

# Manifestation of Unethical Procurement Practices in the South African Public Sector

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## ABSTRACT

*A drawback for the administration of procurement practices in the South African public sector is a negative side-effect which undermines the public's confidence in the procurement environment. Public procurement is the nexus between the public and private sectors and also vulnerable to procurement fraud and corruption. In the public sector where goods and services are funded by public expenditure, taxpayers have reasons to be concerned over public procurement as tax paying community. The question thus arises as to whether the administration of procurement practices is underpinned by value for money, ethics, competition, transparency and accountability in the South African public sector. Explaining the reasons for this, demands greater awareness of the public sector procurement environment and its challenges in the South African environment and beyond. This article therefore examines the manifestation of unethical procurement practices which traces non-compliance with legislation, uncompetitive bids, awards to employees and family members, and accepting less than three quotations, inadequate contract management and internal control, leadership, as well as irregular expenditure.*

## INTRODUCTION

The World Bank (2012:7) states that at the heart of good governance lies effective public financial management, which is linked to multi-stakeholder engagement, political accountability, effective checks and balances. The Bank further links three pillars



of effective and successful governance to increasing value for money, improving public service delivery, and creating an enabling environment for private sector-led growth. Further, public procurement, with links to all three pillars, is thus an essential element of governance reforms. A good procurement system that features transparency, accountability, and stakeholder participation can be a practical tool for carrying out effective governance reforms. Public procurement is a complex function which depicts a series of practices on government actions interacting with public policy. Public procurement could be described as the supply chain system for the acquisition of all necessary goods and services by the state and its organs when acting in public pursuit or interest. Public procurement constitutes a significant *modus operandi* in the public-sector arena and it thus stands as the procedural requisite for the delivery of public services.

The legislative requirements are a fundamental starting point for the application of procurement practices in the South African public sector. Parliament has established a legislative regime for the procurement procedures and decisions of organs of state to reflect the constitutional status of public procurement. The South African Constitution, in section 217(1), stipulates that organs of state must contract for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. The essence of public procurement legislation is to define and enforce those procedures that will produce a productive and efficient result while respecting the public nature of the process and the duty of fairness to the suppliers. The objectives of government procurement function differ considerably from the objectives of an establishment in the private sector as profit is not an issue in government (Taylor & Raga 2010:8).

Public procurement is fundamental to government service delivery as it often involves large sums of money (Chigudu 2014:21). Where problems are rampant, public procurement is one of the most serious and common areas for unethical procurement practices. The entire amount of money that flows through government procurement provides the temptation and opportunity for unethical procurement practices. Unethical public procurement practices prohibit the public sector from obtaining goods or services at the lowest possible tariff. When procuring errors undermine competition during planning or budgeting phases, it might be considered as procurement unethical procurement practices. In South Africa the constitutional importance is given to the objectives of value for money, integrity in public spending practices, accountability to the public, and efficiency as the primary drivers for procurement and unethical procurement practices should be controlled.

Government institutions preside over commodities that are of value to citizens. Gains realised from good public procurement practices make additional resources available

for development (USAID 2013:3). Coombs and Jenkins (2006:2) state that the proper public sector planning of public expenditure is clearly an important mechanism in the government's overall control of the procurement planning. At national and provincial level, the Public Finance Management Act no. 1 of 1999 (PFMA) regulates financial management in the national and provincial government. Furthermore, regulations have been enacted that address superficially supply chain management and the conclusion of public-private partnerships (Quinot & Arrowsmith 2013:185). In South Africa, there are also express legislative provisions regulating the way in which specific powers must be exercised relating to offences of corrupt activities to contracts, and offences in respect of corrupt activities in terms of the procuring and withdrawal of tenders.

The article will use the qualitative method to analyse the manifestation of unethical procurement practices and documents generated by the Auditor General South Africa, South African National Treasury and the South African Public Service Commission and South African Special Investigation Unit. The purpose of the article is to explore the issue of the manifestation of unethical public procurement practices by contextualise procurement fraud practices, the examination of the manifestation of unethical procurement practices in the South African public sector and to reflect on the mechanisms to ensure good governance and prevent unethical procurement practices.

