1. INTRODUCTION

Public procurement as a governmental function continues to be under significant strain in the aftermath of state capture and COVID-19 spending scandals, combined with the urgent need to reignite the South African economy. These tensions are also having notable effects on the law governing public procurement. The overhaul of public procurement law in South Africa, signalled by the publication of a draft Public Procurement Bill for public comment in early 2020, is becoming increasingly urgent. During the period under review, two challenges in public procurement law are particularly noteworthy, confirming the dire need for reform. First, in February 2022, the CC invalidated the regulations governing preferential procurement and effectively sent National Treasury back to the drawing board on this key aspect of South African public procurement law and practice. Secondly, the case law illustrates a clear trend of a significant increase in contracting authorities seeking reviews of their own procurement decisions, often long after the award of the tender and performance by the supplier. This trend raises important questions about the appropriate balancing of risks within the public procurement system.

2. LEGISLATION

2.1 ENHANCING COMPLIANCE, TRANSPARENCY AND ACCOUNTABILITY IN PUBLIC PROCUREMENT

National Treasury issued SCM Instruction No 3 of 2021/22 in terms of s 76(4) of the Public Finance Management Act¹ (PFMA) with effect from 1 April 2022. This instruction introduced a consolidated set of legislative prescripts

¹ BA (Law) LLB (Stell) LLM (Virginia) MA (Free State) MPA (Birmingham) LLD (Stell); Professor, Department of Public Law, Stellenbosch University and Director, African Procurement Law Unit. ORCID: https://orcid.org/0000-0001-5614-9996.

¹ 1 of 1999.
applicable to all entities covered by the PFMA (departments, constitutional institutions, major public entities and other public entities) on compliance, transparency and accountability in public procurement. The instruction repealed a host of prior instructions and circulars in this area, notably SCM Instruction No 3 of 2016/17 (on preventing and combating abuse in the procurement system) and standard bidding documents (SBDs) 4, 8 and 9. A new SBD 4 was issued along with the Instruction, replacing the former SDBs 4, 8 and 9.

2.1.1 Deviations
The Instruction brought about an important change in the rules on deviations from prescribed bidding procedures.

The Treasury Regulations, in reg 16A6.4, provide that accounting officers or authorities may deviate from competitive bidding when it is ‘impractical to invite competitive bids’. Under previous treasury instructions, this rule was further narrowed down to instances of emergencies and sole suppliers, or any other exceptional case, but then only with prior treasury approval. It is evident that these earlier instructions were always unlawful. They attempted to confer on a treasury the power to decide whether it would be impractical to invite competitive bids outside of the emergency and sole supplier contexts. At the same time, they imposed a condition on accounting officers’ or authorities’ power to decide whether a deviation is justified. The Treasury Regulation is explicit in granting the power to accounting officers or authorities to take this decision without any condition of prior treasury approval. Therefore National Treasury could not by way of instruction confer on treasuries the power to approve deviations nor could it place a condition on accounting officers’ or authorities’ power.

The new Instruction rectifies this unlawful position by removing the requirement of prior treasury approval and the limitation on the circumstances where this power may be used. Instead, the Instruction provides that the entity’s SCM policy must determine the circumstances under which the accounting officer or authority can exercise this power. The policy must also determine what procedure should be followed when there is a deviation.

2.1.2 Contract variations and expansions
Another important change introduced by the Instruction is the new rules on contract variations and expansions. Under earlier instructions, contracting authorities could only vary a contract (including expanding it) by a maximum of 15% or R15 million for goods and services and 20% or R20 million for construction procurement. Anything beyond these thresholds required prior treasury approval. A variation above the thresholds without
prior treasury approval would have resulted in irregular expenditure. The Instruction removes the requirement of prior treasury approval. It only retains a reporting obligation on accounting officers or authorities for variations above these thresholds.

2.1.3 Debarment
While debarment of suppliers (restricting suppliers from doing business with the state) has been a common practice for a long time, there has not been clear legislative authority outside of the Preferential Procurement Policy Framework Act² (PPPFA) for debarring suppliers. Debarment under the PPPFA only relates to abuses of the public procurement system pertaining to preferential procurement. The Instruction remedies this position by setting out clear authority for accounting officers or authorities to debar a supplier.

