Draft Public Procurement Regulations, 2026

Infrastructure, Capital Assets and ICT

A public draft discussion paper on what is covered, what is missing, and what should be strengthened

Public debate topic

How should the final regulations treat infrastructure, capital assets and ICT as strategic public assets, not only as construction projects or maintenance items?

Discussion note and disclaimer

This paper and presentation are prepared for public discussion and capacity-building purposes only. They are intended to support debate on the draft Public Procurement Act regulations and to help improve public procurement practice. They do not constitute legal advice, a legal opinion, or an official interpretation of the Public Procurement Act, draft regulations, or any related legislation. Institutions and participants should obtain their own legal, technical, financial or procurement advice before acting on any issue discussed.

Its been a pleasure working on the paper for the discussions on 4/5 June 2026, organised by the APLU.

You are welcome to send me your thoughts on this. You can find me on linkedin, or email **jainthree@procurenew.com**

Regards

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Summary

This draft discussion consolidates the earlier infrastructure, capital assets, ICT and strategic procurement work into a single public-facing storyline. It is designed to support a public discussion on the Draft General Public Procurement Regulations, 2026, with a particular focus on whether the draft regulations adequately respond to the Public Procurement Act, 2024 in relation to infrastructure, capital assets and ICT/digital infrastructure.

The central message is that the Public Procurement Act uses a broader concept of infrastructure and capital assets than ordinary construction procurement. The Act defines capital assets as tangible or intangible assets used for more than 12 months, and it defines infrastructure as physical facilities, structures and systems, including digital or analogue communications systems required to provide services to the public directly or indirectly. This means the final regulations should cover roads and buildings, but also digital infrastructure, electronic communications assets, data centres, cloud platforms, operational technology, major equipment, plant, fleet and other long-life assets.

The draft regulations take important steps forward. Chapter 3 introduces infrastructure and capital asset planning, portfolio and programme strategies, lifecycle costing, gateway reviews, feasibility analysis, bid-stage due diligence, contract management, maintenance strategy, risk controls, anti-extortion measures, stakeholder

consultation and environmental/heritage compliance. Regulation 84 addresses procurement data retention and Regulation 85 addresses ICT-based procurement systems. These provisions are important.

The concern is that the draft still leaves gaps. Regulation 4 is structured mainly around spend analysis and a Kraljic-style supply-market classification, while the Act requires a strategic procurement framework across specific statutory domains. Chapter 3 may also be read too narrowly as built-environment or construction-focused, while ICT appears mainly as support for maintenance or as an electronic procurement platform, rather than as infrastructure and capital assets to be procured, operated and protected.

The recommendations in this draft discussion therefore focus on revising the storyline and the regulatory architecture: Regulation 4 should be organised around the Act's strategic procurement domains; Chapter 3 should be renamed and clarified as a lifecycle framework for infrastructure and capital assets; ICT/digital infrastructure should be expressly included; contract management should be strengthened; and institutional obligations should be differentiated for SOEs, municipalities, national departments, provinces and smaller entities.

Core public message

The regulations should not treat infrastructure as construction only. They should treat infrastructure, capital assets and ICT as public service-delivery platforms that require strategic planning, funding, procurement, contract management, maintenance, renewal and disposal over their full lifecycle.

Contents

1. Public debate frame and storyline

The proposed public debate topic is: Infrastructure, Capital Assets and ICT in the Draft Public Procurement Regulations: from construction compliance to lifecycle public value.

This framing is deliberate. Earlier discussions on the draft regulations often focus on infrastructure procurement as if it primarily means construction works. That approach is too narrow. The Act itself treats infrastructure and capital assets more broadly. It includes long-life tangible and intangible assets, digital or analogue communications systems, and the goods and services required to construct, repair or maintain infrastructure and capital assets.

The storyline for a public audience should therefore move in five steps:

- Start with the Act: the legal scope is broader than construction.
- Show what the draft regulations cover: especially Regulation 4, Chapter 3, Regulation 29, Regulation 46 and Regulations 84-85.
- Show the gap: capital assets and ICT are not sufficiently developed as strategic asset portfolios.
- Use examples: construction projects, medical equipment, fleets, smart meters, data centres, cloud platforms and electronic communications networks.
- End with practical recommendations: revise the taxonomy, strengthen contract management, include ICT/digital infrastructure, make thresholds and requirements proportionate, and align with existing infrastructure and digital laws.

Quick note

The public question is not only how the state buys construction works. It is how the state plans, funds, procures, operates, maintains and protects the assets that enable public services.

