

THE CONTRACT STATE:

Outsourcing & Decentralisation in Contemporary South Africa

2014



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ACRONYMS

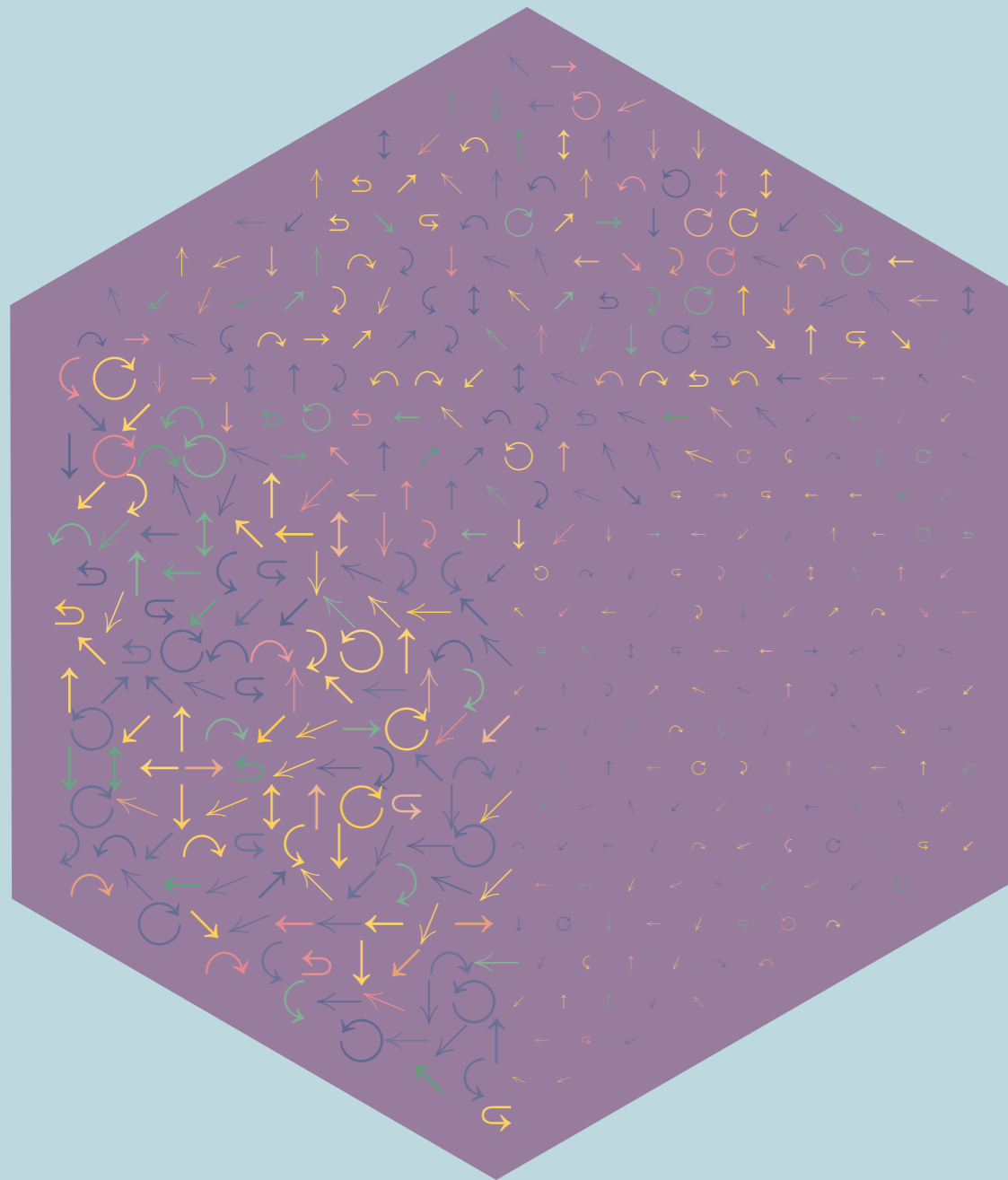
CIDB	Construction Industry Development Board
CSIR	Council for Scientific and Industrial Research
DPSA	Department of Public Service and Administration
MTEF	Medium Term Expenditure Framework
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
SABS	South African Bureau of Standards
SARS	South African Revenue Services
SCM	Supply Chain Management



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BACKGROUND

The Public Affairs Research Institute (PARI) is a research institute which deals with major issues facing South Africa's public sector organisations today through theoretically-informed social science research. It pursues relevant applied and strategic research on the public sector and on state-society relationships, and works to generate dialogue amongst scholars of the state, and between them and change agents in the public sector, business, and civil society. PARI's concern with public procurement emerges from this agenda. Procurement has been identified by previous research as key to service delivery, to corruption, and to broader state-society relations in South Africa. PARI was privileged to partner with an intervention team led by the new Chief Procurement Officer working on Limpopo Provincial Government procurement systems. These still continuing investigations, in the context of PARI's wider research agenda, have allowed us to confirm and develop insights into the significance of public procurement as an administrative system which is intended to serve broader South African aspirations.

As we will see later in this report procurement practices in Limpopo reflect broader dynamics in the South African state since the end of the apartheid period. One of the most dramatic features of the post-apartheid state, though largely unnoticed in academic and other circles, has been the contracting-out of government services to third-party providers. In this regard, two imperatives - the desire to modernise the state as well as to use government agencies as a catalyst for black economic empowerment - came together behind a common agenda for public sector reform.

It emphasised the following principles:

- De-bureaucratise the public sector and local government.
- Reform & strengthen management practices in government departments.
- Decentralise decision-making to 'appropriate' levels.
- Outsource government functions when appropriate.

This new governmental spirit was felt acutely in procurement. During the apartheid period there were effectively a handful of sites for procurement, such as the State Tender Board. However, from the late 1990s responsibility for the procurement of goods and services was decentralised to government officials in offices all around the country. The South African Revenue Services (SARS) found that in the Eastern Cape alone there were tens of thousands of discrete procurement sites. National Treasury statistics, moreover, show that approximately 42 percent of the South African government's budget is spent in and through the Supply Chain Management (SCM) system.

¹ Sources: National Treasury, 1997, 2004, 2011, 2012 and 2013; World Bank, 2003.

² Excluding local government own revenue.

³ Government spending through procurement occurs in two classifications i.e. (i) Goods and Services and (ii) Payment of capital assets. What this excludes is (i) Compensation of employees, (ii) Transfers and subsidies, (iii) Payment of interest on land, and (iv) Debt costs. Due to data constraints we also exclude (v) local government own revenue, and (vi) major public entities (e.g. Eskom), (vii) provincial public entities (Limpopo Road Agency) and (viii) provincial business enterprises (Free State Development Corporation). We include in our calculation Chapter 9 institutions (the Public Protector), national public entities (South African National Parks), and national government business enterprises (Rand Water). Given these parameters, in 2012/13 estimated government expenditure amounted to R876.6 billion for national, provincial and local government. Of this, R372.9 billion was spent on the procurement of goods and services, and payment for capital assets. This does not include conditional grant spending, due to issues with access to credible data. The figure reflects a minimum of government expenditure through procurement.

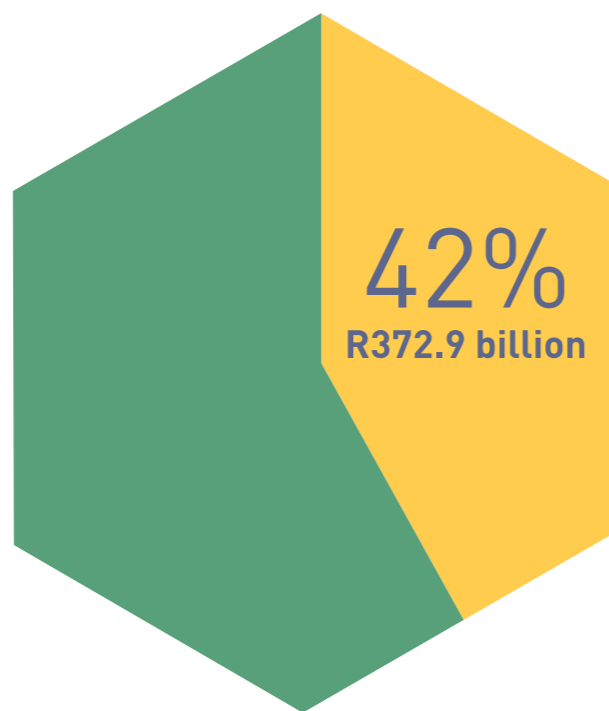
⁴ Procurement figures established from the budget allocated to Goods and Services and payments for capital assets in the revised estimates.

PROCUREMENT ALLOCATION AS A PROPORTION OF TOTAL BUDGET¹

In 2012/13, the budget of national, provincial and local government² combined was R 876.6 billion; R 372.9 billion or 42 percent³ of this was allocated to procurement. Note that this does not include expenditure figures from other areas of government, such as the parastatals.

Most procurement expenditure occurs at the levels of local (52.2 percent of the total) and provincial government (29.4 percent).

Between 2009 and 2013, spending on procurement has grown by an average of 10 percent annually.⁴



TOTAL BUDGET: R876.6 billion

Taken together this gives government and governance in South Africa the following features:

1. Service delivery in South Africa is decreasingly performed by government administrations and increasingly performed by private companies which tender for this role.
2. The role of public servants has changed from that of administration to that of managing contracts. That is, when they are not complying with National Treasury, Department of Public Service and Administration (DPSA) and other departmental regulations, public servants are effectively managing service-delivery contracts with private firms, other departments and parastatals. The quality of service delivery often depends on how well these contracts are negotiated and enforced.
3. The system of awarding contracts is today so decentralised and fragmented that it is difficult to coordinate activities between departments and tiers of government and/or to exercise oversight over the system as a whole. The decentralisation of procurement has produced thousands of sites across South Africa where local groups compete for resources and opportunities. This provides an important context for processes of contemporary class formation.

We will argue later in the report that South Africa has become a 'contract state'. What was called 'state capacity' is now predicated upon the ability of the state to tap into and manage, through contractual relations, private sector capacities. By the same token, corruption and clientelism are developing largely around the weaknesses of this 'contract state'.

In this report we will argue that addressing the problems in the personnel and procurement systems is central to South Africa's development aspirations. The alternative is very likely declining state capacity. It may also be rising corruption and clientelism, as competition grows and gains are distributed and redistributed. The ability of South Africa to manage its future rationally and democratically will suffer as a result.

We will sustain this argument in an in-depth, but still necessarily preliminary, study of the public procurement system in South Africa. Through it we will see the entangled nature of personnel and public procurement systems. We will also begin to discern the broader implications of these systems and the prospects of reform.

METHODOLOGY

Over the last year, PARI has been provided with unprecedented research access by senior officials to a number of government sites where we undertook interviews and documentary analysis. The research aimed to assist personnel tasked with improving the SCM system in particular government departments in Limpopo, and was aimed, in addition, at enabling broader reflection on the procurement system. PARI researchers also drew from the Institute's ongoing research in the public sector elsewhere, at national, provincial and local government levels. The research involved in-depth interviews with government officials in a number of departments, with SCM practitioners, and with a limited number of non-governmental organisations. We also conducted a thorough document review, covering relevant legislation, regulations, policy documents and reviews, guidelines and circulars on public procurement. We also read relevant sections from Hansard, national parliament's record of proceedings. Further, a provincial department in Limpopo provided PARI with selected contracts from 2009 to 2012 for research and to assist personnel with improving SCM in the department.

While more time is necessarily required to take full advantage of this access, in combination with the use of more widely-available sources we have been able to lay strong foundations for future endeavours in this area.

STRUCTURE OF THE REPORT

In Chapter 2 we discuss the history of public procurement in South Africa. We note, especially, the post-1994 move to a highly decentralised procurement system. Subsequent chapters are framed around the ambitious post-1994 reform agenda, which has for a number of reasons failed to consolidate into a viable procurement system.

In Chapter 3 we describe the procurement process under South Africa's current regulatory framework. The effect is to reveal important weaknesses in this process. These weaknesses represent key points for regulatory intervention. However, their nature also indicates the limits of such intervention. This provides the empirical basis for the next chapter.

In Chapter 4 we consider the broader implications of the public procurement system. Our argument is that the procurement process is a thread that runs through contemporary governance, serving to define the entity which we refer to as the 'contract state'. The nature of this state is elaborated, and its implications for state capacity, corruption and the quality of our democracy are teased out.

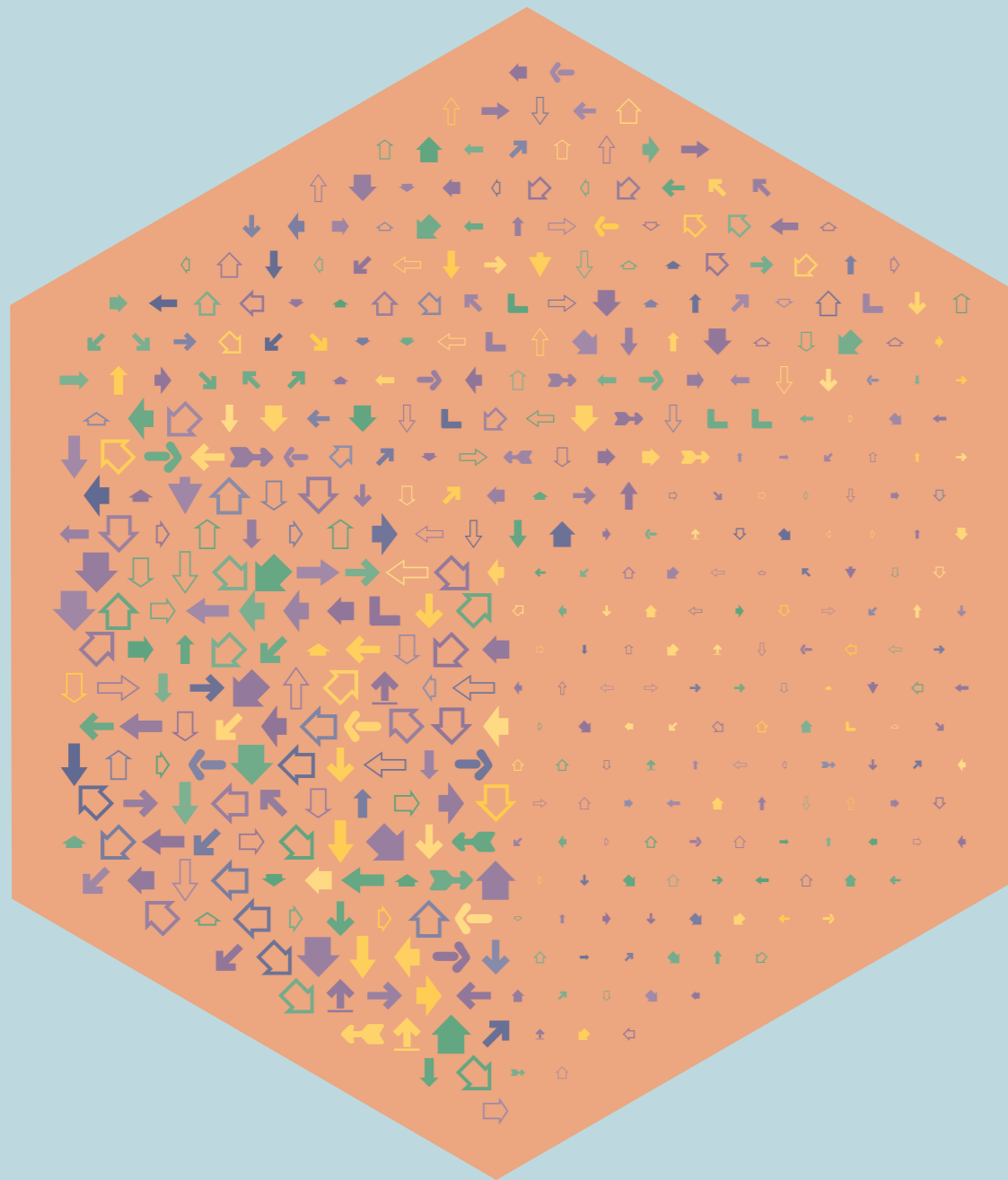
We conclude by tentatively suggesting the way forward. We briefly consider the American precedent to argue that in some instances administrative solutions can be found not only for administrative problems, but also for seemingly intractable political dilemmas. Yet if the personnel and procurement systems are potential cure-alls, then the American case also shows that they can only be activated by political mobilisation.

