

# **Investigating the challenges of monitoring and enforcement of preferential procurement regulations in South African local government**

A minor dissertation in *partial fulfilment* of the requirements for the award of the degree of

Master of Philosophy (MPhil) in Public Policy and Administration

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## **ABSTRACT**

This thesis examined the challenges of monitoring and enforcing preferential procurement regulations in South African local government. The policies of the non-democratic regime created racial disproportions in South Africa and resulted in a need for the transformation of public procurement systems to empower the historically disadvantaged individuals (HDIs) to access government procurement opportunities. The Preferential Procurement Policy Framework Act (PPPFA) serves as a basis for state organs to operationalize their preferential procurement policies, using a system of preferential points. The study focused on factors that constrain and undermine the monitoring and compliance mechanisms for the implementation of preferential procurement in local government.

The study adapted and applied a qualitative approach, underpinned by the interpretivist paradigm, to delve into the subject matter. To this end, data were collected through semi-structured interviews involving a sample of eight participants, who were selected using a non-probability sampling method, specifically employing the purposive sampling technique. The gathered insights were subjected to a thematic analysis, where a set of assumptions was set to guide the factors that constrain the National Treasury's (NT) monitoring and oversight role. The findings were subsequently discussed based on the emerging themes, and revealed that the NT, as an oversight body, does not have the necessary powers and authority to monitor compliance with municipalities. It further identified four challenges constraining the oversight powers: a lack of a comprehensive monitoring tool for local government, non-compliance and poor internal controls in municipalities, and the incapacity of SCM practitioners and integrated systems.

Therefore, the study investigated the challenges of monitoring and enforcement of preferential procurement legislation in the South African local government. This study contends that monitoring and oversight authority should be granted to the public procurement oversight bodies to enforce and support local government.

## COMPULSORY DECLARATION

I, **Luvo Bomvana**, hereby declare that the work on which this thesis is based is my original work (except where acknowledgements indicate otherwise) and that neither the whole work nor any part of it has been, is being, or is to be submitted for another degree in this or any other university. I authorize the University to reproduce for research either the whole or any portion of the contents in any manner whatsoever.

<b>Signature</b>	Signed by candidate	<b>Date</b>	20 June 2025
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## LIST OF ABBREVIATIONS AND ACRONYMS

<b>APP</b>	Affirmative Procurement Policy
<b>BBBEE</b>	Broad-Based Black Economic Empowerment
<b>B-BBEEA</b>	Broad-Based Black Economic Empowerment Act
<b>BEE</b>	Black Economic Empowerment
<b>CIDB</b>	Construction Industry Development Board
<b>COGTA</b>	Cooperative Governance and Traditional Affairs
<b>DTI</b>	Department of Trade and Industry
<b>DTIC</b>	Department of Trade, Industry and Competition
<b>EEA</b>	Employment Equity Act
<b>EEA</b>	Employment Equity Act
<b>EME</b>	Emerging Micro Enterprises
<b>EU</b>	European Union
<b>GPA</b>	Government Procurement Agreement
<b>HDI</b> s	Historically Disadvantaged Individuals
<b>IDP</b>	Integrated Development Plan
<b>MFMA</b>	Municipal Finance Management Act
<b>NEDLAC</b>	National Economic Development and Labour Council
<b>NPC</b>	Non-Profit Company
<b>NPM</b>	New Public Management
<b>NT</b>	National Treasury
<b>OCPO</b>	Office of the Chief Procurement Officer
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PDGs</b>	Previously Disadvantaged Groups
<b>PFMA</b>	Public Finance Management Act
<b>PDI</b> s	Previously Disadvantaged Individuals
<b>PP</b>	Preferential Procurement
<b>PPACA</b>	Public Procurement Anti-Corruption Agency
<b>PPO</b>	Public Procurement Office
<b>PPPFA</b>	Preferential Procurement Policy Framework Act
<b>PPR</b>	Preferential Procurement Regulations
<b>QSE</b>	Qualifying Small Enterprises
<b>RDP</b>	Reconstruction and Development Programme
<b>RSA</b>	Republic of South Africa
<b>SALGA</b>	South African Local Government Association
<b>SCM</b>	Supply Chain Management
<b>SCOF</b>	Standing Committee on Finance
<b>SIU</b>	Special Investigating Unit
<b>SMMEs</b>	Small, Medium, and Micro Enterprises
<b>UN</b>	United Nations
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>US</b>	United States
<b>USA</b>	United States of America
<b>WPTPS</b>	White Paper on the Transformation of Public Service
<b>WTO</b>	World Trade Organisation

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# CHAPTER ONE

## INTRODUCTION AND BACKGROUND

### 1.1. Background

The South African new democratic dispensation introduced a unique feature of using public procurement as a tool for redress and wealth redistribution in its public procurement law. This was driven by the economic disparities created by unfair discrimination and divisive statutes and policies. While the wave of power shifted from a monocratic rule of apartheid to a democratically elected government, the economy remained in the hands of the white minority, and poor economic transformation remained constrained. The nature and magnitude of these discriminatory practices created a dependency syndrome to the extent that in 1994 only five per cent of the population, mostly whites, owned 88% of the nation's wealth, while the top 1 per cent owns between 60 and 90 per cent of all wealth while the top 10 per cent owns 90–95 per cent of all wealth (Asaf et al., 2010: 22; Chelwa, 2024; Orthofer, 2017). It is still apparent that the South African economy is characterized by deep structural inequalities that correspond with the country's racial composition.

Public procurement emerged as a key component of the government's redress project, which in part led to the introduction of preferential procurement. Amongst the legislative framework governing public procurement in South Africa (The Reconstruction and Development Programme (RDP) White Paper, 1994; the Ten Point Plan on Procurement Reform, 1995; the Constitution of the Republic of South Africa, 1996; the Green Paper on Public Sector Procurement Reform in South Africa, 1997; the Preferential Procurement Policy Framework Act, 2000; Broad-Based Black Economic Empowerment Act, 2003; Codes of Good Practice for BBBEE, 2007; the Country Procurement Assessment Review, 2003 and the recently promulgated Public Procurement Act, 2024 yet to be implemented).

The South African public procurement regime is based on section 217 of the Constitution, which requires every organ of state to contract for goods and services in a fair, equitable, transparent, competitive, and cost-effective manner. Subsequently, the government passed the Public Finance Management Act (PFMA), 1 of 1999, and later the Municipal Finance Management (MFMA) Act 56 of 2003, which gave effect to and reiterated the constitutional requirements of Section 217. What has generally become known as the practice of preferential procurement is rooted in section 217(2) of the Constitution of the Republic of South Africa, 1996. The basic constitutional authorisation for preferential procurement is given some

content in the Preferential Procurement Policy Framework Act 5 of 2000 (the Act), but the compelling component of the regulatory regime governing preferential procurement is found in the regulations under the Act (Quinot, 2018:856).

The enactment and promulgation of PPPFA triggered the formulation of several regulations under Section 5 of the PPPFA, commanded by the Minister of Finance through the National Treasury as an institutional base. The first set of regulations was promulgated in 2001 to make provision for the awarding of contracts based on preference, price, and functionality (Preferential Procurement Regulations, 2001). The 2001 Preferential Procurement Regulations (PPR) were subsequently superseded by the 2011 PPR, aligning with the Broad-Based Black Economic Empowerment Act (B-BBEEA) and its Codes of Good Practice. The 2011 regulations remained in effect for over five years before being replaced by the more controversial 2017 PPR. The introduction of the 2017 Preferential Procurement Regulations triggered a series of legal challenges, including a Constitutional Court case (Case CCT 279/20) involving the Minister of Finance and AFRI-Business NPC (Jonas, 2024:2).

Notably, the 2017 regulations introduced prequalification through Regulation 4 and the sub-contracting component through Regulation 9 until they were declared invalid on 16 February 2022 following the introduction of Regulations 2023. A few months later, the National Treasury introduced a public procurement bill process, which saw the signing of the Public Procurement Act (28 of 2024) on 23 July 2024, which replaced the PPPFA. The recently passed Public Procurement Act 2024 will be effective during the third quarter of the 2025/26 financial year, according to the National Treasury (2024).

The study examines the effectiveness of central monitoring, auditing, and oversight of Preferential Procurement (PP) in local government. Considering one of the objects of local government, in terms of the Constitution of South Africa, is to promote social and economic development (Watermeyer, 1999). Local government, in terms of this developmental duty, is required to structure and manage its administration, budgeting, and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the communities which they serve (RSA, 1996).

## **1.2. Problem statement**

The research problem being proposed is that the PPPFA reforms from the introduction of the act and the first set of regulations and lessons learned throughout implementation have struggled to reach the desired goals as prescribed in the provisions under section 2 (1) of the

PPPFA. This research strives to investigate the effectiveness of central oversight and compliance monitoring of preferential procurement in local government. The study bases its focus on the following questions: (a) who is responsible for monitoring and enforcement of PP reforms in local government, (b) what capacity do the oversight institutions have to perform the monitoring and oversight functions effectively, (c) what factors constrain central oversight bodies like the National Treasury and Provincial Treasuries from performing this role?

Understanding factors that constrain the oversight bodies from monitoring and enforcing compliance with the implementation of preferential procurement as a tool to redress the ills of the past widens the limitations on the policy framework of preferential procurement. Primarily, in its pursuit to drive economic transformation based on the participation of Exempted Micro Enterprises (EMEs) and Qualifying Small Enterprises (QSEs), and whether preference as prescribed in section 217 of the Constitution of the Republic of South Africa, 1996 has been met as a primary goal. The interpretation of the monitoring and compliance parameters shifts analytical focus towards identifying the underlying features embedded in the mechanism by which preferential procurement goals have been met.

Significant developments in preferential procurement since the introduction of the PPPFA (5 of 2000) included policy and statutory shifts all designed to put preferential procurement at the forefront of South Africa's redress of historical imbalances. The following two factors remain at the core of the inadequate proof of a transformed economy and reduced economic disparities:

- (a) Bureaucratic red tape in the Supply Chain Management (SCM)/ procurement process - Ineffective and inefficient supply chain management (SCM) processes and controls result in municipal under-expenditure, which undermines service delivery, irregular, fruitless and wasteful expenditure, unauthorized expenditure and corruption (Awarding of contracts to Government employees), and/or time to pay service providers over the legislated thirty-day maximum period, which impacts on business cash flow, sustainability and unnecessary job losses (Department of Trade and Industry, 2013). This deems the preferential procurement goals invalid, given the counter-productive effect, which does not aid the targeted Exempted Micro Enterprises (EMEs) and Qualifying Small Enterprises (QSEs).
- (b) Procurement manipulation and corruption - Corruption and manipulation come in different forms during the procurement process. Mantzaris (2014) endeavours to determine the situations that leave an opening for corruption, including the principal/agent situation, poor transparency, weak systems, incompetent officials,

conflicts of interest, and urgent tenders (quotes requested at the last minute). Consequently, targeted SMMEs lose out on procurement opportunities due to corrupt decisions selecting established (larger) businesses; preferential procurement, favouring these targeted entities, might increase opportunities for municipal public servants to channel contracts to small businesses they have links with or a personal stake in. To what extent does the targeting of designated groups for procurement opportunities as a vehicle to facilitate economic transformation also come at the risk of corruption in the process?

The determination to address these challenges cannot be overstated. Misinterpretation or misapplication of the PPPFA could impede the desired transformation, perpetuating societal disparities. Recognizing the currently existing body of literature from statutory and scholarly sources on preferential procurement, this thesis's perspective is that the PPPFA reforms can be observed as influencing local government to better implement the Public Procurement Act and its regulations.

This thesis's perspective examines the factors that constrain central oversight bodies like the National Treasury and Provincial Treasuries from performing the monitoring and support role. It is hoped that this research can make a useful contribution to enhancing knowledge of this subject and provide a framework for the implementation of the Public Procurement Act at the local government level.

### **1.3. Research question**

As a result of the above-mentioned motivation and problem formulation, the following research question was developed:

What factors constrain and undermine the monitoring and compliance with preferential procurement policies in local government?

The initial step in gathering secondary source material relevant to the research question will be identifying what has been produced on public procurement and, subsequently, preferential procurement<sup>1</sup>. The study aims to propose a better framework to assist local government institutions in contributing meaningfully to the advancement of economic transformation through preferential procurement opportunities. The propositions are in the form of recommendations that will implement the Preferential Procurement Policy more flexibly for

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<sup>1</sup> The first sub-research question of the thesis.

local government institutions to reach their intended objectives of awarding procurement opportunities to HDI-owned enterprises. The study also contributes to the development of knowledge in the field of Local Government SCM policy for use by academics and practitioners responsible for the implementation of BBBEEA and the PPPFA. The development of knowledge is important to professionalise SCM in local government.

#### **1.4. Theoretical Framework: Social Justice Theory**

Public procurement constitutes a major component of public spending and has a significant impact on demand for any economy (Sibanda, 2021). In its quest to locate the study of public procurement and preferential procurement within a formidable theoretical grounding, this study has selected the social justice theory (SJT). Cane (2000:47) describes public procurement as essentially central to a government delivery system, which promotes objectives that aim at using procurement to promote social, industrial, and environmental policies. The use of public sector procurement as an instrument of government policy to achieve specific socio-economic objectives can have significant positive outcomes in a variety of areas, ranging from the protection and development of national industry to social policy goals such as the promotion of equal opportunity (McCrudden, 2004).

The Social Justice Theory has been elected to justify the implementation of preferential procurement policy to redress the ills of the past caused by apartheid. It explains preferential procurement as a mechanism to restore equity, fairness, and socio-economic transformation. The theory of social justice, which is described as everyone having the same rights under the law regardless of race, class, and gender, argues that ultimately, the government is responsible for the determination of social advantages within an economy (Quinot et al., 2019:7). Whereas this study's research question does not strictly propose to test a hypothesis, it is structured in a way that could contribute theoretically useful data about the nature of the challenges of monitoring and enforcement of preferential procurement regulations in South African local government from the preferential procurement reforms on local government mainly how effectively central oversight bodies monitor and enforce compliance.

Some studies have made useful contributions to the application of Social Justice theory (Adams et al., 2007; Wright et al.). The contextual contribution by Wright et al to understand the achievement of social justice through procurement encompasses objectives that seek the fairer distribution of wealth, health, resources, power, opportunity, and privilege in society. While Adams et al's application of SJT included diversity, which created a balanced view to

demonstrate how society and the workplace dynamics can be transformed. However, in their study titled 'Theory in Public Procurement Research,' Flynn and Davis (2014) studied the frequency of theories used in public procurement research and found that it was used 50 times out of 172 journal articles analysed between 2001 and 2013. The study further ranked the Theory of auctions and competitive bidding as the most used, followed by the principal-agent theory. It is imperative to locate the study of preferential procurement within the social justice parameters. The common understanding is that the achievement of 'social justice' through procurement encompasses objectives that seek the fairer distribution of wealth, health, resources, power, opportunity, and privilege in society. Thus, Wright et al. (2023: 7) believe that social justice is about creating a future based on equality and fairness for all, including economic, social, and political rights. It also includes taking steps to address historic injustices and inequalities.

Considering the above, it is evident that equality, fairness, and redress prevail as key factors in which Social Justice can be attained. Furthermore, two types of justice drive the arguments on the extent to which equality, fairness, and redress are attained, namely distributive and procedural justice. Distributive justice has been compellingly demonstrated in the equity literature, which shows that people are most satisfied when they receive fair wages at work (Tyler, 2015: 345). Procedural justice is central to creating and maintaining internal values that support voluntary cooperative behaviour on the part of the members of groups. Taking this study's perspective on the effectiveness of the central oversight bodies in monitoring and enforcing compliance with PP statutes in local government. This thesis would likely gravitate towards the distributive justice level of analysis, where it has been argued that more prevalent interpretations of preferential procurement risk ignore the extent to which the PPPFA regime has redressed the past injustices. However, it is important to recognize that the essence of public procurement, whether in the private sector or the public sector, is first and foremost to enable an entity (firm, organisation or institution) to conduct business, which in local government becomes a key enabler of service delivery. According to Brooks (2020:88), the actual acquisition of goods and services can be referred to as the operational component of public procurement, where the state procures what it needs.

### **1.5. Research methodology**

This section aims to explore the methodology used in this thesis. It examines the thesis's research approach, research design, sampling techniques, data gathering, and analysis procedures. The suitability of the research design in addressing the study's research questions

will be assessed. Moreover, this chapter provides a basis for selecting the methodology and deals with ethical concerns associated with the study

### **1.5.1. Research approach**

The study seeks to investigate factors that constrain and undermine the monitoring and compliance mechanisms for the implementation of preferential procurement at the local government. This is according to the regulatory reforms since the enactment of the PPPFA in 2000, and subsequently the regulations from 2001 to 2022. A qualitative, interpretive, and exploratory approach was selected for this thesis. Qualitative research is a situated activity that locates the observer in the world. According to Creswell and Poth (2016: 37), the process begins with assumptions, a worldview, the possible use of a theoretical lens, and the study of research problems inquiring into the meaning individuals or groups ascribe to a social or human problem. The nature of the problem investigated suggests that such a qualitative methodological approach would assist in achieving the aim as stated above. Gathering empirical and secondary data to inform the interpretation of preferential procurement being put forward by this thesis required a research methodology capable of identifying and delineating the structural and functioning conditions under which Municipalities have crafted institutional arrangements for the implementation of preferential procurement as an instrument for local economic development.

It was decided that a traditional literature review approach paired with an in-depth interview approach would be favourable for collecting and analysing data. Traditional Literature reviews seek to consolidate existing theoretical and empirical knowledge on specific issues. ‘Traditional’ literature reviews, sometimes termed ‘narrative’ or ‘expert’ reviews, are generally based on expert substantive knowledge in each area (Torgersen *et al.*, 2006:1).

