

Legislative and Administrative Directives Governing Procurement Procedures

A local government perspective

K Raga

School of Governmental and Social Sciences
Nelson Mandela Metropolitan University
South Africa

N Nano

School of Governmental and Social Sciences
Nelson Mandela Metropolitan University
South Africa

ABSTRACT

To enact a comprehensive body of rules to regulate public procurement is only one element in fostering compliance with the norms and objectives of a sound public procurement programme. The development of a sound legal framework is a core element in the modernisation and improvement of public procurement systems.

The task of government institutions is to achieve the policy objectives which have been set by the government for societal life. As public policy-maker, the government strives to establish a generally preferred future for society. Any deliberations by the policy-maker on the establishment and realisation of such a preferred future should, of necessity, include, *inter alia*, the setting of standards and respect for the administrative legal framework to guide functionaries in government institutions on how to execute policy.

The essence of public procurement legislation is to define and enforce those procedures that will deliver a productive and efficient result, while respecting the public nature of the process and the duty of fairness to the suppliers. Government institutions are not usually established with a view to profit-making, with the consequence, the objectives of their procurement function will differ considerably from the objectives of an establishment in the private sector.

In this article, the legislative and administrative directives which impact and govern the procurement system in South Africa will be discussed. The article will conclude with recommendations based on an empirical survey to establish attitudes towards public procurement policies with specific reference to the local sphere of government.



INTRODUCTION

A procurement official who is entirely unsympathetic with the particular needs of the users of the goods and services will fail to grasp what is one of the most essential functions for their department because they deal with papers and accounts instead of groups and individuals (Twyford, in Dobler et al. 1996:07).

The business functions of government, as controlled by the public procurement systems, affect various elements of society. *Firstly*, there are departments involved in the procurement functions with the responsibility to execute designated needs for the country as a whole and which require material support, for example: roads, hospitals and equipment for educational institutions. *Secondly*, there is the business sector constituting the actual or potential suppliers to the government. Furthermore, there are academic, training and public interest groups which have views on how public management institutions should execute the procurement function. The largest interest group is the general public, who will express their satisfaction when they note that expenditures are being made through the public procurement system which are economical, rational and fair (Wittig 2000:03).

In South Africa, a statutory body, known as the State Tender Board was established to take rationally based decisions regarding the allocation of contracts to private sources for the provision of goods and services (Raga 2002:17). The significance of such a body is clear when it is considered that government expenditure on public sector procurement during the 2010/2011 fiscal year exceeds R400 billion, of the total government revenue (<http://www.sars.gov.za/home.asp?pid=4153>). To control and account for such expenditure of taxpayer's funds, a sophisticated and responsible approach is required by both politicians and public sector officials. Legislation exists in this regard together with concomitant subordinate legislation such as regulations, consolidated instructions, procedural codes, circular letters and administrative directives (Raga 2002:17-18).

Procurement reforms in South Africa commenced in 1995. A joint initiative by the ministries of Public Works and of Finance aimed at transforming public sector procurement in South Africa. The public sector procurement reforms were directed at two broad focus areas, *viz.*: the promotion of principles of good governance and the introduction of a preference system to address certain socio-economic goals. The procurement reform processes were supported by the introduction of a number of legislative and administrative measures which included, *inter alia*, the *Public Finance Management, Act 1 of 1999*, as amended by Act 29 of 1999 and the *Preferential Procurement Policy Framework, Act 5 of 2000*.

To utilise government procurement as a tool to achieve specific socio-economic goals has been used by countries with developing economies as well as developed countries. Several governments have, over decades, identified socio-economic goals, for example, targeting of specific business sub-sectors (SMMs in South Africa) as having the potential of impacting positively on structured government public sector procurement requirements (Raga 2002:19).

In this article, the South African Government's utilisation of legislative and administrative directives of the procurement process to address the political imbalances

of the past which denied the absolute majority (Black – Africans, Coloureds and Asians) from participating in the public sector procurement function is briefly expounded upon. The following legislative directives will be expounded upon: *Green Paper on Public Sector Procurement Reform, Constitution of the Republic of South Africa of 1996, Preferential Procurement Policy Framework Act, 5 of 2000, Public Finance Management Amendment Act, 1 of 1999* and the Supply Chain Management Policy of September 2003. The discussion will conclude with recommendations based on an empirical survey to establish attitudes towards public procurement policies with specific reference to the local sphere of government.

