

Public procurement, tendering and corruption

Realities, challenges and tangible solutions

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ABSTRACT

This article analyses a number of key elements and processes of the procurement and tendering systems in the South African public service systematically, with the emphasis on a number of key processes, risk management, and anti-corruption systems and initiatives. The article starts with some definitions and a brief analysis of the existing legislative framework, and briefly examines the functions and importance of budgetary control in procurement management, as well as the different categories of tenders in South Africa and their particularities. Tender processes are outlined in this context, in relation to various forms of corruption in the public sector. The roles that systems, risk management imperatives and procurement management can play in combating corruption are discussed as shields against fraud, collusion, extortion and similar corrupt activities.

In response to recent examples where procurement practices led to corruption in South Africa's national and provincial departments, the article provides a tangible plan that supplements the preceding analysis and outlines monitoring and evaluation procurement procedures that could be implemented as a serious weapon to combat corruption. The discussion concludes that the most crucial element in combating corruption in South Africa is political will.

INTRODUCTION

Many forms of fraud and corruption occur across public sector organisations, and it may be argued that fraud and corruption are possible in virtually every area of activity and in every type of transaction. It seems, however, that in many countries, especially developing countries, corruption is found in the realm of procurement transactions more than anywhere else, because this is where the opportunities to engage in corrupt practices are greatest and where the rewards of corruption can be very high. Many types of corruption are frequently found in this area – be it fraud, bribery, collusion, extortion, document manipulation, or

computer fraud. It is therefore important to take a focused look at this area of operational activity in order to understand the nature and practices associated with public sector procurement activity and their vulnerability to corruption. This article, which is based on a much wider research project, identifies the key elements and processes of the procurement and tendering systems in the South African public service and proposes a number of tangible preliminary solutions to such problems.

DEFINITIONS AND LEGISLATION

Procurement in the public sector can be defined as the acquisition of goods and services – other than the services of officials – for the citizens and their administration by means of commercial transactions. *Public procurement* then refers to those government administrative activities that concern the purchasing of the goods and services that the government need from the private sector. These range from basic stationery requirements and other consumables to mainframe computer systems, military weaponry and large public buildings (Lloyd and McCue 2004:2).

Considering that governments spend very large sums of money to procure goods and services, it stands to reason that the primary defence against the possibilities of corruption should involve full and proper everyday management of procurement activities.

Procurement policies and practices in government institutions have long been documented. The rules that have been laid down were for many years intended to give more or less guidance to administrative routines, and these rules were expected to produce reasonably economical and honest procurement transactions. However, in line with the general reform and modernisation of public finance management in many countries over the past decade and a half, a far more critical approach to procurement policy and practice is now being taken (Thai 2001; McCue and Gianakis 2001; WHO 2011). Lessons from the private sector – the need to ensure greater spending controls, the need for higher efficiencies, and the realisation that procurement policy can offer management far more than just ensuring good procurement practices – have informed many of the new policy dimensions and practices (Woods and Mantzaris 2012:111).

Section 217 of the *Constitution of the Republic of South Africa*, 108 of 1996 (RSA 1996), together with the relevant parts of the *Public Finance Management Act*, 1 of 1999 (*PFMA*) (RSA 1999), has had a significant impact on procurement practices in government. Of particular note is the shifting of authority and responsibility to individual organisations. This requires a national framework which lays down the basic principles of procurement that are to be developed and introduced in order to ensure some policy consistency throughout government.

Section 38(1)(a)(iii) of the *PFMA* provides that the accounting officer for a department, trading entity or constitutional institution must ensure that the entity has and maintains “an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective”. This is consistent with the *PFMA*’s overall philosophy of establishing a shift away from a regime of authoritarian external rules to one in which a manager’s decision-making authority is given more scope. The idea is that this should occur in the context of a less prescriptive policy framework, and should enable practices that are



simpler and more attuned to the circumstances of the individual public organisation. It is well-established that overly centralised purchasing systems often deny managers opportunities to make the decisions they are best placed to make, but conversely, decentralisation can open up opportunities for incompetent individuals to make poor decisions and for dishonest individuals to defraud the organisation (Woods and Mantzaris 2012:112).