We believe that this report demonstrates that the convergence of research and practice can reap rich rewards.

ACKNOWLEDGEMENTS

In developing this report PARI has enjoyed support from a number of stakeholders. We would especially like to thank the Ford Foundation; this research would not have been possible without their generous support.

As in any research endeavour, we have relied heavily upon many informants and participants. We have drawn upon the time and insights of a number of public servants who have given their attention generously and openly. In particular, we would like to recognise officials in the Office of the Chief Procurement Officer and officials in the departments of the Limpopo provincial administration. We hope that we have begun to lay the foundations for a robust and open engagement between the state, the academy and civil society.



In this chapter we outline the history of public procurement in South Africa.⁵ The focus, especially as we approach the present, will be upon the formal institutions, policies, laws and regulations that have established the models governing public procurement. The history of these institutions has followed international intellectual and administrative trends fairly closely. A long established, centralised procurement system was modernised in accordance with international precedents through decentralisation accompanied by central control of an essentially regulatory nature. Reform was driven by good intentions. It followed models of best practice. We consider some of the unintended consequences of decentralisation and the actual practice of public procurement in South Africa in the chapters that follow.

⁵ See Appendix One for sources for this chapter.

PROCUREMENT BEFORE 1994

Historically, South Africa operated a highly centralised procurement system. In this it for the most part followed well-established international practice, generally the product of much earlier attempts to ensure strong central control over government finance and in part thereby to limit forms of corruption current at the time. After the unification of South Africa in 1910 this tendency was reflected at the national level in the establishment of a Union Tender Board, later renamed the State Tender Board. Procurement in the four provinces was vested in their separately elected Executive Committees, all of which went on to promulgate ordinances establishing provincial tender boards. Unlike the Union Tender Board these only enjoyed advisory powers. The larger municipalities made their own procurement arrangements, generally centred on their own tender boards. State-owned enterprises also had autonomous procurement powers. In the railways for instance these powers were embodied in the Railway Tender Board. In addition, separate tender arrangements held in the sphere of defence, and in other related confidential and secret operations.

If the national-level State Tender Board is taken as indicative of the general situation then the system of centralisation was gradually accompanied by recognition of the need for a measure of decentralised flexibility. It seems that this was generally understood as the need to reduce the prospect of the central tender board becoming a bottleneck. Procurement through a central tender board in a large and varied state like South Africa would be time-consuming, and especially in urgent cases this would be problematic. Further, in light of the large range of supplies and services purchased by the government, decentralisation would reduce complexity at the centre, facilitating its smooth functioning. No doubt there were also other considerations, such as that decentralisation would ensure that procurement decisions would take account of specific circumstances and specialist knowledge, and that it would provide for quicker feedback regarding goods and services procured.

Institutionally, the need for a measure of decentralised flexibility was expressed in quite strictly circumscribed delegations of procurement powers from central tender boards to departments and other organs of

state, with allowances for re-delegation. From 1981 such delegated powers were accompanied by general authority for emergency purchases, requiring approval after the fact by the State Tender Board. These delegations operated only outside a broad net of what today are called 'transversal term' contracts, or contracts operating for fixed periods relating to goods and services utilised in large quantities by a number of organs of state.

These vehicles for decentralised flexibility, it must be recognised, were complemented in other spheres by certain flexibilities inherent to centralisation. Specifically, the extensive political and administrative visibility and control that centralisation provided meant that procurement decisions at the centre could be made within a wide ambit of discretion. There existed no legal prescriptions regarding how offers were to be solicited. They could be made in any manner deemed appropriate by the Board, and what are now called 'unsolicited bids', offers made by service providers without an initial request from government, could be accepted at discretion. No hard rules were legislated regarding how final decisions were to be made. There was, that is, no obligation to accept the bid with the lowest price, and there was no legal obligation to accept any other bid for any particular reason whatsoever. Still, it was routine for tenders to be adjudicated on the basis of cost, with necessary adjustments for local content and other preferences. Presumably, given these wide discretionary powers, procurement processes were easily tailored to specific circumstances. Negotiation with service providers would have been allowed. Sole providers could readily be approached. Decisions could easily and flexibly take account of a range of other factors in addition to price.

The added visibility and control that centralisation provided was, it could be argued, unhelpfully hedged around by the fact that it was only extended in very limited ways from political leadership, especially in the person of the Minister of Finance, to civil society. The Minister of Finance was responsible for appointing a minority of non-official members to the State Tender Board, and the practice as it developed was for him to solicit nominations from the key business associations, such as the Association of Chambers of Commerce, the South African Agricultural Union, and the Afrikaanse Handelsinstituut. Yet the proceedings and decisions of the State Tender Board were kept confidential, with disclosure at the sole discretion of the Board. At least in part this was an attempt to protect the trade secrets of bidders, but it amounted to a blanket allowance not conducive to integrity in procurement decision-making. When combined with the scarcity of justiciable legal norms and standards, this doubtless left service providers with very little protection against unfair decisions, and it certainly reduced the ability of society to hold procurement decision-makers to account. On the other hand, a service provider 'black-list', which restricted persons from trading with the state in cases of fraud, non-performance and other infringements, was only established in administrative law in 1981. It would be populated purely at the discretion of the tender boards.

This model of procurement administration, in place since the formation of the Union of South Africa, and evolving only incrementally thereafter, would remain in operation until the 2000s. Its combination of strong high-level political control, with ample political autonomy, especially in the form of relative freedom from the scrutiny of civil society, dovetailed quite neatly with the policy goals which the procurement system would be increasingly tasked to pursue, especially after 1948. In pursuit of a broader Afrikaner economic advance, procurement preferences for Afrikaner-owned firms were instituted. These preferences, however, were never legislated. They were informal and discretionary, which allowed for the influence of biased and personal connections, and a measure of self-enrichment that bordered upon and probably quite often crossed into the domain of corruption. Still, strong high-level political control meant that the project of Afrikaner economic advance was, at least until the dying days of apartheid, kept on a tight leash, and within the confines of the Afrikaner nationalist project.⁶

The procurement function itself was staffed by generalist administrators without specialist training. This sphere of the civil service was apparently never an attractive prospect for public servants and this in a society which in any case exhibited a marked preference for private sector employment. Procurement expertise in the state was therefore relatively limited. Yet the system was considered, at least by the political class, to have operated with a reasonable degree of facility. For these reasons the procurement model does not appear to have been seriously questioned before the 1990s. Procurement had a very low legislative profile, with legislation about procurement generally enjoying bipartisan support in Parliament, even bipartisan indifference.

The more extensive changes to the system were normally purely administrative, following on from other changes considered more vital. The creation of the Bantustans, for instance, involved the creation of a series of separate Bantustan tender boards. The abolition of Provincial Councils in 1986 meant the imminent demise of the ordinances that gave legal existence to provincial tender boards. By 1987 regional tender boards attached to the State Tender Board were legislated in their place, providing the opportunity to ensure uniformity in procurement procedure, documentation, conditions of contract and item specification, generally to the benefit of business. Member of Parliament DW Watterson expressed the general mood when he noted that 'We have no strong feeling about this particular Bill, but here again we have the feeling that it is change for the sake of change. The existing tender boards appear to have done a pretty good job over many years'.⁷ The statement was one of conservatism in matters of administrative structure. To the generation of avid modernisers that assumed power after 1994 it would have appeared simply as an unreasoned defence of anachronism.

⁶ Hyslop, J. 2005. 'Political Corruption: Before and After Apartheid' *Journal of Southern African Studies*, 31 (4): 773-89.

⁷ Hansard 1987: 1058.

THE FIRST PERIOD OF REFORM

1994 - 2000

The initial trigger for reform appears to have been the desire to include emerging small and medium enterprises effectively in government contracts, which had in the past overwhelmingly gone to established white big business. Procurement reform was therefore centrally predicated upon and explicitly justified as an attempt to merge the two sides of South Africa's 'dual economy', procurement being utilised as a lever to help include previously disadvantaged business-owners in the mainstream economy.⁸ In contrast to roughly similar efforts pursued under apartheid, however, African economic advance would in this respect be both formal and open. The Constitution (section 217) had itself required that preferences for previously disadvantaged service providers be provided for in national legislation. It is against this background that reform was initiated under the joint leadership of the Departments of Finance and of Public Works.

By January 1995 these lead departments had come together with representatives of an array of national and provincial departments in a Procurement Forum, created to frame and generate consensus around the shape of impending reform. The State Tender Board was involved in providing support to this initiative, and additional technical and financial assistance was drawn from the World Bank. Between 1995 and 1997 this Procurement Forum would establish the shape and thrust of procurement reform, though not its administrative implementation.

The analysis, as it took shape in the Forum, involved a convergence of prevalent international trends with domestic conditions and goals. The 1990s was a period of large-scale reform of public procurement systems internationally. In the 1980s the profile of procurement in the private sector had been elevated under the banner of 'strategic procurement'. The private sector-inspired New Public Management included a concern with public procurement, which converged with a donor-driven 'good governance' agenda highlighting the corruption of and inefficiencies in developing country procurement systems. South Africa's central tender boards were, in this context, and typically, viewed as out-dated, cumbersome and unwieldy, both bad procurers and a bottleneck placed across the effective discharge of government responsibilities. Crucially, specifically reflecting South African realities, the central tender boards were also distanced from localities and local conditions, and they biased procurement towards large purchases. These were factors which hindered the advance of emerging small to medium business. In reaching these conclusions the work of the Procurement Forum dovetailed neatly with, and was in part influenced by, the broader New Public Management reforms simultaneously emerging from the Department of Public Service and Administration and resonating in National Treasury.⁹ The New Public Management agenda stressed the twin objectives of giving state managers the freedom to manage, and holding them accountable for results. What this meant in practice was that a broad range of managerial

powers and functions were to be decentralised, and responsibility for them aligned in the offices of departmental and agency heads. Central tender boards ran counter to this logic. By removing important powers from the control of departmental heads they restricted managerial freedom and thereby complicated lines of accountability. In this context the decentralisation of procurement was accepted by the Procurement Forum as a *fait accompli*, part and parcel of a broader policy of decentralisation.

The first interim strategy for reform was embodied in a Ten-Point Plan released by the Department of Public Works in 1996. The Plan was a first attempt at including emerging businesses in tender processes. It proposed, amongst other things, preferences for the previously disadvantaged, along with a range of procedural changes to enhance access, such as the wider dissemination of information, the simplification of procedure and documentation, and the establishment of Tender Advice Centres to support emerging business.

TEN POINT PLAN

An interim strategy for reform was articulated in a Ten-Point Plan released by the Department of Public Works in 1996. It included the following measures:

1. The improvement of access to tendering information;
2. The development of tender advice centres;
3. The broadening of a participation base for small contracts (less than R 7 500);
4. The waiving of security/sureties on construction contracts with a value less than R 100 000;
5. The unbundling or unpacking of large projects into smaller projects;
6. The promotion of early payment cycles by government;
7. The development of a preference system for SMMEs owned by historically disadvantaged individuals;
8. The simplification of tender submission requirements;
9. The appointment of a procurement ombudsman; and
10. The classification of building and engineering contracts.¹⁰

A general model for the reform of the procurement system was elaborated in more detail in the Procurement Forum's 1997 Green Paper on Public Sector Procurement Reform. Accounting officers (i.e. chief executives) across the state were to be given power and responsibility to establish procurement centres in their respective departments and agencies. In a move common to such efforts at decentralisation, especially in areas of financial relevance, the architecture and operations of these procurement centres was to conform to a policy framework established and administered by a central regulatory agency. This was to be called the National Procurement Framework, administered by a Procurement Compliance Office, likely to be a stand-alone entity close to National Treasury.

¹⁰ Department of Public Works, 1995, 10-Point Plan Strategy.

⁸ Bolton, P. 2006. 'Government procurement as a policy tool in South Africa', *Journal of Public Procurement*, 6 (3): 194.

⁹ Chipkin, I. and B. Lipietz. 2013 'Transforming South Africa's Racial Bureaucracy: New Public Management and Public Sector Reform in Contemporary South Africa' *PARI Long Essays*, No. 1.

The Procurement Compliance Office was to form the lynchpin of the new procurement system. When the directive to establish procurement centres was issued, the Procurement Compliance Office would be charged with ensuring, assisting and overseeing their creation and operation. It would exercise high-level control over the necessary education and training. Further, it would enjoy robust powers to monitor, audit, investigate and sanction, and would function as a forum that disappointed bidders could approach to secure administrative review of allegedly faulty decisions. Wielding these instruments the Office would be positioned effectively to detect and sanction non-compliance, better target its assistance and interventions, and communicate useful innovations between the different procurement centres. The Office would, in addition, be charged with monitoring the various socio-economic goals attached to procurement policy, such as the promotion of small and emerging business, the promotion of national economic development, and ensuring environmental sustainability and good labour practice. The central administrative and information-gathering role of the Office would, additionally, give it a central place in the further elaboration of policy.

Beyond facilitating, sustaining and evolving the implementation of the new procurement system, the Procurement Compliance Office would directly administer a range of functions central to the operation of the system as a whole. Of critical importance, it would be charged with establishing and maintaining a national database of service providers, registration with which would be a pre-condition for participating in government contracts. The process of registration would be key to monitoring and support of preferred service providers, such as black-owned and local business, and to ensuring that service providers were both compliant and capable of delivering on contracts. Removal from the list of registered suppliers would be an important means of punishing service providers guilty of fraud, sub-standard delivery, and other forms of misconduct.

Beyond the database, the Procurement Compliance Office would be responsible for ensuring uniformity in the procurement system, procedurally but also more broadly. Uniform and simplified procedures, documentation and conditions would render the system more legible, allowing business to employ fewer procurement specialists, render apportionment of risk between government and service provider more regular and less opaque and, very importantly in the context of post-1994 goals, make the system more accessible to smaller service providers. Greater uniformity in item specification would allow for the provision of uniform goods and services, ensuring longer production lines and other economies of scale.