The acquisition of primary data through in-depth interviews with key informants, such as the South African National Treasury. NT is the custodian of PPPFA and plays a monitoring, compliance, and support role to ensure successful implementation. The Office of the Chief Procurement Officer (OCPO) has two crucial portfolios looking at the SCM policy, governance, monitoring, and compliance, namely (a) SCM policy and Legal; (b) SCM Governance, Monitoring, and Compliance (GMC). The selection of the oversight institution, like the National Treasury, enables the study to examine the PP reforms from a monitoring and support position, given the reporting channel created by the National Treasury. An institution outside NT would not be able to inform the research question, whereas in the quest to examine the PP

reforms, NT has been directly responsible for the design of the regulations from 2001 to 2022. This makes NT the best institution to inform the research question and to draw on lessons learned to inform the new procurement regime with the introduction of the Public Procurement Act (28 of 2024).

Unlike a case study as a research strategy, as defined by Jreisat (2002: 68), the case study as a systematic research method is concerned with context as well as variables, which primarily seeks to discover rather than confirm or test hypotheses. The use of a review approach will assist in the research outcomes, which are objectively intended to examine factors that constrain and undermine the use of preferential procurement to promote local economic development. However, given the dual nature of the methods applied in this research, qualitative interviews were chosen because how social explanations and stances are constructed has a direct influence on the depth of data (Mason, 2002). Further reasoning for an interview style is that this project is founded on the view that the knowledge of the participants is contextual and situational; thus, the interview itself must reflect this to fully bring up the themes of interest.

### **1.5.2. Research design**

The study is therefore a qualitative enquiry formulated within the post-positivist framework and draws on the principles of the interpretative perspective as its epistemological position. Epistemological assumptions primarily exercise a normative function over methodologies, Evers and Lakomski (2000) explain, especially assumptions regarding knowledge justification. Within the scope of the study, the epistemological stance is that knowledge was created through an analysis of theorists' and other scholars' reasoning on factors constraining and undermining the use of preferential procurement as an instrument for local economic development, in which the institutional arrangements to enable this were examined at the local government level.

The interpretivist theoretical perspective will be adopted in this study. This perspective implies that the emphasis is on discovering communicated concepts, and is an approach that, according to Babbie and Mouton (2001), purposefully tries to unravel the reality of the situation within a certain contextual environment. The foundational assumptions of the interpretative paradigm, according to Henning, Van Rensburg, and Smit (2004), are that knowledge is gained or filtered through social constructs such as language, consciousness, shared meanings, documents, and other artefacts. The non-empirical component of the study draws on the interpretation of documents, which contain researchers' scholarly views and analysis of the reality of preferential procurement reforms on local government in this research context. While the empirical nature

of the study will draw on the insights shared by the institution with oversight authority over the implementation of the preferential procurement policy of South Africa, such as the National Treasury.

### 1.5.3 Sampling

This thesis followed a purposive sampling method. In this approach, the selection of participants, settings, or other sampling units is criterion-based or purposive (Ritchie et al., 2013:78). The sample elements are selected because they have features or characteristics that will allow a comprehensive investigation and understanding of the fundamental subjects and puzzles that the researcher wishes to study. The researcher determines what needs to be known and sets out to find individuals who can and are willing to provide the information based on their knowledge or experience (Etikan, 2016).

The monitoring and compliance of other organs of state, which include municipalities as part of the local sphere of government, are overseen by the National Treasury. The research is focused on an institution that plays a monitoring role in the implementation of PPPFA, and the National Treasury, as the custodian of PPPFA and its implementation, was selected. The National Treasury has recorded 1050 employees and 10 departments<sup>2</sup>. It is important to note that Division A has seven units in total, all reporting to one divisional head. However, for this study, two units were selected, given their focus and role in preferential procurement monitoring and policy design. These two divisions were more relevant to the topic, with two participants from Unit A and six participants from Unit B, making it eight participants in total. Both groups consisted of senior staff and provided a good representation of the population selected for this research topic (see Table 1).

**Table 1:** Research participants

<b>Institution</b>	<b>Unit</b>	<b>Description</b>	<b>No. of participants</b>
National Treasury	Unit A	Participant 1	2
		Participant 2	
	Unit B	Participant 3	6
		Participant 4	
		Participant 5	
		Participant 6	

<sup>2</sup> National Treasury. 2024. Annual Report 1 April 2023 to 31 March 2024. Accessed at <https://www.treasury.gov.za/> on [16 June 2025].

	Participant 7	
	Participant 8	
<b>Total number of participants</b>		<b>8</b>
<b>Source:</b> Researcher's own source		

Unit A is responsible for policy and legislative matters, procurement policies and regulations, and provides support to organs of state for alignment with their procurement policies. Their scope goes beyond local government, but a comprehensive support to the organs of state. Unit B is responsible for the municipal monitoring and compliance and supports them with tools to deal with complex SCM matters. Unit B leads the public procurement policy matters and is responsible for the coordination of new legislation, including PPPFA regulations, and supports all the organs of state. These groups were engaged in two separate meetings; the first meeting featured Unit A officials, who laid the foundation for the study and provided a policy perspective on each question asked.

However, they indicated that the relevant department for specific responses was Unit B officials, which can be classified as group two. This was a focus group, as it contained six participants who responded to all interview questions. This range was selected to warrant that it precisely embodied the whole population, recognising that some monitoring functions are performed by Provincial Treasuries.

#### **1.5.4. Data Collection**

The process of gathering data for this thesis used a mixture of primary and secondary sources to try to build a comprehensive picture of preferential procurement reforms in local government. This was necessary to facilitate the search for factors that could be observed as constraints and undermine the monitoring and compliance mechanisms for the implementation of preferential procurement at the local government. The initial step in gathering secondary source material relevant to the research question was identifying what has been produced on public procurement and, subsequently, preferential procurement.

The researcher began by searching for specific statutory document references to preferential procurement identified in government legislation, policy discussions papers, case laws, audit reports, and circulars, which were mostly accessible from the South African National Treasury website. The next step was to further consult non-empirical data collected from literature-based sources such as literature reviews, conclusions extracted from interrelated studies, standards of

practice, and practical guidelines. Documents included books, journals, case law, conference papers, dissertations, government reports, industry and professional publications, the internet, policies, and artefacts.

Primary data on the preferential procurement reforms in local government were collected through qualitative interviews. In total, two groups of senior officials from the National Treasury were interviewed. The first group (Unit A) can be classified or described as a '*group interview*', because it comprised two officials who represented the entire division. A group interview can be defined as a series of individual interviews, with comments directed solely through the researcher (Ritchie et al., 2013, p. 171). The second group can be classified as a '*focus group*' as it contains at least six participants representing Unit B. The group contained senior officials who represented a second key component of this study. According to Ritchie *et al.* (2013:172), focus groups typically involve around six to eight people who meet once, for a period of approximately one and a half to two hours. The semi-structured interview sessions were conducted to collect data using an interview guide. The email contact details of participants were obtained from the National Treasury's website, and invitation emails were sent with a link to Microsoft Teams, an online platform for hosting the interview session.

The virtual interview session was chosen on the basis that it is efficient and cost-effective. Online interviews can be easily recorded and transcribed accurately, minimising the risk of data loss or distortion (Jonas, 2024:42). Researchers can review the recordings and transcripts multiple times, enhancing the reliability and validity of the data analysis (Smith & Johnson, 2023:307). In total, eight participants participated, and the first meeting with Division A was transcribed through notes, while the second group from Unit B was recorded on Microsoft Teams. The interviews consisted of seven open-ended questions (*see Appendix 1*), where all the participating officials were able to express and discuss the points chronologically as per the order of the interview guide provided.

### **1.5.5. Data analysis**

Data analysis can be defined as the application of various techniques and guidelines to previously collected data, aiming to interpret and comprehend the perspectives of the participants and the phenomenon under study (Creswell, 2018:123). The approach to analysing primary data (based on interviews) followed an inductive approach. In an inductive approach, researchers start with empirical data and develop larger generalisations and theoretical insights from the data (Kalof et al., 2008: 17). The following analytic techniques were used to analyse

the data collected:

#### **1.5.5.1. Preparation of field notes and transcripts**

Comprehensive notes acquired through virtual recordings (Microsoft Teams) were compiled during qualitative interviewing and converted into write-ups to enable ease of reading and editing. The use of technology made the interview process much easier, saved time and costs, as all the meetings were conducted virtually, and notes could be shared later.

#### **1.5.5.2. The identification of themes**

A qualitative researcher analyses data by organizing it into categories based on themes, concepts, or similar features (Neuman, 2006: 460). Themes such as preferential procurement reforms, monitoring and compliance, preferential procurement policy, SCM, and SMME support were identified before the process of data collection. This thesis is presented in terms of key themes that emerged during the data analysis process, such as SCM policies, risk, consequence management, and e-Tender portals. The resemblances that occurred from the data were assembled to create broad themes underlying the data.

#### **1.5.5.3. Data coding**

The purpose of coding is to analyse and make sense of the data that has been collected. The huge amounts of information were reduced to manageable and understandable texts. The researcher used open coding, that is, coding as the work progresses, throughout the text (Rubin and Rubin, 2005: 222). The researcher envisaged the following codes: irregular expenditure, HDI support, RDP goals, Afri-Business vs Minister of Finance case law, SCM policy, and e-tender. monitoring and compliance, PPPFA regulations.

#### **1.5.6. Limitations**

The first limitation encountered during the study was that the representation of the population selected to participate in this study is based on the responses of a specific group of participants within the National Treasury. The sample size may not represent the entire population, as there are shared roles with provincial treasuries. However, due to the research question, the study focused on the monitoring and compliance perspective to understand how the PPPFA unfolded and how it will inform the Public Procurement Act (28 of 2024) regime with its first set of regulations.

#### **1.5.7. Delimitations**

The researcher has deliberately confined the respondent pool to officials in the National Treasury. Given the extended role of provincial treasuries in the enforcement of PP regulations, further research should seek to incorporate the role of Provincial Treasuries.

#### **1.5.8. Ethical considerations**

The researcher was aware of the ethical dilemmas that exist in the research community and strived to conduct the research in a manner that is regarded as ethical. Research ethics encompasses the principles and guidelines that ensure the protection of participants' rights, integrity, and well-being, as well as the credibility and reliability of the research outcomes (Jonas, 2024:46). The researcher was devoted to, amongst other things, avoiding scientific misconduct throughout the research project. This research was also approved by the Department of Political Studies Research Committee of the University of Cape Town and allocated clearance number 005. A copy of the approval is attached as *Appendix 2*. Informed consent was also granted to ensure that research is conducted with the full permission of the participants, representing the institution. Confidentiality, anonymity, and privacy were guaranteed, and this thesis has opted to use or refer to participants 1 – 8 instead of using names or designations.

#### **1.6. Chapter outline and summary of contents**

This thesis consists of five chapters and two appendices. The introductory chapter has identified the preferential procurement reforms process in local government as the subject of its enquiry. It has given a brief overview of the research problem associated with the gaps when preferential procurement is dissected as a driver of economic transformation, which exposed how the issue was framed about the implementation of preferential procurement, which portrayed some gaps in monitoring and measurement of the PPPFA regime as it came to an end in July 2024.

#### **Chapter 2 - The Conceptual Framework (Literature review)**

Preceding the introductory chapter, this first section of the literature review will briefly consider locating preferential procurement from public procurement as a means. While Preferential procurement finds resonance within the broader public procurement theory and practice, this study focuses firmly on preferential procurement as a subject matter. Building on a working definition and theoretical insights into preferential procurement, the two mechanisms that justify preferential procurement as a concept will enable this thesis to examine the relevant literature associated with preferential procurement reforms and as a tool for economic transformation in the remainder of the chapter, and later, the international practices on

preferential procurement will be explored.

### **Chapter 3 – Statutory and Policy Framework (Literature review)**

The purpose of Chapter 3 is to give a detailed outline of the preferential procurement statutory and policy environment to examine the literature and key legislative prescripts to substantiate the research question. Recognising that preferential procurement forms a significant part of public procurement, as outlined in Chapter 2, it is also operating within a highly regulated environment. This chapter will first discuss the preferential procurement reforms since 1994. Secondly, this chapter will discuss the evolution of the Preferential Procurement Policy Framework Act (PPPFA) 5 of 2000 and its regulations from 2001, 2011, 2017, and 2022. Thirdly, this chapter will discuss the overview of the Public Procurement Act (28 of 2024). Lastly, corruption as an inhibiting factor in public procurement will be discussed.

### **Chapter 4 – Data analysis and finding**

This chapter presents an analysis of findings from interviews conducted mainly with officials of the National Treasury. In total, qualitative interviews were conducted with 8 participants responsible for SCM monitoring, policy, and compliance. Findings from the interviews were analysed together with a reading of secondary literature sourced by the National Treasury, which included a range of documents covering official reports and statutory documents like the MFMA circulars, etc. The analysis is structured according to the principles of grounded theory to analyse the themes developed during the analysis process, as outlined in Chapter One.

### **Chapter 5 – Conclusions and recommendations**

This chapter summarises the main findings and wider research contributions that this thesis has tried to make by examining the preferential procurement reforms in local government. It began with the general conclusions of the study. It will then link the research question with the findings of the study. The thesis will then detail a list of recommendations, implications, and finally, future research.

## CHAPTER TWO

### PREFERENTIAL PROCUREMENT: CONCEPTS AND THEORETICAL APPROACHES

#### 2.1. Introduction

While Preferential procurement finds resonance within the broader public procurement theory and practice, this study focuses on preferential procurement as the factor of this research. Building on a working definition and theoretical insights into preferential procurement, the two mechanisms that justify preferential procurement as a concept will enable this thesis to examine the relevant literature associated with preferential procurement as a tool for economic transformation.

#### 2.2. The New Public Management Theory

New Public Management (NPM) has been widely observed and debated since Hood's seminal observations in the early 90's. It was influenced and motivated by the shift away from the traditional Weberian bureaucratic public administration model, and Woodrow Wilson was challenged in anglophone countries such as England, Australia, and New Zealand. A new model of public sector management emerged in these countries, which was called NPM. (Cameron, 2009: 4). Its foundations carry two major elements: (a) business-type managerialism borrowed from the private sector, and (b) the other partner was new institutional economics, which draws on public choice, transaction cost theory, and principal-agent theory (Cameron, 2009). This paper focuses on both, with special interest in the influence of the NPM on public procurement, which can also be described as more contract-based competitive provision, with internal markets and term contracts.

There has been an ongoing criticism of the theoretical abilities of the NPM, which has been described as just a bundle of techniques without any theory. Cameron (2009) believes the NPM is not a coherent theory but rather a discrete set of ideas that can be broadly divided into two categories. Vabaza (2015) viewed the NPM as merely an ideology that:

The new state is about public choice and entrepreneurship. Entrepreneurship is synonymous with a whole process of reorganizing, restructuring, and re-engineering government. The consequences of this have included the development of a new, technically oriented, efficiency-driven vocabulary of downsizing, de-layering, and

de-bureaucratization of the public sector organizations.

However, the NPM practices were considered to have both explanatory and predictive capabilities: the presumption that the adoption of NPM practices would enhance the efficiency and effectiveness of public services. Hood and Dixon (2016) challenge the effectiveness of managerialism in reducing the costs of public services. The introduction of the two streams of theories by Hood in publication in 1991 (the new institutional economics and neo-scientific management studies) misplaces the criticism of the NPM as a theoretical framework. Moreover, the seven principles of the NPM have demonstrated both Hood's (1995) theoretical streams to further justify the public procurement reforms:

- Unbundling the public sector into corporatised units organised by product;
- More contract-based competitive provision, with internal markets and term contracts;
- Stress on private sector management styles;
- More stress on discipline and frugality in resource use;
- Visible hands-on top management;
- Explicit, formal, measurable standards and measurement of performance and success;
- Greater emphasis on output controls.

Based on the principles above, it is important to locate the public procurement reforms and the changes brought forward by the wave of the NPM, motivated by the paradigm shift to ensure efficient and effective delivery of services. This thesis recognizes the primary function of public procurement, which is to purchase goods and services to ensure quality service delivery. It also recognizes the significance of preferential procurement as a redress policy to ensure inclusive economic development, given the ills of the past in the context of South Africa.

### **2.3. Public procurement as a means for preferential procurement**

Public procurement has its origins in the fiduciary obligation of government administrations to deliver goods and infrastructure, for example, roads and harbours, and services, health care and education, to the population of a country or a specific geographic region, city or town (Odhambo & Kamau, 2003: 10). Public procurement has a long history. Written on a red clay tablet, found in Syria, the earliest procurement order dates from between 2400 and 2800 B.C, the order was for “50 jars of fragrant smooth oil for 600 small weight in grain” (Coe, 1989: 87). Other evidence of historical procurement includes the development of the silk trade between China and a Greek colony in 800 B.C. (Thai 2001:11).

The public procurement realm has been seen as a mere acquisition of goods and services; however, its development and depth have widened respectively. This is evident from various modalities and practices, such as preferential procurement, which cannot be detached from public procurement theory and practice. Public procurement has been widely studied by several scholars (Watermeyer et al., 2024; Quinot, 2023; Brook, 2020). The review of public procurement literature leans more on the statutory and policy, and less on theory, as also observed by Thai (2001); however, this study will navigate both theoretical and legislative insights to drive the preferential procurement discussions home. In pursuit of the working definitions of public procurement, several definitions were reviewed. According to Ambe (2019:654-655):

The term ‘public procurement’ refers to the purchase of goods, services, and works by governments and state-owned enterprises. The government, the public, and private suppliers thus all have a direct interest in public procurement. Therefore, public procurement remains the one government activity that is most vulnerable to waste, fraud, and corruption owing to the magnitude of the financial flow involved.

Ambe (2019) broadly defines public procurement using the normal view of the acquisition of goods and services. Mazibuko (2020:1) defines procurement as the supply chain system for the acquisition of all necessary goods, works, and services by the state and its organs when acting in public pursuit or interest. Thai (2001:154) explains public procurement as a channel that is used by government agencies and organisations to acquire services and supplies from outside businesses. In addition, Xhala (2014:1) partially sustains the view and maintains that public procurement forms an integral part of public operations, as it is not merely the acquisition of goods and services but includes a holistic transfer of traditional processes that serve to render basic infrastructure to the public. Public procurement becomes an integral tool to ensure public funds are not misused through strong governance. Thus, effective public financial management is, therefore, central to the government's ability to deliver services to citizens and to ensure sustainable development (Fourie, 2015:874).