It seems logical that guidelines should be established that could make a positive difference. The brief exposition below of fraud, corruption, inherent, inherited, intended or unintended weaknesses and omissions shows that such guidelines are urgently needed.

BUDGETARY CONTROL AND PROCUREMENT MANAGEMENT

Budgetary control is, of necessity, based on the principle of value for money. This means that the people responsible for a task must constantly find ways of achieving more than the budget and its underlying costing calls for. It is clear that the drive for improved value for money by its very nature implies a strong anti-corruption dynamic. In terms of this anti-corruption logic, unacceptable instances of expenditure have been clearly identified in South Africa in the *PFMA* and the *Local Government: Municipal Finance Management Act, 56 of 2003* (RSA 2003) in respect of un-authorized expenditure, such as any purchase that exceeds the budget limits of a vote (for example, in a department) or the main budget divisions within that vote. Fruitless and wasteful, and irregular expenditure are an integral part of financial misconduct as identified in Section 81 of the *PFMA*.

DIFFERENT CATEGORIES OF PROCUREMENT

Procurement takes place at different levels in a typical public sector organisation, depending on the value of the transaction. There are day-to-day purchases, such as incidental stationery, cleaning materials, staff refreshments and other consumables, for which there are few specific procurement rules. Then there are middle range purchases of a higher value which are subject to particular rules of competition, usually in the form of having to obtain a few competing quotations from different suppliers prior to awarding the business to a particular supplier. Finally, there are higher value range purchases (usually above a predetermined amount of money) for which more complex and stringent rules apply, usually known as competitive tendering. Corruption has been reported at all three levels of procurement (Steyn 2012).

For first level purchases, departments and other public institutions normally do not need to invite tenders for purchases below a particular level, for example, R100 000 in South Africa. Below this tender cut-off spending level, there are numerous day-to-day purchase transactions of an operational type. These transactions may add up to a considerable sum of money, sometimes more than that spent through the tendering system. These transactions rely on more routine requisitioning, ordering, receiving and payment processes, which involve line officials, stores and accounts sections. At this level, corruption can be rampant if strict rules and regulations are not followed (Woods and Mantzaris 2012:113–114). An

essential sequence of actions must be followed, because an environment without risk does not exist. Where such a sequence is not implemented, control principles are violated and monitoring systems either do not exist or are ignored.

For middle value tenders, which since 2009, in South Africa's case, is purchases of R500 000 or more, transactions are subject to additional regulations, for example, that more than one quotation (usually three quotations) must be obtained from competing suppliers, and the final choice will be made on the basis of the quotations. This requirement mostly favours the best price bid. Such purchases are often of a capital nature, for example, office furniture or computer equipment, which means that the purchased items are subject to the controls of asset registering and related accounting practice (Woods and Mantzaris 2012:118).

Competitive tendering is a process whereby an organisation invites offers for the supply of goods and services, and then awards the contract to the best offer, according to pre-determined criteria, without negotiation. Under competitive tendering, would-be suppliers offer to undertake such supply for payment. The intention is to get bidders to respond to the competitive nature of the process by offering optimal value for money within the specifications and conditions that the tender documents lay down.

Procurement through tendering has various interesting characteristics. These include the following:

- All things being equal, the lowest tender wins the contract. This ensures economy.
- Because the process selects a supplier mainly on the basis of price, bids are supposed to be kept secret up to the point when the tender closes. This ensures maximum competition. Any arrangement between bidders (collusion) is strictly forbidden.
- Negotiation with bidders after the closing date and before awarding the contract is prohibited. Thus the tender documentation contains all the stipulations of the contract. The bidder must understand that his or her offer is binding once a government institution accepts it.

Tender processes ensure practices that favour transparency, fairness and the acquisition of comparative value for money. The various tender committees are required to make procurement regulations within the established government tender rules framework, ensure that laid-down policies and procedures are adhered to, assess the bids submitted, and award contracts to winning bidders (Woods and Mantzaris 2012:120–121).

TENDER PROCESS

Generally a tender process is based on a number of inter-related steps. The process starts with planning and defining (which includes a needs assessment), planning and budgeting, the definition of requirements and specifications, and the choice of procedures. This is followed by finding a provider, which includes pre-qualification, inviting or calling for tenders, evaluation or assessment of tenders received, and awarding them. The post-award actions include contract management, order and payment. The final stage concerns the management and monitoring of the contract and the administering of payments as and when these become due.