It would seem that these efforts came undone after 1994, when nine provinces came into being under the Interim Constitution. In terms of section 187 each province was to establish a central tender board in terms of its own legislation. The result was the creation of separate and distinct dispensations

regarding procedures, documentation and conditions of contract. To remedy the situation it was envisaged that the Procurement Compliance Office be tasked with the production of standard documentation, including a Generic Categorisation of Contracts, with conditions of contract varying between categories such as 'goods', 'services' and 'engineering and construction works', and between sub-categories therein. In regard to item specification, which had previously relied heavily upon ad hoc processes, professional associations and the South African Bureau of Standards (SABS), the Procurement Compliance Office was to be centrally involved in coordinating processes of specification, and in funding and directing related research.

Finally, relatively little was proposed regarding the internal architecture and operation of the decentralised procurement centres themselves. Naturally, these procurement centres would be empowered to make procurement decisions, and these would have to accord with the constitutional provisions (section 217) requiring that government procurement be 'fair, equitable, transparent, competitive and cost-effective'. A transparent and competitive tender system was therefore strongly implied. The Procurement Forum had, however, come to the conclusion that 'cost-effectiveness' did not entail that price be considered the only criteria in making procurement decisions. It therefore advocated a broader 'value for money' approach, without specifying how this might be put into practice.

In any case, the extensive proposals contained in the 1997 Green Paper, released for public discussion, never graduated into an authoritative White Paper. In the years that followed, a difference of opinion arose between National Treasury and the Department of Public Works as to who should drive the process. As a result the recommendations of the Green Paper were never coherently and comprehensively implemented. Instead, National Treasury and Public Works seemed to go their own ways. Indeed, something resembling a Procurement Compliance Office was only eventually established in the National Treasury in 2013.

In 1999 the Minister of Finance drove the Public Finance Management Act (PFMA) through Parliament, on the back of 18 months of extensive consultation, and with overwhelming multi-party support. The PFMA formally decentralised responsibility for establishing constitutionally compliant procurement functions to accounting officers. The PFMA, in this respect, went in the opposite direction to the spirit and provisions of the past, which held that procurement powers rested with the tender boards or were delegated by them. In 2000 National Treasury then pushed through the Preferential Procurement Policy Framework Act (PPPFA) which established a points-based system for the adjudication of tenders.

THE POINTS-BASED SYSTEM FOR ADJUDICATING TENDERS

The preferential procurement policy is implemented within a points system: Under this system the bidder scoring the highest number of points out of 100 wins the bid. Over a certain amount, prescribed by the Minister of Finance, 90 of these points are awarded on the basis of price, with the lowest bidder qualifying on the basis of specifications, conditions, and administrative compliance being given the full 90. The additional ten points are calculated on the basis of a weighting given to Black Economic Empowerment and Reconstruction and Development Plan goals. Below this amount a similar, 80/20, system applies. The Preferential Policy Framework Act specifies the allocation of points on the following basis:

A maximum of 80 or 90 points is allocated for price using the following formula:

$$\begin{array}{lcl} 80/20 & \text{or} & 90/10 \\ P_s=80\{1-(P_t-P_m)/P_{min}\} & \text{or} & P_s=90\{1-(P_t-P_m)/P_{min}\} \end{array}$$

Where:

P_s = Points allocated for price of tender under consideration

P_t = Price of tender under consideration

P_m = Price of lowest acceptable tender

A maximum of 20 or 10 is allocated for the provision of a valid B-BEE rating.¹¹

Later in 2000 the Department of Public Works established the Construction Industry Development Board (CIDB). The had many of the powers and responsibilities originally envisaged as belonging to the Procurement Compliance Office, especially powers of registration and monitoring. These powers and responsibilities, however, only covered procurement of construction and related services, and involved relatively limited authority over the procurement centres. In 1998, as amended in 2002, it was further legislated that information technology was to be procured centrally through the newly established State Information Technology Agency.

The cumulative result of these partial and disjunctive initiatives was a measure of confusion in implementation. Early efforts at ensuring uniformity also floundered over the difficulty of driving new initiatives through the ten existing and partly autonomous tender boards. What the long-term consequences of this interregnum will be are not at present fully discernible. At least, the result has been delay, and the more extensive ambitions of the Procurement Forum and its Green Paper fell by the wayside.

THE SECOND PERIOD OF REFORM

2000 – C. 2010

In November 2000 an Australian consultant, Roger Webb, completed the Report on Opportunities for Reform of Government Procurement in South Africa. The report was endorsed by Cabinet. In 2001 the World Bank was approached by officials in National Treasury to conduct a Country Procurement Assessment Review of South Africa. A second period of reform was inaugurated by these developments - a period that would decisively shape the contemporary procurement system. While the Department of Public Works would over this time retain its own distinct but interrelated procurement regime for construction work, during this period National Treasury would lead reform.

National Treasury established a new division, responsible for SCM policy, for the development of norms and standards, for monitoring and enforcing compliance, and for contract management. The division assumed control of transversal term contracts, and, nominally, of the procurement function of organs of state that lacked the necessary capacity. In effect this arrangement, remaining much the same until the 2013 advent of the Office of the Chief Procurement Officer, offered a toned-down substitute for the Procurement Compliance Office envisaged in 1997.

The process of decentralisation would proceed in earnest only after 2003. In this year regulations to the State Tender Board Act removed legal impediments, and the Framework for Supply Chain Management, corresponding to the National Procurement Framework, was promulgated as regulations to the PFMA. The Framework mandated that accounting officers establish an SCM function consistent with the Constitution and the PPPFA, providing for demand, acquisition, logistics, disposal and risk management. Central to these tasks were mandated SCM Units established within the offices of the Chief Financial Officer. The effect was to conceptualise procurement as a subset of financial management, and to render it largely a procedural, financial control function, disconnected from strategic decision-making.

Accounting officers were to have broad discretion in determining the shape of these SCM Units, and they would also be able to delegate procurement powers largely as they saw fit. The Framework for SCM and related policy documents, however, set down certain basic requirements, mainly in relation to the function of acquisition management.

In the first place, the relevant documentation and conditions of contract were standardised by the Chief Directorate of Norms and Standards. The SCM Units were obliged to utilise these standard documents, and any amendments were to be motivated and approved by accounting officers. Procurement decisions valued at over R 30 000 were subject to the preferential points system established in terms of the PPPFA. In addition, the rand values of specific procurements were to determine the procurement procedure to be followed. In terms of the instruction notes currently in force, procurements valued at below R 2 000 could be made through petty cash; between R 2 000 and R 10 000 through verbal quotation from three service providers, with written confirmation from the winning supplier; between R 10 000 and R 500 000

three written quotes would have to be obtained, on a rotational basis, through an in-house register of service providers; and finally, for values above R 500 000 procurement would have to be through open and competitive tender.

These requirements, often quite restrictive, were largely intended to infuse procurement decision-making with a measure of rule-bound integrity and impartiality. Decentralisation of public procurement, then, threatened the wide discretion of the centralised system by rigid decisions in accordance with bureaucratic rules. These rules, in order to reduce the burden involved substantially, were however surrounded by clauses allowing their circumvention. The PPPFA allowed for granting an award to a firm that did not receive the highest number of points if 'objective criteria' other than those included in the points system justified such a decision. Furthermore, regulations in terms of the PFMA provided that deviations from procedure would be allowed where invitation of competitive bids or quotations would prove 'impractical'. In defence, the accounting officer would be obliged to approve of and record the reasons for deviation. These clauses provided rather large gaps through which rules could be circumvented, and partiality creep into procurement decision-making.

The integrity of the system was bolstered by a range of additional measures. The National Treasury established a code of conduct specific to SCM practitioners. These practitioners were required to disclose conflicts of interest and on that basis exclude themselves from specific decision-making processes, and members of the relevant bid committees were required to disclose their financial interests annually. SCM practitioners were also obliged to report any malfeasance that might come to their attention, and accounting officers were mandated to take corrective action, including if necessary involving the police. The Auditor-General, in addition, was to report upon wasteful or irregular expenditure, working closely on this with the relevant directorate in National Treasury.

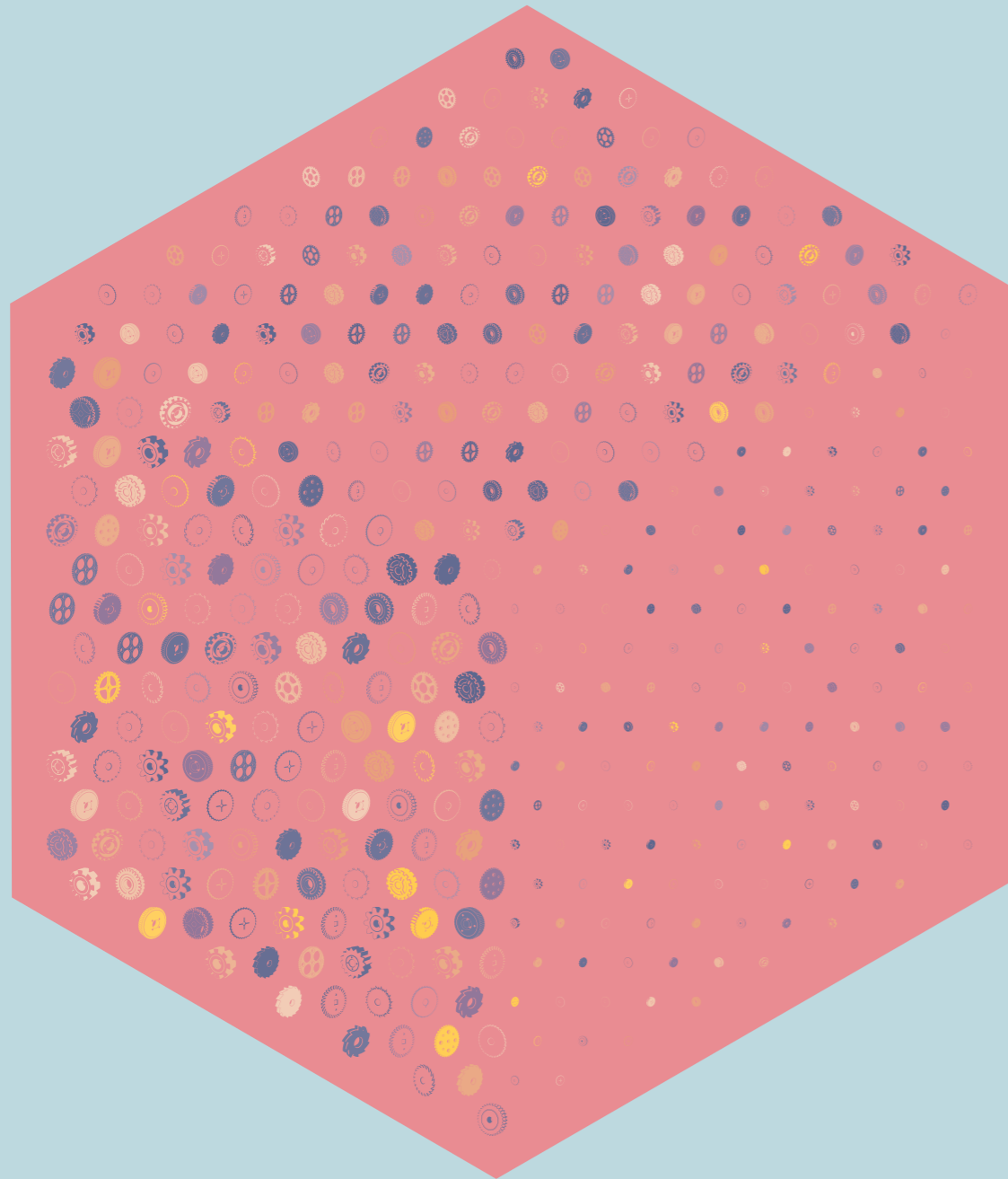
Nominally, public servants found responsible for irregular expenditure could in terms of wider Treasury regulations face financial penalties. In relation to service providers themselves, a List of Restricted Suppliers and a separate Register for Tender Defaulters was established in National Treasury, and supply chain practitioners were required to check the database prior to the awarding of contracts.

Bidders without tax clearance certification, or involved in corrupt or fraudulent practices in the context of a particular bid, were to be rejected. Further, bidders could be rejected for failure to perform in prior contracts. In return, procurement decisions could be contested by service providers on justiciable grounds, and reasons for decisions would have to be given on request. When contracts were awarded the public would be notified regarding winning bidders. The model here established omitted a number of prescriptions contained in the

1997 Green Paper. The role of the SCM Office in National Treasury in monitoring was underspecified and not clearly defined. In contrast to the vision for the Procurement Compliance Office, it did not have strong powers of sanction, audit and investigation. In these functions it was to rely largely upon the Auditor-General, whose office exhibited an impressive capacity to audit the procurement system, but was coupled with toothless mechanisms, highly dependent upon the will of political leaders to sanction non-compliance. Special powers for administrative review of procurement systems, in cases for instance where unsuccessful bidders allege misconduct, were not established. The SCM Office, furthermore, did not reserve to itself a robust central role in facilitating item specification and costing, complex and skill-intensive processes that would by default devolve upon organs of state in general. Despite these notable omissions, however, the model did amount to a decentralised procurement system that approximated, on paper, to international best practice.

The implementation strategy was conceptualised as having three phases. In the first phase, existing tender boards, in liaison with the relevant treasuries, would begin to delegate significant procurement powers to departments and agencies. The organs of state would in the process be allowed to build the relevant capacities and systems, with implementation plans included in the performance agreements of accounting officers. They would be supported in this by the treasuries and the tender boards, and guided by a 2003 Policy Strategy and a fairly detailed 2004 SCM Guide for Accounting Officers. The Policy Strategy noted that the focus at this point would be on establishing clear lines of authority and accountability, improving sourcing strategies, and improving asset and inventory management, essential to effective demand management. Further, accounting officers would be responsible for ensuring the training of procurement personnel, with training services being provided by private providers accredited by a Validation Board established in National Treasury.

Essentially, reformers were here relying upon a process of learning-by-doing. A comprehensive skills and capacity needs assessment was never conducted prior to reform, despite the World Bank's advice in this respect. It would seem that implementation of the first phase was not thoroughly monitored, with reliance essentially placed upon reporting to National Treasury. It was not supported by a comprehensive programme of capacity- and institution-building. Implementation happened very quickly, and there were no red lights to stall and consolidate it, despite the visible emergence of major problems in the system. Phase 2, involving the abolition of the tender boards, and full implementation of the decentralised procurement system, was proceeded with despite knowledge of major problems emerging at procurement centres. The State Tender Board was finally dismantled in 2009. Phase 3 was to succeed the immediate post-tender board abolition phase, and would involve continuous support and monitoring. It is to the difficulties that emerged in this process, to the actual practice of procurement and the consequences thereof, to which we now turn.



LESSONS FROM LIMPOPO AND ELSEWHERE

We have traced, in broad outline, the history of public procurement in South Africa. Presently a major overhaul and consolidation of the system is in the offing. Since the early 2010s, that is, public procurement reform is again at the centre of the policy agenda. Now, however, public procurement is seen more as a problem than as an opportunity. Indeed, it has emerged as a major deficiency in the system of government. The process of policy definition has not yet reached completion and the envisaged shape of reform is not currently clear. In this chapter we endeavour simply to describe and begin to analyse prominent weaknesses of public procurement in South Africa. The account will follow, roughly, the stages of a generic procurement process, as described and governed by South Africa's regulatory framework and instantiated in practice.