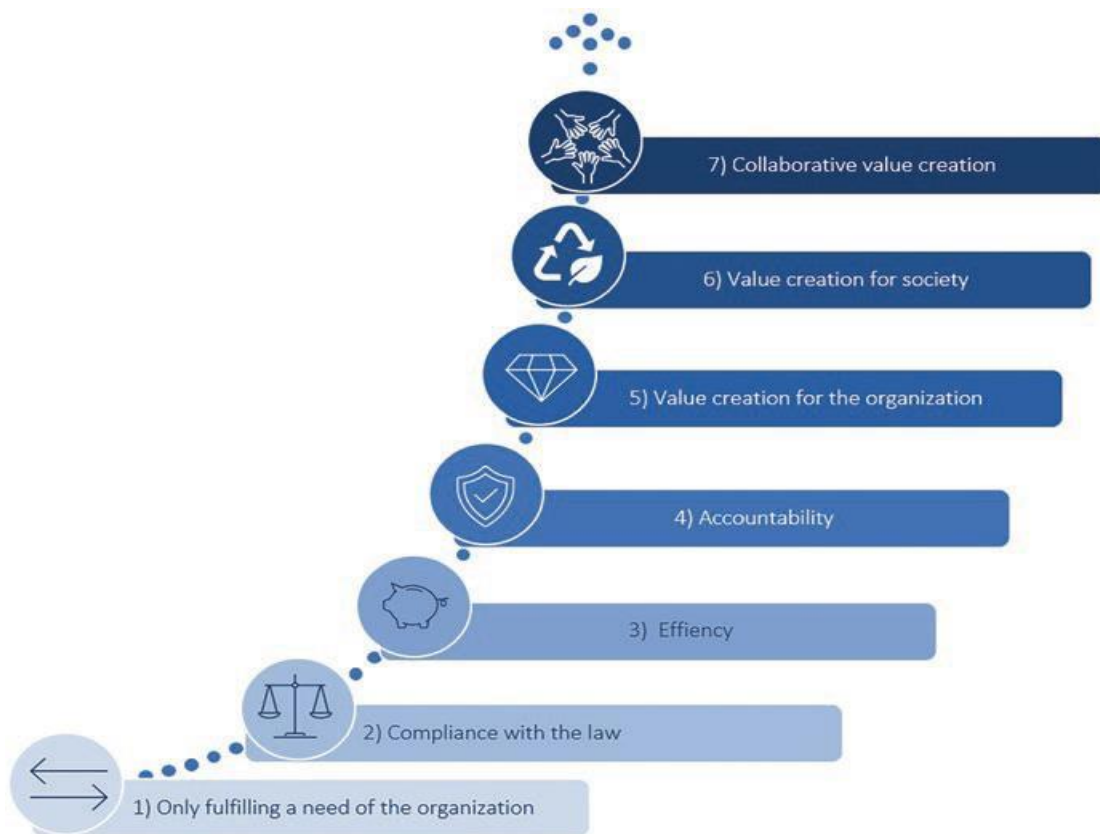
Some commentators have noted that using public procurement as a mechanism to facilitate the distribution of public goods and services can also generate direct social benefits. Cane (2000:47) describes public procurement as essentially central to a government delivery system, which promotes objectives that aim at using procurement to promote social, industrial, and environmental policies. Bolton (2006:193) also suggests that public procurement is central to a government service delivery system as it has been granted constitutional status and is recognised by addressing past discriminatory policies and practices.

Public procurement is a tool that can be used to promote social responsibility (Edler & Georghiou, 2007:85). Carroll (1979:45) illustrates the method of applying public procurement social responsibility to facilitate public sector agencies to stimulate companies and engage with the development of small and medium business agendas. Craig (2003:21) concurs that it is a government's responsibility to assist small and medium-sized businesses to develop, grow, and ensure their long-term success. The government must continually foster an environment where they can compete successfully for a fair share of government procurements on their own merits.

The definitions above provide a considerable balance in understanding public procurement from both its primary parameters to its use as a tool for socio-economic transformation. Interestingly, the study of public procurement holds the same posture as the observations of its development over the years, from an executive management function aimed at fulfilling internal demands for works, supplies, or services to a policy instrument that can create societal value (Grandia and Volker, 2023). Besides the fiduciary obligation to deliver goods and services to the constituents of the government administration, public procurement addresses a wide range of objectives (Uyarra & Flanagan, 2009: 2). Knowing and understanding the different stages that public procurement is progressing through is crucial for understanding how public procurement can contribute to achieving societal value, such as creating employment opportunities for people excluded from the labour market, improving labour conditions abroad, or diminishing the negative results of production and consumption (Grandia & Volker, 2023: 10).

In many European countries, public procurement has developed from an executive management function (fulfilling a need of the organisation) to a highly tactical and strategic management function (using procurement to reach policy goals) (Tassabehii & Moorhouse, 2008). It is important to note that this is not the common practice throughout Europe and other parts of the world; rather, public procurement as a management function has developed and varies from country to country. This thesis adopted Telgen et al.'s seven stages of public procurement development to better understand the subject matter.

Currently, the following seven developmental stages that public procurement can progress through are recognized: (1) fulfilment of needs, (2) compliance, (3) efficiency, (4) accountability, (5) optimizing internal value for money, and (6) achieving external value and (7) collaborative value creation. However, as public procurement continues to develop, new stages might be added:



**Figure 1:** Seven stages of public procurement development (based on Telgen et al., 2007)

The relevance of the Telgen et al. seven-stage model can be characterised by its ability to approach public procurement differently by compressing it to all levels without biasedly leaning on policy and legislative framework, which varies from country to country and organisation to organisation. This thesis will briefly describe the variables to understand the phenomenon.

**Table 2:** Telgen et al. Seven stages of public procurement development tabulated

Stages	Descriptions
Stage 1: Fulfilling the Need of an Organisation	Procurement intends to fulfil what users demand, in the right quantity, at the right time, and in the right place. Availability of whatever is needed is the only objective. Thus, the duty of procurers is only operational and executive. They purchase what the organisation needs and only pay attention to fulfilling that specific need.
Stage 2: Compliance with the Law	Procurement is no longer only about fulfilling a need; now it is also important that this need is fulfilled without any fraud or corruption.

Stage 3: Efficiency	The attitude of public organizations toward public procurement becomes more commercial at this stage, and procurers start to look at how they can ensure that their organization gets the most bang for their buck, and to try to make their procurement as efficient as possible.
Stage 4: Accountability	Apart from preventing fraud and corruption and ensuring an efficient procurement process, from this stage onward, public organizations also must explain and convince the public why they are doing this and that they are doing it well.
Stage 5: Value Creation for the Organization	It is not only cost or efficiency that is important, but also the value that such items and services themselves bring to the organization. This means that, for the first time, the attitude of public procurement starts to change from reactive (you ask, we buy) to proactive (we suggest, you ask, we buy).
Stage 6: Value Creation for Society	In the sixth developmental stage, value creation for society becomes part of public procurement. At this stage, public procurement's scope expands outwards and starts to look at how procurement can add value to its environment as well.
Stage 7: Collaborative Value Creation	Through co-production or co-creation, value is created that is considered necessary and useful by not only the public organisation itself, but also by others. For example, a municipality in need of a new playground can opt to procure a piece of sustainable play equipment made from recycled and natural materials.
<b>Source:</b> (Grandia & Volker, 2023:10)	

Public procurement is constantly evolving and consistently influencing the policy and legal framework in practice, as this thesis reviewed several studies that singled out different approaches and facets of public procurement from the pillars of government procurement policy, procurement methods, committee systems for competitive bids, procurement practices, mechanisms of procurement, and preferential procurement practices (Vabaza, 2015; Hlakudi, 2012; Watermeyer, 1999; Nano, 2008; Mkele, 2019; Abediran, 2018; Letchmiah, 2012; Nzo,

2019). This thesis has based its focus on preferential procurement to understand factors that constrain and undermine its use as a tool for local economic development, with a specific objective to study the institutional arrangement in which it has been implemented at the Local Government level. Thus, this section will focus on the conceptual framework of preferential procurement with less detail on the statutory/legal frameworks.

#### **2.4. Overview of International Preferential Procurement Practices**

An appropriate system of public procurement, as required under Article 9(1) of the United Nations Convention against Corruption (UNCAC), is considered a core component of any government programme (Mazibuko, 2018: 30). Public procurement has been standardised across the globe; this is evident in the early observations made by Grandia & Volker (2023) of the development and evolution of public procurement as a management tool. Standardisation has improved confidence in public procurement as a practice. There are key contributors in setting these norms and standards, such as the United Nations (UN), the World Trade Organisation (WTO), the Government Procurement Agreement (GPA), the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement, and the European Union (EU) Public Procurement Directives (EU Directives). These set the international legislative guidelines to help countries navigate towards good procurement practices.

International experience on the use of public procurement to achieve socio-economic objectives suggests that different models exist in different countries based on contextual procurement regimes and socio-economic imperatives (Adediran, 2018: 23). An early example of using government procurement to achieve social objectives was the Executive Order issued in 1840 by US President Van Buren which established a 10-hour working day for workers employed under certain government contracts (McCrudden, 2004). The concept of preferential procurement adopted by South Africa has its roots in the American model of affirmative action (Letchmiah, 2012). Both originating from government policies that attempted to strengthen the viability of SMEs, they aim to develop historically disadvantaged enterprises and counter the effects of past discrimination (Bolton, 2006; Chatterji *et al.*, 2014). The use of public procurement to seek historical redress for policies that discriminated against specific segments of the population reveals unusual parallels between the United States and South Africa. In the US, the focus has been on targeting vulnerable minority groups, e.g., African Americans, while in South Africa, the focus has been on targeting Blacks who constitute most of the population.

In areas of regional policy, procurement preference schemes were first introduced in the 1930s to assist areas hit by the Great depression, and following the Second World War, further schemes were adopted, some of which survived in Europe until 1991. A special scheme in Northern Ireland provided for a 5% price preference for tenders where this would benefit employment in Northern Ireland (Watermeyer, 2003: 12). In turn, other Commonwealth countries adopted anti-discrimination legislation drawing from British and American legislation, with the Canadian provinces enacting human rights statutes from the early 1960s. In 1986, the Canadian government instituted the Federal Contractors Programme, which, according to McCrudden (2004), complemented Canada's Federal Employment Equity Act. It demanded that businesses that wish to compete for Canadian government contracts of a recommended value commit to executing employment equity and demonstrate such commitment by signing a certificate in this regard (Letchmiah, 2012).

Having explored different preferential procurement practices in countries such as the United States of America, Northern Ireland, Canada, and South Africa. The government spending patterns play a crucial part in preferential procurement, and this thesis looks at global practices in which procurement is measured by the percentage of GDP and the acquisition of goods and services through procurement and preferences. In the European Union (EU), over 250,000 public institutions spend around 2 trillion € annually, which is about 14% of GDP, procuring works, supplies, and services. Also, in countries outside the EU, around 12% of the GDP is spent by public institutions (Grandia & Volker, 2023: 2). In the Netherlands, for example, the central and decentralized governments procure yearly around 84 billion Euros on works, supplies, or services for their 17 million citizens (Grandia & Volker, 2023: 5). Global government public procurement spending is estimated to be US\$13 trillion US dollars a year. Public procurement accounts for 12% of GDP in OECD (Organisation for Economic Co-operation and Development) countries and almost 30% in developing countries. In South Africa, the Government spends almost R1 trillion on procurement annually, accounting for 12% of GDP (National Research Foundation, 2023).

Despite its perceived benefits towards attaining socio-economic goals, preferential procurement policies have faced many criticisms, with opposing views based on moral and socio-political grounds from various interest groups (Kajimo-Shakantu, 2007; Rice, 1992; Watermeyer, 2000). When a change is on the horizon, uncertainty becomes the order of the day. However, giving preference to some individuals over others has been opposed for both being morally unjust and for introducing an element of inefficiency in the procurement system

(Charlton and van Niekerk,1994). These were fears of certain Municipalities in South Africa when the 2017 preferential procurement regulations were passed, where regulation 9 obligated organs of state to subcontract where feasible, with a 30% preference on all tenders beyond R30 million. The expected outcome is to devise a design for an institutional framework that can be replicated at the local government sphere for the National Treasury to roll out.

## **2.5. Preferential procurement overview and conceptual insights**

The conceptualisation of Preferential Procurement involves the development of a comprehensive and inclusive framework aimed at addressing historical disparities and promoting economic empowerment (Sibanda, 2021:7). The concept of preferential procurement adopted by South Africa has its roots in the American model of affirmative action (Letchmiah, 2012). Both originating from government policies that attempted to strengthen the viability of SMEs, they aim to develop historically disadvantaged enterprises and counter the effects of past discrimination (Bolton, 2006; Chatterji et al., 2014). Based on the literature review on the study of preferential procurement (Watermeyer, 2003; Letchmiah, 2012; McCrudden, 2004; Abediran, 2018; Sibanda, 2021), it is evident that preferential procurement is indeed a policy phenomenon and holds a narrow theoretical base. It is crucial to further extend to the nature of this policy pathway of preference, which has been built on case studies or practice, to unpack its scope. Jonas (2024:16) extends that this conceptual framework begins with the formulation of policies that clearly define preferential criteria, aligning with legal frameworks and specifying preferences for historically disadvantaged groups.

The emphasis is on transparent evaluation processes that ensure objectivity in awarding contracts and contribute to building trust and accountability. Additionally, the conceptualization extends beyond contract awards to encompass robust, inclusive supplier development programs, including mentorship and capacity-building initiatives, fostering the long-term competitiveness of historically disadvantaged businesses (Sibanda & Tshikovhi, 2022:702).

Given the policy nature of preferential procurement, this chapter bases its conceptual grounding on the use of preferential procurement as a policy instrument. This method gives relevance to the remainder of the study, which later zooms in on the South African policy frameworks and reforms thereof to study the institutional gaps towards the implementation of the preferential procurement policies. Furthermore, the research deemed it crucial to add ‘affirmative’ and ‘targeted’ procurement to extend to the preferential procurement conceptual box.

### **2.5.1. Preferential procurement as a policy instrument**

The use of public sector procurement as an instrument of government policy to achieve certain

socio-economic objectives can have significant outcomes in a variety of areas. For example, the adoption of preferential procurement policies as a tool for contractor development was referred to as targeted procurement (Adediran and Windapo, 2016). Conversely, it can also be used negatively. Hlakudi (2015) indicated that many companies engaging with the government do so fraudulently by claiming preferential points they do not deserve. The same study reported that most government officials within the government departments were not familiar with the preferential procurement targets.

Using procurement as a policy tool can also be referred to as “wealth redistribution” – using procurement to channel funds to discrete categories of economic actors (e.g., previously disadvantaged groups in South Africa) (Bolton, 2006). One such argument is that “where properly employed, procurement may prove a useful and effective instrument” (Arrowsmith, 2002). These arguments are realistic if the use of procurement as a policy tool has measurable targets, verifiable, auditable and transparent, and competitive; this phenomenon can indeed contribute to the development of advancing SMME’s (Small Medium and Micro Enterprises) also known as Emerging Micro Enterprises (EMEs) and Qualifying Small Enterprises (QSEs) that can participate equally in the international markets. It is therefore appropriate for the use of procurement as a policy tool to be regulated, to correct the social exclusion, and specifically, the amelioration of the extreme inter-racial inequalities (Thiankolu, 2019).

Bolton (2006) argues that preferential procurement policies can also offer advantages over more direct methods of assistance because they do not raise public spending directly, are less likely to be channelled into the purse of organised crime, and are more efficient than tax-financed State aid, which barely reaches recipients. Watermeyer’s (2003) work on preferential procurement as a policy tool is crucial to draw on some of the methods used to implement preferential procurement policies. Table 2<sup>3</sup> summarises at least four methods from the early days of preferential procurement conceptualisation in South Africa.

**Table 3:** Methods used to implement preferential procurement policies

<b>Scheme type</b>	<b>Nr</b>	<b>Method</b>	<b>Actions associated with the method</b>
Reservation	#1	Set aside	Allow only enterprises that have been prescribed characteristics to compete for the contracts or portions thereof, which have been reserved for their exclusive execution.
	#2	Qualification	Exclude firms that cannot meet a specified

<sup>3</sup> That is three years after the enactment of the PPPFA (2000) and two years after the first set of regulations were passed (2001).

		Criteria	requirement or norm, relating to the policy objective, from participation in contracts other than those provided for in the law.
	#3	Contractual conditions	Make policy objectives a contractual condition, e.g., a fixed percentage of work must be subcontracted out to enterprises that have prescribed characteristics, or a joint venture must be entered into.
	#4	Offering back	An offer tendered that satisfies the criteria relating to policy objectives and opportunity to undertake the whole part of the contract if that tenderer is prepared to match the price and quality of the best tender received.
Preferencing	#5	Preference at a shortlisting stage	Limit the number of suppliers/ service providers who are invited to tender based on qualification and give a weighting to policy objectives, along with the usual commercial criteria, such as quality, at the shortlisting stage.
	#6	Award criteria (tender evaluation criteria)	Give a weighting to policy objectives along with the usual commercial criteria, such as price and quality, at the award stage.
Indirect	#7	Product/service specification	State requirements in product or service specifications by specifying labour-based construction methods.
	#8	Design of specifications, contract conditions and procurement processes to benefit particular contractors	Design specifications and or set contract terms to facilitate participation by targeting groups of suppliers.
Supply side	#9	General assistance	Provide support for targeted groups to compete for business, without giving these parties any favourable treatment in the actual procurement.
<b>Source:</b> (Watermeyer, 2003:12)			

The conceptual framework acknowledges the importance of continuous improvement, incorporating regular reviews of policies, evaluation processes, and supplier development initiatives (Jonas, 2024: 17). The methods described on table 3 portrayed the South African preferential procurement policy which was later reviewed on multiple occasions from the (PPPFA 5 of 2000 and its regulations 2001, 2011, 2017, 2022 and the recently signed Public Procurement Act 28 of 2024). Stakeholder engagement remains pivotal, fostering collaboration

with government entities, business associations, and community organizations to ensure that the preferential criteria align with evolving economic priorities (Vinti, 2021:20). In its pursuit to break the conceptual barrier, the next section of this thesis dissects ‘affirmative’ and ‘targeted procurement’ concepts as mechanisms for public procurement.