PROCUREMENT AND TENDER CORRUPTION AND COMBATTING IT

Corrupt practices specific to procurement transactions include bribery, extortion, embezzlement, nepotism, patronage systems, fraud, kickback schemes, false invoices, overpaying, fronting in Black Economic Empowerment (BEE) companies, inflated prices, unnecessary purchases, payments made for goods or services not received, ghost suppliers on the “preferred suppliers list”, the use of shell companies, and “facilitation fees” required by state officials (a type of bribery) (Krappe and Kallayil, 2003; Woods and Mantzaris 2012:123).

Situations that leave an opening for corruption include the principal/agent situation, poor transparency, weak systems, incompetent officials, conflicts of interest, urgent tenders (for example, when preference can be given by an official by requesting a supplier to quote – a verbal request, sometimes at the last minute), seeking justification to bend the rules, multi-jurisdictional corruption (deals between parties in two different countries, for example, arms deals), weak accountability arrangements, and weak internal controls (Bartle and Korosec, 2003; Woods and Mantzaris 2012:128).

Almost all of the more general types of procurement corruption listed above also occur in tender transactions, but there are other forms of corruption that appear to be more specifically related to tendering, for example, manipulating the basic tender processes in order to select a particular project, or providing insider information to a particular bidder, where asymmetric information exists between bidders, perhaps because of the actions of a procurement official. Information brokers can also try to buy information from officials in the purchasing or decision-making parts of the deals to sell this information to competing bidders (Baily, Farmer, Jessop, and Jones 2005).

Other forms of bid rigging include collusive bidding (when bidders agree amongst themselves beforehand as to who should win the tender, with some secret agreement that the other bidders will be compensated in some way, sometimes out of the inflated profits of the winning bidder, or by taking turns to win tenders) and improperly awarded tenders (including the wide-ranging possibilities that exist for corruption during the tender evaluation and decision-making phases). The experience is that the individual(s) who present(s) the information from the evaluators to the decision-makers are often in a unique and strong position to influence the decision taken (Woods and Mantzaris 2012:131).

Vulnerability exists where, in the purchasing process, there is a functional separation between those that deal with the pricing of the bids, and those who do the technical evaluation (specifications) of the bids. This separation can give an opportunity to mediators who have the technical competence (and/or political competence) to manipulate the process (Croxtton, García-Dastugue, Lambert and Rogers 2001).

Opportunities arise from intermediate parties’ identification of key players and decision-makers in the purchasing process or structures (OECD 2009:21-23; Woods and Mantzaris 2012:127–128). Corruption opportunities usually arise where the existing control systems are weak or malfunction; where a sanction regime is not strong enough; where the officials concerned have sufficient authority or discretion to make decisions which circumvent the rules, have the scope and ability to act in conditions of secrecy and lack integrity, allowing them to contemplate opportunities to act corruptly; and where private sector parties are

able to solicit government business discreetly and dishonestly, or are willing to conspire with dishonest officials (OECD 2009:24).

Within the scope of the established law, the regulations and any official government procurement framework, each individual government organisation should develop, document and enforce internal procurement practices and policies. There are a number of issues of principle which managers should take into account when they introduce internal procurement practices and policies into their organisation, if procurement activities are to be appropriately managed. These are universally applied principles that are considered essential to all public sector procurement transactions: all aspects of procurement must be seen to be ethical and honest, strong and clear accountability arrangements must be in place, stringent transparency requirements must be met, procurement must be open to competition, procurement must be fair and impartial, the interests of taxpayers, suppliers and customers must be paramount (they are usually paramount to the people), infringement reaction procedures must be applied quickly and decisively. These practices should, of course, be included in the organisation's procurement rules and should be enforced (OECD 2008:11–12).

It is incumbent upon managers to abide by the best practices established through international experience in both the private and public sectors and of relevance to Supply Chain Management situations.