DEFINITION OF TERMS

The following definitions of terms are proposed for purposes of this article:

Procurement: Bolton (2007:1-3) describes procurement as the function of purchasing goods and services from an outside body as contained in the heading of 17 Section 217 of the Constitution, 1996 should be given a wide interpretation. Procurement in the South African context should be understood as referring to instances where government acquires goods and services and when it sells or lets assets.

Affirmative Procurement: comprises participative programmes aimed at the engagement of small, medium and micro-enterprises owned by previously disadvantaged categories of people or companies. It aims to increase the volume of work available to the poor and marginalised sectors of the community falling within this definition (Raga 2002:15).

Supply Chain Management: is a management function aimed at integrating a network of upstream linkages in performing a specific process and activities that will ultimately create and optimise value for the customer in the form of products and services which are specifically aimed at satisfying customer needs (Raga 2002:15).

Historically Disadvantaged Individuals: (HDI) refers to a South African citizen or any service provider who, due to the apartheid policy had no franchise prior to the introduction of the interim *Constitution of the Republic of South Africa, Act 200 of 1993*, and its successor the Constitution, 1996 who is a female and/or who has a disability; provided that a person who obtained South African citizenship on or after the coming into effect of the Interim Constitution, is deemed not to be an HDI.

Developmental local government: The White Paper on Local Government (1998:37), defines developmental local government as local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs to improve the quality of their lives.

Municipality: A municipality is a corporate body and has specific roles and responsible areas, a political structure, political office-bearers and a municipal manager and has jurisdiction in a defined geographical area as determined by the *Local Government: Municipal Demarcation Act, 1998* (Craythorne 2006:119).

Councillor: The *Local Government: Municipal Systems Act, 32 of 2000* defines a councillor as a member of a municipal council.

Local governance: Local governance requires that institutions involved in local governments are engaged in the design and implementation of economic and social



policy with business elites, community leaders, development corporations, training and enterprise councils, as well as voluntary groups (<http://www.answers.com/topic/local-governance>).

GREEN PAPER: PUBLIC SECTOR PROCUREMENT

The Green Paper on Public Sector Procurement Reform in South Africa (Government Gazette No. 17928, 14 April 1997:32) recognises that public sector procurement could be used as a tool by government to achieve economic ideals, including particular socio-economic objectives. This view formed the foundation of the procurement reform process and the development of policies and procedures. The Green Paper has not been superseded by a White Paper on public sector procurement. However, several proposals of the Green Paper have been implemented. Furthermore, the Green Paper on Public Sector Procurement Reform recognised that an effective and efficient procurement system would permit organs of state to deliver the quality and quantity of services demanded by its new constituency in accordance with its policies articulated in the RDP and in the Growth, Employment and Redistribution Strategy (GEAR).

To achieve this, the following components, involving institutional and economic reform, were deemed necessary:

- achieving good governance in procurement; and
- achieving socio-economic objectives through procurement.

The system which was advocated in the Green Paper on Public Sector Reform was Affirmative Procurement (AP). An AP Policy was advocated to enact the vision for the procurement reform process and to facilitate purposefully the flow of commerce to and through population segments that had been historically under-utilised and excluded from participation. This had to be done in a manner such that participation in public sector procurement activities was ensured through: making the tendering process available to the target group without guaranteeing work; linking the flow of money into target business enterprises with a concomitant flow of responsibility; increase the volume of work available to the poor and marginalised sectors of society and provide employment and income generation opportunities for marginalised sectors of society in all types of contracts, for example, engineering and construction. Other recommendations included: consistent and uniform definitions, monitoring and reporting mechanisms, strategies and the realisation of policy objectives. In February 2000, section 217(3) of the *Constitution of the Republic of South Africa, 1996* was effected with the promulgation of the *Preferential Procurement Policy Framework Act, 5 of 2000*.

