport, housing, health and education sectors
- Project management support

5. Maintain

- Supporting maintenance/ improvement of infrastructure projects

CLIENTS AND MANDATED EXPOSURE



Public

- Municipalities
- SOEs
- Sovereigns

Private

- PPPs
- Private sector

SECTORS



Energy



Transport



Water and Sanitation



ICT



Education



Health

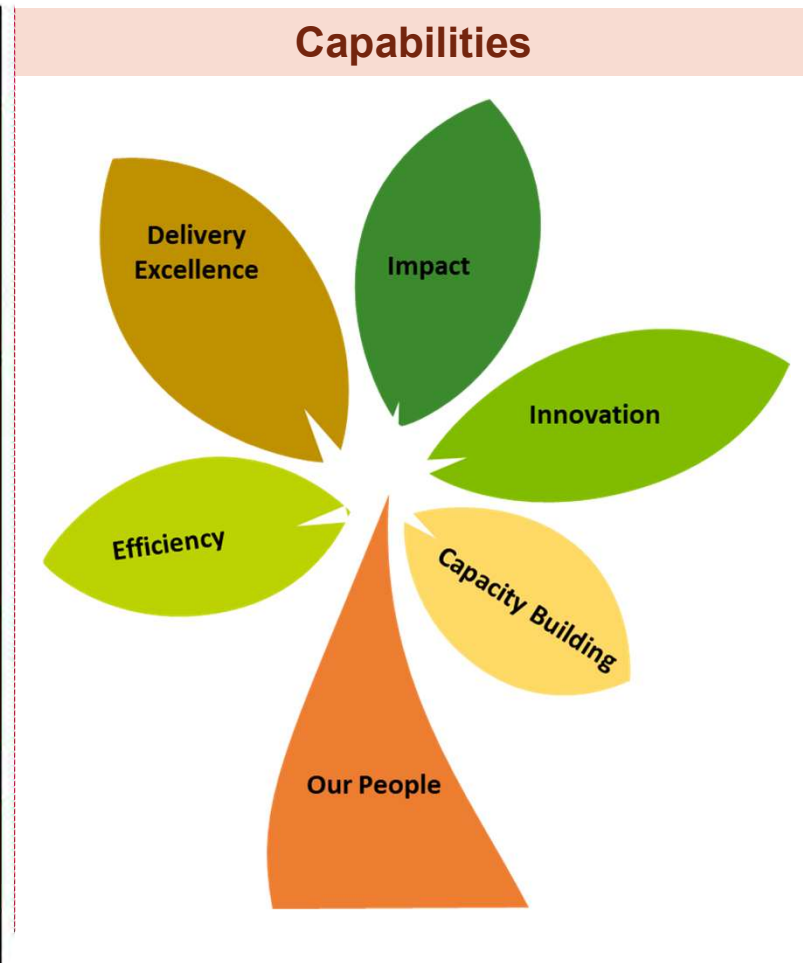


Human settlements

SERVICES AND VALUE CREATION

Our Services and Capabilities

Services	Description	Focus
Implementing Agent Services	Management of the planning, design, construction, upgrades, refurbishment, maintenance of social infrastructure projects using innovative, turnkey solutions to drive greater value for money, asset sustainability and full functionality	<ul style="list-style-type: none"> ▪ Refurbishment/ upgrades/ minor repairs ▪ New Builds construction ▪ Operations & Maintenance ▪ Facilities Management
Programme Management Services	Provision of programme management and specialist expertise to support medium to long-term planning, and delivery of infrastructure	<ul style="list-style-type: none"> ▪ Spatial Planning ▪ Programme Management Office Support ▪ Infrastructure Delivery Management ▪ Revenue Enhancement initiatives ▪ Infrastructure Sector Coordination ▪ Infrastructure/Asset Conditional Assessments
Capacity Building Services	Provision of innovative infrastructure delivery learning solutions that deliver measurable improvements in individual and business performance as well as developmental impact	<ul style="list-style-type: none"> ▪ Capacity building initiatives ▪ Skills development ▪ Artisan development ▪ Enterprise development
Infrastructure Procurement Services	Offering expertise for rapid procurement services to enable clients achieve their procurement needs.	<ul style="list-style-type: none"> ▪ PMO resourcing ▪ Infrastructure projects procurement ▪ Establishment of panels



A GROWING CLIENT BASE - 2013 TO 2025

DBSA IDD has delivered Over R45 Billion of Infrastructure



National Level

 basic education Department: Basic Education REPUBLIC OF SOUTH AFRICA	 national treasury Department: National Treasury REPUBLIC OF SOUTH AFRICA	 the dti Department: Trade and Industry REPUBLIC OF SOUTH AFRICA	 water & sanitation Department: Water and Sanitation REPUBLIC OF SOUTH AFRICA	 higher education & training Department: Higher Education and Training REPUBLIC OF SOUTH AFRICA
 public works Department: Public Works REPUBLIC OF SOUTH AFRICA	 health Department: Health REPUBLIC OF SOUTH AFRICA	 PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA	 government printing Department: Government Printing Works REPUBLIC OF SOUTH AFRICA	 defence Department: Defence REPUBLIC OF SOUTH AFRICA