### **2.5.2. Targeted procurement system**

According to McCrudden (2004), a system of “targeted procurement” was established in South Africa that was like the Malaysian model for the Bumiputras. The similarity was more on intent rather than on implementation since the Malaysian model provided set-asides exclusively for the Bumiputras, whereas the South African model promoted the participation of target groups without excluding any enterprise from tendering (Letchmiah, 1999a).

Targeted Procurement was developed in South Africa, where procurement is regulated by that country’s constitution. As a result, Targeted Procurement enables socio-economic objectives to be achieved in a fair, equitable, transparent, competitive and cost-effective manner. Targeted Procurement, without resorting to set-asides and being prescriptive, enables procurement to be readily used as an instrument of social policy by public bodies both on a large scale and in a focused manner. This is done without compromising the aforementioned requirements for a cost-effective and practical procurement system (Watermeyer, 2000: 6).

Targeted procurement is done through a contracting process, where the aim is to achieve social goals by employing project designs that are to increase labour and participation of Affirmable Business Enterprises (ABE) (Mkele, 2019: 38). Letchmiah (2012: 80) further outlines that Targeted Procurement, is an innovative form of public sector procurement which was developed in South Africa by the Procurement Reform Task Team to provide employment and business opportunities for historically disadvantaged businesses, marginalized individuals and poor communities. Targeted Procurement enables preferential procurement policies to be implemented and allows social goals to be correlated to procurement in a fair, transparent, equitable, competitive, and cost-effective manner. By passing key and sound governance and accountability measures to ensure the system is well-regulated and to eliminate discrepancies. It also permits these objectives to be quantified, measured, verified, and audited.

In South Africa, Targeted Procurement has been used mainly to target those groups of society that were disadvantaged under the apartheid system. It has,

However, also been used within South Africa to support local economic development, to promote growth within the small business sector, and to target the unemployed in poverty alleviation programmes (Watermeyer, 2000: 7).

Targeted procurement as the basis for preferential procurement remains a key instrument to the development of local economies through targeted procurement of Small Businesses, generically or based on specific boundaries or groups. Targeted Procurement rests on three pillars, viz., the classification of contracts, the use of resource specifications, and the awarding of contracts in terms of a development objective/price mechanism. Having observed that there is a general emphasis on unbundling as one of the tools for targeting, below are the methods in which unbundling is achieved:

**Table 4:** Unbundling strategies

✓ Procuring works in the smallest practicable quantities.
✓ By obligating prime contractors to engage SMMEs in the performance contracts in terms of resource specifications.
✓ By requiring joint venture formation between large businesses and SMMEs (known as a Structured Joint Venture), an
✓ By providing third-party management support to enterprises that are not capable of operating as prime contractors (known as Development Contracts.
<b>Source:</b> Letchmiah (2012:80)

Targeted procurement strategies favoured and created the basis for local economic development (LED) goals to be reached or attained. Some of the goals, according to the Local Economic Development (LED) policy 1999, identified the following aims for targeted procurement:

- Stimulate the growth and development of SMMEs and local resources;
- Empower specific population groups/sectors of society;
- Increase the volume of work available to the poor; and
- Encourage the use of employment-intensive practices and technologies.

The above would be impossible without key strategic methods such as resource specifications, the development objective, the price mechanism, and classification of contracts. In terms of the Targeted Procurement procedure, contractors are penalised financially should they fail to achieve their contracted socio-economic deliverables in the performance of the contract. The

The next section of this study dissects affirmative procurement policy as a mechanism of public procurement and a key instrument and descriptor of preferential procurement.

### **2.5.3. Affirmative procurement policy**

According to Taylor and Raga (2010:1), affirmative procurement is a programme initiated by the democratic government to influence the participation of formal and informal SMMEs that are owned by groups and individuals who were previously marginalised by the policies of apartheid. The objective was to set out targeting policies to create opportunities for the broadest possible participation of historically disadvantaged persons in the public procurement process (Letchmiah, 2012: 83). There is a significant commonality between targeted and affirmative procurement policy; some scholars do not treat these two as peculiar variables, rather targeted procurement as the means for affirmative policy, which both provides great justification for preferential procurement.

The APP (Affirmative Procurement Policy) was implemented through the use of resource specifications that targeted prime contractors, joint venture partners, subcontractors, suppliers, manufacturers and service providers, targeted labour, Affirmable Joint Venture Partners together with businesses owned, managed and controlled by previously disadvantaged persons referred to as Previously Disadvantaged Enterprises in concessionary contracts (private public partnerships) Letchmiah (2012:83).

According to Watermeyer (2000), the following standardised resource specifications (international and South African) have been developed and published by the South African government (see [www.pwdprocure.co.za](http://www.pwdprocure.co.za)):

- TP1: Targeting of Affirmable Business Enterprises;
- TP2: Structured Joint Ventures (Affirmable Partners);
- TP3: Structured Joint Venture (Targeted Partners);
- TP4: Targeting of Local Resources;
- TP5: Engagement of Targeted Labour; and
- TP6: Targeting of Affirmable Professional Service Providers.

The road to the preferential procurement policy framework consisted of cross-cutting policy parameters, such as the influence of the BBBEE Act, which later became instrumental in the implementation of preferential procurement in South Africa, especially the 2017 Preferential

Procurement Regulations. Mkele (2019) reaffirms this claim that the acceleration of affirmative procurement has been influenced by the practical growth strategy of Broad-Based Black Economic Empowerment (BBBEE), as it aimed to realise the country's full economic potential. The early arguments of the two variables being affirmative and targeted procurement mechanisms were concluded by the PFMA (Public Finance Management Act) 1 of 1999, that the APP is visible in the PPPFA. Therefore, targeted procurement was a step towards the solidification of the PPPFA and its regulations, while the APP was a policy instrument to realise targeted procurement.

## **2.6. Summary**

This chapter developed the origins of preferential procurement and its conceptual approaches to understanding theory and practice comprehensively. The researcher maintained his view that preferential procurement cannot be detached from public procurement as the main subject, and the study linked the two variables. This rolled over to the study of the preferential procurement conceptual insights to better understand the subject matter, which was done using three levels of analysis (preferential procurement as a policy instrument, targeted procurement system, and affirmative procurement policy). The study further recognized that public procurement cannot be isolated in a certain region, country, or continent, but its global relevance was elucidated. The next chapter of this thesis will explore the preferential procurement statutory and policy environment.

## CHAPTER THREE

### PREFERENTIAL PROCUREMENT STATUTORY AND POLICY ENVIRONMENT

#### 3.1. Introduction

The purpose of Chapter 3 is to give a detailed outline of the preferential procurement statutory and policy environment to examine the literature and key legislative prescripts to substantiate the research question. Recognising that preferential procurement forms a significant part of public procurement, as outlined in Chapter 2, it is also operating within a highly regulated environment. This chapter will first discuss the preferential procurement reforms categorised into three phases: phase one (1994-1999); phase two (1999-2004); phase three (2011-2024), which is not regularly cited but forms a significant part of the preferential procurement regime. Secondly, this chapter will discuss the evolution of the Preferential Procurement Policy Framework Act (PPPFA) 5 of 2000 and its regulations from 2001, 2011, 2017, and 2022. Thirdly, this chapter will discuss the overview of the Public Procurement Act (28 of 2024). Lastly, corruption as an inhibiting factor in public procurement will be discussed.

#### 3.2. Preferential Procurement reforms

South Africa ushered in a new democratic order in 1994, paving the way for revolutionary change in the public service (Ncholo, 2000). One of the key initiatives in the reforms and transformation of public service in South Africa was the integration of government amid the fragmentation by the apartheid state. The Presidential Review Commission Report (1998) identifies this complex and difficult task of rationalising and integrating the eleven different former administrations of the Republic of South Africa and the “independent” and “self-governing” homelands and Bantustans into a single and unified Public Service, operating at national and provincial spheres, as the most difficult (Moeleti, 2006). This is where the South African public service experienced a paradigm shift in its attempt to govern effectively and efficiently. According to Ncholo (2000:87), this paradigm was marked by *inter alia*:

- the desire to provide high-quality services valued by citizens;
- increased autonomy from centralised control;
- a shift to performance measurement of both individuals and institutions with corresponding reward structures;
- the provision of human and technological resources needed to meet performance targets;

- an open-mindedness to exploring changes in traditional public service functions and responsibilities.

The initial years following the democratic transition coincided with large-scale legislative and policy reforms, which had a direct impact on public procurement practices. This was marked by the White Paper on Reconstruction and Development (1994), whose aim was to increase the participation of black people in the economy and to ensure that existing ownership patterns became less concentrated and more racially inclusive, and which promoted the participation of SMMEs in the economy (Hlakudi, 2012:6). This was followed by the appointment of the Procurement Reform Task Team consisting of government officials and private sector consultants by the Ministry of Public Works and the Ministry of Finance embarking on a joint initiative in February 1995 to research and draft new policy proposals (Letchmiah, 2012).

This was followed by the introduction of the Ten Point Plan in November 1995 as a set of interim strategies to further the procurement reform process. The Constitution of the Republic of South Africa, 1996, was enacted, giving effect to section 217, which obliges any organ of state in the national, provincial, and local spheres of government that procures goods and services to do so by a system that is fair, transparent, equitable, competitive, and cost-effective. The Green Paper on Public Sector Procurement in South Africa was released with the full endorsement of the National Cabinet in April 1997, and all the principles contained in the Ten Point Plan on Procurement were incorporated into the Green Paper.

The second post-apartheid administration, beginning in 1999, saw the introduction of the Preferential Procurement Policy Framework Act (5 of 2000), which forms the basis of this study and represents the cornerstone of the preferential procurement regime in South Africa. The Preferential Procurement Policy Framework Act (PPPFA) (Act 5 of 2000) was intended to give effect to Section 217 (2) of the Constitution and to provide a framework within which procurement policies referred to therein must be implemented (Letchmiah, 2012:53). The PPPFA was followed by a set of National Treasury Regulations in 2001. The regulations were provided to be used as necessary to advise the objectives of the policy. These regulations, in some instances, converted the general framework provided for in the Act into a series of prescriptions (Bolton, 2004; Watermeyer, 2003). The regulatory reforms will be discussed later in this thesis to detail the developments to the latest Public Procurement Act (28 of 2024). The Municipal Finance Management Act (MFMA) (56 of 2003) was introduced to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government. According to Quinot (2023:75):

The MFMA, which was created after the PFMA to extend the new public finance management paradigm to local governments, already contained significantly more detailed legal rules on public procurement.

The last reform to be introduced was the Broad-Based Black Economic Empowerment (BBBEE) Act 53 of 2003. Hlakudi (2012) believes the PPPFA and the BBBEEA have been enacted to achieve similar objectives of redressing economic imbalances of the past, including the promotion of equal distribution of economic resources of the country. This was mostly applicable during the implementation of the PPPFA regulations, given its importance to the procurement processes, especially in Local Government. This section aims to guide the thesis to the idea of a phased reform using Naidoo's approach as discussed above. However, the next section of this thesis explores the reforms beyond Naidoo's two-phase approach. This will allow the remainder of the chapter to examine relevant literature associated with the third and fourth phase approach.

### **3.2.1 The first phase of preferential procurement reforms, 1994-1999**

The public sector reforms in South Africa followed a turbulent period of policy confusion, bureaucratic irregularities, and gross exclusion of the Previously Disadvantaged Groups (PDGs) from the mainstream economy. To give effect to the policies and proposals set out in the White Paper on the Transformation of Public Service (WPTPS) (1995)<sup>4</sup>, and the values and principles set out in the 1996 Constitution, existing legislation had to be amended, and new legislation introduced (Ncholo, 2000:87). The restructuring programme forms part of the comprehensive transformation process that began in the 1990s to date.

#### **3.2.1.1. The White Paper on Reconstruction and Development, 1994**

The Reconstruction and Development Programme (RDP) became the first major policy of the ANC following a successful national election in 1994. The Reconstruction and Development Programme (RDP) is a policy framework for integrated and coherent socio-economic progress (RSA, 1994:7). It attempted to integrate development, reconstruction, redistribution and reconciliation into a unified programme (Cameron, 2009:6). This period signifies an integral period in the new dispensation, given the fears and excitement to govern, yet became a vehicle to experiment with the policy direction of the first administration. According to Letchmiah (2012), RDP became a comprehensive socio-economic policy instrument aimed at eradicating the legacy of apartheid, which had left South Africa with an inward-looking economy.

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<sup>4</sup> Republic of South Africa. 1995. The White Paper on the Transformation of the Public Service (Notice 1227 of 1995) Pretoria: Government Printers.

focused, distorted by growth inequities, inefficiencies, and underdeveloped resources and markets.

The RDP White Paper (1994) identified the key areas of support to SMMEs as, amongst others, access to marketing and procurement and the encouragement of inter-firm linkages (Hlakudi, 2012). It also recognised that historically the tendering system favoured larger and more established businesses, and that it was very difficult for new and emerging enterprises to compete successfully in the existing public sector procurement system (Watermeyer et al, 1998). This informed policymakers to drive a transformative agenda by using the public procurement system to redress the ills of the past, which still hold ground for the preferential procurement agenda.

The relevance of the RDP in local government finds itself in the contemporary policy framework for Supply Chain Management at the local government level, which is informed by a series of public procurement legislations (Section 217 of the Constitution of RSA; PPPFA; MFM; Municipal SCM regulations,<sup>4</sup> etc.) that align with the primary RDP goals. To date, municipal preferential procurement policies are aligned with the PPPFA and its regulations, and all must reflect the RDP goals as outlined in Table 4 below:

**Table 5:** Socio-economic goals of the RDP

Item	Description
1	The promotion of South African-owned enterprises
2	The promotion of export-oriented production to create jobs
3	The promotion of SMMES
4	The creation of new jobs or the intensification of labour absorption
5	The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province
6	The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region
7	The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area.
8	The promotion of enterprises located in rural areas.
9	The empowerment of the workforce by standardising the level of skill and knowledge of workers.

<sup>4</sup> National Treasury. 2005. *Local Government: Municipal Finance Management Act*. (Notice No. 868 of 2005, Gazette No. No. 27636). Pretoria. Accessed at <https://www.treasury.gov.za/> 19 April 2025.

10	The development of human resources, including assisting in tertiary and other advanced training programmes, in line with key indicators such as the percentage of wage bill spent on education and training and improvement of management skills.
11	The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.
<b>Source:</b> (Letchmiah, 2012:55)	

### 3.2.1.2. Procurement Reform Task Team, 1995

The obligation bestowed upon the South African government towards the transformation, policy, and legislative reforms necessitated strategic measures to craft a new path for the public procurement policies. This could not be done by the state on its own, but a collective measure to include the private sector consultants and experts in the procurement field assisted in producing a non-sectoral strategy. A comprehensive strategy was adopted. This resulted in the appointment of the Procurement Reform Task Team, consisting of government officials and private sector consultants, by the Ministry of Public Works and the Ministry of Finance, embarking on a joint initiative in February 1995 to research and draft new policy proposals (Letchmiah, 2012).

From the outset, the transformation of the public sector procurement system had two primary objectives:

- The promotion of good governance within the sphere of public sector procurement; and
- To utilise public sector procurement as a vehicle to achieve specific socioeconomic objectives, such as the promotion of targeted small and medium enterprises, enhanced job creation, business opportunities, skills and technology transfer, and other related goals (Letchmiah, 2012:43).

A preliminary review of South Africa's existing procurement policies and systems identified a tendency for the awarding of public sector contracts to be skewed towards large established companies (Letchmiah, 2001a; Gounden, 2000; Watermeyer *et al*, 1998). This paved the way for the participation of SMMEs who were completely excluded from the mainstream economy, and procurement became one of the opportunities to participate and build enterprises controlled by Previously Disadvantaged Individuals (PDIs). This followed a series of best practice exercises to benchmark a feasible model for South Africa, with Malaysia and the United States of America (USA) proving to be replicable, paving the way for the adoption of the preferential

procurement policy (Hart, 1994; Letchmiah, 2012). The outcomes of the Task Team resulted in the release of the Green Paper on Public Procurement in 1997. Thus, the work of the Task Team indirectly impacted the current municipal supply chain management policies, preferential policies, and SMME empowerment policies.

### **3.2.1.3. Ten Point Plan, 1995**

As part of South Africa's initiatives to introduce new reforms in government procurement, the Ten Point Plan was introduced in November 1995 as a set of interim strategies to further the procurement reform process (Hlakudi, 2012:8). The Ten Point Plan was adopted by the then National Cabinet of Unity in November 1995 as its interim procurement policy. The two key thrusts were the price preference policy and the strategy for breakout procurement (i.e., unbundling of large contracts) (Letchmiah, 2012). The plan introduced a set of ten strategies, which include, amongst others, preferential procurement that aimed to give preference points to companies owned by people disadvantaged by racial discrimination in the previous political dispensation of apartheid, as well as women entrepreneurs when competing for government contracts (Ten Point Plan, 1995: 7). The local government supply chain policy framework is still driven by the effects of the strategies adopted by the Ten Point Plan including the points scoring despite the multiple revisions and editions as well the unbundling of large contracts. It is important to highlight the commitment to principles of good governance and socio-economic development. During the adoption of the Ten Point Plan, the constitution was not adopted; however, the agenda was clear, and these were interim strategies:

### **3.2.1.4. The Constitution of the Republic of South Africa, 1996**

The Constitution of the RSA is the supreme law guiding the procurement systems and statutes. According to Section 217 (1), when an organ of state in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so under a system which is fair, equitable, transparent, competitive, and cost-effective<sup>5</sup>. While section 217 (2) subsection (1) above does not prevent the organs of state or institutions referred to from implementing a procurement policy that provides for (a) categories of preference in the allocation of contracts; and (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. In terms of section 217 (3) of the Constitution, national legislation must prescribe a framework within which the procurement policy must be implemented.