Our focus upon problems should not lead one to believe that there are no sites of effective procurement. There clearly are. It should be noted, moreover, that the problems and weaknesses that we discuss are not drawn from any single public institution. They are rather an amalgam of issues that have emerged in actual practice across South Africa, extensively supplemented by our findings in the Limpopo Province. There are, necessarily, shortcomings to such an approach. We will discuss these in the conclusion. For now we need only note that what follows represents an attempt at facilitating public understanding, and provide a foundation for future debate.¹²

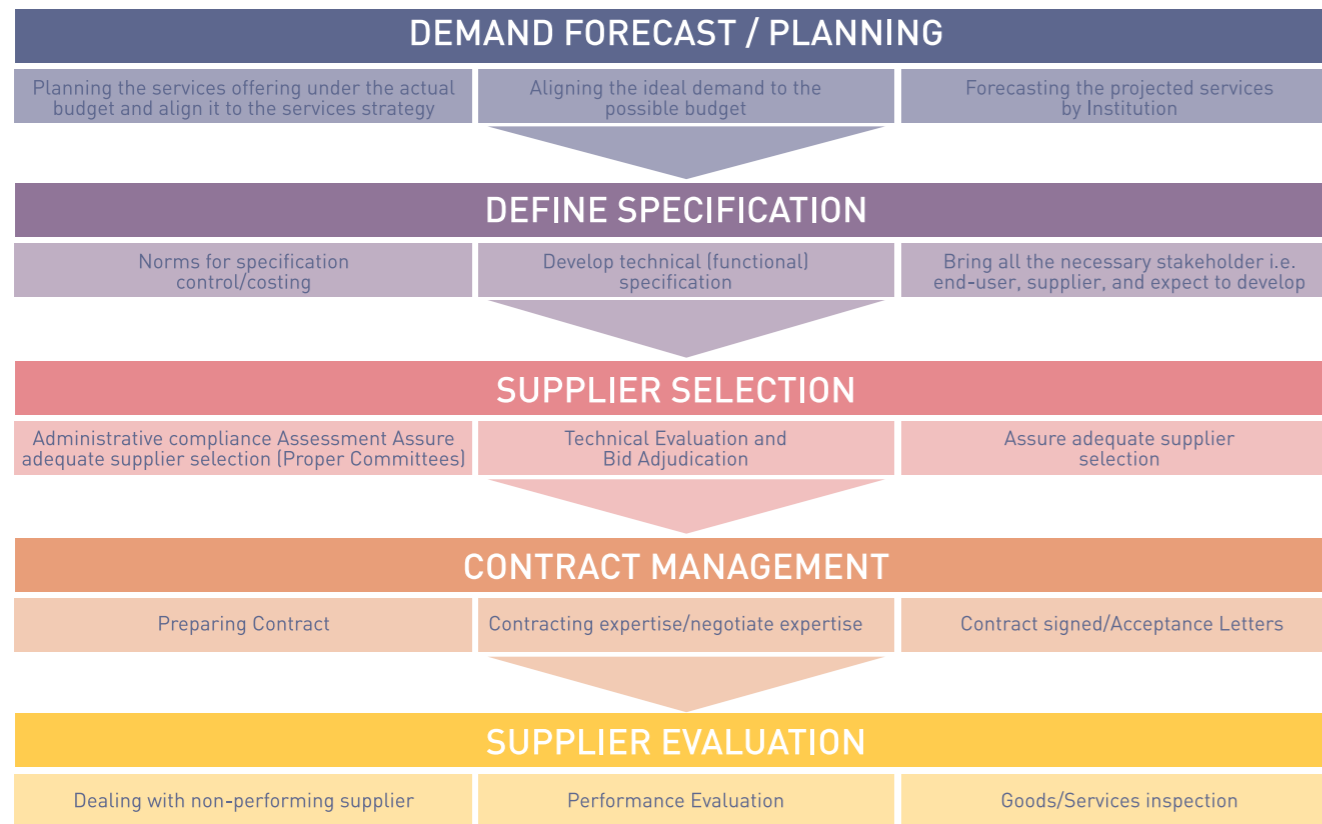
¹² See Appendix One for sources for this chapter.

PROCUREMENT PLANNING

The procurement process starts, in a manner of speaking, with planning. Strategic planning documents identify activities to be performed, and procurement planning should be a process of identifying procurement needs on the basis of these activities. In South Africa this is normally not the case. Strategic planning documents themselves are often of poor quality, and frequently not evidence-based. In turn, procurement planning is de-linked from broader strategic plans. In interviews it was suggested that often 'supply chain is really pulled in at the tail end' of the planning process. In this case timeframes built into the regulated process are difficult to follow, 'it is too late and most of the damage is already done' (Respondents Z and AA, 07/03/2014).

In practice, procurement planning involves a largely *ad hoc* process of interaction between upper management, financial authorities, SCM practitioners, and end-user entities that will utilise the goods or services in question. The process begins in earnest when financial authorities or SCM practitioners issue a notice to end-users requesting that they forward a list of procurement needs. The end-users will usually not determine these needs on the basis of strategic plans. Often these requests are reactive responses to a problem that has unexpectedly arisen. In theory, having identified what they need to do, end-users will proceed by discerning whether these activities can be pursued in-house, or whether they must be sourced from elsewhere. Decisions in this respect will usually be based on historical practices. When the decision is a live one, not just the product of routine, it has sometimes been suggested that there exists a strong bias towards procurement from private service providers. There are a number of reasons for this.

Procurement Process Chart Flow



The figure above outlines a fairly generic public procurement process in the South African context. It is included to give the reader a sense of the steps involved in public procurement.

We might note the pervasive presence of a presumption, largely ideological in nature, that private sector providers are inherently more efficient and effective. The widespread perception that the South African state is relatively dysfunctional amplifies this presumption. Interviewees, moreover, noted that state managers in South Africa often do not trust the expertise and capacities of those below them. This is especially the case where these managers have not moved up through the ranks, and have therefore not gained extensive experience in technical operations. As a result, the organisations that they manage are opaque to them, a situation exacerbated by high levels of turnover at upper levels. What this means, in addition, is that managers struggle to make an informed judgement as to the risk of under-performance involved in placing an activity in-house. Risk aversion can therefore be an important reason for out-sourcing, because out-sourcing serves to shift some of this risk to the private sector.

Of course, the bias in favour of private providers can exhibit a more under-handed logic. If production is kept in-house, the opportunity to benefit from a financial transfer to the private sector outside of public sector salaries is foregone. In other words, public procurement provides the opportunity for illicit enrichment of politicians and public servants. Some respondents have expressed the concern that this opportunity does indeed in some cases influence the decision of whether to procure or not.

The decision to out-source, finally, is self-reinforcing. Procurement from the private sector hinders the development of internal capacities, leads to dissatisfaction and resignations amongst career-minded technical staff that want to gain on-the-job experience, and cuts out the task and career paths that enable managers to gain experience of operations in the first place. Almost inherently, the bias in favour of procurement also produces sub-optimal decisions regarding quality and cost.¹³ In 2009 the Department of Basic Education planned to award a R254 million tender for development and printing of numeracy and literacy workbooks for grades 1 to 6. In 2010, after careful consideration, the department cancelled the awarding of the contract, and newly appointed Director-General Bobby Soobryan announced that the development and printing would be done in-house. As a result, in the 2011 Medium Term Expenditure Framework (MTEF), the department had an efficiency saving of R 125.3 million.¹⁴

In any event, with those considerations in mind end-users will generate a list of procurement requests, together with cost estimates, which are then forwarded for consideration to financial authorities and SCM practitioners. Usually, the cumulative costs of these requests exceed the available budget. To develop a viable procurement plan the relevant authorities must prioritise.

To prioritise they need to call upon the appropriate technical and operational expertise, and they should be able to draw upon robust data regarding inventory and assets, and their use. In practice, interviewees admitted, they often do not call upon the relevant expertise. Inventory and asset registers have historically been weak, they were often disrupted and lost in the post-1994 process of administrative amalgamation, and they are currently the product of poorly established data collection routines and record-keeping. The process of prioritisation suffers as a result. Decision-makers often fall back upon a hazy desire to be 'fair' to end-user groups, avoiding perceptions of favouritism. More problematically, procurement plans sometimes end up including items not even requested by end-users.

The outcome, nevertheless, is a procurement plan, even if incomplete or weak. This will detail the relevant procurement items, the procurement procedures to be followed, production times, and the timeframes that these impose. Procurement activities should follow procurement plans, and material deviations should be supported by written reasons, authorised on this basis by accounting officers. In practice, it is common for procurement plans to become moribund. They may be partially or entirely ignored, with adverse consequences further down the line.

Procurement plans are also often substantially incomplete. Frequently this may simply be a problem of administrative oversight and omission. Especially in cases of maintenance and replacement such an omission can be understood from the context. Problems with asset registers and inventories make it near to impossible to plan effectively for maintenance and replacement. If, for instance, the age and average lifespan of an asset is not known, and if the asset has not been subject to routine checking and maintenance, then it will be difficult to discern when it should come up for replacement. In extreme cases it may not even be clear that an asset exists at all until it breaks.

¹³ It should be noted in passing that similar dynamics to those just described, with the necessary changes of course, plausibly apply to decisions regarding whether to procure from other public institutions or to participate in transversal term contracts.

¹⁴ National Treasury, 2011, *Estimates of National Expenditure*.

COSTING AND SPECIFICATION

Formally, once a procurement plan is established, the process of procuring specific items can commence. Before the private sector is approached, item costs and specifications must be determined. Currently the process of costing is often improvised. Costing could be on the basis of historical purchases, or through rudimentary market research. In more complex procurements sophisticated costing models might be needed. End-users are again prominent in these endeavours, and the laxity of the regulatory environment affords them substantial room for manoeuvre, and opportunity for abuse.

It is important to note at the outset that item costing will substantially determine the purchasing procedure to be followed in any particular case. The costing will determine the value threshold within which an item falls. Value thresholds, in turn, prescribe purchasing procedures. So, every public institution will have delegations of purchasing powers with value thresholds attached. When these thresholds are exceeded purchasing has to proceed through higher authorities. In addition, National Treasury prescribes distinct purchasing procedures for different value thresholds. So, for prices above R 500 000, a competitive tender is prescribed. Below this level one moves through various quotation-based procedures to petty cash purchases. As a rule, the higher the item cost, the more restrictive the procedure for purchasing. At the top end of this scale, then, sit purchasing procedures that are cumbersome but well-protected. At the bottom end sit procedures that are convenient but that lack institutional integrity.

It should be obvious that advantages accrue to public servants who follow the less restrictive procedures. By doing so they can get the job done with added facility, and in certain cases they can create room for their own private enrichment. The key vehicle for achieving this end is to split bids, reducing the cost of any single item by breaking it into a number of different items. National Treasury has repeatedly and ineffectually instructed that this practice must end. By all accounts, and by our own observation, it remains both pervasive and openly admitted to. The practice may serve to grease the machine of state, but its broader effect is to open opportunities for corruption, and to erase progressively the benefits of regular purchase and bulk-buying, ultimately increasing costs for the state and legitimate service providers alike.

Each item will also require a specification, which describes the requirements that a good or service must meet in order to be accepted by the state. The process of item specification is equally subject to a great deal of improvisation. In some cases specifications will be on file, drawn up for the purpose of past procurements. They might be available from other public institutions that have made similar purchases, or the South African Bureau of Standards (SABS) might have created a specification that could be used or adapted. Even in cases where specifications are thus secured, they will often be dated and incomplete. It will commonly be necessary to turn directly to private service providers.

Under the current regime, this is often necessary, but there are large risks involved. Private providers often have limited knowledge regarding the resources, capacities and needs of public institutions. In this context they sometimes suggest more expensive options than are needed or even manageable. Let us take an example from our own fieldwork: Amathole District Municipality relies heavily upon consultants to specify for its infrastructural needs. In the case of water sanitation their requirements could be met by oxidation ponds, the maintenance of which would ordinarily simply require the mowing of lawn and prevention of bank erosion. Instead, they operate a fairly high-technology activated sludge solution. This they neither have the need nor the capacity to manage, as such solutions are appropriate for much more urbanised contexts. In some cases this sort of over-prescription is driven by the self-interest of consultants, who could be called in to deliver the more expensive product. They could collude with other consultants. Essentially, the reasoning is, 'I will do this sanitation master plan, you tender for the work that will come from it' (Respondent O, 10/2013). In order to do this, consultants need only give each other inside information, or collude with a wider set of consultants in tendering. Approaching private providers for specifications can also have anti-competitive implications.

EVALUATING TENDERS IN THE ABSENCE OF DETAILED SPECIFICATIONS

In 2010, the Provincial Department of Health in Limpopo wanted to procure for the supply and maintenance of devices that destroy air-borne pathogens (viruses, bacteria, or fungi that are transmitted through the air). They approached suppliers for specification. The department then invited the Council for Scientific and Industrial Research (CSIR) to be part of the technical evaluation committee. However, before the CSIR could join the evaluation committee, they raised following concerns about specifications used in the tendering process, noting that there was no clear basis for comparing one tender to another. Specifics issues related to the lack of clear definitions of technical terms provided, and limited detail provided to bidders for specifications around important issues such as the installation of the devices.¹⁵

¹⁵ Analysis of bid files.

To elaborate, a private provider can provide a specification that matches its own product quite exactly. Its product will almost invariably be different at the margins from that offered by its competitors. If end-users and others follow these specifications, interviewees explained, then the effect is over-specification. The specifications used in the bidding process speak too directly to the product of a specific provider, tending to disqualify its competitors from the outset. End-users who approach private providers for specifications can build relationships. Often these relationships are built in more explicit ways. It was suggested to us in interview that in one department technical staff and private industry:

have it all worked out, they generally work out the models together, they come for formal meetings, the bosses don't even know what the meetings are about, they just know that these techies are meeting with these contractors... You see in the lift and you wonder where these suited people are going to: 'No, we have got a meeting with so and so'. But more to come and present their products,.. big companies contacting them directly and they will say 'Come in, come and have a meeting with me and da, da, da'. That is how it starts. (Respondent E, 06/09/2012)

These are often highly experienced personnel that have seen their prospects of career advancement short-circuited. They are offered the prospect of securing a second income, which they believe they deserve. Placed above them are individuals who have commonly not worked through the ranks, and so do not have the experience and expertise needed to exercise effective oversight.

Where private service providers are not approached, and where the public institution's own needs are not sufficiently known or where other interests apply, the result is often under-specification. In this case specifications do not adequately provide for the minimum needs of the procuring entity.

Under-specification works to the advantage of fly-by-night operations. These often pursue government contracts with minimal existing capacities. They compete with others solely on the basis of cost, and to do so they are known to provide sub-par services and trade in sub-standard, cheap or pirated products. Under-specification, by keeping the bar low, allows them to tender below better-established competitors offering more robust products. There are obvious negative consequences for government service delivery. Specifications are an integral component of contracts between the state and successful bidders. Under-specification therefore additionally undermines the ability to manage service providers and hold them to account for poor performance.

