

# *Government Procurement: SCM, PPI's and PPP's*

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# Outline

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- 1. Global Public Sector Procurement perspective**
- 2. National Legislation, Frameworks and Codes perspective**
- 3. Western Cape experience**
- 4. Questions**

# 1. Global Public Sector Procurement perspective

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Public bodies are being encouraged to procure sustainably, to consider the social and environmental impact and to stimulate sustainability.

There is, however, limited literature and studies about how the public sector organizations are responding to **sustainable procurement (SP)**.

Brammer , Warwick Business School , Coventry , UK

Public procurement reform becomes an important tool for strengthening and supporting governance reforms and better public sector performance.

It is at the **core of translating public policy into tangible results for citizens**, delivering essential services and implementing projects and programs.

World Bank , Why reform public procurement ?



## 2. National Legislation, Frameworks and Codes perspective

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### Constitution 1996 s.217 (1,2 & 3)

- (1) Process must be **equitable, transparent, fair, competitive, result in cost effectiveness** “(PFMA)”
- (2) Preference policies may **advance or protect categories of persons** “(B-BBEE)”
- (3) Specifies framework for **preferential procurement** “(PPFA)”



Equitable,  
Transparent, Fair,  
Competitive, Cost  
Effective

### Public Finance Management act 1999

Regulates financial management in National and Provincial governments

s. 76(4) Provides that **NT to determine a framework** for an appropriate procurement and provisioning system which is equitable, transparent, fair, competitive and cost effective

Aligns overall **responsibility of setting up of financial management s45 (a) and procurement systems to Accounting Officers** of National or Provincial authorities

These systems, however, often differs across SA

## 2. Procurement Policy and Legislation

**Broad-Based  
Black  
Economic  
Empowerment**

### **Broad-Based Black Economic Empowerment act no 53 2003**

To advance **economic transformation** and enhance the **economic participation** of black people in the SA economy. Enables Min of Trade and Industry to issue **codes of good practice** applicable to government on procurement, licensing, concessions, PPP's and sale of state owned land

### **Broad-Based Black Economic Empowerment Code 2003**

Provides clearer definitions, categorizations or rating system and a framework to implement matters.

### **Broad-Based Black Economic Empowerment Amendment act 2013**

Stronger government intervention approach

Impose an obligation on government and public entities even to cancel a contract or authorization due to false information provided

Provide for establishment of a **B-BBEE commission**. Includes a "trumping provision" if any conflict between B-BBEE 2013 and any other Act , 2013 will prevail.

**Increased oversight and advocacy role**. Investigate complaints, introduce criminal offences

### **Amendments to the Broad-Based Black Economic Empowerment codes for Good Practice, 2013**

Increase the compliance targets, thresholds to measure EME and QSE entities, maintenance of min B-BBEE level and amendment codes.

## 2. Procurement Policy and Legislation

### Preferential Procurement Policy Framework Act 2000 & Preferential Procurement Regulations 2001

Establish the **obligation of government to award preferential procurement points to historically disadvantaged persons.**

### Preferential Procurement Regulations 2011 Implementation Guide

Expanded to all organs of state and all public entities schedules 2, 3A, 3B, 3C, 3D, and to PFMA

Regulations empower **DTI to designate specific industries, sectors and sub-sectors for local production, minimum local content in terms of 2011 Local Procurement Accord.** NT practice notes on designated sectors are available.

If no designated sector may include specific tendering condition that only local produced services, works or goods or locally manufactured goods with stipulated minimum thresholds will be considered. Once tenders for goods and services from designated sectors and sub-sectors are awarded the procuring authority must notify DTI and provide necessary contract details.

The successful bidders are required to apply the technical specifications for determining local content as published by SABS and are liable for the costs of SABS verification of the local content declared.

### Preferential Procurement Regulations 2017

80/20 for bids R30 000 to R50 million and 90/10 for bids above R50 million.

Clarity on use of B-BBEE compliance levels, on commitments to subcontract minimum of 30 % to EME or QSE. Organ of state may apply pre-qualifying criteria. Compulsory subcontracting where feasible on contracts above R30 million to black owned or designated groups.