The establishment of the credibility of a proposed supplier of goods and services includes practices such as vetting suppliers; verifying their actual existence, registration and date of registration; determining their Value-added Tax (VAT) and tax status; checking on their business history; establishing who the directors/members are; looking at their credit history; doing a search for civil and criminal judgements; examining their Previously Disadvantaged Individuals (PDI) and Employment Equity (EE) status; requiring them to sign the code of conduct of the customer; entering into an integrity pact between the customer and the bidding company; introducing greater flexibility with regard to dialogue between purchasers and suppliers; encouraging the use of modern information and communications technologies; using negotiation only in exceptional circumstances; evaluating supply offers against recognised technical specifications (application of ISO9000); considering the economic and financial feasibility of the supplier and its technical abilities and experience in making selections; and using benchmarking to compare the costs and methods of industrial and consumer products (Woods and Mantzaris 2012:129). In the case of services, comparisons could be performed by identifying functions and comparing them with the best practice, which might be outside the industry – this allows the procurement process to take place swiftly because it can significantly reduce transaction costs. This helps to avoid the tendency for public procurement procedures to become complex and slow (Argyris 1990).

The ISO9000 is the most widely available range of quality standards and is produced by the International Organisation for Standardisation. These standards are the basis for many standards applied by the South African Bureau of Standards (SABS). Where a supplier subscribes to these standards, there is some reassurance that the purchasers will receive acceptable product quality (Schultz and Soreide 2006:15–19).

In this context, Public Procurement authorities should be aware that the best practice in procurement involves using competitive selection procedures, clear bidding rules, transparent and efficient administration of the rules, sound procedures for evaluating bids and



selecting the winners, and firm supervision of contract implementation performance. These practices are key to ensuring a successful bidding process, and minimising opportunities for manipulation and corruption (Argyris 1990; Schultz and Soreide 2006:15–19).

Using competitive selection processes for contracts and purchases above a specified threshold is crucial, and doing so may not be circumvented for reasons of urgency. Open competition is often the best guarantor that manipulation and corruption will be minimized, as it requires bidding rules to be clear. Specifications should be precise regarding the technical requirements, allowed variations, timing of deliveries, currency and bid security requirements. These must all be specified in the invitation to tender (Woods and Mantzaris 2012:131).

It needs to be made known that transparent application of the rules includes assuring absolute confidentiality of bids received until the opening of the bids. Then all bidders should have access to all the other bids submitted. Where the criteria for evaluation go beyond simply the price, that should be made clear prior to the evaluation exercise. The evaluators should be appropriately competent and have the required expertise to assess the bids. The evaluation and assessment of the bids should be quick, and the result or decision should be made known as soon as the evaluation is complete (Stock and Lambert 2009).

There should be a strict anti-corruption policy which also covers tendering companies and parties to contracts. Such a policy should lead to the blacklisting of companies that show evidence of corruption. It encourages open competitive bidding, provides easy access to information about the contracting process, ensures that no bidder is given access to privileged information, allows bidders sufficient time to prepare their bids, monitors changes to contracts, ensures that independent controls are working properly, promotes monitoring by civil society organisations, checks that all commissions and other payments to be made by bidders to entities such as sub-contractors and agents are disclosed in the bid submission and by the winning bidder at regular intervals during the contract or supply process, ensures that there is strict supervision of contract implementation by the principal in order to assure that the requirements in terms of quality, quantity, and timeliness are met, and that comprehensive recording of the process and decisions occurs (Schultz and Soreide 2006:18).

Before awarding the tender, an audit has to confirm that the evaluation exercise has in no way been flawed and that open procedures and non-discriminatory criteria have been used – this does not refer to preferential procurement criteria, which are discussed later in this article. This confirmation is necessary in the selection and awarding of all public contracts. It greatly reduces the possibility that bidders will contest the award (there has long been a tendency for bidders to believe that their offers have been unfairly judged and then they want to contest the final choice) (Woods and Mantzaris 2012:136–138).

In order to identify risks, the pre-tendering phase consists of four main steps: a needs assessment, planning and budgeting, the definition of requirements and choice of procedure. Each step entails some risk of corruption, as discussed below.

The needs assessment is open to corruption when it is insufficient because there is too little time to do it properly. The process is also at risk if the procurement officer lacks capacity or competence; if the purchase is unnecessary, and demand is only induced so that a certain firm can profit, but the goods or services purchased are of little value to the public; or if political and administrative pressure can influence the procurement cycle (Woods and Mantzaris 2012:132).