2. Relevant provisions of the Public Procurement Act

The Public Procurement Act, 2024 is the controlling legal instrument. The regulations must give effect to it. The following provisions are the most relevant to this draft discussion.

Box 1: Act provisions that frame this debate

Definitions: “capital asset” means a tangible or intangible asset that a procuring institution intends to use for more than 12 months. “Infrastructure” includes physical facilities, structures and systems, including digital or analogue communications systems required to provide public services directly or indirectly. “Procurement” includes goods or services for construction, repair or maintenance of infrastructure or capital assets, acquisition of infrastructure or capital assets, and letting or disposal of assets.

Section 24: The Minister must prescribe a framework for strategic procurement, including infrastructure, capital assets and related maintenance goods and services; procurement methods; requirements and procedures per method; and evaluation criteria. Section 24 also permits differentiated thresholds by institution and procurement category and requires procurement systems to include planning, budgeting, acquisition, contract management, risk, disposal, performance assessment and reporting.

Section 25: A procuring institution may acquire goods, services, infrastructure or capital assets from another organ of state, or use another organ of state to construct, repair or maintain infrastructure or capital assets.

Section 26: Accounting officers and authorities must prevent abuse, interference and tampering with bids or contracts and must investigate allegations of corruption, improper conduct or non-compliance.

Section 63: The Minister must make regulations for infrastructure and capital assets and goods or services related to infrastructure and capital assets, and may make different regulations for different categories of institutions and procurement.

Sources: Public Procurement Act 28 of 2024, definitions, sections 24, 25, 26 and 63.

Act provision	What it says	Why it matters for this draft discussion
Definitions	Capital assets include tangible and intangible assets used for more than 12 months. Infrastructure includes digital or analogue communications systems.	The regulations must cover construction assets, moveable assets, intangible assets and ICT/digital infrastructure.
Section 24(1)(a)(ii)	Strategic procurement must include infrastructure, capital assets and related maintenance goods or services.	Regulation 4 should contain a strategic asset framework, not only a spend-analysis method.
Section 24(1)(b)-(d)	The regulations must prescribe methods, requirements, procedures and evaluation criteria.	Infrastructure, capital assets and ICT need suitable procurement methods and procedures.
Section 24(2)	Different thresholds may be set for different institutions and procurement categories.	Municipalities, SOEs, departments and smaller entities should not face a single one-size-fits-all burden.
Section 24(3)	Procurement systems must include demand management, planning and budgeting, acquisition, contract management, risk, disposal, performance assessment and reporting.	Infrastructure and ICT need lifecycle planning, service performance, maintenance and contract management.
Section 25	Use of another organ of state is permitted for assets and infrastructure.	Useful for SITA, implementing agents, public works entities and shared infrastructure capability.
Section 26	Institutions must prevent abuse of the procurement system.	Strategic procurement must include anti-capture, beneficial ownership, conflict and anti-extortion controls.
Section 63	Infrastructure and capital asset regulations are mandatory.	Chapter 3 is necessary, but must be broader and better integrated with Regulation 4.

3. Relevant provisions of the Draft General Public Procurement Regulations

The draft regulations respond to the Act through several provisions. The most important are Regulation 4 on strategic procurement, Regulation 6 on methods, Regulation 29 on contract management, Chapter 3 on infrastructure and capital assets, Chapter 5 on preferential and sustainable measures, Regulation 73 on competence, and Regulations 84 and 85 on procurement data and ICT-based procurement systems.

Box 2: Draft regulation provisions that frame this debate

Regulation 4 requires a structured, systematic and data-driven approach to procurement, using spend analysis, internal needs and market information. It then classifies categories broadly into strategic, leverage, bottleneck and routine/non-critical categories and requires a strategic procurement plan.

Regulation 29 requires a contract management system that monitors execution, tracks milestones, manages risks, enforces accountability, supports outcome-based evaluation and publishes contracts and variations.

Chapter 3 defines and classifies capital assets, goods and services related to capital assets, lifecycle, portfolio level, programme level and project phases. It requires portfolio and programme infrastructure strategies, infrastructure procurement plans, gateway reviews, feasibility studies, bid-stage due diligence, standard contract forms, maintenance strategies, risk registers, anti-extortion controls, stakeholder consultation and environmental/heritage compliance.

Regulation 46 specifically requires the strategic procurement plan to include maintenance procurement measures, including long-term maintenance contracts, facility management, mechanical and energy services, ICT support and asset disposal.

Regulations 84 and 85 deal with retention of procurement data and ICT-based procurement systems, including digital archiving, backup, security, e-tender portal use, ISO 27001-compliant frameworks, audit trails and electronic submissions.