Unlike the current debarment mechanism under the PPPFA, debarment under the PFMA in terms of the Instruction is done by the contracting authority, rather than National Treasury. The contracting authority is only obliged to solicit the views of National Treasury before taking the decision to debar. The Instruction also provides for basic rules of procedural fairness before taking the debarment decision. However, these fall short of the requirements of procedural fairness under s 3 of the Promotion of Administrative Justice Act³ (PAJA), which would also apply to the debarment decision.⁴ Contracting authorities should thus read the procedural prescripts in the Instruction together with s 3 of PAJA in order to take a procedurally fair debarment decision. Curiously, the Instruction does not set out the grounds upon which suppliers may be debarred. It only requires the accounting officer or authority to inform the affected person and National Treasury of the grounds for debarment, whatever they may be. This is a serious gap in these new debarment rules; it would have been preferable had the Instruction also listed the grounds upon which a supplier may be debarred. The Instruction sets the maximum period of debarment at ten years, effective from the date upon which National Treasury records the debarment on the list of restricted suppliers.

2.2 INCOME-GENERATING TENDERS
Following the uncertainty created by the judgment in Airports Company South Africa SOC Ltd v Imperial Group Ltd,⁵ the Minister of Finance exempted organs of state subject to the PPPFA from following the price formulae

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² 5 of 2000.
³ 3 of 2000.
⁵ 2020 (4) SA 17 (SCA).
set out in the Preferential Procurement Regulations 2017 with effect from 1 August 2021.

The *Airports Company* judgment held that transactions in which organs of state contracted for goods or services, but did not incur expenditure in doing so, but generated an income, even when such goods or services were not for their own use, were still subject to s 217 of the Constitution and thus the PPPFA. The effect of the judgment was to subject so-called income-generating tenders to the PPPFA and its Preferential Procurement Regulations. The problem with this approach is that the price formulae set out in the Preferential Procurement Regulations generate the highest number of points for the bidder offering the lowest price. This is naturally premised on the typical procurement contract where the state is expending money to acquire goods or services. However, when the contract involves an income to the organ of state, such as the scenario in the *Airports Company* case where the organ of state rented out space to service providers to provide transport services to members of the public, the formulae generate the wrong outcome. In such a scenario, the bidder offering the highest price should score the highest number of points.

In PPPFA Circular 1 of 2021/22, National Treasury advised organs of state to use the particular formulae when adjudicating income-generating tenders. For contracts between R30 000 and R50 million, price points up to a maximum of 80 should be calculated as follows:

\[ P_s = 80 \left( 1 + \frac{P_t - P_{\text{max}}}{P_{\text{max}}} \right) \]

or contracts above R50 million, price points up to a maximum of 90 should be calculated as follows:

\[ P_s = 90 \left( 1 + \frac{P_t - P_{\text{max}}}{P_{\text{max}}} \right) \]

(where \( P_s \) = Points scored for price of tender under consideration; \( P_t \) = Price of tender under consideration; and \( P_{\text{max}} \) = Price of highest acceptable tender)

The calculation of the 10 or 20 preference points, as the case may be, remains the same as under the PPPFA.

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3. CASE LAW

One of the most notable features of the case law for the period under review, particularly in relation to the higher courts, is that the vast majority of cases came before the courts as self-reviews. That is, the cases involved organs of state seeking to have their own procurement decisions reviewed and the awards and/or contracts invalidated. No fewer than four judgments were handed down by just the Supreme Court of Appeal (SCA) during the first half of 2022 on self-review applications in respect of public procurement.\(^7\)

3.1 PREFERENTIAL PROCUREMENT POLICIES

By far the most significant judgment handed down in public procurement law in the period under review is that of the CC in *Minister of Finance v Afribusiness NPC.*\(^8\) In this judgment, the CC, with a narrow majority (5 to 4) held that the Preferential Procurement Regulations, 2017, giving effect to the PPPFA, were unlawful, and invalidated them.

The matter came to the CC by way of appeal against the order of the SCA that similarly held the regulations invalid.\(^9\) Unlike the SCA, which ventured into the constitutionality of the regulations when tested against s 217, the CC found the regulations invalid on the narrow grounds of their inconsistency with the PPPFA. The latter court’s reasoning was thus considerably narrower than that of the former with important implications for future developments in this area of law.

