

Workshop on a Public Procurement Authority for South Africa

Programme		Time (SAST)
Welcome	Geo Quinot, Stellenbosch University	14:00
Background to the proposal of a procurement regulator in South Africa	Geo Quinot	14:05
The experience in Kenya – the Public Procurement Regulatory Authority	Patrick K. Wanjuki, Director-General, Public Procurement Regulatory Authority of Kenya	14:15
The experience in Kenya – the Public Procurement Administrative Review Board	Faith Waigwa, Chairperson of the Public Procurement Administrative Review Board of Kenya	14:30
The experience in Ghana – the Public Procurement Authority	Frank Mante, Chief Executive Officer, Public Procurement Authority, Ghana	14:45
The experience in Chile - ChileCompra	Tania Perich Iglesias, Director, Dirección ChileCompra	15:00
Supporting the creation of a public procurement authority	Steve Guppy, Crown Agents	15:15
Public procurement authorities and open contracting	Carey Kluttz, Head of Country Programs, Open Contracting Partnership	15:30
Discussion	Audience	15:40
Close	Geo Quinot, Stellenbosch University	16:20

BACKGROUND

State Tender Board - State Tender Board Act 86 of 1968

- Regulatory
- Operational

Public Finance Management Act 1 of 1999 + Local Government: Municipal Finance Management Act 56 of 2003

- Double decentralization
- SCM office in NT

BACKGROUND

2013: Office of the Chief Procurement Officer (OCPO)

2012 Budget: “NT will appoint a Chief Procurement Officer who will have overall responsibility for monitoring procurement across government”

2013 Budget: “The process for setting up the Chief Procurement Office in the National Treasury has begun in earnest and I shall soon be able to announce the name of a Chief Procurement Officer. A project team seconded from state agencies and the private sector has identified four main streams of work, involving immediate remedial actions, improving the current system, standardising the procurement of critical items across all government and the long-term modernisation of the entire system.”

BACKGROUND

Quinot, G. (2014) *An Institutional Legal Structure for Regulating Public Procurement in South Africa - Research report on the feasibility of specific legislation for National Treasury's newly established Office of the Chief Procurement Officer*

Brunette, R., Klaaren, J. (2020). Reforming the Public Procurement System in South Africa. *Position Papers on State Reform*. Public Affairs Research Institute.

Draft Public Procurement Bill, 2020

– Public Procurement Regulator

- (a)* ensure that institutions comply with this Act and engage in the prudent spending ...
- (b)* guide and support officials and institutions to ensure compliance with this Act and in doing so—
 - (i)* provide advice and assistance to institutions;
 - (ii)* develop, promote and support the training and professional development ...
- (c)* promote & ensure the integrity of the procurement system and monitor and integrate revisions and learning ...
- (d)* develop and implement measures to ensure transparency ... and promote public involvement ...
- (e)* intervene by taking appropriate steps to address a serious or persistent material breach of this Act ...
- (f)* reconsider decisions of institutions where necessary ...
- (g)* monitor the changes effected and revisions proposed to the procurement system by other organs of state ...
- (h)* continuously revise and provide guidance ...
- (i)* establish and maintain registers for bidders and suppliers debarred ...
- (j)* create and maintain one or more databases ...
- (k)* promote the use of technology in procurement;

Judicial Commission of Inquiry into State Capture Report (Part 1 Vol III)

- Anti-Corruption Authority or Agency of South Africa (ACASA)/
Public Procurement Anti- Corruption Agency (PPACA).

“In the view of the Commission and for the reasons which follow, the appropriate starting point for any scheme of reform must include the establishment of a single, multi-functional, properly resourced and independent anti-corruption authority with a mandate to confront the abuses inherent in the present system.”

“It is a fundamental feature of the Agency that it be independent. There has however been lengthy judicial debate on the question whether such independence can be achieved within a government department or by an entity under Ministerial control. That debate requires careful consideration.

The question is a simple one but the answer is fundamental to the Commission’s recommendations – put bluntly: should supervision of the procurement system be located within a government department but with assurances of full independence or must it be located outside of Government control?”

Judicial Commission of Inquiry into State Capture Report (Part 1 Vol III)

- Anti-Corruption Authority or Agency of SA South Africa (ACASA)/
Public Procurement Anti- Corruption Agency (PPACA).

“South Africa requires an anti-corruption body free from political oversight and able to combat corruption with fresh and concentrated energy. Public trust will not otherwise be re-established in the procurement system. The ultimate responsibility for leading the fight against corruption in public procurement cannot again be left to a government department or be subject to Ministerial control. What is required are specialised oversight and monitoring authorities which operate upon the basis that they are independent in the full and untrammelled sense, i.e. that they are subject only to the Constitution and the Law. This also implies that the choice of officials who will lead and staff such bodies is not left in the discretion of Government. Such appointments must be in accordance with a transparent procedure in a public process.”

Judicial Commission of Inquiry into State Capture Report (Part 1 Vol III)

- Anti-Corruption Authority or Agency of SA South Africa (ACASA)/
Public Procurement Anti- Corruption Agency (PPACA)

“The Commission must make it clear that it does not seek to question the vital leadership role of National Treasury in the design and oversight of the public procurement system in general. The Commission endorses many of the proposals contained in the Bill which will serve to centralise and strengthen public procurement standards. Nonetheless and for reasons already made clear it is not appropriate that any government department be tasked to lead the fight against corruption in public procurement. The vulnerability of any government department to undue political interference remains and will always remain and the answer to state capture does not lie in replicating the very same features that allowed state capture to succeed in the first place.”

BACKGROUND

Questions:

- Purpose
- Institutional design – who, where, funding
- Functions
- Powers
- Relationships
 - Other regulatory/oversight bodies
 - Executive (national, provincial, local)
 - Procuring entities
 - “Other” organs of state: SOCs etc.