

Office of the Public Protector

Public Procurement Law Workshop 2018

Programme, North West

26-30 November 2018

Day 1: 26 November 2018

Theme: Introduction to public procurement law and overview of the state of the law in South Africa

On Day 1 participants will be introduced to public procurement law. The notion of this field of law will be discussed and distinguished from other related fields, such as supply chain management. The basic legal framework in terms of which public procurement occurs in South Africa will be set out. This involves general constitutional and administrative law at the highest level as well as the largely statutory framework that governs public procurement in particular.

Outcomes:

To develop an appreciation for:

- The notion of public procurement law;
- The distinction between public procurement law and other fields impacting on public procurement;
- The general legal framework in South Africa in terms of which public procurement law exists;
- The scope of public procurement law in South Africa:
 - What type of transactions are covered
 - Which institutions are covered
 - What stages of procurement are covered

Presenter: Prof Geo Quinot

TIME	ITEM
11:00 – 11:30	Arrival and Refreshments
11:30 – 11:35	Welcoming & Introductions, Regional Representative Mr Sechele Keebine
11:35 – 11:45	Introduction of the partnership and project team, Ms Benita Young
11:45 – 11:50	Remarks from the Konrad Adenauer Stiftung, Ms Michaela Braun
11:50 – 12:00	Remarks and introduction of Prof Quinot, Adv Kevin Malunga
12:00 – 12:20	Introduction to public procurement law
12:20 – 13:30	Group Photograph Lunch
13:30 – 14:30	Introduction to public procurement law Public procurement law & the Constitution
14:30 – 14:45	Break
14:45 – 16:00	Public procurement law & the Constitution

Readings:

G Quinot & S Arrowsmith (eds) *Public Procurement Regulation in Africa* (Cambridge University Press, 2013): chapter 1

S Schooner “Desiderata: Objectives for a System of Government Contract Law” (2002) 11 *Public Procurement Law Review* 103

G Quinot *An Institutional Legal Structure for Regulating Public Procurement in South Africa – Research Report for National Treasury: Office of the Chief Procurement Officer* (2014) chapter 3

Day 2: 27 November 2018

Theme: Procurement methods

Day 2 will focus on particular procurement methods. In South African law there are essentially three basic procurement methods or procedures, namely petty cash purchases, quotations and competitive bidding. These are also at times used in combination in multi-stage procedures. The law focuses primarily on the third of these procedures, competitive or open bidding. This is where bidders are invited to submit tenders that are formally adjudicated within the procurement law regime.

In addition to the basic procurement methods set out above, the law also provides for a number of "special" procurement arrangements, namely unsolicited bids, transversal contracts and participating in contracts arranged by another organ of state.

Outcomes:

To develop an appreciation for:

- The main statutory instruments governing public procurement in South Africa:
 - Public Finance Management Act 1 of 1999 & regulations
 - Local Government: Municipal Finance Management Act 56 of 2003 & regulations
 - Preferential Procurement Policy Framework Act 5 of 2000 & regulations
 - Construction Industry Development Board Act 38 of 2000 & regulations
 - National Land Transport Act 5 of 2009 & regulations
 - State Information Technology Agency Act 88 of 1998 & regulations
- The different methods of procurement provided for in South African law;
- The main legal requirements for a valid public procurement within each of these procedures.

Presenter: Prof Geo Quinot

TIME	ITEM
08:30 – 08:45	Recap of Day 1
08:45 – 10:45	Public Procurement law legislative framework
10:45 – 11:00	Break
11:00 – 12:30	Institutional roles in public procurement Public procurement methods
12:30 – 13:30	Lunch
13:30 – 15:00	Public procurement methods
15:00 – 15:15	Break
15:15 – 16:15	Competitive bidding Deviations

Day 3: 28 November 2018

Theme: Adjudication of public tenders

Day 3 will focus on one particular method of procurement, namely competitive bidding. This is the prescribed procedure for the most important and high value transactions. The law prescribes detailed rules for how this procedure must be implemented leading to the decision to award a tender to a bidder.

Outcomes:

To develop an appreciation for the particular legal requirements pertaining to the various stages of competitive bidding.