Source: Draft General Public Procurement Regulations, 2026, Regulations 4, 29, 37-50, 73, 84 and 85.

Draft regulation	What it covers	High level comment
Regulation 4	Strategic procurement, spend analysis, Kraljic-style categories and strategic procurement plan.	Important but too narrow if treated as the whole strategic framework.
Regulation 6	Procurement methods and procedures.	Needs clearer taxonomy for infrastructure, capital assets, ICT and innovation.
Regulation 29	Contract management system and variation thresholds.	Good base, but infrastructure and ICT need deeper contract controls.
Regulations 30-33	Use of another organ of state; letting and disposal to another organ of state.	Useful but should be part of a strategic asset-use and disposal framework.
Regulations 37-40	Definitions/classification, portfolio and programme planning, infrastructure procurement plan.	Strong base, but capital assets and ICT need clearer treatment.
Regulations 41-45	Gateway reviews, feasibility, planning/design, bidding and contracting.	Strong for projects, but may be read as construction-oriented.
Regulation 46	Maintenance procurement strategy, including ICT support.	Important but ICT should not only be treated as support or maintenance.
Regulations 47-50	Risk, extortion, stakeholder consultation, environmental and heritage compliance.	Important for construction and should be adapted for digital/cyber and critical infrastructure risks.
Regulations 55-70	Set-asides, prequalification, subcontracting, sustainable development and preference conditions.	Needs explicit integration into infrastructure and capital-asset strategies.
Regulation 73	Competency requirements and technical competency dictionary.	Needs infrastructure, capital asset and ICT-specific competencies.
Regulations 84-85	Data retention and ICT-based procurement systems.	These are about procurement data/systems, not enough about ICT assets as procured infrastructure.

4. Act-to-regulation matrix: what is covered and what is absent

Act requirement	Draft regulation response	Covered	Absent or needs strengthening
Act definitions: capital asset and infrastructure	Regulation 37 definitions and classification	Capital assets are classified and lifecycle is defined. Goods and services linked to capital assets include professional services, operational inputs, ICT support, spare parts and consumables.	The Act's infrastructure definition expressly includes digital/analogue communications systems. The draft should say clearly that digital infrastructure and ICT assets fall within the Chapter 3/lifecycle framework.
Act definition: procurement includes acquisition, maintenance, letting and disposal	Regulations 30-33, 46 and 53; Chapter 4 leases	Some asset letting, disposal and maintenance provisions are included.	Disposal and letting are not yet treated as strategic lifecycle and circular-economy mechanisms. Auctions and asset-income routes need clearer methods.
Section 24(1)(a)(ii): strategic procurement for infrastructure, capital assets and maintenance	Regulation 4 and Regulation 40	Regulation 4 requires a strategic procurement plan; Regulation 40 says infrastructure procurement plans must align to it.	Regulation 4 should contain a substantive strategy for infrastructure/capital assets, not only a cross-reference to Chapter 3.

Act requirement	Draft regulation response	Covered	Absent or needs strengthening
Section 24(1)(b)-(c): methods, requirements and procedures	Regulations 6-21	RFQ, RFB, RFP, competitive dialogue, framework agreement and direct procurement are included.	The taxonomy remains unclear. Two-stage bidding, prequalification, emergency procurement and electronic bidding should be classified more carefully.
Section 24(1)(d): evaluation criteria	Regulations 23-25 and Annexure 1	Criteria include cost-effectiveness, functionality/technical merit and section 21-23 measures.	Infrastructure and ICT need clearer guidance on lifecycle cost, resilience, interoperability, cybersecurity, maintainability and asset performance.
Section 24(2): differentiated thresholds	Draft thresholds in annexures and later notices	Some thresholds appear, including set-aside thresholds and contract variation percentages.	Infrastructure, capital assets and ICT need thresholds based on value, complexity, risk, institution type and asset criticality.
Section 24(3): contract management and assessment against outcomes	Regulation 29 and Regulation 45	General and infrastructure contract management systems are required.	Need mandatory contract-management plans, variation/claims registers, handover evidence, SLAs and asset-performance dashboards.
Section 24(3): risk management	Regulation 47 and Regulation 48	Risk registers, contingency plans, anti-corruption and anti-extortion controls are included.	Risk should also cover cybersecurity, vendor lock-in, obsolescence, data protection, service continuity and critical infrastructure resilience.
Section 25: use of another organ of state	Regulations 30-33	Acquisition, construction/repair/maintenance, letting and disposal between organs of state are addressed.	More detail is needed for SITA, implementing agents, shared infrastructure, accountability and handover.
Section 26: prevent abuse	Regulations 44, 47, 48, 76-85	Due diligence, beneficial ownership, anti-extortion, security and data controls are included.	Strategic procurement should include anti-capture controls before procurement starts: market analysis, probity review and conflict screening.
Section 63: must regulate infrastructure and capital assets	Chapter 3	Chapter 3 is substantial and valuable.	It needs a revised title and scope to avoid a construction-only reading and to include ICT/digital infrastructure and intangible capital assets.