Briefly, the matter involved a challenge to the validity of the pre-qualification (reg 4) and mandatory subcontracting (reg 9) provisions of the regulations. Regulation 4 provides that an organ of state may determine pre-qualification criteria for any tender based on a closed list of criteria set out in the regulation, which effectively would set such tender aside in favour of suppliers meeting the stated criteria. Regulation 9 obliges organs of state to include a provision in all contracts above R30 million that a minimum of 30% of the value of the contract must be subcontracted to subcontractors meeting set criteria (also set out in the regulations and largely identical to the list contained in reg 4), provided that such subcontracting is ‘feasible’.

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8 2022 (4) SA 362 (CC).

The applicants raised a number of challenges to these provisions, but the one that prevailed in the CC was the very simple point that the PPPFA does not allow the minister to prescribe the content of preferential procurement policies to organs of state.

The majority of the court found that the PPPFA grants the exclusive power to organs of state to formulate the content of their preferential procurement policies when it states in s 2(1) that ‘[a]n organ of state must determine its preferential procurement policy’. The court accordingly held that the Minister of Finance did not have the exact same power by way of his powers in s 5 of the Act to ‘make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of this Act’. That is, since the PPPFA grants organs of state the power to determine the content of their preference policies, it is neither ‘necessary’ nor ‘expedient’ for the minister to exercise the same power. Accordingly, the prescripts in the regulations on how preference should be determined, including the pre-qualifications and subcontracting provisions, were inconsistent with the PPPFA. The court thus found the regulations unlawful, rejecting the appeal and confirming the SCA’s order.

An important difference between the CC and SCA judgments is the remarks made by the latter on the constitutionality of the impugned regulations, compared to those of the CC. In Afribusiness NPC v Minister of Finance\(^{10}\) the SCA remarked that

\[\text{[t]he discretionary pre-qualification criteria in regulation 4 of the 2017 Regulations constitutes a deviation from the provision of s 217(1) of the Constitution which enjoins organs of state when contracting for goods or services, to do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Any pre-qualification requirement which is sought to be imposed must have as its objective the advancement of the requirements of s 217(1) of the Constitution. The pre-qualification criteria stipulated in regulation 4 and other related regulations do not meet this requirement. Points are to be allocated to bidders based on the goals set out in s 2 of the Framework Act. The discretion which is conferred on organs of state under regulation 4 to apply pre-qualification criteria in certain tenders, without creating a framework for the application of the criteria, may lend itself to abuse and is contrary to s 2 of the Framework Act ...}^{11}\]

\[\text{It is correct that the discretionary pre-qualification criteria stipulated in regulation 4 may constitute an antecedent step. But}\]

\(^{10}\) 2021 (1) SA 325 (SCA).

\(^{11}\) Para 38.
the antecedent step that is introduced in regulation 4 creates an additional layer which, neither s 217 of the Constitution, nor s 2 of the Framework Act, authorises. The Minister may not in terms of s 5 of the Framework Act make regulations which permit organs of state to incorporate in their tender documents conditions which are inconsistent with s 217 of the Constitution ....\textsuperscript{12}

The SCA unfortunately did not provide any reasoning as to why it considered the relevant aspects of the regulations, specifically reg 4, to be inconsistent with s 217 of the Constitution (as opposed to the PPPFA). The court simply states, with no supporting reasoning, that the pre-qualification criteria in reg 4 do not meet the requirement of advancing s 217(1) and that s 217 does not allow the ‘additional layer’ imposed by pre-qualification as an ‘antecedent step’. It is unfortunate that the SCA did not provide any reasoning for these conclusions as they do not seem immediately obvious upon reading s 217 and especially sub-s (2). That subsection explicitly mandates preferential procurement policies that provide for ‘the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination’. It seems difficult to see why a pre-qualification mechanism would not serve to advance black persons in South Africa. In this respect one would think that it fits s 217(2)(b) perfectly. Furthermore, one of the principles that the procurement system in South Africa must meet under s 217(1) is ‘equity’. Again, given the Constitution’s commitment to substantive equality, it is hard to see why a pre-qualification mechanism in procurement would not serve this exact purpose when applied in favour of black bidders.

The CC fortunately took a different view. The court made the following crucial remarks: ‘Happily, both the first judgment and this judgment and, indeed, the Minister understand the impugned regulations to do what is envisaged in section 217(2) of the Constitution.’\textsuperscript{13} With this statement, the court thus explicitly confirmed the constitutionality of the substance of the impugned regulations. Unlike the SCA, the CC did not question the alignment between the content of the preferential procurement approach contained in the impugned regulations and s 217 of the Constitution. On the contrary, the court found these to be consistent. The problem which resulted in the finding of invalidity was rather who had the power to formulate the content of a particular entity’s preferential procurement policy in terms of the PPPFA. It had nothing to do with what such policy could include and alignment with the Constitution.