Provincial Level

 LIMPOPO PROVINCIAL GOVERNMENT REPUBLIC OF SOUTH AFRICA DEPARTMENT OF EDUCATION	 LIMPOPO PROVINCIAL GOVERNMENT REPUBLIC OF SOUTH AFRICA DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	 education Department: Education PROVINCE OF KWAZULU-NATAL	 Education and Sport Development Department of Education and Sport Development Departement van Onderwys en Sportontwikkeling Lefapha la Thuto le Thabololo ya Metshameko NORTH WEST PROVINCE	 education Department of Education FREE STATE PROVINCE
 LIMPOPO PROVINCIAL GOVERNMENT REPUBLIC OF SOUTH AFRICA DEPARTMENT OF PUBLIC WORKS, ROADS & INFRASTRUCTURE	 LIMPOPO PROVINCIAL GOVERNMENT REPUBLIC OF SOUTH AFRICA DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT & TOURISM	 Province of the EASTERN CAPE HUMAN SETTLEMENTS	 dpwr Department: Public Works and Roads North West Provincial Government Republic of South Africa	 education MPUMALANGA PROVINCE REPUBLIC OF SOUTH AFRICA
 LIMPOPO PROVINCIAL GOVERNMENT REPUBLIC OF SOUTH AFRICA DEPARTMENT OF HEALTH & SOCIAL DEVELOPMENT	 human settlements Department of Human Settlements FREE STATE PROVINCE	 Province of the EASTERN CAPE EDUCATION	 GAUTENG PROVINCE AGRICULTURE AND RURAL DEVELOPMENT REPUBLIC OF SOUTH AFRICA	 GAUTENG PROVINCE HEALTH REPUBLIC OF SOUTH AFRICA

Municipal & Other

								
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STATE MANDATE



OBJECTIVE OF THE STATE

Medium Term Development Plan (MTDP) 2024-2029, as the final, targeted implementation blueprint to align the overarching goals of the NDP 2030

-Three strategic national priorities:

- **Driving inclusive growth and job creation;**
 - *Increased infrastructure investment, access and efficiency;*
 - *Improved energy security and a just energy transition*
- **Reducing poverty and tackling the high cost of living; and**
 - *Reduced poverty and improved livelihood*
- **Building a capable, ethical and developmental state.**
 - *Improved service delivery in the local government sphere*

KEY ENABLERS AND INTERLINKAGES

- Effective ***cross-government coordination***. This will involve establishing effective arrangements across and beyond government fostering a unified approach to planning and implementing multi-agency partnerships.
- Adequate resource allocation. Allocating ***sufficient human and financial resources*** to operational units responsible for implementation of each strategic intervention will be essential to empower these units to carry out their tasks and achieve the desired results
- Mechanisms must be put in place to ensure efficient decision-making processes and swift implementation strategies to avoid policy paralysis and bureaucratic bottlenecks

KEY CONCERN - Regulation 30, 31, 32 and 33



The proposed provisions are overly prescriptive and may limit the flexibility required for efficient and effective service delivery across government.

Practical Challenges

- Restricting state-to-state procurement to services within an organ of state's statutory mandate may prevent the optimal use of existing public-sector capacity.
- Some organs of state have financial resources but lack the technical or operational capacity to deliver specific projects.
- Other organs of state may possess the required expertise, systems, and capabilities developed over many years.
- Service delivery requirements remain regardless of institutional capacity constraints.

Impact on Collaboration

- May discourage collaboration between organs of state.
- Limits the ability to leverage specialised public-sector expertise and implementing capacity.
- Could undermine government-wide efforts to strengthen institutional capacity and improve service delivery.

Accountability Considerations

- Transactions between organs of state remain subject to oversight and audit by the Auditor-General.
- Appropriate governance, reporting, and contractual arrangements can provide adequate accountability.

Accountability Considerations.....Continued

Restrictive provisions are not the only mechanism for ensuring transparency and control.

Recommended Approach

Adopt a principles-based rather than a rules-based framework. Emphasise:

Cost-effectiveness; Efficiency; Accountability; Transparency; Proper contracting and contract management; Performance monitoring and reporting

Scope of State-to-State Procurement

Current drafting appears too narrow by focusing on specific activities such as:

Construction; Repair and maintenance; Infrastructure-related services; Leasing arrangements.