Presenter: Prof Geo Quinot

TIME	ITEM
08:30 – 08:45	Recap of Day 2
08:45 – 10:45	Bid specifications Advertising
10:45 – 11:00	Break
11:00 – 12:30	Adjudicating bids Validity periods Award decisions
12:30 – 13:30	Lunch
13:30 – 14:45	Cancellation of tenders Correction, clarification, variation Negotiation
14:45 – 15:00	Closing of Prof Quinot Session, Ms Young & Adv Malunga

Day 4: 29 November 2018

Theme: Grievances and disputes in public procurement law

Day 4 will begin with the topic of grievances and disputes in public procurement. In this unit we shall focus on what can broadly be called the procurement remedies regime. This includes the various mechanisms that are available to enforce the rules of public procurement. One can look at the remedies regime from the perspective of the contracting authority and ask what mechanisms are available to procuring entities to enforce procurement rules against suppliers. On the other hand one can look at the remedies regime from the perspective of suppliers and other interested third parties and ask what mechanisms are available to them to enforce the rules against contracting authorities. Alternatively, one can distinguish between administrative remedies and judicial remedies. Amidst all of this, the role of chapter nine institutions such as the Public Protector and the Auditor General must also be taken into account as part of the procurement remedies regime. Day 4 will continue with grievances and disputes in public procurement. The final part of the day will introduce the legal measures against procurement corruption in SA.

Outcomes:

To develop an appreciation for:

- The different remedies provided for in South African law to enforce public procurement rules;
- The main mechanisms by means of which these remedies are implemented.

Presenter: Prof Sope Williams-Elegbe

Readings

G Quinot "Enforcement of Procurement Law from a South African Perspective" (2011) 20 *Public Procurement Law Review* 193 – 206

TIME	ITEM
08:45 – 10:30	Different ways to categorise procurement remedies Administrative remedies: contracting authorities Administrative remedies: suppliers
10:30– 10:45	Break
10:45 – 12:30	Judicial remedies
12:30 – 13:30	Lunch
13:30 – 15:00	Chapter nine institutions and remedies
15:00 – 15:15	Break
15:15 – 16:30	Overview of the various legal mechanisms aimed at addressing corruption in public procurement in South Africa: the PFMA, MFMA, PPPFA and the Prevention and Combating of Corrupt Activities Act 2004

Day 5: 30 November 2018

Theme: Corruption in public procurement

This final day will focus specifically on corruption in public procurement and the legal measures aimed at curbing corruption that forms part of public procurement law. We shall look into the specific South African legal rules aimed at curbing corruption in public procurement and how the courts have interpreted those roles. We shall also consider corruption in public procurement more broadly and discuss what the typical forms of corruption in procurement are and how to identify potentially corrupt activities in public procurement.

Outcomes: To develop an appreciation for:

- the ways in which South African law responds to corruption in public procurement;
- the various legal mechanisms that exist in South African law to tackle corruption in public procurement specifically;
- typical forms of corruption in public procurement and how to identify their occurrence in particular contexts;
- considerations when recommending measures against procurement corruption.

Presenter: Prof Sope Williams-Elegbe

TIME	ITEM
08:30 – 08:45	Recap of Day 4
08:45 – 10:15	Corrupt schemes in public procurement and anti-corruption remedies in South African Law
10:15 – 10:30	Break
10:30 – 12:00	Investigating procurement corruption and recommending measures against procurement corruption
12:00 – 12:30	Evaluation, Ms Young Awarding of Certificates, Adv Malunga & Prof Williams-Elegbe Closing Session, All
12:30	Lunch & Departure

Readings:

S Williams-Elegbe “A perspective on corruption and public procurement in Africa” in G Quinot & S Arrowsmith (eds) *Public Procurement Regulation in Africa* (2013)

S Williams & G Quinot “Public Procurement and Corruption: The South African Response” (2007)
124:2 *South African Law Journal* 339-363

J. Edgardo Campos Sanjay Pradhan, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level* (2006, World Bank), chapter 9. Available at
<https://openknowledge.worldbank.org/handle/10986/6848>