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<sup>5</sup> Constitution of the Republic of South Africa Act, 1996

### **3.2.1.5. The Green Paper on Public Procurement Reform in South Africa, 1997**

The government of the time recognised its power as the largest buyer in the country; the government has a responsibility to ensure that its procurement policy supports its overall economic objectives and serves as an instrument for attaining those objectives. It also recognised the need to grow the economy through job creation, and one of the strategic moves was the inclusion of small and medium enterprises to participate in the smaller procurement opportunities instead of doing larger contracts that favoured larger corporations. The government, therefore, embarked on a reform process to make the tendering system more easily accessible to small, medium, and micro enterprises. This process has resulted in a Green Paper on Public Procurement Reform (RSA, 1997)<sup>6</sup>.

According to the Green Paper (1997), the government aimed to transform the public procurement process to achieve its socio-economic objectives within the ambit of good governance. The perspective articulated by the Green Paper was that an effective and efficient procurement system would permit the Organs of State to deliver the quality and quantity of services required by its new constituency per its policies, which were articulated in the RDP (Letchmiah, 2012:46). Its basic objectives were (i) *Achieving good governance in procurement*; and (ii) *Achieving socio-economic objectives through procurement*. It is fascinating how consistent the ‘policy state’ was in its focus on redressing the ills of the past; most of the policies passed were very clear on good governance and inclusion of the previously disadvantaged groups in the mainstream economy. The influence of the policies mentioned can still be felt in the latter days’ procurement policies, including the recently signed Public Procurement Act, with special reference to Chapter 4 of the act, a chapter dedicated to preferential procurement.

### **3.2.2. The second phase of preferential procurement reforms, 1999-2004**

The second post-apartheid governing administration presided over an acceleration of public procurement reforms marked by the introduction of three major statutes: the Preferential Procurement Policy Framework Act, 2000; the Municipal Finance Management Act, 2003; the Broad-Based Black Economic Empowerment, 2003; and other statutes, including a series of regulations. However, for the interest of this thesis, this section will only focus on the three above-mentioned statutes that apply to local government.

#### **3.2.2.1. Preferential Procurement Policy Framework Act, 2000**

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<sup>6</sup> Foreword by Trevor Manuel (Minister of Finance) on the Green Paper on Public Procurement Reform in South Africa, 1997.

The implementation of the Preferential Procurement Policy Framework Act 5 of 2000 gives effect to section 217(3) of the Constitution of the Republic of South Africa of 1996, by providing a framework for the implementation of a fair public preferential procurement policy (RSA, 2000). The Act prescribes in detail categories of persons referred to as Historically Disadvantaged Individuals (HDIs) who qualify for preference in the allocation of contracts, which include people who did not have franchise in national elections before the implementation of the 1983 Constitution and/or the Interim Constitution of 1993 (Hlakudi, 2012). A historically disadvantaged individual (HDI) was defined as a South African citizen who, due to the apartheid policy before 1994, had no franchise in national elections; or is female; or has a disability (RSA, 2000).

In terms of prescriptions contained in the Preferential Procurement Policy Framework Act 5 of 2000, an organ of state must determine its preferential procurement policy and implement it within a framework (RSA, 2000). Section 2(1)(b)(i) of the Act further stipulates that a preference point system must be followed, that is, in respect of contracts with a Rand currency value above a prescribed amount, a maximum of 10 points may be allocated for specific goals, provided that the lowest acceptable tender scores 90 points for price (Taylor and Raga, 2010; RSA, 2000). While Section 2(1)(b)(ii) of the mentioned Act stipulates that contract with a Rand currency value equal to or below a prescribed amount, a maximum of 20 points may be allocated for specific goals, provided that the lowest acceptable tender scores 80 points for price (RSA, 2000; Letchmiah, 2012; Taylor and Raga, 2010).

Taking this study's perspective of preferential procurement, the intention is not to exhaust preferential procurement legislation in this section; however, to give an overview of PPPFA in the context of the preferential procurement reforms in South Africa, while section 3.3 of this thesis will give a broader overview of the PPPFA by analysing its regulatory framework. However, it is imperative to state the importance of the introduction of regulations to give context and a guide to the organs of state on the implementation of the PPPFA (2001; 2011; 2017, and 2022). According to Hlakudi (2012:10), the new regulations do not change the value given to preferential procurement but rather attempt to encourage transformation in companies by incorporating all seven elements of B-BBEE into the preferential procurement system.

### **3.2.2.2. Municipal Finance Management Act, 2003**

The Local Government: Municipal Finance Management Act 56 of 2003 (MFMA) came into operation on 1 July 2004. Section 112 of the Municipal Financial Management Act 56 of 2003

(MFMA) reflected the need to reform public procurement to modernise the management of the public sector and make it more people-friendly and sensitive to meet the needs of the communities it serves (Mkele, 2019:12). According to Section 56 (1) of the MFMA, the executive mayor of a municipality that has sole or shared control over an entity must guide the municipality in exercising its rights and powers of a municipal entity in a way. The municipalities that do not have mayors, section 57 (1), the council of a municipality that does not have a mayor. must designate; I councilor, to exercise the powers and duties assigned by this Act to a mayor. The municipal manager has administrative powers according to section 60 of the MFMA:

The municipal manager of a municipality is the accounting officer of a municipality for the Act, and, as accounting officer, must-

- (a) exercise the functions and powers assigned to an accounting officer under this Act; and
- (b) provide guidance and advice on compliance with this Act
  - (i) the political structures, political office-bearers and officials of the in terms of the municipality; and
  - (ii) any municipal entity under the sole or shared control, Fiduciary responsibilities of accounting officers of the municipality.

### **3.2.2.3. Broad-Based Black Economic Empowerment, 2003**

Black Economic Empowerment (BEE) is defined as an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people who manage, own, and control the country's economy, as well as significant decreases in income inequalities (RSA, 2003; Letchmiah, 2012). The BBEE Act (46 of 2013) defines black people as a generic term, which means Africans, Coloureds, Indians, and Chinese<sup>7</sup>. The introduction of the BBEE Act (53 of 2003) was a measure to give effect and consolidate redress policies geared towards the economic inclusion of the PDI's. Section one of the BBEEA further defines broad-based black economic empowerment as the economic empowerment of all black people, including women, youth, workers, people with disabilities, and people living in rural areas (RSA, 2003). To promote such objectives, the B-BBEE Act expands the framework provided in the Preferential Procurement Policy Framework Act, enabling the Minister of Trade and Industry to issue codes of good practice on black economic empowerment that may include adjudication criteria for preferential purposes in procurement; indicators to measure broad-based black economic

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<sup>7</sup> Broad-Based Black Economic Empowerment Amendment Act, 2013.

empowerment; and the weighting attached to such indicators (RSA, 2003). Similar to the introduction of the PPPFA and its regulations, the BBEEA would not have made any impact without the introduction of the Code of Good Practice of 2007, four years later. The Act provides for Codes of Good Practice to specify targets that are consistent with the objectives, and to provide sunset clauses that indicate the period within which such targets must be achieved (Letchmiah, 2012). The Codes of Good Practice for B-BBEE (2007) identify the following seven elements of B-BBEE:

**Table 6:** The Code of Good Practice for B-BBEE

<b>Item</b>	<b>Description</b>
1	Ownership element (Code Series 100), which measures the effective ownership of enterprises by black people.
2	Management control element (Code Series 200), which measures the effective control of enterprises by black people.
3	The employment equity element (Code Series 300), which measures initiatives intended to achieve equity in the workplace in terms of the Employment Equity Act (EEA) No. 55 of 1998 and BBEEA.
4	The skill development element (Code Series 400) measures the extent to which employers carry out initiatives designed to develop the competencies of black employees.
5	The preferential procurement element (Code Series 500), which measures the extent to which enterprises buy goods and services from suppliers with strong BBEE procurement recognition levels.
6	The enterprise development element (Code Series 600) measures the extent to which enterprises carry out initiatives intended to assist and accelerate the development and sustainability of other enterprises.
7	The socio-economic development and sector-specific contributions element (Code Series 700), which measures the extent to which enterprises carry out initiatives that contribute towards socio-economic development or sector-specific initiatives that promote access to the economy for black people.
<b>Source:</b> (DTI, 2007; Hlakudi, 2012)	

The next section will provide details on South Africa's Preferential Procurement Policy Framework Act and its regulations to give relevance to the legislative literature to understand how PPPFA has been implemented since its adoption in 2000.

### **3.3. The evolution of the Preferential PPFA and its regulations**

*To give effect to section 217 (3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217 (2) of the Constitution; and to provide for matters connected therewith.*

RSA (2000:1)

This section intends to explore the evolution of the PPPFA and its regulations since its promulgation in 2000 and the regulatory reforms (2001, 2011, 2017, and 2022). This thesis will further link some of the literature and policy discussions stemming from the PPPFA and its regulatory gaps. Hence, section 3.4 of this thesis will elucidate the newly promulgated Public Procurement Act (28 of 2024). The body of literature on the South African preferential procurement policy framework has been conceptualised within the legislative parameters (Quinot, 2018; Letchmiah, 2012; Taylor and Raga, 2010; Adediran, 2018; Watermeyer, 2003), tracking its origins from a series of statutes as described above. Preferential procurement policy is defined by Watermeyer (2003:11):

As a procurement policy that provides objectives additional to those associated with the immediate objective of procurement itself.

Without over-exhausting the definitive perspective of PPPFA, as this thesis provided a broader conceptual overview in both Chapter Two and the first two sections of Chapter Three, it is therefore key to extend to Watermeyer's policy perspective by contextualising PPPFA in South Africa as provided by Section 217 of the Constitution:

A preferential procurement policy is a policy that provides for categories of preferences in the allocation of contracts and/or the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination (RSA, 1996).

### **3.3.1. Provisions set out in the PPPFA**

While the PPPFA system derives from section 217 of the Constitution, various methods are used to justify its existence depending on the subject being addressed. The road to PPPFA reforms cannot be completely isolated from its constitutional principles, but the context provided by other relevant prescripts (Ten Point Plan, Green Paper on Public Procurement Reforms and the White Paper on Redistribution and Development (RDP)) leads to the observations, hence this section has formulated a leading path to the alignment of the PPPFA provisions with its principles which aligns with the RDP goals and shall be linked with the evolution of regulations accordingly:

#### **3.3.1.1. Preferential procurement principles**

Section 217 of the Constitution of the Republic of South Africa (1996) read in conjunction with section 38 of the Public Finance Management Act (PFMA) and chapter 11 of the Municipal

Finance Management Act (MFMA) requires all organs of state in the national, provincial and local spheres of government to procure goods and services in accordance with a system that is fair, equitable, transparent, competitive and cost-effective (Hlakudi, 2012: 68). The legal framework set out for the public procurement system in South Africa has been consistent in its intentions towards economic inclusion through recognition of local content, local content and the participation of HDI's.

### **3.3.1.2. The determination of the preference points system**

This forms one of the guiding factors of the act and gives relevance to its existence and differentiation from the statutes before its promulgation. Part two of the PPPFA (5 of 2000) establishes a preference point system, which has been adopted and customised by organs of state as prescribed by section 217 of the Constitution. According to Letchmiah (2012), a point scoring system implies that tenders are awarded in the first instance, for points relating to the financial offer, and in the second instance, for the offer to meet the specified socio-economic objectives or their current enterprise status.

Section two of the PPPFA prescribes the use of a points system to evaluate bids during the award stage. In terms of the points system, points are allocated to suppliers for both price and preference.<sup>8</sup>The 80/20 preference points system for income contracts, disposal, and leasing of state assets with Rand value equal to or below R50 million, inclusive of all applicable taxes. The 90/10 preference points system for income-generating contracts, disposal and leasing of state assets with a Rand value above R 50 million, inclusive of all applicable taxes (National Treasury, 2023:21). This system allocates points based on encoded criteria, including factors such as the level of black economic empowerment (BEE) ownership, job creation, skills development, and subcontracting to historically disadvantaged individuals or groups (Scott, 2016; Jonas, 2023).

### **3.3.1.3. Reporting and monitoring mechanisms**

The PPPFA (RSA, 2000) requires that all socio-economic goals are to be measurable, quantifiable, and monitored for compliance. This obligates the organs of state to invest in monitoring and reporting systems that enable oversight and align with the OCPO at the National Treasury. Letchmiah (2012) also observed that a prerequisite to the proper application of monitoring systems is an effective control process aimed at ensuring due compliance through

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<sup>8</sup> National Treasury. 2023. Implementation Guide: Preferential Procurement Regulations, 2022 Pertaining to the Preferential Procurement Policy Framework Act, Act No. 5 of 2000. Pretoria. Accessed at <https://www.treasury.gov.za/>

all stages of the contract. Jonas (2023) rubberstamps Letchmiah’s view that the reporting requirements aim to track the progress and impact of the Act's implementation, enabling stakeholders to assess its effectiveness and identify areas for improvement.

### 3.3.1.4. Evaluation and modifications

The PPR regime has undergone multiple revisions to its statutory provisions. The regulations were designed to be flexible in terms of revisions and amendments when gaps are identified. According to Jonas (2023) and Scott (2016), these reviews often result from court challenges, public consultations, and lessons learned from implementation experiences, shaping the Act to better serve its intended objectives. This has been well articulated by this thesis in its three-phase approach, which characterised the preferential procurement reforms:

**Table 7:** PPPFA three-phased approach

Statute	Period	Phase
The White Paper on Reconstruction and Development.	1994	One
Procurement Reform Task Team.	1995	
Ten Point Plan.	1995	
The Constitution of the Republic of South Africa.	1996	
The Green Paper on Public Sector Procurement in South Africa.	1997	
Preferential Procurement Policy Framework Act.	2000	Two
Municipal Finance Management Act	2003	
Broad-Based Black Economic Empowerment, 2003	2003	
PPPFA Regulations.	2011	Three
PPPFA Regulations.	2017	
PPPFA Regulations	2022	
Public Procurement Act	2024	
<b>Source:</b> Researchers' own source		

The public procurement system of South Africa is far from being perfect; however, the constitutional policy framework allows for regular reviews and amendments, which is evident in some of the groundbreaking case law. The constitutional case law between Afri-Business NPC vs Minister of Finance (2020) necessitated the amendment of the PPPFA regulations 2017 and the promulgation of the PPPFA regulations 2022<sup>9</sup>. Moreover, the Zondo Commission on

<sup>9</sup> Afribusiness NPC v Minister of Finance [2020] ZASCA 140.

State Capture identified irregularities and abuse of the procurement processes using preferential procurement, which massively influenced the promulgation of the Public Procurement Act<sup>10</sup>.

### 3.3.1.5. The Socio-economic goals of the RDP

Section 17 (1) (2) (3) of the PPPFA provides for specific goals to be prioritised during the procurement processes and to align with the socio-economic goals as enshrined in the White Paper on Reconstruction and Development (1994). The RDP goals have been used as a guiding tool throughout the era of the PPPFA and its regulations<sup>11</sup>. This section of the thesis will base its arguments on the broader examination of the PPPFA regulations against the key provisions of the PPPFA and the alignment with the socio-economic goals of the procurement system, with sections 217, 152 (c), and 153 (a) of the Constitution of the Republic of South Africa, 1996. It is imperative to justify the usage of the RDP goals to examine the evolution of the PPPFA regulations to link these with the main argument made by this thesis, which examines the factors constraining and undermining the use of preferential procurement as a tool for Local Economic Development. This link was once tried and observed by Watermeyer (1999)<sup>12</sup>. His arguments leaned more toward the objectives of a local economic development policy in the creation and maintenance of assets and the provision of services. His paper was presented before the promulgation of the PPPFA, which came a year later (2000).

The available literature on policy and governance was consulted to understand the gaps and further areas of research (Hlakudi, 2012; Jonas, 2024; Nano, 2008; Mkele, 2018). The second body of literature is derived from the Engineering and the Built Environment discipline (Letchmiah, 2012; Adediran, 2018; Watermeyer, 1999). The third body of literature is derived from the Business and Administration and Leadership discipline (Gunter, 2009; Nzo, 2020; Kraai, 2021; Zwane, 2020). To advance this thesis argument, the institutional provisions made by the Government to ensure the successful implementation of the socio-economic goals as prescribed by section 17 (3) of the PPPFA (5 of 2000). According to Eaton *et al.* (2008:10):

Institutional arrangement refers to a set of rules or agreements governing the activities of a specific group of people pursuing a certain objective. Different types of examples include a contract (such as simply to exchange goods, or a

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<sup>10</sup> Judicial Commission of Inquiry. 2022. Report of the Judicial Commission of Inquiry into State Capture Vol 4: All the recommendations. <https://www.statecapture.org.za/site/information/reports>.

<sup>11</sup> Republic of South Africa. 1994. *White Paper on Reconstruction and Development Programme*. Pretoria: Government Printers.

<sup>12</sup> Watermeyer, R.. 1999. October. The use of procurement as an instrument of local economic development. In *Unpublished paper presented at the Conference of the Institute of Municipal Engineers of South Africa, Kempton Park, October*.

sharecropping agreement between landlord and tenant farmer), a producers' organisation (an agreement among farmers, perhaps to jointly purchase inputs or deliver produce to clients), and so on.

The institutional arrangement or provisions form a crucial part when contrasted against the provisions made for implementing local economic development goals and their link with the local government's main policies and plans, including the IDP (Integrated Development Plan) and the Municipal Supply Chain Management Policies. The next section of this thesis will provide the evolution of the PPPFA regulations and their relevance towards the advancement or attainment of the socio-economic goals, also known as section 17 (3) specific goals of the PPPFA.