## **CONTEXTUALISATION OF PROCUREMENT FRAUD PRACTICES**

Biegelman and Bartow (2006:2–5) posit that fraud has always been an issue on the side of honest citizens and the enactment of strong laws and the empowerment of enforcement agents are helpful but do not guarantee an end to fraud). A culture of non-compliance combined with a lack of accountability and transparency contributed to the wholesale of looting and unethical procurement practices. Manyaka and Sebola (2013:76) posit that unethical conduct by public officials has provoked a widespread global discourse on good governance. Rottig, Koufteros, and Umphress (2011:163–204) contribute to the importance of a multifaceted moral ethics/formal ethical infrastructure, consisting of formal communication, recurrent communication, formal surveillance, and formal sanctions. Ethical concepts and principles that relate to the procurement process are loyalty and respect for rules and regulations, integrity, impartiality and fairness, transparency, confidentiality, avoidance of the appearance of impropriety and due diligence (UNDP, 2007: section, E, 4.0). Zitha and Mathebula (2015:21) state that unethical conduct of procurement officials goes along with corruption, bribery, fraud and nepotism which impacts negatively on



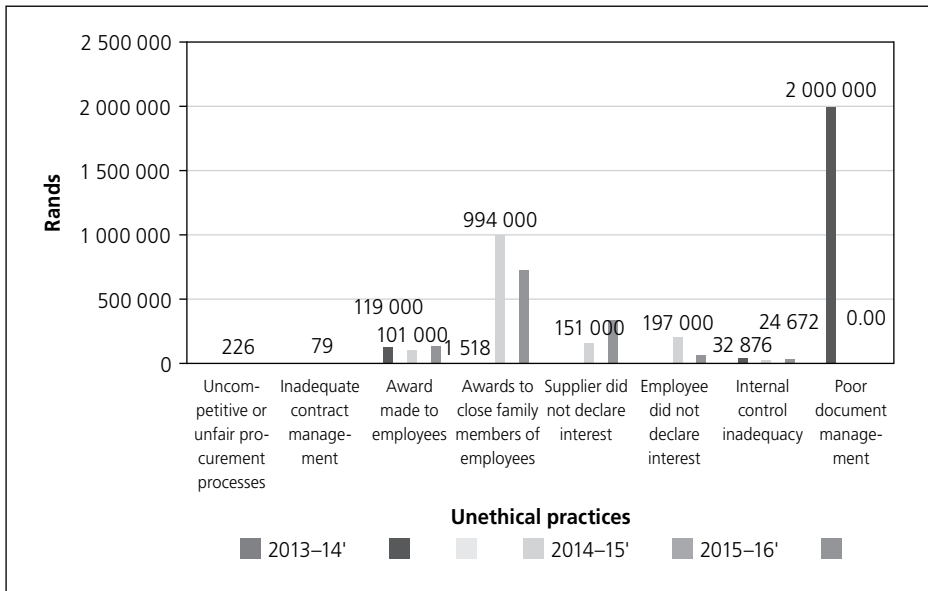
poor quality service delivered to the people. The manifestation of unethical procurement practices will therefore relate to uncompetitive bidding, inadequate contract management, and the awarding of bids to employees and their family members, non-disclosure by suppliers, no supporting documents for procurement awards, using incorrect preferential point systems and thresholds, and acceptance of less than three quotations.

There are great risks that the procurement process faces during the pre-bidding phase, e.g. lack of adequate needs assessment by contracting authorities and thus leads to poor procurement planning and budgeting. During the bidding phase, the level of information might not be uniform across all actors to attract enough bidders in public procurement through processes that are open and fair thus project a key concern. The post-bidding phase is also exposed to certain risks. e.g. great risk of failure to monitor performance of contractors, lack of supervision over the quality and timing of the process, substantial change in contract conditions to allow more time and higher prices for the bidder, product/service substitution or sub-standard work or service not meeting contract specifications and theft of new assets before delivery to end-user or before being recorded in the asset register (Reinvest Institute for Development Research (RINVEST) & Center for International Private Enterprise (CIPE), 2012:17).

## **MANIFESTATION OF UNETHICAL PROCUREMENT PRACTICES**

The procurement for infrastructure delivery and maintenance is paramount for economic development and growth in South Africa. Government has adopted the National Development Plan (2013) as the country's framework for economic and social transformation. However, economic and social development is not sufficient to eradicate corruption (Rose-Ackerman & Søreide, 2011:141). Public procurement has an important role in the public sector. Any public institution requires external resources in pursuit of its objectives, e.g. resources could be goods, services, works or consultancy. Procurement is important strategic business management function to manage entire process from assessment of need, identification of product, forecasting, sourcing, logistics, risks managements, value engineering, supplier relation management and regulatory compliance efficiently and effectively. However, the manifestation of unethical procurement practices impedes the achievement of the above imperatives as is discernible in the following key findings namely: uncompetitive or unfair procurement processes, inadequate contract management, awards to close family members of employees, lack of documentation to the awards and awards to employees of government institutions. Figure 1 reflects common issues for the financial years 2013/14 to 2015/16.

**Figure 1: Unethical procurement practices 2013–2014 to 2015–2016**



Source: Auditor General South Africa. (2014, 2015, 2015). Consolidated general report on the national, provincial and public entities audit outcomes 2013/14, 2014/15 and 2015/16.