Recommendation: Broaden the provision to cover the procurement of goods, services, and works where another organ of state can demonstrate the required capacity and capability.

Conclusion

- State-to-state procurement is an important mechanism for improving service delivery.
- The regulations should enable, rather than constrain, collaboration across government.
- **Greater flexibility, supported by strong governance and accountability measures,** will allow organs of state to utilise existing public-sector capacity more effectively

1

GOOD

- Publishing the long-awaited regulations.
- The highlighted topics i.e., “*Use of another organ of state*”; Bid Committee System etc., which are clear especially the use of language.

2

LIMITATION

- **Overly prescriptive** regulations may limit strategic thinking and professional discretion.
- Schedule 2 entities require sufficient flexibility to develop policies that support operational efficiency.
- Public-sector systems are often viewed as cumbersome due to **rigid regulatory** requirements.
- Excessive prescription can reduce agility, innovation, and responsiveness.

3

RECOMMENDATION

- Capture Regulation 30, 31 and 32, into simply single paragraph which states –
 - “A procuring institution may **ACQUIRE, CONTRACT; LEASE**, goods, services, works infrastructure, or capital assets from another organ of state if –
 - *that organ of state – has a statutory mandate to do so; or*
 - *demonstrates the technical, financial, and managerial capacity to execute the project within the required timelines and standards; and it is cost-effective and value for money”*
- Publish the approval on the institution’s official website within 7 days of the approval
- The regulations should make the process of capacity augmentation seamless and not subject it to red tape

Regulation 30, 31, 32 and 33

The proposed provisions are overly prescriptive and may limit the flexibility required for efficient and effective service delivery across government.

Use of another organ of state

30. Acquisition from another organ of state

[section 25(a) of the Act]

- (1) A procuring institution may acquire goods, services, infrastructure, or capital assets from another organ of state (referred to as a "supplying institution") if the supplying institution –
- (a) is **mandated by law to exclusively** provide the goods or services to other organs of state; or
 - (b) offers goods or services that fall within its **statutory mandate** which can be sourced from the open market.
- (2) In the case of subregulation (1)(b), a procuring institution –
- (a) may either acquire the goods or services –
 - (i) from the supplying institution; or
 - (ii) source its procurement from the open market; and
 - (b) if it sources its procurement from the open market, must –
 - (i) **justify its decision on grounds** of cost effectiveness based on a value for money assessment;
 - (ii) publish the decision and assessment on the institution's official website within 7 days of the decision; and
 - (iii) use an open competitive bidding method referred to in regulation 6(1)(a) to procure goods and services.

31. Contracting another organ of state to construct, repair or maintain infrastructure or capital assets

[section 25 (b) of the Act]

A procuring institution may contract another organ of state to **construct, repair** or maintain **infrastructure or capital assets** if –

- (a) that organ of state –
 - (i) has a **statutory mandate** to do so;
 - (ii) demonstrates the technical, financial, and managerial capacity to execute the project within the required timelines and standards; and
- (b) it is cost-effective and value for money.

32. Letting of assets to another organ of state

[Section 25 (c) of the Act]

A procuring institution may let assets to another organ of state if –

- (a) the asset is let at a market-related rental unless the relevant treasury approves otherwise;
- (b) any legal or contractual requirements are complied with; and
- (c) the letting is in the public interest or promotes the efficient use of state resources; or
- (d) the asset is **underutilised or** surplus to the institution's current needs, or specifically made available for shared use.

33. Transfer or disposal of assets to another organ of state

[Section 25(d) of the Act]

- (1) A procuring institution may transfer assets to another organ of state without a competitive bidding process if the transfer –
- (a) arises in terms of legislation or the reorganisation of functions as between organs of state; or
 - (b) promotes the efficient use of public assets; and

Regulation 33

The proposed provisions are overly prescriptive and may limit the flexibility required for efficient and effective service delivery across government.

- (c) is approved by their respective accounting officers or accounting authorities.
- (2) Subject to the Public Finance Management Act or the Municipal Finance Management Act, a procuring institution may transfer –
 - (a) movable assets free of charge; and
 - (b) immovable assets at market-related value unless the relevant treasury determines otherwise.
- (3) A procuring institution may dispose of assets to another organ of state if –
 - (a) the assets are surplus to its needs;
 - (b) the disposal promotes the efficient use of public assets; and
 - (c) it is approved by the accounting officers or accounting authorities of both the institution and the organ of state.
- (4) A procuring institution may only dispose of assets at market-related value unless a relevant treasury determines otherwise.
- (5) The accounting officer or accounting authority of a procuring institution must, in approving the disposal of any assets –
 - (a) justify the disposal; and
 - (b) publish the approval on the institution's official website within 7 days of the approval.

CONSULTATION TO SECTION 56(3) OF ACT

THANK YOU