This difference in approach is of primary importance for the immediate response of organs of state to the invalidity of the regulations as well as to

\textsuperscript{12} Para 43.

\textsuperscript{13} Minister of Finance v Afribusiness NPC (note 8) para 116.
any future procurement legislation, as is currently on the cards. The CC’s approach implies that organs of state may adopt the exact same substance in their preferential procurement policies as what was hitherto contained in the regulations. Furthermore, the court’s approach means that the legislature, in replacing the PPPFA, may grant the minister the power to determine the substance of preferential procurement policies, which may subsequently consist of the exact same content as the now-invalidated regulations.

A final point to note in respect of this case relates to the uncertainty following the judgment of the CC. The SCA’s order of invalidity was suspended for a period of 12 months from the date of that order (2 November 2020) to allow the minister to correct the unlawfulness in the regulations. The CC judgment was handed down on 16 February 2022, ie more than 12 months after the SCA judgment. Some uncertainty accordingly arose, fuelled by the remark of the four CC justices in the minority judgment that ‘[t]he period of suspension expired on 2 November 2021’. National Treasury initially advised all organs of state that ‘tenders advertised on or after 16 February 2022 be held in abeyance; and no new tenders be advertised’, while it approached the court again to clarify when the regulations will factually become invalid. In its response to the minister’s application for variation of the court’s order to bring clarity, the CC held that there was no uncertainty as to the order.14 The court held that in terms of s 18 of the Superior Courts Act,15 the SCA order was suspended when the minister lodged his appeal to the CC on 23 November 2020. That suspension included the suspension of the order of invalidity, ie the 12-month suspension period was also suspended pending the outcome of the appeal to the CC. When the CC handed down judgment on 16 February 2022, dismissing the appeal, the suspension of the SCA order under the Superior Courts Act was lifted. The 12-month suspension of the order of invalidity thus started running on that date again. The result is that 21 days of the 12-month period had lapsed by the time the appeal was lodged. The remainder of the 12-month period (that is, 344 days) thus started running on 16 February 2022 after which the regulations would become invalid. The minister thus has until 26 January 2023 to replace the regulations with new ones.

3.2 SCOPE OF PROCUREMENT LAW

The scope of procurement law was at issue in Eastern Cape Rural Development Agency v Agribee Beef Fund (Pty) Ltd,16 with the SCA following the expansive

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14 Minister of Finance v Sakeliga NPC (previously known as Afribusiness NPC) 2022 (4) SA 401 (CC).
15 10 of 2013.
approach to scope adopted in its earlier judgment in *Airports Company South Africa SOC Ltd v Imperial Group Ltd*.\(^7\) In the *Agribee* matter, two provincial government entities, the Eastern Cape Department of Rural Development and Agrarian Reform and the Eastern Cape Rural Development Agency, entered into a tripartite agreement with the respondent to implement an agriculture development project. In terms of this agreement, the department transferred funds to the agency, which in turn paid the funds to the respondent as the implementing agent of the project. Such implementation involved the respondent buying cattle and providing such at cost to smallholder farmers, along with veterinary packs, feed, training and support. Once the farmers had raised the cattle, the respondent would facilitate their sale. The key question before the court was whether this arrangement amounted to a procurement.

The court applied the approach in the *ACSA* matter and focused on the purpose being served by the agreement in the context of the public function of the relevant organs of state, rather than the terminology employed in the agreement. In terms of this approach, the court concluded that the agreement clearly involved the acquisition of goods (cattle, veterinary packs, feed) and services (training, support, facilitation of sales) in support of the public functions of the relevant organs of state. As in the *ACSA* matter, the court held that it made no difference that such goods and services were rendered to third parties rather than the organs of state. The court applied a ‘but-for’ test to conclude that ‘but for’ the respondent’s involvement, the organs of state would have had to directly acquire the goods and services to provide to the project beneficiaries. As a result, the agreement was a procurement and subject to procurement law.