The risks of poor specification can be ameliorated by bid specification committees and other such entities. These are prescribed in the case of competitive tenders, and are constituted on an ad hoc basis. Ideally, the bid specification committee should be cross-functional, including financial personnel, technical and operational personnel nominated by end-users, legal and contract management personnel responsible for the drafting of contracts,

and SCM practitioners. Since no law enforces this, it is common for these committees not to be so constituted. They can easily be packed by political and administrative leadership with an eye to securing private advantage.

When specifications are drawn up the specifications committee is responsible for considering them, ensuring that they are unbiased and otherwise appropriate, and amending them accordingly. The same factors, however, that lead initially to poor specification might simply be repeated in committee. These committees, moreover, can amend specifications in an ad hoc fashion, without stating reasons or communicating these to end-users and other relevant parties. We found in Limpopo, for example, that a hospital sent specifications to the provincial department for laundry services required at the hospital, yet these did not match the specifications in the service level agreement signed with the successful bidder. The hospital specification indicated that dirty linen should be collected on a daily basis, but the final contract stated that dirty linen should be collected three times a week. As a result, the hospital experienced a serious shortage of clean linen. These deficiencies in basic services can have serious consequences for the quality of care provided to patients. The cause, as always, can be inadequate skill, poor communication, or malfeasance. The consequence is for specifications to deviate from the stated and legitimate needs of end-users.

SUPPLIER SELECTION

Once specifications are prepared, the private sector can be approached. The procedure for doing so depends, as already suggested, upon the estimated cost of the goods or services being procured. In terms of the thresholds currently in force, items costed below R 2 000 are subject only to an institution's procedures for dealing with petty cash. Petty cash purchases, that is, fall outside of the regulated procurement system. Essentially, within this threshold costs are too low to justify a more cumbersome procedure. The room afforded for simply choosing a preferred service provider, in accordance with private interests, is correspondingly large.

Quotation-Based Procurements

For costs between R 2 000 and R 500 000 procurement is quotation-based. For all procurements under this procedure, where it is practical, at least three quotations must be secured. Quotations must be from service providers registered on an official database, containing lists of prospective suppliers arranged according to item. Further, in order to avoid bias and spread opportunities, SCM practitioners must approach service providers for quotations on a rotational basis, moving through the list at least three providers at a time for this purpose.

Quotation-based procurements fall into two distinct categories, according to the thresholds that apply. If costs fall within the R 2 000 to R 10 000 threshold then verbal quotations are prescribed, with the winning quotation providing written confirmation thereafter. The particular problem with

this method is that the relevant public servant can approach two service providers for quotation, and then approach a third service provider with the prices verbally quoted by the others, thereby ensuring that the third wins.

For values of R 10 000 to R 500 000 a more robust procedure is suggested. In this case written quotations must be forwarded, and ideally these must be enclosed in envelopes which should be opened simultaneously by a team. The ideal, however, is not formally prescribed, and it seems that it is often not followed. In consequence the procedure can be manipulated in much the same way as in the case of verbal quotations. The first two quotations can be viewed, and the third service provider informed so that he or she can quote just under them.

These quotation-based procedures, in any case, are generally not very robust. We can begin with the supplier databases. The databases are generally populated by inviting service providers to register through public advertisement. Due to the need to promote emerging business, the requirements for registration are low. Service providers, that is, must be registered on the companies register, they must be in possession of an annually updated and original tax clearance certificate, they must be in possession of a bank account, and only in some sectors must they have proper business premises and the necessary industry accreditation. BEE certification is needed to secure the relevant preferences. Entry onto the database is not generally subject to physical inspection. The problems that such an open system poses are amplified substantially by the fact that there is currently no provision for a staggered database. A staggered database would place service providers in different grades on the basis of information regarding their capacity. This would allow institutions to approach different grades in accordance with the difficulties imposed by particular projects.

The cumulative result of low entry requirements and 'un-staggered' lists, is that databases can be over-populated, often with service providers that are often not well positioned to do the job, and the databases themselves offer no formal means for separating those that can do particular jobs from those that cannot. The databases are, moreover, open to a phenomenon that we might call 'bid multiplication'. Private individuals, that is, can fairly easily establish and register multiple companies. These would be 'shelf' companies, having no real material existence, pulled off the shelf *en masse* to increase the odds of winning a procurement contract. We will see that the phenomenon of bid multiplication subverts the procurement process in many ways.

Consider, in the broader context of low entry requirements and un-staggered lists, the procedure of rotation. In this context the procedure, while eminently reasonable on paper, becomes deeply problematic in practice. In following it institutions are forced to take quotations from, and ultimately contract, a great many service providers that simply cannot perform. Beyond this, bid multiplication can easily undermine the fairness of the process. Ten of the hundred companies that find a place on it could be shelf companies belonging

to a single individual. In consequence, he or she would come up effectively once in every ten rotations, rather than a fair once in every one hundred.

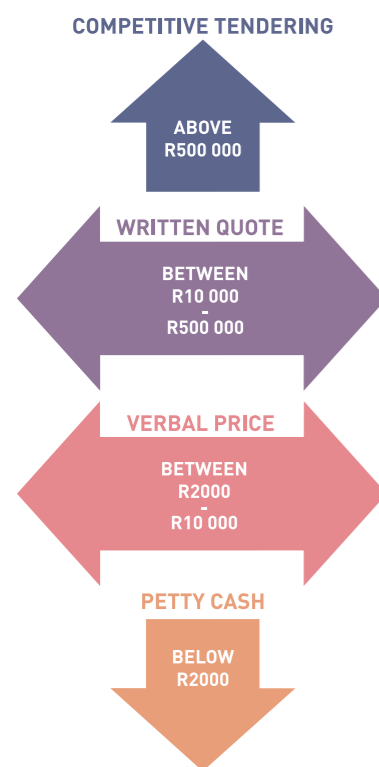
In practice, then, it seems that the rotation procedure is not always followed. In fact, it emerged from our investigations that the relevant public servants are not even widely aware of it. The result, then, is to open quotation-based procurements to abuse. Effectively, private service providers can be chosen from the lists. It may often be that they are chosen on the basis of past performance, or some other acceptable criteria. They can, however, easily be chosen on the basis of private or personal interest. In the first place, the practice of obtaining only one quotation, without reasons as to the impracticality of obtaining more, is quite common. Beyond this, bid multiplication will allow that three companies owned by a single individual could be approached. Alternatively, three individuals controlling separate companies could operate a ring.

Competitive Tenders

Quotation-based procurement processes provide opportunities, depending on the circumstances, for small numbers of government officials to exercise high levels of discretion regarding who gets government contracts. Corrupt choices, furthermore, can fit quite easily within regulations. The Auditor-General would not even be aware of them. The procedure for competitive tendering, prescribed for costs above R 500 000, is designed to limit this room.

¹⁶ Sources: Auditor-General Reports: 2009, 2010, 2011, 2012 and 2013.

Expenditure Thresholds



AUDITOR-GENERAL FINDINGS: 2009 – 2013

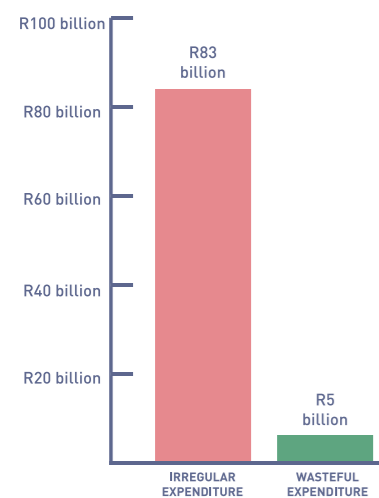
Between 2009 and 2013, the Auditor-General found irregular expenditure totalling R 83 billion, and fruitless and wasteful expenditure of R 5.4 billion. Of the total irregular and wasteful expenditure, 75 percent was attributed to the contravention of SCM regulations.

Specifically, the Auditor-General found the following to be the main causes of irregular, fruitless and wasteful expenditure:

- There was insufficient or no link between procurement needs, plans and the available budget.
- Reporting questionnaires to the National Treasury were not completed and submitted by departments on a monthly basis.
- Three written quotations were not invited by departments for tenders of the specified Rand value and deviations from prescribed norms were not reasonable, justified or approved.
- Departments procured from suppliers who did not have SARS tax clearance.
- Competitive bids were not invited and the preference point system was not applied.
- Suppliers scoring the highest points with the lowest price quotation were not selected and no justification was provided as to why this was so.
- Debriefing sessions were not held with unsuccessful bidders.

It is important to note that irregular, fruitless and wasteful expenditure is expenditure that is not incurred in the manner prescribed by legislation. Such expenditure does not necessarily mean that corruption was committed. The results are of course a good measure of compliance / non-compliance with procurement and financial regulations.¹⁶

Auditor- General Findings: 2009-2013



The competitive tender procedure commences when the private sector is approached. This is done through public advertisement published as a minimum in the Government Tender Bulletin. Prospective suppliers begin by purchasing a bid pack carrying various uniform prescribed forms, and necessary information regarding the nature of the contract to be entered into, inclusive of the specifications for the goods or services being purchased. They are given a prescribed time-period to respond.

In the case of items that are relatively simple to provide, it is often the case that a large number of responses are received, as for example the provision of coal for boilers (the Department of Health in Limpopo received 155 bids for a tender of this kind in 2009).

Sometimes, these can run into the hundreds, not all of which are from functional service providers capable of performing the job at hand. In the case of items that are more sophisticated and difficult to provide, it often happens that very small numbers, or even that no bidders respond. We found instances of this in the case of the Department of Health in Limpopo. This is indicative of a situation where advanced companies, national and international, are not engaging adequately with the government tender process.

The result is failure to tap into competition between potential suppliers, or unnecessary waste of time on unresponsive tenders. The regulations do allow for procurement from sole providers, or for the running of limited tenders, where a list of potential service providers is directly approached to submit bids. These procedures, defined as 'exceptional procurements', are very often not pursued when they should be.

Continuing with the competitive tender, completed and sealed bid packs are usually delivered into a tender box at the procuring institution. The tender box is ordinarily fairly secure, inaccessible and subject to camera surveillance. The sealed bid packs should be opened simultaneously and in public. Interviewees commented that where these precautions are not applied, tampering with bids is not uncommon. The sense is that where the transportation and warehousing of bid packs is not properly protected, tampering also occurs. The acceptance of late bids, despite repeated instruction to the contrary, is also a problem. What this does is allow late bidders to simply quote below the now known lowest price. Much the same thing is achieved by cancelling tenders immediately after bids are received. Insiders, noted some officials, can then scope competing bidders, and advise outside parties to quote under them when the tender is re-advertised.

From this point, bid packs will move past an institution's SCM practitioners. They will be checked for administrative compliance, ensuring that forms are properly completed and that necessary additional documentation is present and appropriate. SCM practitioners are repeatedly exhorted to ensure that bidders attach original tax clearance certificates. Often

they do not. SCM practitioners are also supposed to check bidders against the Register for Tender Defaulters and Database of Restricted Suppliers. Both are administered by National Treasury. The Register for Tender Defaulters includes individuals and service providers found guilty of procurement corruption in a court of law. Perhaps reflecting what a former Finance Minister once described as the 'constipation' of the justice system, and the inherent difficulty of proving guilt in cases of corruption, the Register is essentially dead. It includes at the time of writing only two individuals. Both were convicted, apparently in the same case, in 2010. The Database of Restricted Suppliers excludes individuals and service providers that have failed to perform or are otherwise guilty of misconduct. The Database is in better condition. It is populated through what is in effect the discretionary reporting of public institutions. For this reason alone it is incomplete. It seems that SCM practitioners do not routinely check bidders against it in any case.

DATABASE OF RESTRICTED SUPPLIERS

On the 30th of September 2011, the National Treasury issued a circular requiring accounting officers and authorities to verify the status of recommended bidders by confirming with the Database of Restricted Suppliers that no recommended bidders or any of their directors/trustees and shareholders are listed as companies or persons prohibited from doing business with the public sector.

In 2013, of the listed 699 companies and persons in the Database of Restricted Suppliers, 73 percent failed to obtain permission to do remunerative work outside employment, 8 percent are listed for poor performance, 5 percent are listed for non-performance and 4 percent are listed due to fronting, misrepresentation, prejudice or potential prejudice, unlawful behaviour or intention to commit unlawful acts such as fraud.

SCM practitioners, in checking administrative compliance, are placed in a position where they can exclude service providers from the process even before bids reach evaluation and adjudication committees. What this means is that there is room for SCM practitioners to illegitimately favour specific bidders, by eliminating their competitors on spurious grounds for administrative non-compliance. Accusations to this effect are common (e.g. The Star 28/08/2012). Bids found to be administratively compliant, on the other hand, proceed to a bid evaluation committee.

Bid evaluation committees, like bid specification committees, are constituted ad hoc, and should be cross-functional, including technical and operational personnel, financial personnel and at least one SCM practitioner. Bid evaluation committees and bid specification committees should also be separate, containing different people. Since their composition is not legally prescribed, interviewees noted that this separation often does not take place.

The role of the bid evaluation committee is to assess the ability of the bidders in relation to the work at hand. In other words, they check for functional compliance. The bidders can only be assessed on criteria laid out in the original bid packs, within which specifications loom large. Problematically, it is not unknown for specifications to be changed in the process of evaluation, often without justification. This constitutes the moving of goalposts, and can easily be designed to favour some bidders over others. The bid evaluation committee can physically inspect service providers. Our own observations suggest that the criteria governing inspections are often extremely vague, and therefore largely discretionary. For example, we found that it was only after a Limpopo hospital CEO was frustrated with poor linen cleaning services that it was discovered that the supplier did not have the capacity to do laundry services at scale. However, the inspection did not disqualify the service provider because the criteria for the provision of services, and the nature of inspections, were extremely vague.

The bid evaluation committee, after generating a list of functionally compliant businesses, will calculate the score to be given to the various compliant bidders out of one hundred on the basis of price and BEE preference. At this point we must note again that the practice of bid multiplication may already have distorted the procurement process. The submission of multiple bids, involving different functional offers at different prices, increases the chances that an individual or group will run the gauntlet from administrative to functional compliance, and still come in with the best cost and BEE preference combination.

There are cases, moreover, where public institutions split a tender award between a number of service providers. The practice is entirely legitimate. It involves splitting the task description into a number of component parts, say into the servicing of groups of public institutions or regions. The component parts will generally be more manageable, and therefore available to small business, and through this vehicle the tender can be shared more widely to support redistribution. However, even where the splitting of bids is undertaken to effect service delivery more efficiently, the practice is open to abuse. We have seen, for example, instances where businesses with the same directors were awarded more than one component of the contract.

The bid evaluation committee must, after determining functional compliance and score, forward its recommendations regarding the tender award to a bid adjudication committee. The bid adjudication committee ought, again, to be cross-functional, and not include members from either the bid specification committee or the bid evaluation committee. Its members generally enjoy annual tenure, but again there is the clear possibility that they can be appointed by political and administrative leadership without having the necessary capacity or neutrality. The bid adjudication committee is meant to double-check whether evaluation has been properly conducted, and

then to make a final decision. It may go against the recommendations of the bid evaluation committee, but in such a case it would have to report its reasoning to the relevant treasury and to the Auditor-General. It will normally simply follow the recommendations given to it.