It must also be noted that in South Africa, service providers, contractors as well as suppliers are bound by various labour stipulations, for example: the *Basic Conditions of Employment Act, 75 of 1997*, the *Labour Relations Act, 66 of 1995*, and the *Occupational Health and Safety Act, 85 of 1996*. Failure to abide by the above stipulations will result in legal action.

The aforementioned broad objectives can be perceived as putting in place an integrated standard general approach towards the acquisition systems. These systems are envisaged to direct government resources towards service delivery in both an economical and transparent manner.

LEGISLATIVE ENVIRONMENT

Constitutional provisions

Section 217(1) of the Constitution, 1996 provides the basis for procurement and determines that: When an organ of State in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

Sub-section (2) of the Constitution provides, that sub-section (1) does not prevent the organs of state or institutions referred to in that sub-section from implementing a procurement policy providing for

- categories of preference in the allocation of contracts; and
- the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

Section 217(3) of the Constitution confers an obligation on national legislation to prescribe a framework providing for preferential procurement to address the social and economic imbalances of the past. Section 217(3) of the Constitution has been amended by the *Constitution of the Republic of South Africa Second Amendment Act 61 of 2001*. The word *must* has been substituted for the word *may*. It can be inferred that section 217 makes provision for the implementation of a policy for 'affirmative/targeted procurement' with the amendment of the word, *must*.

ENABLING LEGISLATION FOR A PREFERENTIAL PROCUREMENT SYSTEM

Sections 215-219 of the Constitution, 1996 require that the National Treasury introduce uniform norms and standards within government to ensure transparency and expenditure control measures, which should include best practices related to procurement and provisioning systems. The *Preferential Procurement Policy Framework Act 5 of 2000* (the Act) and its accompanying Regulations (Preferential Procurement Regulations, August 2001), were promulgated to prescribe a framework for a preferential procurement system. This Act and its Regulations incorporate the 80/20 and 90/10 preference point system. The ultimate rationale of the Act is to enhance participation of Historically Disadvantaged Individuals (HDIs) and Small Medium Micro Enterprises (SMMEs) in public sector procurement.

Section 2 of the Act stipulates the basis upon which an organ of state may implement a preferential procurement policy. The latter allows an organ of state to aim for specific goals which may include contracting with persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability. It requires that any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a tender. Furthermore, the Act also requires the contract to be awarded to the tenderer who scores the highest points unless objective criteria to those contemplated in paragraphs (d) and (e) of Section 2(1) justify the award to another tenderer.



The 80/20 preference point system formula must be used to calculate the points for the price in respect of tenders or procurement with a value equal to or above R 30 000 and up to R 500 000. A maximum of 20 points may be awarded to a tenderer for being a Historically Disadvantaged Individual or for sub-contracting with a Historically Disadvantaged Individual or for achieving any of the specified goals stipulated in Regulation 17(3) of the Preferential Procurement Regulations of 2001.

The 90/10 formula must be used to calculate the points for price in respect of tenders or procurement with a Rand value above R 500 000. A maximum of 10 points may be awarded to a tenderer for being a Historically Disadvantaged Individual, for subcontracting with a Historically Disadvantaged Individual and / or for achieving any of the specified goals stipulated in Regulation 17(3) of the Preferential Procurement Regulations of 2001.

The legislation attempts to balance business ownership and encourage the participation of previously marginalised communities in the mainstream economy. Affirmative procurement has been identified as a tool that can bring about economic development and allows for the participation of previously disadvantaged individuals.

Van Weele (2000: 325) supports and argues that government purchases often serve political objectives, whilst there is a need to utilise their financial resources as effectively and efficiently. Reddy (1995:40) argues that the process of tendering can be modified to allow greater access for small enterprises, dividing large contracts either geographically or by size, to allow small, community-based enterprises the opportunity to bid. Service providers should also have the opportunity to demonstrate their capacity on small jobs, and then be allowed to progress rapidly to bid for larger projects. The service providers could also insist on labour intensive bids to undertake capital works and require contractors to employ workers from the local community.

Both Van Weele and Reddy support the South African government's political objective to focus on business opportunities for those who, due to past imbalances and discrimination were unable to participate actively in the economy. To achieve positive outcomes the government is inclined to implement affirmative procurement processes which are supposed to give priority to black business owners.