5. Reframing the subject: infrastructure, capital assets and ICT are not construction-only

The most important public-debate shift is to move away from the idea that infrastructure procurement is only construction procurement. Construction is important, but it is only part of the asset universe contemplated by the Act.

A better title for Chapter 3 would be: “Infrastructure and Capital Assets: Lifecycle Planning, Procurement and Management.” If National Treasury wants to highlight digital assets explicitly, the title could be: “Infrastructure, Capital Assets and Digital Infrastructure: Lifecycle Planning, Procurement and Management.”

Asset category	Examples	Strategic procurement issue
Built infrastructure	Roads, bridges, schools, clinics, hospitals, water works, transmission lines, public buildings.	Design maturity, CIDB, FIDPM, safety, environmental approvals, variations, claims, maintenance, handover.
Capital assets	Plant, fleet, machinery, rolling stock, medical equipment, specialised equipment, laboratory assets.	Spares, warranties, maintenance contracts, asset register, operating capability, replacement cycles, obsolescence.
Digital infrastructure	Data centres, cloud platforms, broadband, networks, cybersecurity systems, software platforms, e-government systems.	Data sovereignty, cybersecurity, interoperability, licensing, vendor lock-in, exit plans, uptime and continuity.
Electronic communications assets	Fibre, towers, radio systems, spectrum-linked assets, public Wi-Fi, emergency communications.	Electronic Communications Act compliance, wayleaves, access rights, resilience, upgrade path, shared use.

Asset category	Examples	Strategic procurement issue
Operational technology	SCADA, smart meters, traffic systems, water monitoring, grid-control systems, building management systems.	Cyber-physical risk, safety, interoperability, vendor support, life-cycle upgrades and emergency response.
Income-generating or reusable assets	Leased properties, concessions, toll/user-charge assets, shared facilities, surplus land or buildings.	Disposal, letting, circularity, fair value, investor confidence and public interest.

Key message on capital assets

Capital assets are service-delivery platforms, not once-off purchases. Regulation 4 and Chapter 3 should require portfolio analysis, whole-life costing, funding strategy, maintenance model, operating capability, contract management and disposal/renewal planning for capital assets.

6. Strategic procurement, Chapter 3 and the lifecycle gap

Regulation 4 and Chapter 3 must work together. Regulation 4 should set the institution-level strategic procurement framework. Chapter 3 should then control the project, programme and portfolio delivery rules for infrastructure and capital assets. Chapter 3 cannot substitute for the strategic framework required by section 24(1)(a).

Regulation 4 should answer	Chapter 3 should answer
What asset portfolio does the institution need?	How will project inception, feasibility, design, bidding and contracting be controlled?
Which categories are strategic, leverage, bottleneck or routine?	How will gateway reviews and due diligence apply to projects?
What funding model and affordability assessment are required?	How will funding confirmation and business-case review happen?
What transformation, local content and supplier-development opportunities exist?	How will bid criteria, subcontracting and contract conditions be implemented?
How will ICT, digital and capital assets be managed over their lifecycle?	How will maintenance contracts, SLAs and asset performance be monitored?
What anti-capture, market and supplier risks exist?	How will risk registers, anti-extortion controls and contract remedies be applied?

The Kraljic matrix in Regulation 4 is useful as an analytical tool. It helps institutions distinguish strategic, leverage, bottleneck and routine categories. Its weakness is that it is not enough for public infrastructure, capital assets and ICT. Public procurement must also consider public value, service delivery, constitutional transformation, lifecycle cost, funding, resilience, environmental impact, cybersecurity, data protection, investor confidence, corruption risk and institutional capability.

Quick note

Keep Kraljic as guidance, not as the framework. The framework should be the Act's four strategic procurement domains and the public-value tests that apply to them.

7. Capital assets as a strategic procurement domain

Capital assets need their own strategic treatment. The Act defines a capital asset broadly as a tangible or intangible asset intended for use for more than 12 months. This definition captures buildings, plant, fleet, medical equipment, major ICT systems, software platforms and other long-life assets. It is not limited to immovable property or construction works.

