

PUBLIC PROCUREMENT REFORM IN SA

PROCUREMENT INTEGRITY

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PROF SOPE WILLIAMS



Photo by Stefan Els

- The debarment system in South Africa
- Professionalisation of public procurement

Exclusion

- The Bill provides two types of disqualification: exclusion and debarment
- 13. (1) The following persons may not submit a bid:
 - (a) A **public office bearer**;
 - (b) a **leader of a political party** registered in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996);
 - (c) a person appointed in terms of section 9 or 12A of the Public Service Act, 1994 (Proclamation No. 103 of 1994); (advisers and others employed by an executive authority)
 - (d) an official or employee of a constitutional institution listed in Schedule 1 to the Public Finance Management Act; (chapter 9 institutions)
 - (e) an **official or employee of a public entity** listed in Schedules 2 (SOEs/public entities) and 3 (regulators, national and provincial business enterprises) to the Public Finance Management Act;
 - (f) an **official or employee of a municipality** or municipal entity;
 - (g) **any entity in which a person mentioned in paragraphs (a) to (f) is a director or has a controlling or other substantial interest;**

- (h) a bidder or supplier debarred in terms of section 16;
- (i) an entity in which a bidder or supplier debarred in terms of section 16—
- (i) has a controlling interest; or
- (ii) is a director or a member; and
- (j) **an executive member of a controlling body** of a procuring institution.
- (2) **A non-executive member of a controlling body** of a procuring institution may not submit a bid in **that institution**.
- (3) **A person related** to a person referred to in paragraph (a), (c), (d), (e) or (f) of subsection (1) may not submit a bid **in the institution in which the person is a member or employed**.

Debarment

- The Public Procurement Office must issue a debarment order against a bidder or supplier and may issue a debarment order against any of the directors, members, trustees or partners of that bidder or supplier, if the bidder or supplier—
- (a) **provided false information** in a bid or any other document submitted to a procuring institution in connection with a procurement process or contract;
- (b) **provided false information** for purposes of registration in a database as envisaged in this Act;
- (c) **connived to interfere with the participation of other bidders**;
- (d) **committed any offence involving corruption, fraud, collusion or coercion, price fixing, a pattern of underpricing or breach of confidentiality relating to procurement by a procuring institution**;
- (e) accepted, delivered against, or made a claim for payment against, an order knowing that the order had not been authorised or was not in a prescribed format or had been issued by a person not authorised to do so;

- (f) refused to sign a contract without reasonable justification or to furnish a performance security in accordance with the terms of the bid;
- (g) has not performed a material contractual obligation not due to circumstances beyond the control of the supplier;
- (h) has been convicted of an offence relating to—
 - (i) obtaining or attempting to obtain a contract or subcontract; or
 - (ii) business or professional activities;
 - (i) attempted, or conspired with, aided, abetted, induced or incited another person to contravene a provision of this Act; or
- (j) contravened a provision of this Act.

Procedure

- Public Procurement Office must provide the bidder, supplier or any of the directors, members, trustees or partners of that bidder or supplier with a notice of the intention to debar.
- The notice must—
 - (a) indicate the reason for the intended debarment; and
 - (b) invite the affected person to provide reasons within 10 days why he or she must not be debarred.
- The Public Procurement Office must consider the reasons submitted and decide whether to issue a debarment order.

- A debarment order may not exceed the prescribed period and different periods may be prescribed for debarment
- A debarment order prohibits the affected person, for the period specified in the debarment order, from participating in procurement by procuring institutions **generally or in circumstances specified in the order.**
- A person debarred in terms of this section may not engage in conduct that, directly or indirectly, contravenes the debarment order.

- A procuring institution must—
 - inform the Public Procurement Office of any bidder or supplier alleged to have committed any of the acts listed for possible debarment; and submit the relevant evidence in support of the allegation.
 - A procuring institution must take all reasonable steps to comply with the conditions of the debarment order.
- The Public Procurement Office must—
- (a) establish and **maintain a debarment register** of persons debarred in terms of this section; and
- (b) make the register publicly available.

- Aligned with Corruption Act
- How will procuring entities ensure exclusion of prohibited persons from submitting a bid
- Debarment is centralized, in line with current NT practice.
- It will be safer (?) for procuring officials but will it be more efficient or less?

Professionalization of public procurement

- S 5: PPO functions include “to guide and support officials and procuring institutions to ensure compliance with this Act” and
- “ensure the professional development and training of officials involved in procurement”
- “promote standardisation in procurement” and
- “promote the use of technology and innovation and learning towards modernisation of the public procurement system”
- Constitution requires the public administration to have “a high standard of professional ethics”

How do we institute ethics in the procurement system?

- Ethical training
- Ethical decision making
- Rewards and progression
- Recruitment practices?

How do we institute higher levels of competence in the procurement system?

- A prominent weakness in public procurement systems is the lack of capacity- ability to meet obligations and objectives with existing administrative, financial, human, or infrastructure resources
- Skills mapping and capacity gap analysis: skills mapping identifies the skills, knowledge, and experience of employees to understand current capabilities and identify the gaps. A capacity gap analysis identifies the difference between a procuring entity's current capacity and the capacity it needs to meet its objectives and obligations.
- Establish realistic qualifications and competencies for officials?- collaborate with local institutions such as SU 😊
- Prioritize training
- Merit and skills-based recruitment

- What can I do to increase the ethics and competence of myself and my team?

Thank you
Enkosi
Dankie



AVANSHIEF
ONS, DIE MENSE VAN SUID-AFRIKA, ERKEN
DIE ONGERECHTE VAN ONSE VERLEDE;
HULDIG DIEGENE WAT VIR GERECHTE
EN VRYHEID IN ONSE LAND GELYK HET;
RESPEKTEER DIEGENE WAT HUL BEYWER
HET OM ONSE LAND OP TE BOU EN TE
ONTWIKKEL; EN GLO DAT SUID-AFRIKA
BEHOORT AAN ALMAL WAT DAARIN WOON,
VERENIG IN ONSE VERSKEIDENHEID.
DAAROM NEEM ONSE, DEUR ONSE
VRYVERKOSE VERTEENWOORDIGERS,
HIERDIE GRONDWET AAN AS DIE HOOGSTE
REG VAN DIE REPUBLIEK TEN EINDE –

DIE VERDEELIDHEID VAN DIE VERLEDE TE
HEEL EN h SAMELEWING GEGROND OP
DEMOKRATIESE WAARDES, MAATSKAPLIKE
GERECHTE EN BASIESE MENSEREGTE
TE SKEP;

DIE GRONDSLAG TE LÊ VIR h
DEMOKRATIESE EN OOP SAMELEWING
WAARIN REGERING GEGROND VES IS OP DIE
WIL VAN DIE BEVOLKING EN ELKE BURGER
GELYK DEUR DIE REG BESKERM WORD;

DIE LEWENS-GEHALTE VAN ALLE BURGERS
TE VERHOOG EN DIE POTENSIAAL VAN ELKE
MENSE TE ONTSLUIT; EN h VERENIGDE EN
DEMOKRATIESE SUID-AFRIKA TE BOU WAT
SY RECHTMATIGE PLEK AS h SOEWEREINE
STAAT IN DIE GEMEENSAP VAN NABES KAN
INNEEM.

MAG GOD ONSE MENSE BESKERM,
NKOSSI SIKELEB' IAFINKA,
MORENA BOLOKA SETUHABA SA HESO.
GOD SEEN SUID-AFRIKA,
GOD BLESS SOUTH AFRICA,
MUDZIMU FHATUTSHEDZA AFURIKA.

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