### 3.3 Tender Validity Periods

In *City of Ekurhuleni Metropolitan Municipality v Takubiza Trading & Projects CC*,\(^8\) the SCA authoritatively confirmed, for the most part, the legal position regarding the lapse of bid validity periods in public procurement. The common scenario of organs of state attempting to proceed with the adjudication and award of bids after the bid validity period had lapsed has been the subject of numerous High Court judgments over a considerable period of time.\(^9\) The SCA has now confirmed the legal position that emerged from those judgments, namely that the procurement process comes to an end when the bid validity period lapses without timely extension. The court held that the process of extension must be complete before the lapse

\(^{17}\) 2020 (4) SA 17 (SCA).

\(^{18}\) [2022] ZASCA 82.

\(^{19}\) Most of these High Court judgments are referenced in paras 6–10 of the SCA judgment.
of the validity period in order to keep the procurement process alive. It is not enough for the organ of state to request an extension of the validity period from bidders prior to its lapse, but only receive confirmation of such extension after the lapse of the validity period, as happened in this case. The court held that one of the primary reasons for this legal position is simply that a bid amounts to an offer, which can only be accepted by the award of the tender to create a contract while the offer is still open, i.e., within the validity period. After the validity period has lapsed, there is no longer an offer on the table to accept, and subsequent extension cannot resuscitate the lapsed offer.

One aspect that remains somewhat unclear is who should be requested to consent to the extension of the validity period. The court stated that the consent of all the participants to the tender process is required. Unless there is a timeous request and favourable response from all the tenderers prior to the expiry of the tender, the tender comes to an end.20

This statement creates the impression that all bidders should be requested to extend the validity period, that is, even those that have already been disqualified by the time extension of the validity period is sought. Furthermore, the statement creates the impression that the procurement process can only proceed if all the bidders consent to the extension, which means that a single bidder could veto an extension, by either refusing to consent or failing to respond. The SCA referred to the High Court judgment in Defensor Electronic Security (Pty) Ltd v Centlec SOC Ltd21 in support of this finding. However, in the paragraph of the High Court judgment referenced by the SCA, the High Court referred to the award of ‘the tender to the second respondent after expiry of the tender validity period and without a prior request for extension and approval of all relevant bidders.’22 The reference to all relevant bidders, as opposed to all bidders, is quite an important difference between the High Court and SCA judgments. The former would imply that consent is required from only those bidders that could still win the tender, that is, those that have not already been disqualified, while the latter implies that consent from all bidders would be required. From a practical perspective, the High Court approach seems more sensible. It is not clear why an organ of state would need the consent from those bidders that have already been disqualified to keep the procurement process alive. The organ of state has effectively already rejected the offers from those bidders (by disqualifying them) and it thus makes little difference whether they

20 Para 13.
22 Para 8 (emphasis added).
keep their offers alive or not. Likewise, it seems impractical to allow any single bidder to determine whether the entire process is kept alive by an extension simply by refusing (or failing) to extend its own offer. Surely, a bidder may choose not to participate further in the process, ie withdraw, when an extension is requested without prejudice to other bidders. The SCA’s remarks in para 13 should thus perhaps not be interpreted too literally. Perhaps one should simply read the statement as holding that a request must be sent to all bidders being considered, and that the process can proceed in respect of only those that consent before the expiry of the validity period. Such an approach seems conceptually sound as well as practical.

3.4 REMEDIES FOLLOWING THE INVALIDATION OF PROCUREMENT CONTRACTS

In Central Energy Fund SOC Ltd v Venus Rays Trade (Pty) Ltd,23 the SCA neatly captured the emerging rules governing remedies vis-à-vis suppliers when procurement contracts are set aside. Drawing on the judgment of the Constitutional Court (CC) in Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency (No 2),24 the SCA noted the twin principles governing remedies in such contexts, namely the corrective principle and the no-profit-no-loss principle. The corrective principle holds that neither party may unduly benefit from what has already been performed under the invalidated contract. The consequences of the invalidity should thus be reversed as far as possible. The no-profit-no-loss principle entails that suppliers should generally suffer neither loss nor make a profit off the invalidated contract. In this regard, the SCA held that a distinction must be drawn between innocent suppliers and suppliers that were complicit in abuse of the procurement system. While the no-profit-no-loss principle would apply fully to the former category, it would not necessarily protect the latter category from loss. In the case of complicit suppliers, they may be saddled with losses resulting from the invalidation of the contract.