For capital assets, the strategic procurement question should not be "how do we buy it?" The question should be: what asset is needed, why is it needed, how long will it last, how will it be funded, who will operate it, who will maintain it, how will performance be measured, how will it be upgraded, and how will it eventually be disposed of or repurposed?

Capital-asset strategy element	Question to ask before procurement
Asset portfolio analysis	What assets does the institution own, need, replace, renew, lease or dispose of?
Whole-life costing	What is the cost of acquisition, financing, operation, maintenance, spares, upgrades and disposal?
Maintenance model	Is maintenance in-house, outsourced, framework-based, warranty-based or performance-based?
Operating capability	Does the institution have the skills, systems and budget to use the asset properly?
Contract-management model	How are warranties, service levels, payment, performance, variations and supplier failure handled?
Digital and data risk	Does the asset create cybersecurity, licensing, data ownership or interoperability risks?
Renewal and disposal	When should the asset be renewed, repurposed, let, transferred, sold or recycled?

8. ICT and digital infrastructure as public infrastructure

ICT appears in the draft regulations in two different ways. First, Regulations 84 and 85 regulate procurement data and ICT-based procurement systems. Second, Regulation 46 mentions ICT support as part of maintenance procurement. These are important, but they do not fully address ICT and digital infrastructure as assets that are themselves procured, funded, operated, maintained and protected.

This distinction should be made clearly in the public discussion: ICT as a procurement platform is not the same as ICT as public infrastructure. An e-tender portal is an ICT support system for procurement. A data centre, cloud platform, fibre network, cybersecurity capability, software platform or smart-meter system can itself be a capital asset or infrastructure system.

ICT/digital asset	Strategic procurement risks
Cloud and data platforms	Data location, data ownership, exit costs, portability, POPIA, cybersecurity, supplier lock-in.
Cybersecurity systems	Critical business functions, incident response, resilience, supply-chain security, ISO 27001 alignment.
Software platforms	Licensing model, intellectual property, customisation, open standards, interoperability, upgrade path.
Communications networks	Electronic Communications Act compliance, wayleaves, spectrum-related issues, access, resilience.

ICT/digital asset	Strategic procurement risks
Smart infrastructure / operational technology	Cyber-physical risk, uptime, safety, redundancy, service continuity and support.
Data assets	Retention, governance, confidentiality, open data, archiving, audit trails and public transparency.

What should be added

The regulations should require ICT/digital infrastructure procurement plans to address interoperability, cybersecurity, data protection, data sovereignty, vendor lock-in, licensing, open standards, exit strategies, service continuity, disaster recovery and lifecycle upgrade paths.

9. Contract management for infrastructure, capital assets and ICT

Contract management is where infrastructure, capital assets and ICT projects often succeed or fail. Regulation 29 provides a general contract management system. Regulation 45 applies contract management to infrastructure and capital asset contracts. These provisions should be strengthened by requiring asset-specific contract management plans for high-value, high-risk or strategically important projects.

Contract-management control	How it should work
Scope and baseline	Approved scope, design baseline, output specifications, asset performance baseline and contract deliverables.
Variation register	Record all variations, approvals, reasons, cumulative value, time impact and link to budget.
Claims and extension-of-time register	Record notices, causes, liability, cost impact, decisions and dispute status.
Payment and performance controls	Link payments to certificates, milestones, service levels, user acceptance and evidence of performance.
Maintenance and handover	Require as-built drawings, warranties, O&M manuals, training, asset-register update and maintenance plan.
ICT SLAs	Uptime, cybersecurity, response time, data recovery, exit assistance, source code/configuration rights and audit trails.
Transformation performance	Track subcontracting, local labour, enterprise development, skills transfer and actual payments.
Anti-capture and integrity	Beneficial ownership checks, conflict declarations, probity review, whistleblower channels and incident escalation.

For infrastructure, the contract management plan should be approved before award and updated at each gateway review. For ICT, the plan should include cybersecurity and exit clauses before contract signature, not after vendor lock-in occurs. For capital assets, it should include spares, warranty, training, support and replacement planning.

10. Funding, PPPs, private finance and investor attractiveness

Strategic procurement for infrastructure and capital assets often requires a funding model beyond an ordinary purchase order. The draft regulations recognise Budget Facility for Infrastructure appraisal, PPPs, blended

finance contracts and offtake agreements. This should be developed further to make strategic procurement bankable, credible and attractive to investors.