### **3.3.2. PPPFA Regulations, 2001**

Earlier, this thesis referred to the reforms and amendments of the preferential procurement regime in South Africa and notably the 2000 – 2024 procurement regime, which can be characterised in the context of this paper as the 'implementing state' and 'reform state'. The enactment of the PPPFA into law in 2000 was preceded by the regulations in 2001, which remained for ten years (2001-2011). In the attempt to analyse the evolution of these regulations, it is important to highlight the methods used and applications as prescribed by the PPPFA. In this context, this thesis has two key provisions (functionality versus price preference) within the ambit of the advancement of socio-economic goals.

In the 2001 regulations, functionality was mostly incorporated in the award-winning stage of the procurement process. In the determination of a winning bidder, points could be awarded not only for price and certain preference criteria, but also for functionality criteria (Bolton, 2014:15). More specifically, functionality was an award criterion along with price, which was relevant to the public entities as they were not entirely bound by the PPPFA, and the 2001 regulations given the nature of their registration as legal entities. While that functionality criteria should serve as "qualification criteria" and should not form part of the award stage, when points must be allocated only for price and preference. Bolton (2014) further justifies her argument with a case of *Sizabonke Civils CC t/a Pilcon Projects v Zululand District Municipality*<sup>13</sup>. The

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<sup>13</sup> *Sizabonke Civils CC t/a Pilcon Projects v Zululand District Municipality and Others* (2011 (4) SA 406 (KZP)) [2010] ZAKZPHC 23; 10878/2009 (12 March 2010).

<sup>14</sup> *National Treasury Instruction Note on the Amended Guidelines in Respect of Bids that Include Functionality as a Criterion for Evaluation*. 3 September 2010.

<sup>15</sup> National Economic Development and Labour Council. 2010. *Draft NEDLAC report on the preferential procurement regulations*.

procuring entity was directly bound by the Procurement Act and the 2001 Regulations. Consequently, the courts invalidated Regulations 8 (2) and 8 (7) of 2001 because they conflicted with section 2(1)(b) of the PPPFA which provides that the 80 or 90 points out of 100 must be awarded for price only with the remainder of the points constituting preference points for historically disadvantaged individuals (HDI) or the realisation of Reconstruction and Development Programme (RDP) goals (Bolton, 2014; RSA, 2001).

This takes us to a very crucial development in the era of PPPFA regulations, given the National Treasury directive<sup>14</sup> on the functional role in the procurement process, which also influenced the amendment of the 2001 regulations to the 2011 regulations. Quinot (2023:76) makes a salient observation that the 2001 Preferential Procurement Regulations determined that an entity may provide preference to any bidder that is a historically disadvantaged individual (HDI), as defined, and/or for subcontracting with an HDI, and/or for achieving any of a broad set of specified goals under the government's reconstruction and development programme. This signified the era of imperfections of the PPPFA regime, where we see the Judiciary becoming a source of regulatory reforms, where case law became the determining factor on whether to amend or not. It is important to note that the 2001 regulations remained for the longest (10 years), followed by 2011 as the second longest with 6 years of existence, as well as 2017, 5 years of existence. While 2022 had the briefest existence of 2 years (2022-2024). The next section will demonstrate the evolution of the 2011 regulations and the transition between the 2001 regulations.

### **3.3.3. PPPFA Regulations, 2011**

The repeal of the 2001 regulations on 7 December 2011 meant the 2011 regulations came into effect on 7 December 2011. The introduction of these regulations denotes a crucial change in the PPPFA regulatory regime from functionality, local content, production, and B-BBEE provisions. This also marked a key period in the concerns raised during the draft commenting period by some of the major players, such as the NEDLAC (2010)<sup>15</sup>. Some of the notable areas of concern were highlighted, such as (a) the Exclusion of RDP goals and the implications for local manufacture, (b) B-BBEE and Regulation 9 (3) and lack of emphasis on local content in respect of products that are not designated (also considering RDP goals), (c) B-BBEE as a tiebreaker (d) Decent work.

The observations by NEDLAC strongly disagreed with the assertions of the draft regulations based on the exclusion of the RDP goals and their replacement with the B-BBEE codes of good

practice. According to NEDLAC (2010), the draft regulations exclude RDP goals, which fall under “Specific goals” in the Preferential Procurement Policy Framework Act, and in terms of which localisation receives emphasis under the current procurement system. Quinot (2018:76) maintained a critical view that these regulations set out a rigid table prescribing in absolute terms the specific preference to be given to bidders, based on their formal, broad-based black economic empowerment status certificate. The shift from the RDP goals to the B-BBEE point scoring system was carried through the 2017 regulations, and the point allocation criteria were developed under regulation 5 (2) and 6 (2) of the Regulations, respectively, to justify the 80/20- and 90/10-point scoring system with the B-BBEE criterion:

**Table 8:** B-BBEE points scoring criterion.

80/20 Points Scoring System		90/10 Point Scoring System	
BBB-EE Status Level of Contributor	Number of points	BBB-EE Status Level of Contributor	Number of points
1	20	1	10
2	18	2	9
3	16	3	8
4	12	4	5
5	8	5	4
6	6	6	3
7	4	7	2
8	2	8	1
Non-compliant contributor	0	Non-compliant contributor	0

Source: RSA (2011:9-10)

While this thesis leaned more on the arguments justifying the socio-economic goals attainment by the PPPFA and its regulations, the functionality aspect of the provisions of the 2011 regulations was mostly proclaimed by the National Treasury’s Implementation Guide, on the 2011 regulations following the court case between *BKS Consortium v Mayor, Buffalo City Metropolitan Municipality* (Bolton, 2014). Whether or not functionality should play a role in the contracting process must be determined by the nature of the required commodity or service, taking into account factors such as quality, reliability, viability and durability of the service and the bidder's technical capacity and ability to execute the contract (Bolton, 2014:18). The development of the role played by the Judiciary due to litigation on the regulations and the preferential procurement has been evident in almost all the 4 sets of regulations. In justification of this position, one will notice the trend in the motive behind the repeal of each set of regulations. In the next section, this thesis will discuss the 2017 PPPFA regulations.

### 3.3.4 PPPFA Regulations, 2017

The evolution of the PPPFA regulatory regime has been defined by several landmark factors that the 2017 regulatory regime carries. It has been observed in this thesis that all new sets of regulations passed were influenced or necessitated by key legal challenges against the state, also known as the litigation process. The repeal of these regulations served as a notice for the promulgation of a new set of regulations, in the PPPFA regulations of 2017, which provided for Regulations 16 and 17, duly transitioning from 2011 to 2017 (RSA, 2017):

Reg.16. (1) Subject to this regulation, the Preferential Procurement Regulations, 2011, published in Government Notice No R. 502 of 8 June 2011 (herein called “The 2011 Regulations), are hereby repealed with effect from the date referred to in regulation 17.

(2) Any sector designated, and a minimum threshold determined for local production and content for purposes of regulation 9 of the 2011 Regulations and in force immediately before the repeal of the 2011 Regulations, are regarded as having been done under regulation 8(1) of these Regulations.

(3) Any tender advertised before the date referred to in regulation 17 must be dealt with in terms of the 2011 Regulation.

Reg. 17. These Regulations are called the Preferential Procurement Regulations, 2017 and take effect on 1 April 2017.

In his characterisation of the changes from the 2011 regulations, Quinot (2018) terms this process a ‘third wave’ of legal rules governing preferential procurement in South Africa. These regulations contained three major contentious issues. The first observation was Regulation 4, which outlines the pre-qualification criteria for preferential procurement. This was a new form of set-aside method in the history of South African Procurement Law, which determined who could bid for the tender, and the evaluation was to be conducted using the criteria provided by the regulations. Fourie (2020: 8) problematised regulation 4, that by permitting the application by organs of state of a pre-qualification criterion that necessitates all tenderers to have a minimum B-BBEE status level, the said regulations seem to make provision for entities to side-step the limitations imposed by the PPPFA, in terms of weighting, is to be devoted to a tenderer’s B-BBEE status during the assessment and awarding of a tender. Based on the three broad categories provided by the regulations:

- (a) Bidders with a stated minimum BBB-EE status level of contributor;
- (b) Exempted micro enterprises or qualifying small business enterprises as defined in the

- (c) Broad-Based Black Economic Empowerment Act; and
- (d) Bidders subcontracting at least 30% of the contract to one or more of a list of eight categories of bidders, basically exempting micro enterprises or qualifying small business enterprises with majority shareholdings by the listed categories of people. There was an outcry about the potential discrimination and structural exclusion of certain bidders based on the pre-qualification criteria (Quinot, 2018; RSA, 2017).

The second observation concerns regulation 9, which prescribes subcontracting as a condition of tender. Regulation 9 obliged the organs of state to include a subcontracting condition in a tender contract if two conditions are met, according to Quinot (2018:863):

Firstly, the estimated value of the contract at the time of invitation to bid must be more than R30 million. Secondly, subcontracting must be “feasible” under the relevant contract. The regulations do not provide any more details on what feasibility in this context entails. It is, however, an objective standard, i.e., it must be objectively possible to subcontract under the contract.

The mechanism introduced in regulation 9 invited multiple debates, mostly not in favour of the prescripts, but rather invited a plethora of enquiries, mainly geared towards the confusion caused by the gap in defining a ‘sub-contracting’. This was mainly the case in the process of procuring construction services, where the mechanism was not clear, hence the passing of the National Treasury’s Implementation Guide. Moreover, the Construction Industry Development Board (CIDB) thus issued the best practice guideline on subcontracting arrangements, ‘Subcontracting arrangements’, setting out acceptable and unacceptable forms of subcontracting (Quinot, 2018: 864).

Consequently, besides the introduction of the BBB-EE conditions, it was observed that the regulations added a list of factors for setting aside specific tenders and for mandatory subcontracting, which was observed as limiting the powers of public entities from designing their own set of rules. The unconstitutionality of the regulations derives from the basis of the court’s finding that the PPPFA granted public entities the power to determine their preferential procurement policies and that the Minister of Finance thus did not have the power to prescribe what policies they had to adopt via the regulations (Quinot, 2023: 77). This led to litigation between Afribusiness NPC versus Minister of Finance where the regulations were *ultra vires* and accordingly invalid. As a result, a new set of regulations, the Preferential Procurement Regulations 2022, was issued, in which public entities were granted extensive options to establish their preferential procurement policies. The next section of this thesis details the introduction of the 2022 regulations, which repealed the 2017 regulations.

### 3.3.5. PPPFA Regulations, 2022

*Repeal of regulations: 10. (1) Subject to this regulation, the Preferential Procurement Regulations, 2017, published in Government No. 40553 of 20 January 2017, are hereby repealed with effect from the date referred to in regulation 11. (2) Any tender advertised before the date referred to in regulation 11 must be dealt with in terms of the Preferential Procurement Regulations, 2017 (RSA, 2022:7)*

Amid the landmark case between Afribusiness versus the Minister of Finance, a new set of regulations. The necessity for the repeal of the 2017 derives from the Constitutional Court, in the matter between the Minister of Finance v Afribusiness NPC, ruled that the Minister exceeded his powers when prescribing the 2017 Regulations; the Ministry of Finance rectified the concerns raised in the Constitutional Court judgement with the Preferential Procurement Regulations, 2022 in that the regulations 2022 prescribe what is necessary or expedient as directed by Section 5 of the Preferential Procurement Policy Framework Act (PPPFA). The new regulations took effect on 16 January 2023.

The purpose of the 2022 Regulations is to (National Treasury, 2022):

- (a) Comply with Section 217 of the Constitution on the procurement of goods and services by organs of state.
- (b) Comply with the PPPFA of 2000.
- (c) Comply with the Constitutional Court judgment of February 2022, on the 2017 Regulations.

Recognising the enactment of new regulations, one recalls the compelling reasons behind the passing of the PPP 2022, and this thesis has observed some of the factors. The first factor pertained to the introduction of Regulation 4 (the pre-qualification criteria as a tender condition). Regulation 4 was removed with no clear direction confirming the ‘placeholder’ concept as a new description for the PPR 2022 until the finalisation of the Public Procurement Bill, which was passed in November 2024. The second factor was PPR 4 (prescribed subcontracting as a condition of the tender). This was the most impactful and yet controversial part of the PPR 2017; it prioritised the socio-economic goals very well and managed to give a considerable number of EMEs and QSEs a great taste of the procurement system and value for money. On the other hand, it was heavily criticised for its unconstitutionality, which led to the case by Afribusiness NPC and the Minister of Finance.

The third factor pertained to Broad-Based Black Economic Empowerment (B-BBEE as a

mechanism to claim preference points, instead of specific goals. It may be viewed as taking transformation backwards from what most bidders have been accustomed to when bidding for state contracts; however, it is important to ensure that the regulations are consistent with the founding legislation, the PPPFA, in this regard. Until the PPPFA is repealed, preference points must be claimed on specific goals decided by the organ of state rather than the BBB-EE scorecard. Enterprises are required to comply with B-BBEE as determined by the BBBEE Act and the Codes of Good Practice, as these prescripts are not limited to public procurement only.

Further uncertainties erupted during this major reform, filled with more questions than normal, given the two major events outlined in this thesis earlier, that is, the Zondo Commission of Enquiry Recommendations on State Capture and the Constitutional Court Judgement on the matter between Afribusiness NPC and the Minister of Finance. One of the most prevalent questions was why organs of state are expected to use specific goals when allocating points for preference, and why the B-BBEE status level of contributors not be used as a specific goal in the allocation of preference points? Section 2(1) of the PPPFA requires an organ of state to determine its preferential procurement policy and implement it within a framework envisaged in the PPPFA, and reference in the PPPFA to specific goals is to what is contained in section 2(1)(d)(i) and (ii). If a specific goal is not located in section 2(1)(d)(i), then for it to be included in the tender document, it must be provided for in section 2(1) (d(ii), under the programmes of the Reconstruction and Development Programme (RDP).

The abolishment of the 2017 PPR opened another gap in the declaration of anything that came out of the PPR 2022, that is, its ability to use procurement as a policy tool to redress the ills of the past, as observed by Watermeyer (1999) and Quinot (2023). Quinot (2023: 81) further stressed that the 2022 regulations have also narrowed the policy field by completely omitting the mandate for public procurement as a tool to support economic localisation policy. The legal basis for such localisation is now questionable, and it is expected that the use of public procurement for such economic policy purposes will greatly decrease (if not stop altogether)<sup>2</sup>. This poses a legal challenge to the goals set in the democratisation of South Africa, which set social, economic, and environmental goals to drive public procurement as a policy instrument. It is all deemed unclear, if not completely abolished. Hence, this thesis probes into the effectiveness of the current regulations despite their ‘placeholder’ nature. This thesis holds the view that local government has been heavily affected by these reforms and shall be probed further throughout the study, specifically examining the impact of the current regime against the socio-economic goals.

### **3.4. The Overview of the Public Procurement Act, 2024**

The road to a new of a new statutory instrument to govern public procurement in South Africa has thus been long coming, which has been influenced by several factors. This section outlines the background of the Public Procurement Act (28 of 2024), the legislative framework, and the provisions of the Act will be discussed. Lastly, the implications of the PPA on local government procurement systems and specifically the socio-economic goals, with a special question on the critique that was observed by this study: to what extent can the Act be used as a policy instrument to address the economic, social, and environmental goals?

#### **3.4.1. Background**

It is imperative to first address the series of events that influenced the adoption of the PPA, which was informed by the lack of a reliable and single legal framework governing public procurement in South Africa in including the repeal of sets of regulations from 2001 to 2022, which can be summarised into 21 years of regulatory reforms. The public procurement regime in South Africa is currently fragmented, as there are several laws that regulate procurement across the public administration. This fragmentation confuses, as different procurement rules apply for different organs of state. Some of these laws predate the constitutional order brought about in 1994.

The first motive derives from the Report of the Judicial Commission of Inquiry into State Capture and the implementation of the State Capture Commission recommendations on procurement. The irregularities and findings of the State Capture report challenged the PPPFA regime and its regulations thereof, especially on the corruption and abuse of procurement systems. The road to the PPA began with the 2017 Budget Speech; the Minister of Finance stated that:

The Draft Public Procurement Bill will be published shortly. It will establish a single procurement authority and will consolidate the currently fragmented regulatory environment, in keeping with section 217 of the Constitution (Quinot, 2020:1).

Following the Public Procurement Bill being mentioned by the Ministry of Finance in February 2021, the draft Public Procurement Bill was published for public comment. The PPA aims to regulate public procurement and prescribe a framework within which preferential procurement must be implemented. The PPA is founded on a strong legislative framework, which gives it much more relevance and ensures the framework does not repeat the contentious issues

highlighted in the State Capture report and the National Treasury outlined these key statutory prescripts to give relevance to the PPA<sup>19</sup>:

- Section 195 of the Constitution requires that national legislation must, among others, ensure the promotion in public administration of the following principles: (a) a high standard of professional ethics; (b) efficient, economic, and effective use of resources; (c) development-oriented, accountability, and transparency.
- In terms of section 216(1) of the Constitution, national legislation must prescribe measures to ensure both transparency and expenditure control in each sphere of government by introducing, among others, uniform treasury norms and standards.
- Section 217(1) of the Constitution stipulates that procurement by organs of state and identified institutions must occur under a system that is fair, equitable, transparent, competitive, and cost-effective.
- The Constitution in section 217(2) allows for organs of state to implement a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons disadvantaged by unfair discrimination.
- Section 217(3) of the Constitution requires national legislation to prescribe a framework within which the procurement policy must be implemented.

It is essential and necessary, considering South Africa's history and the developments following the Constitution's implementation, to have legislation that establishes a single framework regulating procurement, in line with all applicable provisions of the Constitution, and that effectively addresses South Africa's socio-economic challenges.