Supports the objectives of the Industrial Policy Action Plan (IPAP) by stipulating that the DTI is able to designate specific industries of critical or strategic importance.

Where the DTI is yet to designate an industry, it may prescribe the local content of a product as a tendering condition based on robust research that draws on strategic and industry analysis. In this case a two-stage bidding process may be followed

**Preferential  
Procurement**

## 2. Procurement Policy and Legislation

Public Finance and  
Management Act

### Regulations in terms of PFMA 1999: **Framework for Supply Chain Management 2003**

Requirement to establish a separate SCM unit in the office of the CFO

Procurement of goods and services either through quotation or through a bidding process with thresholds determined by NT and adjudicated through SCM bid committee

### Regulations in terms of the PFMA act 1999: **National Treasury Regulations 2005**

Covers financial management arrangements, planning and budgeting, frameworks for banking, investment and supply chain management and PPP's s.16 A6.2&3 Accounting Officer (AO) must develop and implement an effective and efficient SCM function

Must **align with principles of good governance, provide for demand management, acquisition management, logistics management, disposal management, risk management, regular assessment of SCM performance.**

**In accordance with NT instructions, or Construction Industry Development Board**, adjudication criteria i to PPFA, B-BBEE acts, advertised on Government Tender Bulletin and other media for 21 days except for urgent cases

Information Technology items in accordance with **State Information Technology Act** , 1998 and regulations

**If impractical to invite bids the AO can record and approve such** with reasons

May participate in **transversal term contracts** facilitated by relevant treasury

May participate in any contract arranged by means of a competitive bidding process by any other organ of state, subject to written approval from other organ and the relevant contractors. **"Piggy Back arrangements"**

## 2. Procurement Policy and Legislation

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### **Draft Public Procurement Management Bill 2017/ Office of the Chief Procurement Officer (OCPO) / Public Audit Act 2018**

**Seeks to harmonize and consolidate the legislation and policy frameworks.**

A draft is yet to be made public.

Duplication, variation in bidding forms and practices exist as government is still allowed to develop differential procurement policies and systems.

In 2013 NT established the **Office of the Chief Procurement Officer (OCPO)** to oversee and ensure full implementation of public procurement reform.

Focus on good governance, accountability, cost effectiveness in financial and human terms.

Bill being developed as legal framework and **establish the Public Procurement Authority within NT.**

OCPO has ensured 40 centrally negotiated transversal contracts. Next 3 years plan to renegotiate contracts with governments top 100 suppliers.

Central Supplier Database (CSD) established in September 2015

OCPO also launched eTender portal in April 2015.

Amendments to the **Public Audit Act in 2018** will give the Auditor General enhanced authority to refer items for investigation and to take remedial action.



**Office of the  
Chief  
Procurement  
Officer**

### 3. Western Cape experience



2004 Preferential Procurement Policy

**Western Cape Supplier Database**, shared between City of CT, WC Parliament, WCG, and 20 local municipalities. **Compulsory** and maintained by PT in 2009 the WCSD had over 40 000 suppliers.

Tradeworld and Integrated Procurement Solutions (IPS), has aim of standardization and e-procurement.

Province has no overarching Provincial Procurement Policy but PT has issued instructions and guidance circulars aligned to NT regulations.

AO 's develop, document, maintain and implement an effective and efficient SCM system. SCM section under CFO.

PT has performed analysis on a commodity level which reflect 80 % of G&S spend takes place on about 10 items.

PT are piloting strategic sourcing and analysis in **IT**. Implementing a **security** and **catering** procurement strategy.

Presently has **challenges implementing 2017 NT regulations** and in the interim, relies on PT regulations. In large the challenges are directed at pre-qualification criteria which it is believed will result in legal challenges.

DEDAT is helping with policy formulation for **sustainable procurement** ( in line with global thinking), environmental aspects , socio economic considerations and the concept of total cost , focusing initially on infrastructure examples.

Plan is to introduce these aspects into the AOS and agree such with departmental CFO's.

## 4. Questions

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***“Price is what you pay, Value is what you get.”***

**Warren Buffet**