Investor concern	Procurement response
Project pipeline certainty	Publish credible pipelines with project stage, approvals, risk allocation and procurement route.
Feasibility and business case maturity	Use independent gateway review, affordability analysis and realistic cost estimates before market launch.
Risk allocation	Allocate construction, demand, revenue, technology, currency, force majeure and political risks to the party best able to manage them.
Payment security	Provide credible budget commitments, payment mechanisms, escrow/guarantees where appropriate and clear termination compensation.
Dispute resolution	Use predictable dispute mechanisms, including expert determination, adjudication, arbitration or PPP-specific mechanisms where appropriate.
Regulatory alignment	Align procurement with PPP regulations, sector laws, borrowing rules, SITA/ECA requirements and asset ownership rules.
Transparency and integrity	Publish business-case summaries, award rationale, beneficial ownership, contract variations and performance data.

Public debate point

The regulations should not treat private finance as an exception at the end of procurement. For major infrastructure and capital assets, funding model, affordability and investor-readiness should be part of strategic procurement from the start.

11. Alignment with B-BBEE, dtic, CIDB, FIDPM and ISO/SANS

Infrastructure, capital assets and ICT should be aligned with existing policy and regulatory systems. The Public Procurement Act is not a blank slate. The final regulations must integrate, not duplicate or override by silence, the systems already used in construction procurement, asset management, digital infrastructure, transformation and public finance.

Framework	Relevance	Regulatory implication
CIDB and CIDB Standard for Uniformity	Construction procurement, contractor grading, standard documents, classes of works, Register of Projects.	Explicitly align Chapter 3 with CIDB and avoid parallel standard-form regimes.
FIDPM / IDMS	Infrastructure delivery gates, portfolio/programme/project governance, operations and maintenance.	Make clear how the new gateway reviews interact with FIDPM gates.
B-BBEE Act and Construction Sector Code	Transformation, contractor development, built-environment professionals, skills and enterprise development.	Require infrastructure transformation plans and anti-fronting controls.
dtic and local production/content	Industrial policy, designations, local manufacturing, supplier development.	Use market analysis and lawful designations early in the procurement strategy.
ISO/SANS 10845	Processes, methods and procedures for construction procurement, targeted procurement and contract strategy.	Use as taxonomy guidance for methods, procedures, targeted procurement and documentation.

Framework	Relevance	Regulatory implication
Electronic Communications Act	Electronic communications networks, services and facilities.	Bring communications assets into strategic asset and regulatory planning.
SITA Act and ICT governance	ICT services to and on behalf of government departments and public bodies.	Clarify when SITA or another organ of state is used under section 25.
National Data and Cloud Policy	Cloud and data infrastructure, digital economy, data governance and service delivery.	Include cloud and data assets in ICT strategic procurement.
Critical Infrastructure Protection Act	Protection, safeguarding and resilience of critical infrastructure.	Add resilience, security and continuity planning for critical infrastructure and ICT.

12. African and South African lessons

African comparators are useful because they show that procurement systems can be more explicit about infrastructure-relevant methods, e-procurement, community participation, force account, asset disposal and professionalisation. South Africa should not copy these systems, but it can learn from their regulatory choices.

Country	What is in place	Infrastructure/asset/ICT relevance	Lesson for South Africa
Kenya	Public Procurement and Asset Disposal Act and 2020 Regulations.	Procurement planning, e-procurement, asset disposal and professional procurement regulation are more detailed.	Useful model for e-procurement rules and asset-disposal integration.
Zambia	Public Procurement Act 2020 and Regulations 2021.	Includes methods such as force account, infrastructure for private financing/concessions and community participation.	South Africa should consider force account and lawful community participation for suitable infrastructure.
Botswana	Public Procurement Act, 2021; Regulations 2023; PPRA Operations Manual 2024.	Broad method menu including competitive dialogue, BAFO, unsolicited bids, hackathon and community participation; practical operations manual.	South Africa needs both regulations and an implementation manual.
Nigeria	Public Procurement Act 2007; Bureau of Public Procurement.	Central regulator, professional capacity, standard-setting and works procurement controls.	Central capability and professionalisation matter for high-risk procurement.
Malawi	Public Procurement and Disposal of Public Assets Act 2025.	Continues trend toward procurement and disposal oversight, standard documents and data systems.	Asset disposal and procurement data should be treated as core public asset governance.

South African examples also show why a stronger framework is needed. The point is not to litigate past projects in this draft discussion. The point is to draw public lessons about planning, funding, contract management, governance and transparency.

