
Public Procurement Law Workshop 2019

Programme, Mpumalanga

15-19 July 2019

Day 1: 15 July 2019

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 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 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 Botromia Sithole
11:35 – 11:45	Introduction of the partnership and project team, Ms Benita Young
11:45 – 11:55	Remarks from the Konrad Adenauer Stiftung, Ms Michaela Braun
11:55 – 12:30	Introduction to public procurement law, Prof Quinot
12:30 – 13:30	Lunch
13:30 – 15:00	Introduction to public procurement law Public procurement law & the Constitution
15:00 – 15:15	Break
15:15 – 16:30	Public Procurement law legislative framework

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

All materials are available at:

www.africanprocurementlaw.org

(Projects >> Public Procurement Law Training >> Office of the Public Protector of South Africa staff training >> 2019 Participants portal: Mpumalanga)

Password: PPNelspruit

Day 2: 16 July 2019

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 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	Institutional roles in public procurement Public procurement methods
10:45 – 11:00	Break
11:00 – 12:30	Petty cash Quotations Multi-stage procurement Transversal contracts
12:30 – 13:30	Lunch
13:30 – 15:00	Competitive bidding
15:00 – 15:15	Break
15:15 – 16:30	Deviations

Day 3: 17 July 2019

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 implementing 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	Institutional roles in competitive bidding procedure Bid specifications & criteria Advertising
10:45 – 11:00	Break
11:00 – 12:20	Adjudicating bids Validity periods
12:20 – 12:30	Group Photograph
12:30 – 13:30	Lunch
13:30 – 14:40	Award decisions Cancellation of tenders
14:40 – 15:00	Break
15:00 - 16:15	Correction, clarification and variation Negotiation
16:15 - 16:30	Closing of Prof Quinot Session, Adv Malunga & Ms Young

Day 4: 18 July 2019

Theme: Grievances and disputes in public procurement law

Day 4 will focus on 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.

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

TIME	ITEM
09:00 – 09:15	Introduction
09:15 – 11:00	Different ways to categorise procurement remedies Administrative remedies: suppliers
11:00 – 11:30	Break
11:30 – 13:00	Administrative remedies: contracting authorities
13:00 – 14:00	Lunch
14:00 – 15:45	Judicial remedies Chapter nine institutions and remedies
15:45-16:00	Close

Readings

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

Day 5: 19 July 2019

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 rules. 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 – 10.00	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
10.00-10.30	Break
10:30 – 11:30	Corrupt schemes in public procurement and anti-corruption remedies in South African Law
11:30– 12:15	Investigating procurement corruption and recommending measures against procurement corruption
12:15 – 12:30	Evaluation, Ms Young Awarding of Certificates, Adv Malunga & Prof Sope Closing, All
12.30	Lunch

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>