It can be inferred that the primary objective of the government and municipalities is to create an environment that will enable small, medium and micro enterprises and emerging businesses to have meaningful participation in public procurement which can be achieved by prioritising tenders and bids received from businesses owned and controlled by the previously disadvantaged due to racial discrimination.

There are currently proposed changes to the *PPPFA, 5 of 2000*. The changes are expected to have an effect on the procurement policies with which organs of state are legally bound to comply under the *Black Economic Empowerment (BEE) Act, 2003*. The most significant proposed change is the adjustment of the weight of BEE status in a tender pitch. Currently, the amount is R500 000. A contract below this amount will allocate 80 of the total 100 points to the price and functionality of the proposal. 20 points will be awarded to reconstruction and development goals. A contract above R500 000 eases the entry with an extra 10 points awarded to the proposal's price and functionality. According to the draft of the Act, R1 million will be the new threshold. Contracts below this amount will be judged on the 80/20 principle. Above the R1 million, the 90/10 principle will apply (*Sunday Times*, p.13, March 21 2010).

The Constitution of 1996 illustrates the significance attached to the utilisation of public sector procurement as a means to correct discrimination and marginalisation of the majority during the Apartheid regime.

FINANCIAL ENABLING LEGISLATION

Considerable powers are assigned to accounting officers, accounting authorities and municipal managers to enable them to manage their financial affairs within the parameters laid down by the prescribed National Treasury to monitor the compliance of the prescribed norms and standards.

Parliament sets policy objectives and put measures in place to ensure proper financial management and control over state monies, stores, and equipment. According to the *Public Finance Management Amendment Act, 29 of 1999*, the policy objectives are set as follows:

... regulate financial management in the national government and provincial government; ensure that all revenue, expenditure, assets and liabilities of those governments are managed effectively and efficiently; provide for the responsibilities of persons entrusted with financial management in those governments ...

The *Local Government: Municipal Finance Management Act, 56 of 2003 (MFMA)* extends the same principles to municipalities.

Treasury influences the financial policy of public institutions regarding stores administration. Control over stores and equipment is also exercised in terms of section 76(1) (2) and (4) of the *Public Finance Management Amendment Act, 1 of 1999*. These measures include the making of regulations or issuing of instructions applicable to public executive institutions (departments) concerning, *inter alia*:

- the handling of and control over trust money and property such as stores and equipment; and
- the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective (*Public Finance Management Amendment Act, 29 of 1999*).

The accounting officer is a major role player in terms of the *Public Finance Management Amendment Act, 29 of 1999*, to effect external control by the legislature. Furthermore, the accounting officer is required to provide information to the Treasury. The Auditor-General and the Select Committee on Public Accounts play a significant role in external control of public finance.

APPLICATION OF THE SUPPLY CHAIN MANAGEMENT POLICY

Cabinet adopted a Supply Chain Management (SCM) Policy in September 2003 to replace the outdated procurement and provisioning practices across government with a SCM



function to form an integral part of financial management and conform to international best practices. SCM is an integral part of financial management, which intends to introduce international best practice. It breaches the gap between traditional methods of procuring goods and services and simultaneously address procurement related issues. The principles of SCM require accounting officers and accounting authorities to accurately extract relevant information to effectively measure the achievement of government's procurement objectives. The major objectives of the policy are to:

- transform government procurement and provisioning practices into an integrated SCM function;
- introduce a systematic approach for the appointment of consultants;
- create a common understanding and interpretation of the *PPPPFA, 5 of 2000*; and
- promote the consistent application of 'best practice' throughout government's supply chain. (www.gcis.gov.za/resource_centre/guidelines/bestpractice_marketing.pdf accessed on 10 November 2009).

Furthermore, the SCM policy is required to give effect to the Constitution, 1996 as well as the PFMA and MFMA.

A municipality is required to establish a Supply Chain Committee System for Competitive Bids and compile a document on how it intends to conduct its procurement function. This must conform to the *Preferential Procurement Policy Framework Act, 5 of 2000* and the Municipal Procurement Regulations which forms the basis for the formation of the policy. The committee is required to pay attention to detail in order to avoid ambiguity and incorporate the five pillars of procurement, viz.: value for money, effective competition, fair procedures, transparency, control and equity.