Example	Nature	Public lesson	Strategic procurement implication
REIPPPP	Renewable energy procurement programme with private investment and standardised procurement rounds.	Often cited as relatively successful in attracting investment; delays later arose from policy and grid constraints.	Predictable pipeline, standard documents and investor confidence matter.
Gautrain PPP	Large transport PPP with long-term concession and public-private risk allocation.	Delivered a major asset, but public debate continues on cost, ridership and subsidy implications.	PPP procurement must test long-term affordability, demand assumptions and public value.
Medupi and Kusile	Large power-station capital projects.	Publicly reported delays, cost overruns and quality/performance challenges.	Complex construction needs mature design, contract management, risk allocation and accountability.
Transnet locomotives	Large SOE rolling-stock procurement.	State Capture Commission and public reporting linked aspects to procurement corruption and inflated costs.	Strategic procurement must include anti-capture, beneficial ownership and market-integrity controls.

Example	Nature	Public lesson	Strategic procurement implication
IFMS / large ICT projects	Government-wide ICT transformation efforts.	Publicly associated with delays, complexity and implementation challenges.	ICT procurement needs interoperability, governance, staged delivery, exit strategy and benefits management.
Digital migration / broadcast infrastructure	Digital broadcasting infrastructure and devices.	Delayed over many years with policy, technology and implementation disputes.	Digital infrastructure needs regulatory certainty, market readiness and technology lifecycle planning.

Zondo Commission link

The State Capture Commission described public procurement as central to state capture. For this draft discussion, the implication is practical: strategic procurement must include anti-capture controls before the tender is issued. That means independent market analysis, beneficial ownership verification, conflict declarations, probity review, transparent category strategies, anti-collusion controls, contract variation monitoring and public reporting.

13. Recommendations

1. Revise the title and scope of Chapter 3

Rename Chapter 3 to “Infrastructure and Capital Assets: Lifecycle Planning, Procurement and Management” or “Infrastructure, Capital Assets and Digital Infrastructure: Lifecycle Planning, Procurement and Management”. This aligns the regulations with the Act’s broader definitions and avoids the impression that the chapter is only about construction and maintenance.

2. Restructure Regulation 4 around the Act’s strategic procurement domains

Regulation 4 should not be limited to spend analysis and Kraljic-style categorisation. It should contain distinct subsections for other-country procurement, infrastructure/capital assets, disposal/letting and innovation. Each should have objectives, minimum plan content, required analysis, methods, contract conditions and measurement.

3. Treat infrastructure, capital assets and ICT as asset portfolios

Require institutions to identify built assets, capital assets, ICT/digital assets, communications assets and operational technology assets in their strategic procurement plans. The plan should link each portfolio to service delivery, budget, lifecycle cost, maintenance, renewal and disposal.

4. Add explicit digital infrastructure and ICT provisions

Clarify that digital infrastructure includes cloud, data centres, networks, electronic communications systems, software platforms, cybersecurity, data assets and operational technology. Require procurement plans to address data sovereignty, cybersecurity, interoperability, licensing, open standards, vendor lock-in, exit and continuity.

5. Strengthen contract management for high-risk assets

Regulation 29 and Regulation 45 should require contract management plans for strategic, high-value or high-risk infrastructure, capital assets and ICT projects. Plans should include variation registers, claims registers, SLA dashboards, payment controls, handover evidence, maintenance records, asset register updates and performance reporting.

6. Differentiate thresholds and obligations

Use section 24(2) and section 63 powers to differentiate by institution type, procurement category, risk and asset criticality. A small municipality, SOE, national department and provincial department should not have identical strategic procurement burdens.

7. Integrate existing infrastructure and digital law

Require explicit alignment with CIDB, FIDPM/IDMS, the Infrastructure Development Act, the Electronic Communications Act, SITA, the National Data and Cloud Policy, POPIA and Critical Infrastructure Protection Act where relevant.

8. Make funding and investor-readiness part of strategy

For major infrastructure and capital assets, strategic procurement should require an early funding model, affordability analysis, PPP/blended finance suitability, risk allocation, payment security, project preparation and investor-market engagement strategy.

9. Build infrastructure and ICT competency

Regulation 73 should be operationalised through role-based competency profiles for SCM practitioners, engineers, project managers, contract managers, digital architects, cybersecurity specialists, legal advisers, finance experts and accounting officers.

10. Integrate transformation and local economic development

Require infrastructure transformation plans for relevant projects, covering B-BBEE code alignment, CIDB class and grade, local production, local labour, enterprise development, subcontractor payment protection, anti-fronting controls and measurable outcomes.