Planning and budgeting is at risk when the needs assessment, planning and budgeting of purchases are insufficient and/or unrealistic, and/or when the goods and services procured are not in line with the overall investment plan of the government (Woods and Mantzaris 2012).

Definition of requirements is at risk when bidding documents or terms of reference are tailored to what one company can offer, so that competition is either not possible or restricted; when bidding documents or terms of reference are unnecessarily complex in order to hide corrupt actions and to make monitoring complicated; when there are unclear selection and award criteria (criteria that are not objectively defined); and when selection and award criteria are not established in advance (Argyris 1990; Stock and Lambert 2009).

In respect of short listing or pre qualification, there is a risk that firms might be short listed because bribes are offered, and not on the basis of their qualifications and experience. There is also a risk that firms might provide falsified quality assurance certificates, which can have the consequence that unqualified firms are allowed to take part in the bidding competition (Schultz and Soreide 2006:18).

There is some risk in the choice of procedure when there is a lack of justification or ignorance of the requirements for the use of non competitive procedures; when there is any misuse of non competitive procedures based on legal exceptions by splitting a contract in order not to exceed the competitive bidding limit, exaggerated emergency or/and untested prolongation of existing projects; when timeframes are not consistently applied for all bidders; when relevant information is not shared consistently with all bidders; and when there are restrictions in time. The time restriction problem occurs when the public call for bids is published leaving very limited time to respond – this allows only pre-informed firms enough time to prepare tender documents (Woods and Mantzaris 2012:134).

Other more generally found risks in the tendering process can be identified regarding the *invitation to tender* such as a lack of public notice for the bid invitation, a failure to make public the criteria for selecting the winner, a lack of competition leading to an excessive price, collusive bidding when competitors conspire to fix the price of the purchase to an artificially high level, and misuse of confidential information. This occurs if firms offer bribes in order to gain information regarding the relative importance of different elements in the tender, or concerning competitors' bids (OECD 2008:33).

Risks regarding *evaluation* arise when decision-makers are biased due to corruption in the evaluation process, there are unclear definitions of the selection criteria making choosing the winning company subjective, and misuse of confidential information (OECD 2007:24).

Risks regarding the *awarding* of a tender arise when decision-makers are biased due to corruption in the award process or a lack of access to the records of the award procedure (OECD 2007:24).

Typical risks that may arise after the contract relate to *contract management* if the winning contractor compensates bribes with a poorer quality, higher price and different specifications than those that were stated in the contract. This can occur in several ways, for example, the contract conditions may be considerably modified in order to permit more time and/or higher prices for the contractor; the products or services agreed upon in the contract may be substituted with sub standard products or services; new assets may be stolen before delivery or before being recorded in an asset register; there may be poor supervision from public officials, leading to the failure to detect sub-standard of goods and services; there

may be collusion between the corrupt company and a corrupt supervising official, leading to price increases, often through changes in specifications or cost increases, and when subcontractors are not selected in a transparent manner and not kept accountable for their work (Argyris 1990; Schultz and Soreide 2006:18).

Risks regarding *order and payment* arise when claims are filed for goods and services that are not supplied; corrupt supervisors are willing to justify false claims; lack of separation of financial duties and supervision increases the possibility for false accounting, cost misallocations and false invoicing; and/or when renegotiation of the contract is allowed, and substantial changes to the contract are introduced (OECD 2008:28–45; OECD 2007:21 27; Schultz and Søreide 2006:15–19).

A number of recent realities in South Africa can be explored against the above background on key issues of public procurement and tendering.

SOME SOUTH AFRICAN REALITIES

With regard to procurement and tender abuse, fraud and corruption, the latest report of the Auditor-General (2012:88-96) indicates a number of problems.