The supply chain management regulations require the municipal council to approve a transparent policy that will regulate municipal procurement systems. Municipalities are categorised as high, medium and low capacity regarding their capabilities to recruit or use existing human resources to implement the policy and its ability to generate revenue.

The aim of standardising the regulations is to obtain uniformity in procurement on the three spheres of government. These regulations were developed to put in place the administrative and financial accountability under the supervision of the accounting officers (e.g. municipal manager in the case of a municipality) who are responsible for ensuring that there is maximum control to prevent fraud, favouritism, corruption, and unfair practices.

Craythorne (2006:297:2003) states that the constitutional provision contains two levels. At the first level, when organs of state, such as a council award contracts, they must do so in accordance with a system devised by them, but subject to financial management legislation, which will be the MFMA. The system must be fair to council and potential contractors; must be equitable (impartial in its substance); transparent (open and not secret); competitive (so that tax payers get the best deal for money); and cost effective (public goods are not beyond the reach of the public). At the second level the principle is that those persons, who, on the grounds of race or colour, were excluded from being suppliers of goods and services, can be given preference in the awarding of contracts.

The SCM office in National Treasury oversees the implementation of the above policy in conjunction with provincial treasuries and chief financial officers from the different spheres of government. In 2003, parallel to this process, Cabinet approved the *Broad-Based*

Black Economic Empowerment (BEE) Act, 2003 which led to amendments to the Preferential Procurement Regulations during 2005. The main objective of the intended amendments to the regulations was to align them to the *Broad-Based BEE Act, 2003*. Government's BEE strategy aims to accelerate indirect empowerment through preferential procurement and enterprise development (www.gcis.gov.za/resource_centre/guidelines/bestpractice_marketing.pdf accessed on 10 November 2009).

LOCAL GOVERNMENT PERSPECTIVE

The Constitution, 1996 positions local government as an independent sphere of government, interrelated to and interdependent with the national and provincial governments. To give it a collective voice, local government speaks from a position of strength through organised local government, as embodied in the South African Local Government Association (hereafter referred to as SALGA).

Status of local government

The principles of local government define the status underlying developmental local government as:

- The Constitution grants local government original powers. Local government is no longer a function of provincial government, or a third level of government. It has become a sphere of government in its own right. It is part of a system of co-operative government, including provincial and national spheres.
- Local government is no longer a site for the delivery of services only, but a crucial site for social and economic development. This requires local government to have a strong developmental focus.
- Local government, within its constraints, has to appropriately contribute to both economic growth and social redistribution.
- Local government is a key arena for the democratic participation of ordinary citizens.
- Municipalities constituting the new local government system have to be financially viable and sustainable.
- Over time, through appropriate negotiations, more powers and functions can be devolved to local government (<http://www.sacp.org.za>).

According to Section 151 of the Constitution, 1996, the local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic of South Africa. As the executive and legislative authority of a municipality is vested in its municipal council, the municipality has the right to govern, on its own initiative, the local affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. In addition, national and provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

The above provision in the Constitution positions local government as an independent sphere of government, interrelated and interdependent with national and provincial government. The formal recognition of local government in the Constitution as a sphere of government has enhanced the status of local government as a whole (*South Africa Yearbook*



2006/2007:78). Furthermore, municipalities have been accorded a developmental role to enhance service delivery. In this regard, the Constitution requires municipalities to structure and manage their administration budgeting and planning processes to give priority to the basic needs of communities and to promote social and economic development.

Developmental role of local government

Section 23(1) of the *Local Government: Municipal Systems Act, 32 of 2000* presents the vision of developmental local government, as envisaged in the Constitution as follows:

A municipality must undertake developmentally orientated planning so as to ensure that it strives to achieve the objects of local government set out in Section 152 of the Constitution; and gives effect to its developmental duties as required by Section 153 of the Constitution.