11. Use ISO/SANS and CIDB as taxonomy guidance

Use ISO/SANS 10845 and CIDB prescripts to distinguish methods, procedures, bid submission methods, targeted procurement procedures and contracting strategies. This will help resolve confusion in Regulation 6 and support consistent audit interpretation.

12. Add a public implementation manual

The regulations should be supported by a manual with templates, method-selection matrices, asset-class examples, contract-management checklists, ICT clauses, gateway-review templates and public-comment guidance.

14. Public forum discussion questions

The following questions can be used to engage a public audience constructively:

- Should Chapter 3 be renamed to reflect lifecycle management of infrastructure and capital assets rather than construction and maintenance only?
- Should the regulations expressly include ICT, digital infrastructure and electronic communications assets as part of infrastructure and capital assets?
- Should Regulation 4 be reorganised around the Act's four strategic procurement domains rather than around spend analysis and Kraljic categories?
- What minimum contract-management controls should be mandatory for high-value infrastructure, capital asset and ICT projects?
- How should the regulations differentiate obligations for SOEs, municipalities, provincial departments, national departments and small entities?
- How should private finance, PPPs and blended finance be built into strategic procurement without weakening transparency and value for money?

- What data should be published to show whether infrastructure and ICT procurement is delivering time, cost, quality, service-delivery and transformation outcomes?

15. Concluding position

The draft regulations represent an important step in modernising public procurement. They are strongest where they recognise lifecycle planning, gateway reviews, risk management, anti-extortion controls, due diligence and procurement data. They are weakest where they leave capital assets and ICT underdeveloped as strategic procurement domains.

The final regulations should therefore treat infrastructure, capital assets and ICT as the public service-delivery platform of the state. The framework should cover the full lifecycle: planning, funding, procurement, contract management, operation, maintenance, renewal, disposal and performance measurement. That is the best way to align the regulations with the Act, improve public value, attract credible investment, support transformation and reduce procurement risk.

16. References

Botswana Public Procurement Regulatory Authority (2024) Public Procurement Operations Manual. Gaborone: PPRA.

Construction Industry Development Board (2019) Standard for Uniformity in Engineering and Construction Works Contracts. Government Gazette No. 42622, 8 August 2019.

Construction Industry Development Board (n.d.) cidb Procurement Prescripts. Available at: https://www.cidb.org.za/clients/procurement-prescripts/cidb-prescripts/ (Accessed: 2 June 2026).

Department of Communications and Digital Technologies (2024) National Policy on Data and Cloud. Government Gazette No. 50741, 31 May 2024.

Department of Trade, Industry and Competition (2017) Amended Construction Sector Code. Government Gazette No. 41287, 1 December 2017.

ISO (2020) ISO 10845-1:2020 Construction procurement - Part 1: Processes, methods and procedures. Geneva: International Organization for Standardization.

Kenya (2015) Public Procurement and Asset Disposal Act, 2015. Nairobi: Government Printer.

Kenya (2020) Public Procurement and Asset Disposal Regulations, 2020. Nairobi: National Treasury.

Malawi (2025) Public Procurement and Disposal of Public Assets Act No. 7 of 2025. Lilongwe: Government of Malawi.

National Treasury (2019) Framework for Infrastructure Delivery and Procurement Management. Pretoria: National Treasury.

National Treasury (2026) Draft General Public Procurement Regulations, 2026. Pretoria: National Treasury.

National Treasury (2026) Media Statement: Invitation for public comment on Draft General Public Procurement Regulations, 2026 and Draft Public Procurement Tribunal Regulations, 2026. Pretoria: National Treasury.

Nigeria (2007) Public Procurement Act, 2007. Abuja: Federal Republic of Nigeria.

Scott, S. (2026) Critique of Regulation 4: Promotion of Strategic Procurement. Public comment submission, 2 June 2026.

South Africa (1996) Constitution of the Republic of South Africa, 1996.

South Africa (1998) State Information Technology Agency Act 88 of 1998.

South Africa (2003) Broad-Based Black Economic Empowerment Act 53 of 2003.

South Africa (2005) Electronic Communications Act 36 of 2005.

South Africa (2019) Critical Infrastructure Protection Act 8 of 2019.

South Africa (2024) Public Procurement Act 28 of 2024. Government Gazette No. 50967, 23 July 2024.

The Presidency (2024) Making public funds work for all South Africans. From the Desk of the President, 29 July 2024.

Zambia (2020) Public Procurement Act No. 8 of 2020. Lusaka: Government of Zambia.

Zambia (2021) Public Procurement Regulations, 2021. Lusaka: Government of Zambia.