Findings on Supply Chain Management were reported in the management reports of 287 (57%) of the auditees, compared to 282 (58%) in the 2010-11 period. For 222 (44%) of the auditees, compared to 228 (47%), in the 2010-11 period, the findings were material enough to warrant reporting on them in the auditor's report. This implies that at an overall level, there has been no improvement, as the number of auditees that improved is the same as the number that regressed. Moreover, awards to the value of R4 862 million that were selected for audit could not be audited because the required information or documentation was not made available by the auditees (Auditor-General 2012:89). The report stated that these limitations could further affect the extent of identified irregularities and Supply Chain Management weaknesses (Auditor-General 2012:90). The 30% of auditees that had no findings in the current or prior year included 11 departments and leading departments, four of the major public entities and government business enterprises, 107 smaller national and provincial public entities and 32 other entities. Of the 154 auditees that again had no Supply Chain Management findings in the 2012 report, nine were provincial departments, two were national departments and 143 were national and provincial public entities. New auditees that had no Supply Chain Management findings were included among the 154 auditees (Auditor-General 2012:91).

Findings on uncompetitive and unfair procurement processes remain the most prevalent, and the number of auditees with these findings continues to increase. The other categories of findings remain largely at the same level.

In addition, awards to the value of R438 million identified at 46 auditees were made to suppliers in which employees of the auditee had an interest. For some audits, these employees included Supply Chain Management officials and senior managers. Awards to the value of R141 million identified at 42 auditees were made to suppliers in which close family members of employees of the auditee had an interest. It represents an increase from the R136 million identified in the previous year, at 21 auditees. The awards to close family members of employees identified doubled at national departments (eight), by 7% at

provincial departments (seven), by 14% at leading departments (four), and by 9% at major public entities and government business enterprises (two). Where interest was identified, the suppliers did not declare the interest in 73% of the instances, and the employee did not declare in 76% of instances. At 16 departments, the employees doing business with the auditee did not obtain approval for the additional remunerative work.

MONITORING AND EVALUATING PROCUREMENT PROCEDURES

The above point proves the truth that procurement procedures need adequate internal controls to prevent irregularities. Monitoring and evaluating procurement procedures is an integral part of the management of an organisation. The procurement process deserves a high level of attention from management to ensure that it does not fall prey to fraud and corruption. Procurement procedures need to include effective controls to achieve accountability and transparency. Management's continuous monitoring and evaluating of the procurement process establishes integrity and compliance with laws and ethical standards.

The following steps are instrumental in combating corruption in the procurement process: clear identification of the internal controls that exist and whether these controls are operating as designed, and the elimination of opportunities for any of the controls to be overridden. Key internal controls that should be assessed include segregation of duties, supervisory controls, receiving controls, authorization controls and recording controls (eHow 2013; Heggstad, Froystad and Isaksen 2010; Newstrack Online 2013).

In respect of the centrally important matter of procurement and the risks of fraud and corruption, it is useful to apply an Organisation for Economic Co-operation and Development approach (OECD 2008) to the establishment of indicators of procurement risk. Risk or red flag indicators raise awareness among procurement practitioners of key points to be verified throughout the procurement process. Preventing the risks of fraud and corruption requires an understanding of those risks. With that understanding, there are a number of necessary steps to limit the possibilities for fraud and corruption, to detect possible irregularities in advance, to exclude corrupt suppliers/bidders, and to take action against dishonest procurement practitioners (Newstrack Online 2013). Each procuring authority will have to develop its own risk indicators, because the methods needed to detect corruption and fraud may vary, depending on the procurement stage and nature and complexity of the *purchase*. *Processing* information on perceived risks and reporting the evidence is equally crucial.

An investigation is easily launched if a complaint is filed, so establishing procedures to encourage genuine whistle-blowers, or additional mechanisms to allow stakeholders to alert authorities about potential wrong-doing is the most effective means to detect corruption and fraud. Enabling procurement practitioners and other public officials to understand their obligation to report irregularities is also a crucial tool to combat bias, fraud and corruption. Equally, enabling procurement practitioners through training opportunities will enhance their capacity to prevent and detect wrong-doing throughout the procurement cycle (Woods and Mantzaris 2012). Another effective means to detect and report fraud and corruption is through the establishment of appeal mechanisms whereby suppliers can issue a formal complaint to the competent procuring body.