In addition, as the Constitution, 1996, enshrines the rights of all people in this country to dignity, equality before the law, freedom and security, it affirms rights to freedom of religion, expression, culture, association and movement, as well as political, labour and property rights. The Constitution further commits government to take reasonable measures, within its available resources, to ensure that all South Africans have access to adequate housing, health-care, education, food, water and social security. The *White Paper on Local Government (1998)*, cautions that the reality of South African cities, towns and rural areas differ dramatically from this ideal. Particular communities are still geographically divided and live in dire poverty, deprived of services and opportunities. The previous local government system failed to address the greatest needs of the majority of South Africans, while the current system has not yet been able to reverse these long-standing patterns of inequality and unmet human needs (Tsatsire 2008:139).

Characteristics of developmental local government

In terms of Section B of the *White Paper on Local Government, 1998*, developmental local government has four interrelated characteristics, namely:

- maximising social development and economic growth;
- integrating and co-ordinating;
- democratising development; and,
- leading and learning.

Within the context of the above characteristics, developmental local government is local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives. With the changes in local government legislation and structures, it is inevitable that the roles of local government councillors, officials and the community adhere to the new dispensation. The new developmental legislation that has been drafted and enacted now requires communities to participate in local government in order to ensure a local government that is accountable, transparent and responsive to community needs (Planact 2001:36).

In the section that follows, a brief synopsis is provided on the research instrument used to conduct the empirical survey to determine attitudinal responses to procurement management with specific reference to local government. Using four municipalities as a case study, the survey aimed to provide an understanding of the participants' attitudes, perceptions and knowledge relating to procurement management against the background of developmental local government. A quantitative approach was used and the sample included selected senior officials from the four municipalities.

EMPIRICAL RESEARCH

In the paragraphs that follow a synopsis of an empirical survey conducted at four municipalities in the Province of the Eastern Cape by Nano (2009), to investigate attitudes towards the preferential procurement policy, is reviewed.

Research instrument

The research conducted by Nano (2009), employed a self-administered questionnaire with Yes and No responses. However, provision was made in the questionnaire for respondents to further elaborate on their responses. It was assumed that the measuring technique employed would presuppose that a particular test item had the same meaning for all respondents, and thus a given response was scored identically for each respondent.

Test

For purposes of the survey the questionnaire was referred to a statistician for final approval so that the data contained in the questionnaire could be quantified and subjected to statistical analysis. The target population included 46 officials from the identified municipalities. This group was selected because it is strategically situated at the relevant municipalities in terms of working directly with the Preferential Procurement Policy at each municipality. The survey achieved a response rate of 61%. The research findings are based on 28 completed questionnaires of the target research population of 46 (Nano, 2009:56-60).

Data processing

A statistician from the Nelson Mandela Metropolitan University (hereinafter referred to as NMMU) utilised the computer programme SAS to process the collected data and to generate the various statistical results. The relative values pertaining to the set statements that emerged from the survey were transferred in codified form to a computer database.

Interpretation of research findings

The objective of Nano's empirical survey was to test attitudinal responses to aspects relating to the Preferential Procurement Policy to deliver basic services to the relevant communities. The inherent subjectivity in attitude surveys was realised and kept in mind during the analysis



of the results. According to Zimbardo and Ebbeson (1969:125), it is possible to measure subjective attitudes by using quantitative techniques, so that each individual's opinion can be represented by some numerical score.

Empirical survey results

Question 1

The respondents were asked whether they are aware of Constitutional provisions pertaining specifically to procurement and the *Preferential Procurement Policy Framework Act, 5 of 2005*.

Table 1

RESPONSES	NO. OF RESPONDENTS	PERCENTAGE
Positive responses	27	96%
Negative responses	1	4%
Nil responses	0	0%
TOTAL	28	

The above responses indicate that the vast majority of the respondents are familiar with the constitutional prescriptions pertaining to procurement, specifically at the local sphere of government.

Question 2

Respondents were requested to select one piece of legislation that relates specifically to the management and the implementation of procurement in South Africa. The question was designed to establish how knowledgeable the respondents were of applicable legislation.