### **3.4.2. Chapter 4 – Preferential Procurement Provisions**

The intent of the PPA is clearly stated in its preamble and section 2, which is the consolidation of the fragmented regulatory regime. There has been growing criticism of what is generally known as preferential procurement, referring to the use of public procurement to address the inequalities of the South African economy (Quinot, 2020:5). The major criticism has been directed at the ineffectiveness and rigidity of the PPPFA, which has been declared unable to transform the economy and redress the inequality.

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<sup>19</sup> National Treasury. 2024. *Public Procurement Bill [B 18 B- 2023]*. Briefing on a Select Committee on Finance, National Council of Provinces. 06 February 2024.

The Act also allows for the repeal or amendment of different provisions of a law to be brought into operation on different dates. For example, the repeal of the Preferential Policy Procurement Framework Act, 2000 (PPPFA), and Chapter 4 of the Act (including provisions of other Chapters necessary for its implementation) and required regulations should take effect on the same date<sup>20</sup>.

This section bases its focus on the context of PPA chapter 4 as the guiding mechanism to the new statutory regime, which gives relevance to the research question probed by this study. The National Treasury has provided in-depth guidance on the implementation of the PPA throughout the Draft Public Procurement Bill process:

- The first iteration of the framework to be prescribed by national legislation (as per s217(3) of the Constitution) was the PPPFA and the first version of the preferential procurement regulations issued in 2001.
- The second iteration of the framework kept the PPPFA in place but revised the regulations in 2011 to replace specific goals with the B-BBEE status level of contributor, based on a Cabinet resolution. It also introduced designations for local production and content.
- The third iteration of the regulations was gazetted in 2017. The introduction of the B-BBEE elements in the Preferential Procurement Regulations, 2011, diluted the objectives of the PPPFA and undermined the advancement of specific preferential goals, such as black persons, women, and persons with disabilities. To this end, the regulations had the following implications.
- The fourth iteration of the regulations in 2022 had to address the challenges referred to in the Concourt judgment, as well as ensuring that the regulations remain within the scope of the PPPFA, unlike in the 2011 and 2017 iterations that replaced specific goals with B-BBEE and provided for local production and content as a disqualification criterion.

This preferential procurement framework should be understood within the context of the procurement system envisaged in section 217(1) of the Constitution. Chapter 4 is also linked to Chapter 5, which provides the framework for the system to be prescribed by regulation, within which procuring institutions must implement their policies. It is within this context that the trade-off between these competing objectives and principles is maximised and balanced.

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<sup>20</sup> National Treasury Media Statement. *Commencement of the Public Procurement Act 2024*. 13 August 2024.

From the lessons learnt, it became apparent that there is a need for a preferential procurement policy framework that is responsive and enabling to deliver on section 217(2) and (3) of the Constitution and other horizontal policy objectives, such as a mechanism to give effect to set-asides for women and the development of industry masterplans, which may lead to designation of sectors, where possible.

Various narratives propagate negative views regarding preferential procurement, and it is important to appreciate that preferential procurement is not: (a) Reverse discrimination against white owned and large enterprises; (b) Lack of competition; (c) Deliberately paying unsubstantiated and unsustainable high prices; (d) Acceptance of poor or low standard of work/quality (e) Corruption or an illegal policy. The PPA, in Chapter 4, seeks to address the fundamental Constitutional provisions in section 217(2) and (3), and provides for regulations to address negotiations with bidders, which are envisaged would include, amongst others, the negotiation of a fair market price to prevent the government from paying exorbitant prices for contracts awarded (National Treasury, 2024).

### **3.4.3. Provisions in the Act as passed by the National Assembly<sup>21</sup>**

*Set asides for preferential procurement (clause 17)* - Setting aside (ringfencing) for certain categories of persons to provide for the protection and advancement of persons historically disadvantaged by unfair discrimination. Provides for regulations to set targets for set-asides. Provision is made for instances if not possible to find suppliers within those categories of persons - the provision for empowerment will, however, not be lost but provided for in terms of the clause dealing with pre-qualification criteria. Procuring institutions must record the analysis that informed their inability to procure using a set-aside and then report to the PPO and provincial treasuries.

*Prequalification criteria for preferential procurement (clause 18)* - Prequalification will apply to procurement with a higher threshold than set-asides. The list of persons to be reached by this clause is broader than the list provided for in the Set Aside clause. During the SCOF process, the reference to the preference points system was replaced by the reference to “prescribed criteria” to enable the opportunity to research further and to apply potential alternative measures

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<sup>21</sup> Republic of South Africa (RSA), 2024. *Public Procurement Act (No. 28 of 2024)*. Pretoria: Government Printing Works. Accessed at [www.treasury.gov.za](http://www.treasury.gov.za) on [29 March 2025].

of preference and evaluation, and award criteria. This provision also compels the private sector to contribute to transformation and supplier development by recognizing the B-BBEE levels of contribution and making provision for subcontracting.

*Subcontracting as a condition of bid (clause 19)* - For contracts above a prescribed amount, a procuring institution must provide for subcontracting a prescribed percentage of the contract to certain persons and categories of persons. The list of persons to be reached by this clause is aligned with the list provided for in the prequalification for the preferential procurement clause (clause 18). The term “feasible” is used in recognition of the fact that it may not always be possible to subcontract in all tenders due to the nature of some bids. Provision is made that the persons or categories of persons identified for empowerment must be citizens, or owned by citizens, of South Africa under prescribed percentages. As with the prequalification clause, it was envisaged that the application of subcontracting as a condition of bid would also be paired with the preference points system as prescribed. However, during the SCOF process, this reference to the preference points system was also replaced by the reference to “prescribed criteria” to enable the opportunity to research further and to apply to potential alternative measures of preference and evaluation, and award criteria.

#### **3.4.4. Implications on Local Government**

*Provision is made for amendments to, and the repeal of, 16 Acts listed in Schedule to the Bill, which includes the repeal of the PPPFA and amendments to the PFMA and MFMA (clause 67)<sup>22</sup>*

The PPA brings a new regime for local government with a specific reference to the revocation of Chapter 1 of the MFMA. This means that the current provisions dealing with procurement at the local government level will be wholly subsumed under the Bill (Quinot, 2020:11). This will massively challenge the distinctiveness, interdependence, and interrelatedness of local government from other spheres of government. Chapter 9 of the Act gives too much focus on the dispute resolution mechanisms of the provincial and national government and is unclear about local government. There is a growing concern about how local government will juggle the implementation of the PPA once it comes to the application stage.

The institutional arrangement suggested by the Act is confusing and will be confusing for local authorities on three counts: firstly, the role of the tribunal and its intersection with local

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<sup>22</sup> Republic of South Africa (RSA), 2024. *Public Procurement Act (No. 28 of 2024)*. Pretoria: Government Printing Works. Accessed at [www.treasury.gov.za](http://www.treasury.gov.za) on [29 March 2025].

government accountability levels; secondly, the role of the regulator and its link to local government procurement; and lastly, the role of the Public Procurement Office (PPO), which seems to be replacing the Office of the Chief Procurement Officer (OCPO). The merits of the PPA cannot be completely discounted; the reintroduction and refinement of clauses 17, 18, and 19 reignite some lost hope on the use of public procurement as a policy instrument to redress the ills of the past. Chapter 4 of the PPA provides the basis for the research question and lays a good foundation to further probe the institutional arrangement or provisions for the realisation of the socio-economic goals and the alignment with the Municipal policies, such as SCM and LED, and how the two can complement each other.

### **3.5. Summary**

This chapter outlined the preferential procurement statutory and policy environment to examine the literature and key legislative prescripts to substantiate the research question. Given the nature of preferential procurement and its regulatory features, it was important to examine the available literature on the statutory and policy provisions of preferential procurement to determine the factors constraining and undermining the use of preferential procurement as an instrument for local economic development in local government. Moreover, the institutionalisation of the preferential procurement and local economic development goals, in the local government context this would be situated at the SCM level. Hence, this chapter focused on and discussed preferential procurement reforms, the evolution of the PPPFA and its regulations; the overview of the newly signed Public Procurement Act, as well as corruption as an inhibiting factor in public procurement, was discussed. The next chapter will focus on data analysis and the discussion of findings from the data collected.

## CHAPTER FOUR

### DATA ANALYSIS AND THE DISCUSSION OF FINDINGS

#### 4.1. Introduction

This chapter will present an analysis of findings from interviews conducted with officials of the National Treasury. In total, qualitative interviews were conducted with 8 participants from two units, A and B, as depicted in Table 9. Findings from the interviews were analysed together with a reading of secondary literature sourced from the National Treasury, which included a range of documents covering official reports and statutory documents like the MFMA circulars, etc. The analysis will be structured according to the principles of thematic analysis to scrutinise the themes developed during the analysis process as outlined in Chapter One.

#### 4.2. Overview of the data analysis

The interview guide consisted of seven open-ended questions, which were supplied to both the Group Interview and the Focus Group as described in Chapter One. The table below depicts the coding of participants to provide the identification of the participants without disclosing personal details such as names.

**Table 9:** Research participants and codes

Institution	Division	Labels	No. of participants
National Treasury	Unit A	PNS 1	2
		PNS 2	
	Unit B	GMC 1	6
		GMC 2	
		GMC 3	
		GMC 4	
		GMC 5	
		GMC 5	
<b>Total number of participants</b>			<b>8</b>
<b>Source:</b> Researcher's own source			

This section will analyse the primary research outcomes as per the questions asked in both interview sessions.

#### 4.3. Discussion of findings

The research participants were presented with 8 interview questions (*see Appendix 1*) to answer the research question, which is: What factors constrain and undermine the monitoring and

compliance with preferential procurement policies in local government? The responses were grouped in terms of the following themes:

**Table 10:** Thematic Outline

<b>Theme 1: Monitoring and oversight of the PPPFA implementation</b>	
Sub-theme A	The role of NT in monitoring the Implementation of PPPFA
Sub-theme B	Monitoring mechanisms for compliance
Sub-theme C	Shared roles on the monitoring role
<b>Theme 2: Performance management of municipalities</b>	
Sub-theme A	Measurement tools used
Sub-theme B	The effectiveness of the monitoring instruments
Sub-theme C	Sanctions for non-performance
<b>Theme 3: Constraints, support, and lessons learned</b>	
Sub-theme A	Common constraints encountered
Sub-theme B	Support from NT to municipalities
Sub-theme C	Lessons learned
<b>Source:</b> Researchers' own source	

#### **4.3.1. Monitoring and oversight of the PPPFA implementation**

The responses from the participants regarding the monitoring and oversight of PPPFA implementation in municipalities reveal the following emerging themes:

##### ***4.3.1.1 The role of NT in monitoring the implementation of PPPFA***

According to participant 3 (Interview:12 June 2025), the National Treasury (NT) plays a key oversight role in ensuring that municipalities comply with the PPPFA and its associated regulations effectively:

“This includes implementation guidelines and rolling out workshops to assist municipalities in aligning their Supply Chain Management (SCM) policies with the PPPFA”.

Considering the above, NT is the custodian of the PPPFA statute and is constitutionally tasked to design and implement policies. Monitoring role becomes a traditional and organic matter; hence, policy alignment with municipalities' SCM policies to mirror the MFMA and the PPPFA is crucial. Moreover, Participant 3 added that:

“Road shows are also conducted to raise awareness, particularly following the introduction of new regulations”.

The roadshows are organised and implemented in collaboration with Provincial Treasuries (PTs) for ease of coordination. Although NT initiates the processes, it becomes a district responsibility depending on the method preferred by NT, where district municipalities assemble, and local municipalities in their jurisdictions. Furthermore, NT reviews SCM policies submitted by municipalities to ensure that these are aligned with the updated regulatory framework. Section 2 (1) of the PPPFA prescribes a framework for the implementation of the preferential procurement policy, that an organ of state must determine its preferential procurement policy and implement it within the prescribed framework.

Therefore, all the SCM policies must follow the framework and NT provided support and guidance, to eliminate the risk of non-compliance from municipalities. It has been observed that there are underlying risks attached to this approach, such as communication breakdowns from NT, PT, and District Municipalities, which affect and dilute the intent of these roadshows and workshops. The introduction of technology has also brought another factor with the potential to limit the risks; however, it's also not perfect, given that some officials can easily log in and continue with their business.

#### ***4.3.1.2. Monitoring mechanisms for compliance***

According to participants 3 and 4 (Interview: 12 June 2025), municipal compliance is monitored through regular reviews of SCM policies, bids, and quotations:

“NT uses various tools such as the GoMuni system and the eTenders portal to track procurement activities. These platforms allow NT to monitor both planning and transactional compliance with the PPPFA and its objectives”.

The enactment of the PPPFA in 2000 did not come without challenges and imperfections; the regular reforms of regulations are testament to the gaps it carried. The groundbreaking constitutional court case that resulted in PPR 2017 being invalid between Afri-Business versus the Minister of Finance reduced the powers of the Minister on the dictates of the statute. This resulted in reduced monitoring authority from NT. This was supported by the concerns raised by Participants 1 and 2 (Interview: 6 June 2025) on the limited authority to enforce the PPPFA. This complicates NT's role in general and poses a risk to the application of the Watermeyer (2003) conceptual framework, due to limited access to key aspects of oversight.

#### ***4.3.1.3. Shared roles on the monitoring role***

Participant 1 stated the importance and the role of the other oversight bodies, such as the Auditor General (AG), which can point to irregularities in why the PPPFA prescripts were not followed. Chapter 9 institutions carried a crucial mandate in ensuring transparency, accountability, and proper use of state funds and preventing corruption and fraud. The AG's role has been instrumental throughout the PPPFA regime, and it was echoed by the Zondo Commission on State Capture, which also justified the role of the judiciary in procurement matters, given the legal sensitivities attached to SCM matters. The AG's role presents one side of the coin, while the extended coordination role played by PTs becomes handy as outlined in sub-theme (4.3.1.1). Participant 3 further outlined the role of provinces, given their role in coordinating 205 local and district municipalities through the NT, while 17 municipalities (metropolitans and some secondary cities) account for the largest Equitable Share reports straight to the NT.

#### **4.3.2. Performance management of municipalities**

The responses from the participants regarding the performance management of municipalities for the PPPFA implementation, following emerging themes:

##### ***4.3.2.1 Measurement tools used***

The participants were asked about ways to measure municipalities on socio-economic goals as prescribed by the PPPFA, with special reference to the RDP goals. Besides section (2) of the PPPFA, this is the heart of the statute, and Watermeyers (2003) conceptual framework on PPPFA implementation methods provides a guide for the application of the strategies. These have guided the narrative that, without the principles of good governance and socio-economic development, PPPFA does not hold any significance.

The National Treasury relies on data from platforms such as the Central Supplier Database (CSD) to monitor progress in these areas. However, at this stage, the specific information required to provide a comprehensive assessment on municipalities and State-Owned Entities (SOEs) is not yet available (Participants 3, 4,5,6,7,8 (Interview, 12 June 2025)). Based on the participants' remarks, NT has advanced in building monitoring systems for the National Government, not-for-profit SOEs, and municipalities, yet, which poses a concern in terms of the PPA regime, which is about to start with no baseline for these organs of state.

##### ***4.3.2. 2. The effectiveness of the monitoring instruments***

The effectiveness of the instruments shared above is not effective, given that they only cover national government departments. Moreover, these instruments are important to understand the progress made by the organs of state to demonstrate whether the application of the PPR has made any difference. Additionally, Participants 1 and 2 (Interview: 6 June 2025) shared key insights on the extent to which municipalities can be exempted from the applications and prescripts of the PPPFA prescripts is through the office of the Minister, meaning organs of state cannot award contracts without applying the 80/20- or 90/10-points scoring system.

#### ***4.3.2.3. Sanctions for non-performance***

The South African government has been heavily affected by turbulent times, such as the state capture, which brought a wave of destruction to the procurement systems. According to participants 3,4,5,6,7,8 (focus group) (interviewed 12 June 2025):

Where municipalities fail to comply with the PPPFA, NT is empowered under section 5(2)(c)(i) and section 5(2)(e) of the MFMA to recommend the stopping of funds in line with section 216(1) of the Constitution.

These sanctions are applied in serious cases and aim to enforce compliance and improve governance at the local government level. Moreover, Participant 1 also raised a major point that the act does not have provisions for sanctions; however, there are regulations on irregular expenditure and a framework that deals with such (National Treasury, 2021). Despite the focus of the study on local government, however, there is a framework for PFMA-governed institutions. Circular 68 applies to all municipalities.

#### **4.3.3. Constraints, support, and lessons learned**

The responses from the participants regarding constraints, support, and lessons learned for the implementation of PPPFA, following emerging themes:

##### ***4.3.3.1 Common constraints encountered***

According to participants 3,4,5,6,7,8 (focus group) (interviewed 12 June 2025), several recurring challenges continue to affect municipalities' ability to comply with the PPPFA, including:

- *Lack of human resource capacity*, particularly in SCM units, leading to delays and errors in procurement processes. Municipalities are still constrained by staff shortages, which tend to affect their performance and slow the SCM processes.
- *Deliberate non-compliance or malicious compliance*, where officials purposefully

- ignore or manipulate the rules.
  - *Lack of clear Standard Operating Procedures (SOPs)*, resulting in inconsistent application of procurement regulations.
  - *Weak internal controls and oversight*, which increase the risk of irregular expenditure and fraud.
  - *Poor procurement planning*, including failure to align procurement plans with the Integrated Development Plan (IDP) and budget.
  - *Frequent changes in leadership or SCM staff* disrupt continuity and institutional memory.
  - *Limited understanding of the PPPFA regulations*, especially where officials have not been trained or updated on regulatory changes.
  - *Failure to integrate systems*, such as not using the Central Supplier Database (CSD) or GoMuni effectively for decision-making.
- Inadequate consequence management at the municipal level*, where poor performance or misconduct goes unpunished.