These recommendations can, problematically, be drawn up by a single individual, and communicated by him or her to the bid adjudication committee. Such an individual can exploit his or her position by doctoring the recommendations to favour a personally preferred supplier. Alternatively, a member or members of the bid evaluation committee can be invited to make presentations before the bid adjudication committee or write summaries explaining the recommendations. It is not unknown for bid adjudication members to rely entirely upon these presentations or summaries. Again, they can be doctored to favour a certain service provider.

Depending on the way in which the delegation of authority regarding procurement decisions operates in a particular institution, the decision of the bid adjudication committee may, finally, be forwarded to the accounting officer for sign-off. The name of the winning bidder, along with the winning price and BEE score, should then be advertised in the Government Tender Bulletin. The final substantial defence of the system is thereby activated. At this point unsuccessful private service providers can prepare to contest the final decision. Initially, they attend a prescribed debriefing session where government is required to defend its decisions. This might be followed by a formal request for reasons for the rejection of a specific bid. Finally, the matter might be pursued in the courts. Certainly the latter path is cumbersome and expensive, and therefore most likely in relation to high-value items or services that are thoroughly competed for by well-resourced firms. Given that many service providers are not well resourced, and that even where they are there exists a great deal of private sector collusion and other forms of misconduct, recourse to the courts is fairly rare. The South African procurement process is subject to sufficiently widespread manipulation that, even then, there exists a large risk that service providers that turn to the courts might be punished in subsequent bids for doing so.

Exceptional Procurements

It remains to consider exceptional procurements. All procurement procedures have exception clauses attached. These allow officials to circumvent prescribed procedures and requirements in cases of emergency or urgency, where sole providers are needed, or where to follow requirements would be otherwise impractical. The existence of these clauses is absolutely essential to the smooth working of the government machine. In South Africa, however, they seem often to operate in ways unintended by the regulations.

The procedure for invoking an exception is relatively straightforward. When the need arises SCM practitioners prepare a written justification to be forwarded for authorisation to the accounting officer. Once authorised, the exceptional procurement can proceed. In cases where

the procurement is valued at R 1 million and over a report must be prepared and sent to the National or Provincial Treasury and the Auditor-General within ten working days of purchase. These reports are to include a description of the item, the name of its supplier, the amounts involved, and reasons for dispensing with the prescribed procedure. The reports are considered, and action taken if necessary.

It often occurs that exceptions are not invoked even when they are needed. We suggested earlier that this occurs especially where procurement through sole providers or limited tender is necessary. Commonly, such a need will initially be identified by technical end-users. Even in these circumstances SCM practitioners are known to refuse them. There may be a number of reasons for this. SCM practitioners would be well aware of the prospect of manipulation by end-users, and would often be ill-equipped to investigate their justifications. A similar logic applies for accounting officers, who are required to exercise oversight through authorisation, but often confront organisations that are to them exceptionally opaque and treacherous. The result is that even honest decision-makers may exercise excessive caution in proceeding by exception.

However, there is also the reality that exceptions are often invoked for reasons of incompetence and malicious intent. Exceptional procurement does indeed offer obvious advantages to the dishonest, because through it decision-makers are placed in a position where they can decide a purchase on the basis of their own preferences.

The more difficult problem is that even without malicious intent public servants may find themselves in the position of needing to use exceptional procurement. It is obvious and necessary that this happens in cases of genuine emergency, and indeed internationally corruption is a well-known consequence of the loosening of procedures that emergencies provoke. In South African public procurement, however, the definition of emergency is greatly inflated, and is often expanded to include situations that are preventable and foreseeable, the product of administrative dysfunction at early stages of the procurement process.

We saw above that procurement plans are often incomplete. It is not unknown for them to omit key purchases, and with the passing of time these purchases can become quite urgent. More intractably, proper planning for activities such as maintenance and replacement generally requires quality inventories and asset registers. We have seen that these often do not exist. In consequence, when key equipment or infrastructure breaks down this can often be unexpected and legitimately take on the dimensions of an emergency.

We also suggested above that procurement plans are often neglected. Additionally, the timetables included in plans are very often not met, pushing unspent money to the tail-end of the budget cycle. The result is a most prominent form of emergency, the end of

the financial year. When public institutions do not spend budget allocations, they both lose the surplus and risk having their budget revised downwards in the next financial year. A turn to exceptional procurement, under the pretext of emergency, has been a persistent and important means for ensuring that this does not happen.

Through the many processes just described a preferred service provider will be selected. What follows is a contract between state and firm, and the management of the relationship that this involves.

CONTRACT MANAGEMENT AND SUPPLIER EVALUATION

The practice of contracting has been substantially constrained by this point in the procurement process. Specifically, officials are formally discouraged from developing contracts that diverge materially from information contained in the original requests for bids. Bidders hold legitimate expectations formed on the basis of such initial requests, and renegotiating contracts with selected service providers carries a large risk of corruption. The effect of this eminently justifiable practice, however, is that the state is tied to specifications and other conditions prepared much earlier in the procurement process. The problem, as we have seen, is that specifications and other conditions are often too thin. We called this under-specification. Essentially, government has not effectively communicated its own expectations, and all sorts of problems follow.

Of course, to avoid contractual difficulties, some system is needed to monitor and report upon supplier performance. Whatever system there is, is however largely unregulated and ad hoc. Normally the responsibility for checking service provision falls to end-users, and the effective discharge of this responsibility will depend entirely upon whether the appropriate officials are involved, and whether they have the appropriate experience with the good or service in question.

If the level of service is accepted, receipt will be reported and payment will follow. Procedures for checking payments against receipts and contracts are not always followed. This allows for the inflation of invoices, double payments, and so forth. Payment should be made within thirty days of receipt. Very often it is not, putting severe strain on emerging service providers, and discouraging the involvement of established business in government procurement.

If issues emerge in delivery, end-users will have to report these to SCM practitioners for follow-up. Communication and cooperation between end-users and SCM practitioners can often be deficient and acrimonious, as we found in our fieldwork. End-users have complained that follow-up is often tardy or non-existent. At this point we might refer back to the fact that contracts often do not provide a basis for effective follow-up. End-

users might view goods or services as sub-standard, but specifications are often not robust enough to enable contract managers to hold service providers to higher quality. A second option open to SCM practitioners is to place non-performing service providers on the List of Restricted Suppliers, nominally excluding them from future government business. The ease with which companies can be established, and the practice of farming directorships out to family and friends, means that this is a weak instrument. It is easily circumvented. The List is also a blunt instrument. It is an all-or-nothing affair that, particularly, does not provide for the gradation and accumulation of instances of misconduct. Robust guidelines for its use have not been prepared, meaning that this is left entirely to the discretion of public officials, subject to review by the courts.

If we add to these many issues the fact of politicisation of the public procurement system, and the partly related existence of political and administrative corruption and other forms of bias, the conclusion is justified that South Africa does not have a system for reliably and impartially punishing poor performers and rewarding effective ones.

CONCLUDING REMARKS

In concluding, it must be noted that things are often better, and sometimes worse than even this survey suggests. With regard to the latter, we have found cases where procurement powers have been delegated to almost every level of an organisation. It has been suggested to us that in some places even basic regulatory structures, such as bid evaluation committees, are not in place. Here we reach the extremes of non-compliance.

We will close, however, by noting a methodological point. We mentioned at the outset that our survey amounts to an amalgamation of and generalisations about weaknesses that have emerged in the actual practice of public procurement in South Africa. We will close by first considering the limitations of this survey, and then by suggesting ways in which the research agenda might move forward.

Generalisation is always hazardous. It necessarily elides diversity and complexity. Along these lines, it must be noted that procurement processes in South Africa are subject to a great deal of variation. Some departments, or units within departments, procure effectively and efficiently. The procurement system has been implemented in public institutions which exhibit different practices, structures and capacities. The regulatory framework is loose enough to allow for a great deal of

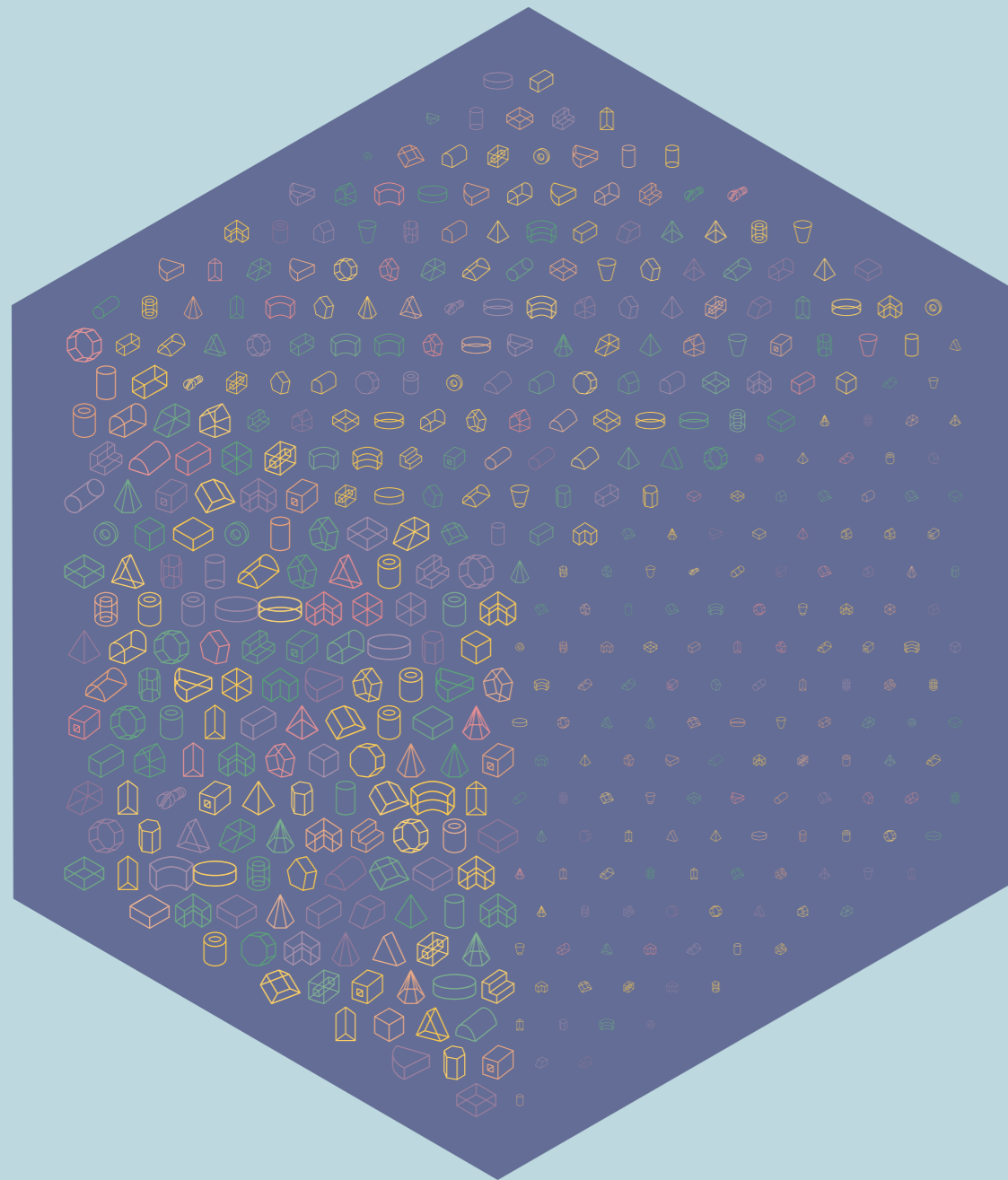
play, even in formal arrangements, across the state. Entirely distinct regulatory regimes and systems, moreover, have been established to deal with transversal terms contracts, information technology, construction, and state-owned enterprises. Even specific items require sometimes subtly different processes, and each brings with it unique issues and problems. Finally, our focus upon 'problems' itself obscures strengths and a great deal of unevenness in implementation.

These issues represent layers of complexity that we could not possibly depict in this initial work. What we have done, rather, is to abstract what we consider to be both prominent and important. We do so in order to give to the uninitiated a preliminary sense of the nature of public procurement in South Africa. We do so also to provide some foundation for further debate. We do not suppose that this early work is the last word. Indeed, given that we hope that it is not, how might those interested in such a research programme proceed?

First, we should note that each stage of the procurement process discussed above provides ample room for elaboration. A more detailed analysis of weaknesses at each stage in the process would be a useful tool for informing regulatory reform. Second, we need to develop a more comprehensive description of unevenness in public procurement. We have already suggested that there are a number of dimensions to this unevenness. There is difference across place, item and regulatory regime. We could, moreover, focus upon unevenness in performance or other aspects of practice. Through the accumulation of data we can begin to develop the comparative basis needed for the elaboration of theory and the emergence of fuller understanding. Third, we might consider various systems that support the procurement function, including training, the justice system, monitoring and policy-making housed at National Treasury, and technical support systems administered by entities such as the SABS and the CSIR. We might include in this category the phenomenon of Purchasing Management Units, often entailing the procurement of the management of procurement.

In the next chapter, however, we pursue a fourth line of inquiry which is more general in scope. Abstractly, we consider the practice of public procurement as consequence and cause of the broader state and society: in short, their reciprocal relationship. In pursuing this line we can begin to understand the importance of public procurement and its reform. We can also start to discern the limits of a public procurement reform agenda that narrowly focuses upon the regulatory framework alone.

Unevenness and Fragmentation in the South African State¹⁷



One of the major problems of current analyses of government and governance in South Africa is that they simultaneously say too much and too little. Moeletshi Mbeki, for example, has discussed South Africa as a 'failed state', a conception that has been picked up by others as well.¹⁸ Alex Boraine's new book, *What's gone wrong?*¹⁹, suggests that the South African state has not failed, but is on the brink of failure. Essentially they claim that South African departments are failing in 'service delivery' because the African National Congress tries to exercise too much control over them and ends up politicising government in a way that undermines governance. The problem with such arguments is that they fail to capture the overwhelming experience of government today. There are certainly departments failing to perform even their basic tasks, like keeping the lights on and the water flowing in taps. Yet there are others succeeding under equally difficult circumstances. Even within the same department, different offices perform differently. Applying for an identity document at Home Affairs today, for example, has become relatively easy and the process is mostly efficient. For non-South Africans, anecdotal and other evidence suggests that dealing with Home Affairs can be tortuous and fickle. The Home Affairs case is instructive because it alerts us to the temporal character of the phenomenon that we are dealing with. Departments perform differently across their different offices but also in time. Some have degenerated in their ability to perform mandated tasks. Others have improved. It is the *unevenness of government performance and of governance generally*, not simply across the tiers of government but between departments and even between offices in the same department that remains to be explained and dealt with.

The value of this research is that it goes some way towards enabling us to understand why this is the case and, to some extent, towards suggesting how to deal with it.

The procurement system discussed in this report, both at the level of design and at the level of practice, allows us to make some general statements about governance in South Africa and even about the character of the South African state. Two features, in particular, are especially noteworthy.

- In the first place, procurement has become one of the largest tasks, arguably the single largest function, of government departments. The burden of compliance with National Treasury and DPSA regulations consumes a good part of the daily work of many public officials. In terms of their mandated core function, however, whatever it might be (maintaining an asset register in a department, providing clean laundry for a hospital, developing an Integrated Development Plan in a district), departments are outsourcing these roles to third-party service providers instead of doing it themselves. As we have seen, this does not reflect the indolence of South African public servants, but rather the effects of local and international trends to improve government efficiency and reduce wastefulness.