Table 2

RESPONSES	NO. OF RESPONDENTS	PERCENTAGE
Positive responses	27	96%
Negative responses	1	4%
Nil responses	0	0%
TOTAL	28	

The above responses indicated that the municipal officials in procurement are familiar with legislative prescriptions pertaining to procurement in South Africa.

Question 3

In terms of Section 111 of the *Municipal Finance Management Act, 2003* each municipality must develop and implement a supply chain management policy. The survey sought to determine if the policy was in place and fully implemented at the four municipalities (which formed part of the study).

Table 3

RESPONSES	NO. OF RESPONDENTS	PERCENTAGE
Positive responses	28	100%
Negative responses	0	0%
Nil responses	0	0%
TOTAL	28	

The response rate reflects that all four municipalities are aware of the mechanisms which should be in place with regard to the implementation of the *Preferential Procurement Policy Framework Act, 5 of 2000* and the Municipal Supply Chain Management Regulations.

Question 4

The implementation of the procurement policy requires three levels of bid committees be established to oversee a fair, equitable, competitive, and transparent value for money process. The question aimed at evaluating the existence of the arrangements within each municipality in terms of human resources responsible for the procurement of goods and services.

Table 4

RESPONSES	NO. OF RESPONDENTS	PERCENTAGE
Positive responses	12	43%
Negative responses	16	57%
Nil responses	0	0%
TOTAL	28	

The responses revealed the existence of dedicated personnel. Furthermore, the procurement processes and implementation of the policy, at particular municipalities, was executed by senior managers whilst the accounting officer chaired the proceedings. Certain respondents indicated that the accounting officer approved recommendations made by managers in this regard. It should be noted that, according to Section 26(1)(a), the supply chain management system a policy must provide for a committee system for competitive bids consisting of at least:

- a bid specification committee
- a bid evaluation committee
- a bid adjudication committee

A total of 43% of the respondents indicated the establishment of the three levels of committees as required in terms of legislative prescriptions. Some 57% of the respondents indicated that at their respective municipalities there were fewer than the required 3 levels of committees. This response is of concern as the clear segregation of duties the three bid committees is to minimise the likelihood of fraud, corruption, favouritism, unfair and irregular practices.



Question 5

In terms of the Supply Chain Regulations Section 7, supply chain management units must be established to implement the supply chain management policy. Respondents were requested to indicate whether there are institutional arrangements at their respective municipalities to execute this mandate.

Table 5

RESPONSES	NO. OF RESPONDENTS	PERCENTAGE
Positive responses	20	71%
Negative responses	1	4%
Nil responses	7	25%
TOTAL	28	

50% of the respondents indicated the existence of a fully operational supply chain management unit. Some of the respondents' answers were ambiguous. It was difficult for the researcher to determine the type of structural and institutional arrangements that are in place. The responses indicate that there is an endeavour to implement the procurement policy by senior municipal managers although much still has to be done to fully meet the requirements of section 115(1)(a; b) of the *Municipal Finance Management Act, 56 of 2003*. Section 119(1 to 3) of the MFMA emphasises the competency levels required of officials involved in municipal supply chain management. The National and the Provincial Treasury offices may provide assistance to this effect.

Question 6

The procurement and supply chain regulations provide a framework on how the tender evaluation process should be executed. In this regard respondents were asked whether they were aware of the processes to be followed when evaluating tenders.

Table 6

RESPONSES	NO OF RESPONDENTS	PERCENTAGE
Positive responses	17	61%
Negative responses	9	32%
Nil responses	2	7%
TOTAL	28	

70% of the respondents indicated that they have knowledge of the procedures to be followed and the need for bid committees, application of the 80/20 and the 90/10 scoring system. 25% of the respondents indicated that they were not fully conversant concerning the prescribed procedures whilst only one respondent did not answer.

Question 7

Respondents were requested to indicate who the *Preferential Procurement Policy Framework Act, 5 of 2000* is targeting and provide reasons for their responses. This was a Yes or No question. The respondents were also requested to elaborate on their responses.

