

Projects & Energy

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SOUTH AFRICA

Reforming public procurement regulations to unlock private sector participation in critical infrastructure projects in South Africa



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Reforming public procurement regulations to unlock private sector participation in critical infrastructure projects in South Africa

Infrastructure is the backbone of economic development, as it acts as a catalyst for trade within a country and across its borders. As such, it is imperative that the state puts innovative regulatory measures in place that will facilitate investment through the participation of the private sector in key public infrastructure projects such as roads, ports, railways, energy and other trade related infrastructure.

As with many African countries, there is an ongoing need for the South African Government to secure more investment for upgrading the country's ageing public service delivery systems to ensure that these systems have the capacity to cater for the growing population. This is especially true in contexts where governments do not have the fiscal space to use public funds to invest in capital-intensive public infrastructure. This was evident late last year in Johannesburg when the relevant public institutions that are mandated to provide water and sanitation services confirmed that they do not have the necessary funds to commission all the required upgrades on the water network. The consequences if this is unattended to are dire, with the potential of total collapse for various systems (water systems, the electrical grid). Attracting private sector investment is crucial for bridging the gap.

So, What is the solution? How does the Government unlock funding for infrastructure in South Africa? To succeed, it must reinforce its collaboration with the private sector. This can be achieved through regulatory reforms to remove bureaucratic obstacles, by creating a transparent system with investor friendly requirements, and by providing some level of certainty that the private sector will obtain financial returns in developing public infrastructure.

Ordinarily, the collaboration between the public and private sectors is implemented through procurement mechanisms such as public-private partnerships (PPPs) and private sector participation (PSP). Government has also identified the private sector as a potential solution to the infrastructure crisis. Transnet, for example, has started exploring the viability of PSP to operate its ports and rail network. The Minister of Finance (Minister) announced that there will be upcoming reforms to the legislation and policies that regulate the relationship between the public and private sectors for the purposes of ensuring faster delivery of infrastructure that supports economic growth through the expansion of access to basic services and by boosting job creation.

The upcoming reforms described by the Minister are the proposed amendments to Regulation 16 of the National Treasury Regulations and the Municipal PPP Regulations.

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The proposed amendments seek to, amongst other things: simplify the approval process for PPPs; create two distinctive pathways for PPPs (high-value and low-value PPP projects); and provide clarity on the institutional roles and strengthening capacity of various stakeholders. Significantly, they also provide for a mechanism whereby the private sector can offer unsolicited proposals to Government. The insertion of the option for unsolicited proposals shows Government's policy towards doing business with the private sector and that South Africa is open to using the private sector for infrastructure development.

We are currently awaiting the gazetting of the proposed amendments to the National Treasury Regulations and the Municipal PPP Regulations.

The Public Procurement Act 28 of 2024

While we wait for news on the proposed amendments, there has been a development in PPPs elsewhere, namely in the Public Procurement Act 28 of 2024 (Procurement Act). The Procurement Act seeks to create a single legislative framework for public procurement in South Africa. Therefore, it also contains provisions for PPPs. In terms of section 63 of the Procurement Act, the Minister is conferred with the obligation to make regulations pertaining to PPPs. It is not quite clear how this will affect the other proposed amendments to PPPs. However, we assume that the regulations for PPPs issued under the Procurement Act will be similar to the proposed amendments.

A useful point of reference to highlight successful collaboration between the public and private sectors in South Africa is the Renewable Energy Independent Power Producer Procurement Programme (REIPPP). This is a form of PSP whereby the public sector invites the private sector to build, transfer and operate a renewable energy project, such as a solar farm. Thus, the REIPPP has found a unique way to engage with the private sector to ensure the development of critical infrastructure for the energy sector. With the proposed amendments and given the Government's attitude towards doing business with the private sector, we believe that there will be similar projects to the REIPPP in other basic services sectors, such as sanitation and water, to ensure that South Africa maintains and continues to grow its basic infrastructure.

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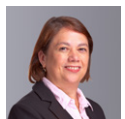
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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