A further valuable exercise conducted by the OECD was to compile a generic list of procurement risk indicators against which monitoring can take place. This final section of the article also provides such a generic list of procurement risk indicators, based on a list by Woods and Mantzaris (2012):

- At the pre-tendering stage, risks in terms of *needs assessment* exist when commission of studies below the national regulatory threshold takes place, when “friendly consultancies” are used (an entity is contracted that belongs to or is associated with a decision-maker), when studies are never delivered, when the outcome of the selection process is altered by asking a commission from a successful tender, or when the successful tender is forewarned about commission and builds that amount into the tender.
- In *planning and budgeting*, risks occur when there is no annual procurement plan tied to long-term strategic objectives or an overall investment decision-making process, when cost estimates are inconsistent with market rates, and when government does not have the capacity to monitor the decentralised units responsible for conducting procurement.
- In respect of the *definition of requirements*, risk occurs when technical requirements are not based on clear requirements or when an unnecessary number of restrictions aiming at reducing competition are not met, when unjustified constraints hindering foreign participation are tolerated, when selection and award criteria are not clearly defined or disclosed in advance, when tender requirements are prepared by a service-provider who belongs to a wider group including numerous subsidiaries or affiliated entities, and when the anonymity of suppliers/bidders and confidential information on suppliers’ or bidders’ records are not properly guarded.
- In respect of *choice of procedure*, risks arise associated with a lack of procurement strategy and criteria for the use of non-competitive tenders; misuse of exception procedures on the basis of legal exceptions such as contract splitting, extreme urgency or protection of national security interests; unjustified continuation of existing contracts; and failure to apply the same timeframe consistently to all suppliers or bidders.
- Risks at the *tendering stage* could be faced during the invitation to tender; where there is no public notice or there is insufficient time to receive invitations to bid; where the invitation to bid is advertised on a restricted basis (for example, the advertisement is only available in one province or in limited media outlets); where sensitive, non-public or confidential information is disclosed; where the public notice contains insufficient information and instructions to help suppliers or bidders to prepare their bids, including pricing instructions; and where bids envelopes are unsealed or opened before opening session.
- Risks during the *evaluation and analysis of bids* arise when a limited number of bids are received, when there are strong similarities between bids, in cases of unreasonable delays in evaluating bids and selecting a winner, and when vested interests are identified amongst members of the evaluation committee.
- The risks associated with the *award* include failure to verify the lists of firms excluded from procurement, the alteration of weighting factors during the examination of proposals, the application of criteria used to select suppliers/bidders that differ from

the public notice, failure to verify certificates that are submitted, and a lack of access to records and minutes on procedures.

- Potential risks during the *post-award stage* include contract management, possible changes in contract conditions to allow more time and/or higher prices for the supplier/bidder, product substitution or sub-standard work or service not meeting contract requirements, the omission of penalty clauses from contracts, and a lack of proper reporting and recordkeeping of changes in contracts.
- Risks related to *order and payment* include a lack of adequate controls of works supplies and services provided by either internal or external audits, false accounting and cost misallocation between contracts, late payments and invoices, and false or duplicate documents.

CONCLUSION

Based on a much wider research project, the article has briefly dissected a number of key elements and processes of the procurement and tendering systems in the South African public service and provides a number of preliminary tangible solutions to such problems by indicating which risks need to be mitigated. It draws on a number of national and international primary and secondary sources to show that there are a range of existing and potential ways, processes, systems and risk control mechanisms to combat corruption, fraud and avarice in the public sector.

It became apparent that amongst the many forms of fraud and corruption which occur across the public sector organisation, procurement transactions are easy targets, especially in South Africa, as the latest Auditor-General's Report has shown. It is evident, as this article shows, that procurement in South Africa, despite the fact that progressive legislation exists to regulate it, provides major opportunities for corrupt individuals, syndicates or groups to indulge in a wide variety of fraudulent activities, inter- or intra-collusion, extortion, systems and risk management manipulation, and other similar illegal and dishonest practices.

The article does not claim to re-invent the wheel in the anti-corruption terrain, but it has shown in unambiguous terms that focus, alertness, methodical financial and performance systems, and scientific but down-to-earth risk analysis in all areas of operational activity are important in order to understand the nature and practices associated with public sector procurement corruption, and also to fight such corruption until the final victory is achieved.

For this objective to be reached, the first step to this journey of a thousand miles is sincere political will. The rest will follow.

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