The municipal challenges have been pronounced as continuous despite the AG findings and regular reports, and there have been minimal consequences. Moreover, Participant, previously the PPR (2001-2017), would spell out for copy and paste; currently, all state organs are obliged to adopt their own PP policies. Those policies tend to differ, and the challenge has been threshold flexibilities on application before 2001-2022. It was then advised that these be applied to tenders above R30,000, and those who did not would face audit findings.

#### ***4.3.3.2. Support from NT to municipalities***

According to participants 3,4,5,6,7,8 (focus group) (interviewed 12 June 2025), NT provides wide-ranging support to assist municipalities in complying with the PPPFA. This includes conducting SCM workshops, providing written advice, reviewing tenders, and offering guidance as detailed in presentations. NT's support also covers:

- *Governance*: SCM Risk Assessments, SCM Maturity Model, Performance Metrics, and promoting transparency and accountability.
- *Monitoring*: Oversight of procurement plans, deviations, and contract expansions, referrals for restrictions through the Special Investigating Unit (SIU), data analysis, and site visits.
- *Compliance*: Bid reviews, resolving audit and tender disputes, addressing tender cancellations, and processing exemptions or departures.
- *Support*: Direct engagement through workshops, implementation of SCM roadmaps, written advice, and assisting municipalities in assessing irregular expenditure.

#### ***4.3.3.4 Lessons learned***

The PPPFA regime brought a magnitude of lessons for the betterment of the PPA regime, as outlined in Chapter 3 of this thesis. The notable lessons were mostly driven by litigation cases, the role of the judiciary, and the Zondo Commission. However, according to participants 3,4,5,6,7,8 (focus group) (interviewed 12 June 2025), the implementation of PPPFA reforms has presented valuable lessons for strengthening NT's oversight and support role. Key lessons include:

- Monitoring tools need to be more user-friendly and standardized across all municipalities to ensure accurate and timely data reporting.
- Consequence management mechanisms must be enhanced and consistently applied to address repeat non-compliance.
- There is a need for ongoing training and refresher programmes to ensure officials are up to date with new regulations and good practices.
- Better integration of procurement data with planning, budgeting, and service delivery information will improve decision-making and accountability.
- Municipalities need to be supported to develop and implement practical SOPs and internal control measures that align with PPPFA objectives.
- Peer learning platforms and case studies should be developed, allowing well-performing municipalities to share experiences and practices.
- NT should collaborate more closely with Provincial Treasuries to ensure that technical support is accessible and responsive to local challenges.
- The use of performance dashboards and compliance heatmaps can assist in identifying high-risk areas and focus support where it is most needed.
- Feedback loops from tools such as GoMuni and the eTenders portal must be improved to ensure that municipalities are aware of their gaps and the corrective actions required.

#### **4.4. The analysis of findings**

The key themes that emerged during the analysis of primary data were reviewed after comparing the results of the study, and the revised themes presented in this chapter were formed. The themes include limited oversight scope, the use of modern technology to monitor compliance (Go-Muni and e-Tender Portal); lack of a comprehensive monitoring tool; Governance, compliance, and monitoring support provided; common constraints, ignorance,

lack of internal controls and SOPs; freezing of grant allocations in case of non-compliance; and good lessons learned.

This section shows that NTs have reformed in their quest to monitor the implementation of the PPPFA, despite the effect of the Afri-Business versus the Minister of Finance Constitutional Case law. The introduction of technological tools to monitor procurement processes at the municipal level and the ability to impose sanctions where there is evidence of non-compliance signify the ability of NT to improve over time. However, besides the compliance aspect, there is a gap in data on the development goals and the effectiveness of the PP policies, which cannot be measured.

#### **4.4.1. Limited scope for full oversight**

The National Treasury plays a crucial role in monitoring and supporting local government, including workshops, SCM policy reviews, and roadshows, participants 3 and 4 (Interview: 12 June 2025). Moreover, the role of provincial treasuries was mentioned as an extension of the monitoring and support mechanism. However, some bigger Municipalities, such as Metropolitan and some secondary cities, report directly to NT based on the equitable share allocations. Participants 1 and 2 also indicated that the importance of the Constitutional Court Judgement on the powers of the Minister was out of scope. Therefore, organs of state have the power to craft or design their preferential procurement policies, and the PPPFA only gave the Minister the regulation of the threshold and formula for the preference points. Therefore, each organ of state must determine its own specific goals and must apply the preference points. The Auditor General (AG) can also verify if these provisions were applied by each organ of state.

#### **4.4.2. The use of modern technology to monitor compliance**

Municipal compliance is monitored through regular reviews of SCM policies, bids, and quotations, participants 3 and 4 (Interview: 12 June 2025). This is to ensure they are aligned with the PPPFA regulations. The reviews emanate from the AG findings, whistleblowing, and on request by law enforcement institutions responsible for the detection of potential fraud and corruption, such as the SIU and the Hawks. NT must ensure the remedial actions recommended by the AG are implemented and in line with the legislation. NT uses various tools such as the GoMuni system and the eTenders portal to track procurement activities. These platforms allow NT to monitor both planning and transactional compliance with the PPPFA and its objectives. It is important to note that, as NT has 17 big municipalities reporting directly to it, the other 240 municipalities' monitoring is still their responsibility, despite the shared role with

provincial treasuries.

#### **4.4.3. A lack of a comprehensive monitoring tool for Local Government**

According to participants 3, 4,5,6,7,8 (Interview: 12 June 2025), the National Treasury relies on data from platforms such as the Central Supplier Database (CSD) to monitor progress in these areas. However, at this stage, the specific information required to provide a comprehensive assessment on municipalities and State-Owned Entities (SOEs) is not yet available. This means NT has an overview of the monitoring of goals on the National Government or Departments; however, they might prioritise it in the future. The researcher followed up with a question on the provincial treasury's role. Participant 4 raised the risk of monitoring, given the constitutional court judgment on the autonomy of organs of state; however, it is encouraged that municipalities must keep such information at LED functions to keep in line with the court judgment. Therefore, NT only comes in when needed to advise, not to give any directives. Participant 5 added on the invalidation of the regulations 2017, which marginally differ from the 2022 regulations, given the autonomy that was granted by the court to the organs of state.

#### **4.4.4. Compliance and monitoring support provided**

According to participants 3, 4,5,6,7,8 (Interview: 12 June 2025), this includes conducting SCM workshops, providing written advice, reviewing tenders, and offering guidance as detailed in presentations. For example, the review and monitoring of procurement plans, based on the commitments made, the National Treasury follows up with the institution to gather any reasons for poor spending. Referrals for restrictions emanate from corruption and fraud, where the internal control measures play a crucial role, per the organ of state. According to participant 3, support is granted in the case of potential irregularities in the bid processes; NT, using circular 43<sup>25</sup>, must ensure all the processes have been followed.

#### **4.4.5. Non-compliance and poor internal controls in municipalities**

The issues raised in this section of the research are mostly directed at the organs of state, including municipalities, to put measures in place to ensure there are internal controls, including the incorporation of the SCM functions in the senior management Key Performance Indicators (KPI's). This would make it compulsory for all the senior managers to ensure that all the constraints raised by NT are addressed at an organisational level.

#### **4.4.6. Freezing of grant allocations in case of non-compliance**

According to participants 3,4,5,6,7,8 (focus group) (interviewed 12 June 2025), where municipalities fail to comply with the PPPFA, NT is empowered under section 5(2)(c)(i) and section 5(2)(e) of the MFMA to recommend the stopping of funds in line with section 216(1) of the Constitution. These sanctions are applied in serious cases and aim to enforce compliance and improve governance at the local government level.

#### **4.4.7. Lessons learned from the PPPFA implementation**

According to participant 6 (Interview: 12 June 2025) outlined the role of intergovernmental relations in pursuit of benchmarking and peer learning processes to find issues of common interest. Participant 4 indicated the lessons learned, e.g., incubation programmes to empower contractors and use the positive stories to inform the regulations to benchmark these lessons. This could also mean the recommendation of set-aside strategies to drive the transformation agenda. For example, the SANRAL contractor development programme can be used as an example. The PPA has different sections that deal with different aspects, for instance, consequence management, recognising that it starts with contract management to ensure performance before the imposition of penalties. Participant 6 further highlighted some of the well-performing municipalities to inform the new regime, including George, Ethekwini, and Sanqu Municipalities, etc. The systems have also improved at NT, and decisions are made just in time. For the non-compliant municipalities with no Municipal Managers or CFOs (Chief Financial Officers), they would forfeit their equitable share allocation.

#### **4.5. Summary**

This chapter presented an analysis of findings from interviews conducted mainly with officials of the National Treasury. Data was analysed and interpreted in response to the research question as outlined in chapter one. A large part of this chapter analysed primary data, and findings were presented based on the themes and codes created. This will align well with the conclusions to be drawn by the study and the recommendations thereof to be discussed in the next chapter.

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<sup>25</sup> National Treasury. 2007. MFMA Circular No. 43, Municipal Finance Management Act No. 56 of 2003. Pretoria Accessed at <https://www.treasury.gov.za/> on [ 18 June 2025].

## **CHAPTER FIVE**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1. Introduction**

The previous chapters have discussed a large part of this study. This chapter will summarise the main findings and wider research contributions that this thesis has tried to make by examining the preferential procurement reforms in local government. It will begin with the general conclusions of the study. It will then link the research question with the findings of the study. The thesis will then detail a list of recommendations, implications, and finally, future research.

#### **5.2. General conclusions**

Four main issues emerged from the research process, namely, limited scope for full oversight; a lack of a comprehensive monitoring tool for local government; non-compliance and poor internal controls in municipalities; and freezing of grant allocations in case of non-compliance.

##### **5.2.1 Limited scope to exercise full oversight**

The National Treasury (NT) plays a key oversight role in ensuring that municipalities implement the PPPFA and its associated regulations effectively. However, the powers and authority of the Minister of Finance have been reduced with the constitutional Court Judgement citing overstepping of powers<sup>26</sup> in 2020. These powers were transferred back to the organs of state as prescribed by the PPPFA (5 of 2000) section 2 (1), where an organ of state must determine its preferential procurement policy and implement it within the framework as per the act. The enactment of the PPPFA gave effect to section 217 (3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217 (2) of the Constitution, and to provide for matters connected therewith. Moreover, some of the monitoring and compliance functions are shared with the provincial treasuries to ensure efficiency and effectiveness. Although this is a lawful practice, it is hard to develop some monitoring tools to measure the information needed.

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<sup>26</sup> Afribusiness NPC v Minister of Finance [2020] ZASCA 140.

### **5.2.2 Lack of a comprehensive monitoring tool for local government**

Currently, the specific information required to provide a comprehensive assessment on municipalities and State-Owned Entities (SOEs) is not yet available. Meaning the only information that is assessed is from the National Government departments. However, the authority to ensure remedial actions are actioned remains NT's role. As the PPPFA regime concludes as soon as the PPA comes into effect, how can we measure its success if there is a lack of data? This further exacerbates the current information gaps at municipalities. Moreover, the issue of specific goals is sensitive as it has significance in whether PPPFA was a success or a failure.

### **5.3.3. Poor internal controls in municipalities.**

The NT identified some of the most common constraints that affect municipal compliance with the PPPFA, which can be linked to institutional issues. Some of the constraints include a lack of human resource capacity; deliberate non-compliance or malicious compliance, weak internal controls and oversight; poor procurement planning, frequent changes in leadership or SCM staff; limited understanding of the PPPFA regulations, failure to integrate systems, and inadequate management at the municipal level. The lack of internal control might affect poor consequence management; hence, the AG report only shows that 24 municipalities achieved clean audits by the year-end 2022-2023.

### **5.3.4 Sanctions for non-compliance**

Where municipalities fail to comply with the PPPFA, NT is empowered under section 5(2)(c)(i) and section 5(2)(e) of the MFMA to recommend the stopping of funds in line with section 216(1) of the Constitution (National Treasury, 2005). These sanctions are applied in serious cases and aim to enforce compliance and improve governance at the local government level. The equitable share allocation can also be forfeited where there is no compliance. Although NT powers have been reduced by the constitutional court judgement, it remains their responsibility to ensure policy coordination and support where necessary; however, the culture of non-compliance must be punishable.

In conclusion, the regulations were found to be unlawful by the constitutional court judgment in the case of Afri-Business versus the Minister of Finance. Therefore, this necessitated massive changes in the oversight role of NT, with more powers being granted to organs of state, which sometimes do not implement the policies as prescribed. As a result, the public sees the

same companies benefiting from procurement opportunities. There is currently no framework to closely monitor and enforce the legislation and give the NT some authority.

#### **5.4. Recommendations**

To address the research question, the study put forward the following recommendations:

##### **5.4.1 Intensify the monitoring and reporting mechanism**

Recognising that there are limitations to this function, as outlined in the previous section. The currently shared monitoring role between NT and provincial treasuries must be stringent to ensure all organs of state devise and implement sound preferential procurement policies to complement the PPA policy intent. One of the current issues is the ability to measure the impact and quantify the successes and failures of the previous regime of PPPFA to avoid the common mistake encountered by the PPPFA regime, which was challenged by the constitutional court. Currently, municipalities can design and adopt preferential procurement policies with no obligations to have contractors or MSME empowerment programmes to ensure there is access and prevent fronting.

##### **5.4.2. Strengthen internal control measures**

Some municipalities are struggling to attract a skilled workforce to head the offices of the Municipal Manager (e.g, risk management and internal auditing functions). Consequence management remains one of the major challenges as far as local government is concerned, given the culture of no prosecution for fraud and corruption in public procurement. The PPA makes provision for the tribunal to ensure fairness and equality to reduce the rate of fraud and corruption. The functionality of committees (Bid specification, evaluation, and adjudication) becomes key and must be presided over by the most senior officials.

##### **5.4.3. Punishment for poor performance and reward for excellence**

Supply Chain Management (SCM) is one of the most sensitive functions, which can be stressful. Society has been negative towards the state for many reasons; however, there must be recognition of excellence to encourage good governance, accountability, transparency, and ethical behaviour. This would create healthy competition between procuring institutions and get recognition from the presidential or ministerial office. This would change the mindset and attitude towards the performance of other organs of state. It is important to note that 24 functional municipalities should be encouraged to keep their performance maintained.

## **5.5. Future research**

Based on the limitations and findings of the study on the implementation of the Preferential Procurement reforms on local government, here are some recommendations for further research:

- Evaluate the impact of the PPPFA regime since its enactment in 2000 until 2024. To measure the impact and quantify the beneficiaries of the policy as per section 17 of the PPPFA.
- Conduct a comparative study on the implementation of preferential procurement on state-owned entities as users of the policy with any other organ of state.
- Study the importance of data management in procurement processes in the digital age and the effect of data on the SCM function.

## **5.6. Policy implications**

This researcher studied the preferential procurement reforms in local government. Mainly, factors that constrain and undermine the monitoring and compliance mechanisms for the implementation of preferential procurement at the local government level. The Social Justice Theoretical underpinnings were used to justify the research question. Based on the research outcomes, there are great lessons to learn from the previous regime of PPPFA, and those can be carried forward to the new PPA regime, mainly under Chapter 4. The purpose of this research was to draw lessons from the preferential procurement policies and inform the new regime. This research was selected to make a direct contribution to the academic world and practice to improve ways of doing things.

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## APPENDIX 1

### Interview questions



### INTERVIEW GUIDE

***Title:***

*Investigating the challenges of monitoring and enforcement of preferential procurement regulations in South African local government*

***Research question:***

What factors constrain and undermine the monitoring and compliance mechanisms for the implementation of preferential procurement in local government?

Thank you for participating in this research. I am Luvo Bomvana, a Master of Philosophy (Public Policy and Administration) student at the Department of Political Studies, University of Cape Town (UCT). This questionnaire forms part of my master's minor dissertation titled "*Investigating the challenges of monitoring and enforcement of preferential procurement regulations in South African local government*". The study aims to examine the factors that constrain central oversight bodies like the National Treasury and Provincial Treasuries from performing the monitoring and support role. ‘

Your cooperation and participation are much appreciated. Please note that your name is neither required nor requested; hence, confidentiality is assured. The questionnaire should only take up to 50 minutes of your time.

**Aim of the Study:**

To draw on the insights shared by the institution with oversight authority over the implementation of the preferential procurement policy of South Africa.

**Questions for the National Treasury**

Position in the organisation.....

Directorate.....

Section.....

1. What role does the National Treasury (NT) play in overseeing the implementation of the PPPFA (Preferential Procurement Policy Framework Act) and its regulations by municipalities?
2. How do you monitor and measure whether municipalities are complying with the PPPFA's prescripts?
3. How are municipalities performing in various aspects of the PPPFA's goals (e.g. (a) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination based on race, gender or disability, (b) South African-owned SMMEs, (c) the creation of new jobs or the intensification of labour absorption (d) the empowerment of the work force by standardising the level of skill and knowledge of workers)?
4. What specific support does the NT provide to municipalities to adhere to the PPPFA?
5. What are the most common constraints that affect municipal compliance with the PPPFA??
6. What sanctions is the NT able to enforce on municipalities that do not adhere to or transgress the PPPFA, and how effective are these sanctions?
7. What lessons can be drawn from the implementation of the PPPFA reforms on how the NT can improve its oversight and support to municipalities?

## APPENDIX 2

### Approval From the Ethics Committee



# UNIVERSITY OF CAPE TOWN

IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

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20<sup>th</sup> May 2025

To: Luvo Bomvana  
From: Ethics Committee  
Subject: Ethics Clearance  
Clearance: No:005  
Research: Examining the preferential procurement reforms on local government.  
Date: 20th May 2025

This letter confirms that the researcher, Luvo Bomvana Ethics Approval request titled: Examining the preferential procurement reforms on local government was approved, subject to removing the line: 'or Guardian if participant is under 18' in the informed consent form by the Political Studies Ethics Committee on the 20<sup>th</sup> May 2025.

Yours sincerely

**A/Professor Vinothan Naidoo**

On Behalf of the Ethics Committee

Department of Political Studies

"OUR MISSION is to be an outstanding teaching and research university,  
educating for life and addressing the challenges facing our society."