¹⁷ This chapter draws heavily upon empirical material laid out in Chapter 3. It is influenced broadly by literature on state formation, especially Weber (1968), Skowronek (1982), Ertman (1997), and Lange and Rueschemeyer (2004). It draws upon the new institutionalism in sociology and political science, with special reference to March and Olsen (1989). The notion of the 'contract state' derives roughly from the 'Anglo-governance' tradition (see Rhodes 1997).

¹⁸ Mbeki, Moeletshi. 2009. *Architects of Poverty. Why African Capitalism Needs Changing*. Johannesburg: Picador Africa.

¹⁹ Boraine, Alex. 2014. *What's gone wrong? On the brink of a failed state*. Johannesburg and Cape Town: Jonathan Ball.

- In the second place, as we have seen, the procurement of goods and services takes place through a system that is highly fragmented and decentralised. In some cases, the very outsourcing function is itself outsourced. In other words, in South Africa today there are literally tens of thousands of sites and locations where tenders are issued and awarded and where contracts are managed for the performance of all manner of services and functions. In the Eastern Cape Department of Education, for example, the procurement of certain goods for schools takes place from one of more than 4 000 places.

This situation, we argue, corresponds to a 'contract state'. The contract state is a highly decentralised government system where the core business of departments and agencies is frequently out-sourced to third parties, usually private sector companies. The uneven character of governance in South Africa today arises partly from this situation. Service delivery and the performance of government tasks varies, depending on the institutional capacity of public officials to plan strategically for the goods and services they will need, to understand the details (specifications) of what they require, to appoint the best suited service provider and/or to buy the most appropriate items for their needs. There are many individual offices across the government system that are getting this right and, more broadly, departments too. There are many, however, that are not. The cumulative effect is a kind of unpredictability in the way government as a whole works.

Based on fieldwork in Limpopo and also drawing from PARI research in other locations, this report has gone some way to identifying why in some places the performance of the procurement function is poor and, consequently, the ability of government departments and agencies to act according to their official mandates is unreliable or worse. We have seen that the problem is not simply one of incompetence or indolence, corruption and political interference. Something more significant is happening in these locations, of which corruption is a symptom rather than a cause. In these places, already weak institutions are struggling to control and regularise what we call the 'contract state'.

EXPLAINING UNEVENNESS IN THE SOUTH AFRICAN STATE

Louis Picard has brought to the analysis of the South African scene the term 'disjointed institutionalism'²⁰. He uses it to describe a state of affairs where the behaviour of public servants is delinked from formal institutions such as rules, procedures and official values, and comes to be driven by narrower personal and sectional interests. Picard emphasises agency in the emergence of disjointed institutionalism. Ivor Chipkin, however, offers a structural corrective when arguing that corruption in South Africa is often driven by 'weak institutions', where 'social relations in a department or agency do not crystallise into predictable conventions and routines [and so] collections of individuals, equipment and resources behave and

combine in capricious and unpredictable ways'²¹. On this reading behaviour becomes disassociated from the ostensible purposes of formal institutions not solely as an exercise of agency, but also sometimes as a function of the institutions themselves. Elaborating upon this suggestion, we can suggest that if formal rules and norms do not exist, if they are not dense and precise enough to render unambiguous and occlude inappropriate political and personal behaviour, or if they are incapable of being consistently followed, then the interstices thus revealed must be negotiated by moving beyond them. Essentially, this is a problem of loose or weak institutions.

Chapter 3 reveals that procurement processes are complex and long-winded. Often the activities involved are highly specialised, meaning that the necessary skills are scarce, labour is divided amongst a number of actors, and oversight by generalist managers is difficult. Specifications and contracts are notoriously difficult to define, and often need to be fitted to specific circumstances. Beyond this, large costs are incurred in inhibiting discretion in purchasing decisions by rigid rules. Sometimes, for instance, suppliers have special qualities that must be actively selected, such as unique products or institutional memory relating to a specific problem. Rigid selection procedures, such as open competitive tenders where decisions are based largely on cost criteria, will often lead the state to forego these special qualities.

That said, South African procurement procedures are loose. We elaborate upon examples of this in Chapter 3. Exceptions to procurement rules, designed to take account of special situations, where following procedure is deemed 'impractical', are not thoroughly defined. Justifications for recourse to exceptions have included poor planning and the end of the financial year. Exceptions give public servants ample room for exercising discretion in procurement decisions, which they exercise for good or ill, subject only to the sign-off of often distant and potentially complicit administrative heads. The extremities of the procurement process – including planning, specification and costing, contract management and supplier evaluation – are almost completely unregulated. *Ad hoc* improvisation is common when it comes to specification and the estimation of costs. What this means is that specifications can be written, and costs inflated, to the benefit of specific private suppliers. Procedures for transporting and utilising documents, especially in and between relevant decision-making committees, are not rule-based. Thus well-placed individuals are known to manipulate information flows to bias procurement processes.

Much of this loose regulation is not a serious problem where background routines and ethical norms of public service are strong. But in many offices and departments in South Africa they are not. The South African public administration was never adequately insulated from political and personal considerations. Branches of the apartheid state had a long history of corruption. Central entities involved in the regulation of rightless black citizens, or in secret activities such as defence and sanctions-busting, bred corruption. Own affairs departments, black local authorities and Bantustans functioned as conduits for clientelistic co-optation by the white state of

²⁰ Picard, L. 2005. *The State of the State: Institutional Transformation, Capacity and Political Change in South Africa*. Johannesburg: Wits University Press.

²¹ Chipkin, I. 2013. 'Whither the state? Corruption, Institutions and State-Building in South Africa'. *Politikon*, 40 (2): 211-31.

²² Lodge, T. 1998. 'Political Corruption in South Africa' *African Affairs*, 97: 157-87; Hyslop, J. 2005. 'Political Corruption: Before and After Apartheid' *Journal of Southern African Studies*, 31 (4): 773-89.

²³ Chipkin, I. and S. Meny-Gibert. 2011. 'Why the Past Matters: Histories of the Public Service in South Africa' *PARI Short Essays*, No. 1.

²⁴ Schick, A. 1998. 'Why most developing countries should not try New Zealand's reforms' *The World Bank Research Observer*, 13 (1): 123-31.

selected black middle class elements²². In reference to such contexts, Chipkin and Meny-Gibert have argued that New Public Management-inspired reforms 'may have exacerbated corruption and poor service delivery by giving increasing autonomy to leaders implicated in patrimonial networks'.²³ In this they mirror Allen Schick's famous warning to the effect that 'no country should move directly from an informal public sector to one in which managers are accorded enormous discretion to hire and spend as they see fit'.²⁴

Similar problems are manifest when procedure, while not necessarily loose, becomes impossible or difficult to follow due to its insertion in incoherent and otherwise dysfunctional organisational contexts. Evidence marshalled in Chapter 3 is again instructive, procurement planning being a prominent example. If, for instance, procurement is only brought in at the tail-end of broader planning processes then the effect is to leave insufficient time to follow sometimes cumbersome procedures. Non-compliance is a necessary result. Especially where maintenance and replacement is concerned, planning processes quite commonly founder upon an absence of reliable and complete asset registers and inventories. Historically these have been weak, they were often further disrupted and lost in the post-1994 process of administrative amalgamation, and they are currently the product of inadequately established data collection routines and poor record-keeping. Without them, infrastructure and equipment breaks down, and stores run out, unannounced. In these circumstances exceptions, with their attendant problems, become necessary.

These problems of loose and incoherent institutions are manifested unevenly across the state, but they remain a pressing problem. It seems that they cannot, however, fully explain many of the more troubling weaknesses that have emerged around the contract state. Chapter 3 offers many examples of simple, precise and consistent procurement rules being visibly broken. Even when timeously prepared, procurement plans are often not followed. Despite repeated protests from National Treasury, bids are commonly and openly split, bringing them under value thresholds, allowing for less restrictive procurement procedures. Single providers are often approached without following procedure. The Auditor-General has repeatedly raised the concern that single quotations are taken in contravention of triple-quote procedures. In some places private providers are informed of competing bids, a practice made possible by accepting late bids, or cancelling and then repeating tenders. Sometimes bidders are disqualified on spurious administrative or technical grounds.

Specifications are occasionally changed during the adjudication process apparently to favour certain suppliers. Once a tender is won, procedures for checking payments against receipts are often not followed, so double-invoicing and other methods of price-inflation are common. These and many other examples are visible evidence of the breaking of some of the simplest rules. These practices require further explanation.

POLITICISATION IN THE CONTRACT STATE

Institutionalisation does not rest solely upon precise rules and norms and upon organisations that are rationally and coherently structured. Beyond these basic conditions, classical administrative thought and modern sociologies of state formation share widespread, if not always fully acknowledged, views regarding what further is needed. First, institutionalisation requires a social framework or context where conforming behaviour is rewarded and non-compliance punished. Second, institutions must be internalised in the sense that compliance is accompanied by feelings of self-validation and deviance by feelings of guilt. Third, the rules must be bolstered by disciplinary and moral weight.

South Africa, in this context, faces the problem of being an 'open' bureaucracy.²⁵ Open bureaucracies are those where politicians retain substantial lawful discretion over the appointment, promotion and, in extreme cases dismissal, of public servants. This can enable politicians to go beyond formal and impartial rules in imposing their will upon public administrations. Politicians with power over appointments and promotion can place close associates into key positions and collude with them in non-compliant behaviour. By threatening, even implicitly, loss of career-progression or even dismissal they can coerce public servants into breaking the rules. Politicians may, of course, have good or bad reasons for doing this. However, by blurring lines of accountability and impairing correct lines of control, political and personal appointments can negatively affect discipline at all levels of the organisation. High-level political and personalised appointees generally do not follow the career paths necessary to give them knowledge of their administrations. They also tend not to remain in their positions for long. Furthermore, if a principal requires political or personal support from her appointee, she loses control correspondingly. If she makes the appointment with reference to a third party – a friend or a political ally or political party – she may find herself constrained while her appointee may be enabled by a second line of accountability. By such dynamics, Weberian bureaucracy, which is in part a social framework designed to discipline individuals into following rules, is breached.

Dynamics such as these can be seen in South Africa's procurement system, and rule-breaking often correlates with political appointments to SCM units and procurement committees. One prominent public servant described what appears to be a fairly common experience:

You get in as a minister, and you are not happy. That board doesn't look kosher because they are not going to be flexible. So you suddenly write letters to them and you tell them that you are changing the board and, of course, as a bureaucrat, because you are representing the state, you can't argue because he is entitled to appoint, so he can appoint inside and outside. So he goes and gets his friends, and they are there, and everybody has got businesses... and there is very little questioning because the books are fine, the Auditor-General wouldn't come to question... (Respondent E, 06/09/2012).

²⁵ See for example, Skowronek, S. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920*. Cambridge: Cambridge University Press.

It is also not unknown for public servants to be cajoled into breaking the rules. Politicians may do this for reasons that do not appear to them to be illicit. Thus, as one interviewee notes, around election time, 'suddenly there is this urgency to spend millions, tens of millions before the election, it must be done now, it must be done quickly, you know, don't worry about procedures, don't worry' (Respondent Y, 04/02/2014). Interviews have also suggested that hierarchical control is attenuated further down. In one instance, the interviewee noted that in order to control procurement systems effectively, 'you have got to have your finger on the pulse, you have got to know who you are controlling' and that this is not ordinarily the case with political appointees (Respondent E, 06/09/2012). In one SCM Unit, a respondent notes, political appointees are not incentivised to perform:

There is no commitment; you know people do as they wish. Someone can just come to work at nine o'clock, half past nine, twelve o'clock ... This change of political heads. The political head comes and says 'Oh the structure is not enough for this, lets add'. Then they advertise posts, you understand? And how they fill those posts, I don't want to talk too much about that ... this is the result of those posts ... there is no discipline, we are not going anywhere.

Structures, and related dynamics, thus operate unevenly across the state, with open bureaucracy an institutional framework within which politicians retain substantial lawful discretion over personnel decisions. How they exercise this discretion depends upon their ideals and interests and on the political pressures brought to bear upon them. As a result, open bureaucracies tend to exhibit significant unevenness.²⁶

In South Africa, this unevenness is the product of a history and of a present of state formation with a strong centre-periphery pattern. At the national level, and especially at regulatory centres such as the National Treasury, bureaucracies are relatively well-established, meritocratic and clean. These organisations tend to provide administrative support for key policy choices; and are closely monitored, supported and disciplined by the media, civil society, markets and international institutions. Their social milieu is generally relatively wealthy, endowed with accumulated resources of property and education that render individuals independent of state largesse. At the provincial and local levels, however, and at the margins, there are weaker bureaucracies which are often subject to the pressures described above. This centre-periphery pattern comes about for historical, policy and other reasons, including variations in the degree of secrecy protecting organisational activities and cutting them off from scrutiny by societal and market actors. Procurement centres are not immune from this 'disjointed' pattern.

Unevenness persists, however, not only because of the uneven social environment that produces it, but also because the South African state is highly decentralised and fragmented. The constitutional compromise created a quasi-federal system where the national sphere retained nominal regulatory powers. Lower spheres were granted substantial operational autonomy, limited only by the state's Section 100 right to intervene in provincial matters and by the financial power of the National Treasury. Much the same applies between the provincial and local levels. In each sphere, moreover, the personnel functions of appointment and promotion have been decentralised to the political heads of departments, thus limiting central control and further undermining the formal institutional basis for insulation between politicians and public servants. Even within line functions, the evolution of state-connected agencies has produced numerous public entities formally autonomous from departmental principals. The institutional architecture of discipline tying the state together is correspondingly weakened, with the centre finding it difficult to bring organisations at the margins to order.

The procurement system offers special difficulties in this respect. Decentralised in the early-2000s, it now consists of a sprawl of separate procurement centres entering into thousands of contracts per annum. Despite laudable capacity at National Treasury and in the Office of the Auditor-General, this is beyond their control; and, when they do detect non-compliance, the need to operate through the political heads of non-compliant entities stifles their ability to exert discipline.

CONCLUDING REMARKS

Chapter 3 showed that, in some parts of the state, the practice of public procurement in South Africa has failed to coalesce around the formal institutions and rules, and the official norms, meant to govern it. This chapter has suggested some reasons for this.

The regulatory framework that governs public procurement in South Africa is loose, and this provides room for the proliferation of informal practices. Organisations within which procurement centres are located are often weak and in some cases even dysfunctional. Planning processes can be problematic, and support functions such as record-keeping and asset-registration not properly established. Furthermore, the combination of out-sourcing, decentralisation and fragmentation (making up what can be called a contract state) is a major contributory factor. This situation expands opportunities for political interference and much non-compliance around procurement is driven by this fact. Finally, the decentralised and fragmented institutional architecture of the state offers limited means through which disciplined organs of state can bring the ill-disciplined into line. This disjointedness is a complex phenomenon and has multiple causes; these have surfaced prominently in research into the procurement system. This suggests that successful procurement reform may require broader interventions into the institutional architecture of the state.

²⁶ See, for instance, Carpenter, D.P. 2001. *The Forging of Bureaucratic Autonomy: Reputation, Networks, and Policy Innovation in Executive Agencies, 1862-1928*. Princeton: Princeton University Press.

