PUBLIC PROCUREMENT REFORM IN SA
PROCUREMENT INTEGRITY
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• The debarment system in South Africa
• Professionalisation of public procurement
Debarment system

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