## Uncompetitive or unfair procurement processes

There were 222 cases of uncompetitive or unfair procurement processes in the financial years of 2013/14, 226 cases in 2014/15, and 247 cases in 2015/16 and thus reveals that uncompetitive or unfair procurement processes which could amount to the discrimination of suppliers in national departments which is against the regulatory framework and relevant legislation (AGSA 2014:18, 47, 86 & 157). Khumalo, Nqojela, and Njisane, (2011:2) propagate that tendering procedures are designed to promote competition and limit discrimination in procurement processes.

## Inadequate contract management

Durant and Durant (2013:157) posit that contracting is an economic exchange amongst actors in which the government's central management challenge is to align public values, institutions and service market conditions for effectiveness across the three-principal contracting or bidding stages or phases. The study found that there was inadequate contract management in 2013/14 (63 cases), 2014/15 (79 cases) and 2015/16 (70 cases). Contracting of massive infrastructure development and huge works involve elaborate and unpredictable relationships between buyers and vendors which need to be accounted for and managed effectively (Pollitt & Talbot 2004:94–95). Lack of proper record keeping and management, specifically regarding tenders, and failure to

appropriately safeguard documentation to support tender procedures affects contract management (AGSA 2014:18, 31, 60 & 68). The potential for manipulation of contract awards and lack of fair competition, all of which create the perception in the population at large, that public expenditure is slow, ineffective, and expensive and often corrupt (Ngugi & Mugo 2012:2314–2315).

## **Awards made to employees and family members**

There is a link between corruption and conflict of interest in this study about employee awards and to their family members. PwC and Ecorys (2013:85) postulate that a “conflict of interest” involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.” A conflict of interest can be current, or it may be found to have existed at some time in the past. In the end, there are only two varieties of cases relevant for this study: corrupt cases of procurement and non-corrupt cases of public procurement. A corrupt case of procurement is a case where, at some stage in the procurement process, any power has been abused for private gain. In a non-corrupt case of public procurement, nowhere in the procurement process has any power been abused for private gain (PwC and Ecorys, 2013:58). Awards can be made due to bad governance, manifested by lack of transparency, weak accountability and lack of integrity by public officials entrusted with procurement by violating regulations and procedures with impunity (Mawenya 2008:3). Tutu, Kofi, Nyako, Ameyaw., & Ampofo 2014:3) asserts that corruption takes place when client officials entrusted with procurement collude with suppliers and contractors and break the law in pursuit of personal interests. Awards made to employees amounted to 36 cases in the financial years of 2013/14, worth R119 million, 27 cases in 2014/15, valued at R101 million and 29 cases in 2015/16 valued at R129 million. Awards to close family members of employees were identified as 39 cases for 2013/14, valued at R1,52 million, 47 cases in 2014/15, valued at R994 million and 51 cases in 2015/16, valued at R725 million.

## **Supplier did not declare interest**

Cases where the supplier did not declare interest was as follows for the financial years 2014/15, 26 cases valued at R151 million, and 2015/16, 36 cases valued at R336 million. Cases where employees did not declare interest: 26 cases in 2014/15 valued at R197 million and 16 cases in 2015/16 valued at R59 million. The AGSA (2016:41) posit that failure by suppliers to declare the interest of employees and other state officials constitutes an unethical procurement fraud practices.

## **Inadequate procurement controls and irregular expenditure**

The South African public sector faces extraordinary governance and procurement challenges, with communities demanding transparency, accountability, and a greater say. To this end, the public sector also needs to improve the efficiency of managing public finances. The challenges can be viewed as opportunities for real change and fundamental improvements, and public procurement reform lies at the heart of this opportunity (World Bank 2012:6). The non-compliance can be equated to governance challenges regarding supply chain management legislation which resulted in irregular expenditure. It is found that there were internal control inadequacy and irregular procurement processes during the financial years 2013/14 with 301 cases valued at R32, 876 million, 2014/15 with 287 cases valued at R24,672 million and 2015/16 with 308 cases valued at R31,596 million (Auditor General South Africa, 2014, 2015, 2016). Bor, Chepkwonmy, and Bonuke (2015:97) assert that non-compliance will include; non-compliance with the advertising procedures, application of unlawful contract award and selection criteria and insufficient or discriminatory definition of the subject-matter of the contract and negotiation during the award procedure. The internal control is a form of control and a managerial function of the management of the public institution (Dragos 2015:125).

Incorrect procurement processes in relation to threshold values for quotations and competitive bidding, extension of validity periods and incorrect use of the limited bidding process took place (National Treasury 2015:10). In addition, inadequate controls and procedures for handling bids, appointment of bid committee members not aligned with policy requirements and insufficient motivation for deviations from SCM procedures were also found.