The SCA noted an important dimension to remedies in the case of innocent suppliers facing the invalidation of procurement contracts, which has not received adequate recognition in the past. The court noted:

The appellants also disregard the public interest in the secure provision of credit in relation to transactions involving the State, which, in my opinion, promotes both transparency and accountability in public procurement. The public interest is adversely affected if creditors cannot safely finance transactions with organs of state, and

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23 2022 (5) SA 56 (SCA).
24 2014 (4) SA 179 (CC).
are constantly at risk of incurring losses if it turns out that the State acted unlawfully.

As the appellants would have it, innocent third-party financiers are required to incur significant losses when the State acts unlawfully, even when they are given assurances by the state entity concerned, and take steps to secure the loans. If these are indeed the risks involved in providing credit, then there is a real danger that it will have a chilling effect on financing, which may become prohibitively expensive. International banks and finance institutions would be reluctant to finance major transactions – crucial to the economy – not only in oil but also in infrastructure and capital projects. Accordingly, the compensation order in this case, it seems to me, serves the broader public interest.25

Curiously, in another matter involving the invalidation of a tender contract decided by the SCA, Sekoko Mametja Incorporated Attorneys v Fetakgomo Tubatse Local Municipality,26 the court did not wholly apply the no-profit-no-loss principle. In this matter, the only question on appeal was whether the appellant, the successful bidder, was entitled to payment on invoices submitted to the municipality for services rendered before the contract was invalidated upon review. In ordering the municipality to pay the full invoices, plus interest, to the supplier, the court did not interrogate either the complicity of the supplier or the profit element of the invoices. The application of the no-profit-no-loss principle, as set out in the Central Energy Fund matter, would have required such. In the present matter, the tender contract was invalidated because the supplier should have been disqualified from winning the bid due to its failure to submit proof of its tax compliance. An argument could thus have been made that the supplier was (at least partially) complicit in the tender irregularity that resulted in the invalidation. This would have placed it in the second category of suppliers identified in Central Energy Fund, which may have denied it even recovering losses. Furthermore, the invoices as submitted almost certainly included an element of profit, which should not have been recovered under the no-profit-no-loss principle.

It is evident that even though principles are emerging around what an appropriate remedy should be vis-à-vis suppliers when procurement contracts are invalidated following (partial) performance, the application of such principles has not been fully worked out. The law in this area is thus clearly still in a developing stage.

25 Paras 59–60.
4. LITERATURE

Reported judgments
Afribusiness NPC v Minister of Finance 2021 (1) SA 325 (SCA)
Airports Company South Africa SOC Ltd v Imperial Group Ltd 2020 (4) SA 17 (SCA)
Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency (No 2) 2014 (4) SA 179 (CC)
Central Energy Fund SOC Ltd v Venus Rays Trade (Pty) Ltd 2022 (5) SA 56 (SCA)
Minister of Finance v Afribusiness NPC 2022 (4) SA 362 (CC)
Minister of Finance v Sakeliga NPC (previously known as Afribusiness NPC) 2022 (4) SA 401 (CC)

Unreported judgments
Chairman of the State Tender Board v Digital Voice Processing (Pty) Ltd, Chairman of the State Tender Board v Sneller Digital (Pty) Ltd [2011] ZASCA 202
City of Ekurhuleni Metropolitan Municipality v Takubiza Trading & Projects CC [2022] ZASCA 82
Defensor Electronic Security (Pty) Ltd v Centlec SOC Ltd [2021] ZAFSHC 315
Eastern Cape Rural Development Agency v Agribee Beef Fund (Pty) Ltd [2022] ZASCA 2
IGS Consulting Engineers v Transnet Soc Limited [2022] ZASCA 63
Sekoko Mametja Incorporated Attorneys v Fetakgomo Tubatse Local Municipality [2022] ZASCA 28

Legislation
Preferential Procurement Policy Framework Act 5 of 2000
Promotion of Administrative Justice Act 3 of 2000
Public Finance Management Act 1 of 1999
Superior Courts Act 10 of 2013

Regulations
Treasury Regulations GN R225, GG 27388 (15 March 2005)

Policy documents
PPPFA Circular 1 of 2021/22
National Treasury SCM Instruction No 3 of 2021/22
National Treasury SCM Instruction No 3 of 2016/17
Journal articles
A Anthony ‘Public procurement law’ (2019/2020) 1 Yearbook of South African Law 1124
P Volmink and A Anthony ‘The South African Supreme Court of Appeal in Afribusiness NPC v Minister of Finance’ (2021) 8 African Public Procurement Law Journal 1