Table 7

RESPONSES	NO OF RESPONDENTS	PERCENTAGE
Positive responses	18	64%
Negative responses	5	18%
Nil responses	5	18%
TOTAL	28	

A total of 64% of the respondents were unanimous, reflecting a positive response. Of the remaining 36%, half of the respondents did not respond and the remainder responded negatively. Various discrepancies emanated from the responses as they did not relate directly to the question posed. Seventy percent of the responses identified the shortcomings in the *Preferential Procurement Policy Framework Act, 5 of 2000* to assist HDI. Responses also highlighted that much competition existed among large well-established companies. The 10 and 20 points allocation for affirmative procurement targets is considered inadequate to make any significant difference to the lives of HDIs.

It should be noted that HDIs are competing with companies whose business interests encompass South Africa, are known for their achievements, and have the capacity to deliver on large projects. The Affirmative Procurement Point System and Preferential Procurement Policy appear not to significantly assist when competing with established businesses. This was a major concern for the respondents.

Question 8

Respondents were asked what they consider as the core purpose of the *Preferential Procurement Policy Framework Act 5 of 2000*. This question consisted of three possible options from which respondents were requested to select:

- to improve service delivery?
- to retard service delivery?

Table 8

RESPONSES	NO OF RESPONDENTS	PERCENTAGE
Yes	5	19%
No	13	46%
Not sure	2	7%
Nil response	8	28%
TOTAL	28	



- not sure? Respondents were also asked to elaborate on their answer.

Twenty eight percent the respondents did not answer the question, 46% indicated that the procurement policy processes retard service delivery, 19% were positive that the implementation of the processes is good for service delivery whilst 7% were not sure about the impact of the procurement policies on service delivery.

With regard to the sub-question, 58,3% of the respondents indicated that the *Preferential Procurement Policy Framework Act, 5 of 2000* does not favour the HDIs while 25 % did not substantiate their responses and 16,66% indicated that the *Preferential Procurement Policy Framework Act, 5 of 2000* is creating fair competition amongst service providers.

RECOMMENDATIONS

Many inroads have been made since the first democratic general elections of 1994 in public sector procurement in South Africa. Despite the existence of a progressive and advanced legislative system to govern public sector procurement since 1994, numerous challenges are still being faced by the government to ensure a cost-effective and efficient procurement system.

Against the above background, the Public Service Commission proposed in January 2010, recommendations to improve public sector procurement with the emphasis on compliance with the legislative policy framework. The recommendations below are, *inter alia*:

- Adequate supervision of the procurement process.
- An updated list of service providers is maintained.
- Performance ratings of suppliers contracted to departments.
- Declaration of conflict of interest from Members of Parliament and those involved in the procurement process.
- Payment of invoices only on the basis of the original quotation.
- Regular fraud detection reviews as well as ongoing forensic and specialised audits within the procurement system.
- Encourage whistle blowing on maladministration and corruption (<http://www.pmg.org.za/report/20100310-public-service-commission-psc-evaluation-supply-chain-management-prac> accessed on 20 January 2011).

CONCLUSION

South Africa has made much progress in the procurement sector since April 1994. Whereas the previous regime which discriminated, denied and marginalised the majority (Black South Africans) from participating in the public sector procurement process, section 217 of the *Constitution of the Republic of South Africa, 1996*, *inter alia*, the *Preferential Procurement Policy Framework Act, 5 of 2000* and the Preferential Procurement Regulations of 2001, demonstrate the new regime's attempt to utilise the public sector procurement process as a means of addressing the imbalances of the past.

Various shortcomings have been experienced especially with regard to the loopholes being exploited in the PPPFA. Consequently, new legislation is being formulated to remove

inconsistencies in the current procurement practices and address the high levels of fronting. The proposed regulations intend to align the current preferential procurement legislation and the aims of the *Broad-Based Black Economic Empowerment (BBBEE) Act, 2003* and its code of best practice.

The empirical survey revealed that officials in procurement are aware that the *PPPFA 5 of 2000* is significant for the socio-economic development in South Africa. The respondents also highlighted the following challenges regarding the procurement legislation, viz.: the procurement process is open to abuse, fronting by established companies while a large percentage (58%) indicated that the *PPPFA* does not favour the HDIs but rather the established companies.

Treasury is of the view that the establishment of a single system of procurement within the public sector will address legislative confusion with regard to procurement by organs of state.

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