This report has argued that the uneven performance of government departments and agencies is strongly related to the ability of these institutions to plan, specify, manage and maintain contracts with third-party providers. Where departments manage in this role, service delivery may be adequate to good. Where they do not, service delivery tends to be poor or negligible.

In South Africa there is legitimate concern that the rising contract state has been given impetus by dynamics of corruption and patronage politics. Contracting-out provides a relatively straightforward means of moving public funds into private pockets. Interviewees for this study expressed concerns about this, feeling that self-interested and patronage-political motives may have added to the fiscal and ideological drivers of the rise of the contract state.

What solutions exist for this situation? It needs first to be asked whether a 'contract state' is desirable in South Africa at all. Secondly, the unevenness and unpredictability in the current situation need to be reduced.

South Africa is not unique in facing these sorts of challenges. In the last quarter of the nineteenth century, American politics was centred upon the spoils system. This had its basis in the Republican and Democrat party-machines, which aimed for success at the polls less through programmatic appeals and the mobilisation of high ideals than through tactical, personalised and partial distributions of government jobs and public works, and the jobs and contracts that the latter provided. These party-machines came together pre-eminently at local and state level and then agglomerated to capture the growing federal administration and the resources that it provided. The result was a fundamental entwining of party and state into the American party-state, or in the context of fierce electoral competition, a state of parties.

In this important late-nineteenth century period in American history, the state of its political parties was emerging as a fundamental problem. Society was industrialising and the management of industrialisation and its often negative social effects was causing the state to intervene more extensively in the lives of its citizens. It was therefore growing in complexity, and involving itself increasingly in sophisticated administrative operations. However, constituted as it was by the spoils system and accumulating human and other resources on partial and political criteria rather than upon grounds of efficacy and impartiality, it was proving visibly unequal to the task.

The American political system was caught up in a fundamental contradiction. In the new industrial situation, the mode through which interests were represented in the state was at odds with the demands that these interests were increasingly liable to make. In order to facilitate industrialisation and smooth its harsh edges, the spoils system would have to go.

Importantly, as was the case in nineteenth-century European thought, these reformers did not perceive the problem primarily as one of immoral or otherwise deficient individuals. Rather, such individuals were provided with opportunities, and were in many cases formed by, the administrative situations and structures within which they were embedded. The endeavours of reformers in America were therefore focused upon the expansion of what they called the 'merit civil service'. Establishing competitive examinations as the basis for admission into the civil service would, it was felt, provide the state with the necessary expertise, independence, and hierarchical accountability to carry out its work. More ambitiously, by transforming decisions about appointment entirely into administrative procedures governed by test scores, the merit civil service would decisively undercut the spoils system. Striking at its mainspring, patronage jobs in the state, would require politicians to shift their efforts at political mobilisation from clientelistic distribution to the elaboration of general programmes, rooted in high ideals and claims about the 'common interest'.

This was not, however, simply an American route to reform. Rather, the Americans were following innovations which had started in Germany in the late 19th century, in Japan after the Meiji Restoration of 1868 and in Great Britain after the Northcote-Trevelyan reforms. All took their cue, directly and indirectly, from the innovations in the organisation of government that had started 2 000 years ago in China under the influence of Confucian philosophy

In a way that is reminiscent of the American situation, it may well be that overcoming the challenges of governance in South Africa does not lie with greater centralisation and increasing bureaucratisation but with the professionalization of public servants by recruiting them through an open and competitive examination and by making promotion dependent on professional advancement and examinations.

BIBLIOGRAPHY

Academic Publications

- Bolton, P. 2006. 'Government procurement as a policy tool in South Africa'. *Journal of Public Procurement*, 6 (3): 193-217.
- Boraine, Alex. 2014. *What's gone wrong? On the brink of a failed state*. Johannesburg and Cape Town: Jonathan Ball.
- Carpenter, D.P. 2001. *The Forging of Bureaucratic Autonomy: Reputation, Networks, and Policy Innovation in Executive Agencies, 1862-1928*. Princeton: Princeton University Press.
- Chipkin, I. 2011. 'Design Flaws in CIPRO: Ambivalence to the New Public Management in South Africa', *PARI Short Essays*, No. 2.
- Chipkin, I. 2013. 'Whither the state? Corruption, Institutions and State-Building in South Africa' *Politikon*, 40 (2): 211-31.
- Chipkin, I. and B. Lipietz. 2013 'Transforming South Africa's Racial Bureaucracy: New Public Management and Public Sector Reform in Contemporary South Africa' *PARI Long Essays*, No. 1.
- Chipkin, I. and S. Meny-Gibert. 2011. 'Why the Past Matters: Histories of the Public Service in South Africa' *PARI Short Essays*, No. 1.
- Cronin, J. 2012. 'Some reflections on the systemic underpinning of corruption in contemporary South Africa'. PARI-Princeton Symposium on International, Comparative Perspectives on Corruption. August, 2012. Johannesburg, South Africa. <pari.org.za/217wp-content/uploads/Cronin-Structured-to-be-looted-Aug2012.pdf > [Accessed 03/03/2013].
- Ertman, T. 1997. *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe*. Cambridge: Cambridge University Press.
- Hyslop, J. 2005. 'Political Corruption: Before and After Apartheid' *Journal of Southern African Studies*, 31 (4): 773-89.
- Kirkpatrick, I. and M.M. Lucio. 1996. 'Introduction: The Contract State and the Future of Public Management' *Public Administration*, 74 (1): 1-8
- Lange, M. and D. Rueschemeyer (eds). 2004. *States and Development: Historical Antecedents of Stagnation and Advance*. New York: Palgrave Macmillan.
- Lodge, T. 1998. 'Political Corruption in South Africa' *African Affairs*, 97: 157-87.
- Mbeki, Moeletsi. 2009. Architects of Poverty. *Why African Capitalism Needs Changing*. Johannesburg: Picador Africa.
- March, J.G. and J.P. Olsen. 1989. *Rediscovering Institutions: The Organizational Basis of Politics*. New York: The Free Press.
- Picard, L. 2005. *The State of the State: Institutional Transformation, Capacity and Political Change in South Africa*. Johannesburg: Wits University Press.
- Rhodes, R.A.W. 1996. 'The New Governance: Governing without Government' *Political Studies*, 44 (4): 652-67.
- Rhodes, R.A.W. 1997. *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability*. Philadelphia: Open University Press.
- Schick, A. 1998. 'Why most developing countries should not try New Zealand's reforms' *The World Bank Research Observer*, 13 (1): 123-31.
- Skowronek, S. 1982. Building a New American State: *The Expansion of National Administrative Capacities, 1877-1920*. Cambridge: Cambridge University Press.
- Weber, M. 1968. *Economy and Society: An Outline of Interpretive Sociology*. London: University of California Press.

Government Publications

- Auditor-General of South Africa, Consolidated PFMA general report, years: 2012-13, 2011-12, 2010-11, 2009-10, 2008-9.
- CIPC Company Register.
- Hansard 18 June 1968.
- Hansard 26 May 1971.
- Hansard 4 July 1984.
- Hansard 10-20 February 1987.
- Hansard 26 February 1999.
- Hansard 3 March 1999.

- Ministries of Finance and Public Works, Procurement Task Team: An Initiative of the Ministries of Finance and Public Works (1995, November 29). Interim Strategies: Public Sector Procurement Reform in South Africa: A 10-Point Plan.
- National Treasury, Estimates of National Expenditure, years 1997, 2004, 2011, 2012 and 2013. Pretoria: National Treasury.
- National Treasury. 2012. Presentation: Review of the State Procurement System to Ensure Value for Money.
- National Treasury. Database of Restricted Suppliers. < <http://www.treasury.gov.za/publications/other/Database%20of%20Restricted%20Suppliers.pdf> > [Accessed 05/03/2014].
- National Treasury. Register for Tender Defaulters. < <http://www.treasury.gov.za/publications/other/Register%20for%20Tender%20Defaulters.pdf> > [Accessed 05/03/2014].
- National Treasury SCM Instruction Notes (2003-2014).
- National Treasury SCM Circulars (2004-2012).
- National Treasury. 2013. Forensic Investigation: Electoral Commission, Riverside Office Park.
- Public Protector. 2014. Secure in Comfort. Report No. 25 of 2013/14.
- RSA. 2012. Diagnostic Report of Five Limpopo Provincial Departments under Administration.
- World Bank. 2003. Country Procurement Assessment Report: South Africa.

Policy, Legislation and Regulations

- Exchequer and Audit Act No. 23 of 1956.
- State Tender Board and State Procurement Board Act No. 86 of 1968.
- Regulations to the State Tender Board and State Procurement Board Act No. R. 1733 of 1968.
- Finance Act No. 102 of 1969.
- State Tender Board and State Procurement Board Amendment Act No. 74 of 1971.
- Finance Act No. 63 of 1973.
- Finance Act No 102 of 1976.
- Regulations to the State Tender Board Act No. R. 139 of 1981.
- Finance Act No. 113 of 1984.
- State Tender Board Amendment Act No. 18 of 1987.
- Regulations to the State Tender Board Act No. R. 947 of 1988.
- Regulations to the State Tender Board Act N.o. R. 1237 of 1988.
- General Law Amendment Act No. 49 of 1996.
- State Tender Board. 1994. General Conditions and Procedures (ST 36).
- Ministry of Finance and the Ministry of Public Works. 1997. *Green Paper on Public Sector Procurement Reform in South Africa*. *South African Government Website*. < www.gov.za/documents/download.php?f=187736 > [Accessed 12/05/2014].
- State Tender Board. 1998. User Manual: Directives to the Departments in Respect of Procurement.
- Public Finance Management Act No. 1 of 1999.
- Preferential Procurement Policy Framework Act No. 5 of 2000.
- Regulations to the State Tender Board Act 2003.
- National Treasury. 2003. *Policy Strategy to Guide Uniformity in Procurement Reform Processes in Government*. National Treasury Website. < <http://www.treasury.gov.za/divisions/ocpo/sc/Guidelines/default.aspx> > [Accessed 12/05/2014].
- Regulations to the Public Finance Management Act: Framework for Supply Chain Management.
- National Treasury. 2004. *SCM Guide for Accounting Officers*. National Treasury Website. < <http://www.treasury.gov.za/divisions/ocpo/sc/Guidelines/default.aspx> > [Accessed 12/05/2014].

APPENDIX 1: SOURCES

Sources Chapter 2

—Government Documents

Exchequer and Audit Act No. 23 of 1956.
State Tender Board and State Procurement Board Act No. 86 of 1968.
Regulations to the State Tender Board and State Procurement Board Act No. R. 1733 of 1968.
Finance Act No. 102 of 1969.
State Tender Board and State Procurement Board Amendment Act No. 74 of 1971.
Finance Act No. 63 of 1973.
Finance Act No 102 of 1976.
Regulations to the State Tender Board Act No. R. 139 of 1981.
Finance Act No. 113 of 1984.
State Tender Board Amendment Act No. 18 of 1987.
Regulations to the State Tender Board Act No. R. 947 of 1988.
Regulations to the State Tender Board Act No. R. 1237 of 1988.
General Law Amendment Act No. 49 of 1996.
State Tender Board. 1994. General Conditions and Procedures (ST 36).
Ministry of Finance and the Ministry of Public Works. 1997. Green Paper on Public Sector Procurement Reform in South Africa.
State Tender Board. 1998. User Manual: Directives to the Departments in Respect of Procurement.
Public Finance Management Act No. 1 of 1999.
Preferential Procurement Policy Framework Act No. 5 of 2000.
Regulations to the State Tender Board Act 2003.
National Treasury. 2003. Policy Strategy to Guide Uniformity in Procurement Reform Processes in Government.
World Bank. 2003. Country Procurement Assessment Report: South Africa.
Regulations to the Public Finance Management Act: Framework for Supply Chain Management.
National Treasury. 2004. SCM Guide for Accounting Officers.

—National Assembly Debates

Hansard 18 June 1968.
Hansard 26 May 1971.
Hansard 4 July 1984.
Hansard 10-20 February 1987.
Hansard 26 February 1999.
Hansard 3 March 1999.

Sources for chapter 3

—Interviews (ordered by date):

Interaction with members of the Office of the Chief Procurement Officer, September to December 2013.
Respondent AA, GIZ, 07/03/2014.
Respondent Z, SCM Specialist, 07/03/2014.
Respondent Y, National Department of Health, 04/02/2014.
Respondent X, Bloemfontein Water, 02/2014.

Respondent W, Bloemfontein Water, 02/2014.
Respondent V, Limpopo Department of Health, 12/2013.
Respondent U, Tender Advice Centre, Limpopo, 11/12/2013.
Respondent T, Ekurhuleni Local Municipality 03/12/2013 and 11/2013.
Respondent S, Govan Mbeki Local Municipality, 12/2013.
Respondent R, Govan Mbeki Local Municipality, 12/2013.
Respondent Q, Govan Mbeki Local Municipality, 04/11/2013.
Respondent P, Department of Water Affairs, 10/2013.
Respondent O, Department of Performance Monitoring and Evaluation, 10/2013.
Respondent N, Local Government SETA, 09/2013.
Respondent M, Mvula Trust, 09/2013.
Respondent L, Limpopo Department of Health, 27/07/2013.
Respondent K, Limpopo Department of Health, 27/07/2013.
Respondent H, I, J, South African Revenue Services, September to December 2013.
Respondent G, Financial Intelligence Centre, 12/09/2012.
Respondent F, Public Service Commission, 10/09/2012.
Respondent E, institutional affiliation withheld at request of respondent, 06/09/2012.
Respondent D, institutional affiliation withheld at request of respondent, 05/09/2012.
Respondent C, retired public servant, formerly National Treasury, 30/08/2012.
Respondent B, GIZ, 27/08/2012.
Respondent A, South African Revenue Services, 24/08/2012.

—Documents (ordered by date):

Selected contracts from 2009 to 2012 provided by a provincial department in Limpopo for the purposes of research and assisting personnel tasked with improving supply chain management systems in the department.
Auditor-General Reports (2010-2013).
CIPC Company Register.
National Treasury. Database of Restricted Suppliers. < <http://www.treasury.gov.za/publications/other/Database%20of%20Restricted%20Suppliers.pdf> > [Accessed 05/03/2014].
National Treasury. Register for Tender Defaulters. < <http://www.treasury.gov.za/publications/other/Register%20for%20Tender%20Defaulters.pdf> > [Accessed 05/03/2014].
National Treasury SCM Instruction Notes (2003-2014).
National Treasury SCM Circulars (2004-2012).
Preferential Procurement Policy Framework Act 5 of 2000.
National Treasury. 2003. Policy Strategy to Guide Uniformity in Procurement Reform. Processes in Government.
National Treasury. 2003. Framework for Supply Chain Management: Regulations in terms of the Public Finance Management Act, 1999.
Government of the Republic of South Africa. 2004. General Procurement Guidelines.
National Treasury. 2004. Supply Chain Management: A Guide for Accounting Officers/Authorities.
RSA. 2012. Diagnostic Report of Five Limpopo Provincial Departments under Administration.
National Treasury, Presentation: Review of the State Procurement System to Ensure Value for Money.
National Treasury. 2013. *Forensic Investigation: Electoral Commission*, Riverside Office Park.
Public Protector. 2014. *Secure in Comfort*. Report No. 25 of 2013/14.



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