## **Poor document management or no supporting documents**

For the financial years 2013/14, 41 cases of poor document management or no supporting documents, valued at R2.1 billion were identified. In 2014/15, 32 cases were identified. In the financial years 2014/15 there were no recorded cases, followed by 30 cases in the financial years of 2015/16 valued at R2,526 million. Prevailing findings related to no or inadequate contract performance measures and monitoring and contracts amended or extended without proper approval (AGSA 2013:70). The non-submission of supporting documents varied over the three years as it depends on the value of the relevant contract awarded in the year. To this end, there was no evidence that auditees had followed a fair, transparent and competitive process for all awards (AGSA 2015–2016:42; AGSA 2013:70). It could be argued that documentation either did not exist or could not be retrieved as a result of poor document management. Raga (2008:117) is of the view that public sector procurement guidelines are issued

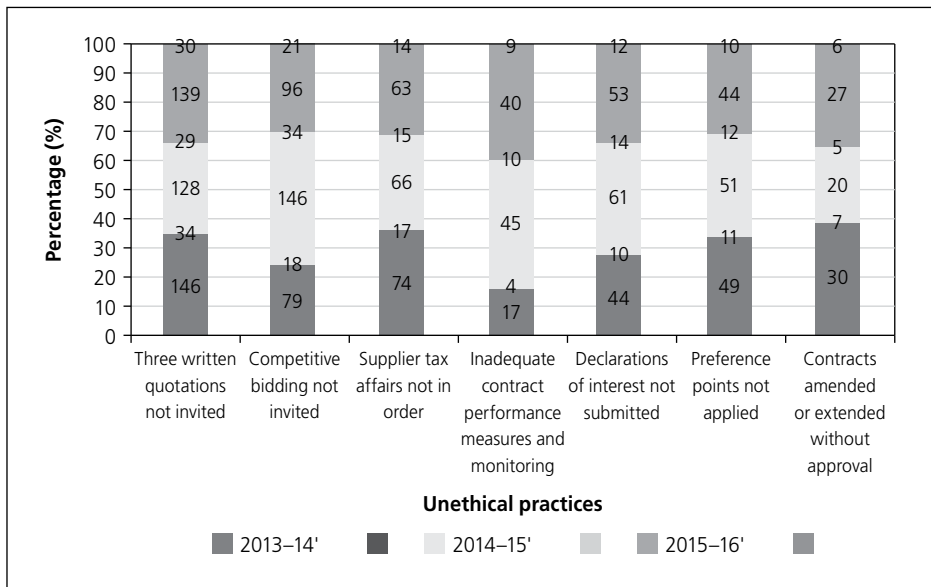


by government as a prescription of standards of behaviour, ethics and accountability which it requires for its public service (AGSA 2014:59; AGSA 2015:42 & 67). In addition, poor record management created an environment in which it was easy to commit and conceal possible improper or illegal behaviour.

## UNFAIR PROCUREMENT PROCESSES

Figure 2 reflects how unethical procurement practices unfolded. Unethical procurement practices included the following; three written quotations not invited; 146 cases (34%) for 2013/14, 128 cases (29%) for 2014/15, and 139 cases (30%) for 2015/16. Competitive bidding not invited; 79 cases (18%) for 2013/14, 146 cases (34%) for 2014/15, and 96 cases (21%) for 2015/16. Supplier tax affairs not in order, 74 cases (17%) for 2013/14, 66 cases (15%) for 2014/15 and in 2015/16, 63 cases (14%) were identified. Inadequate contract performance measures and monitoring amounted to 17 cases in 2013/14, 45 cases in 2014/15, and in 2015/16, 40 cases. Declarations of interest not submitted; 44 cases for 2013/14, 61 cases for 2014/15 and 53 cases for 2015/16. Preference point not applied for 2013/14 was 49 cases, 2014/15 had 51 cases and 2015/16 suffered 44 cases. Contracts amended or extended without approval were 30 cases for 2013–14, 20 cases for 2014/15 and 27 cases for 2015/16.

**Figure 2: Case of unethical procurement practices: Financial years 2013–14 to 2015–16**



Source: Auditor General South Africa. (2014, 2015, 2015). Consolidated general report on the national, provincial and public entities audit outcomes 2013/14, 2014/15 and 2015/16.



## Ethical leadership

The Auditor General asserts that there was lack of day-to-day monitoring and involvement by the leadership in the administration of the department (AGSA 2012). The Institute of Directors in Southern Africa (IoDSA) (2016:30) posits that the King IV code recommends leadership to ensure compliance is understood, not as an obligation, but as a source of rights and protection. The Chartered Institute of Purchasing and Supply (CIPS) (2012) states that leadership should universally apply the practice set out as laws, regulations, policies and procedures (Ayoyi & Mukoswa 2015:1). However, it was revealed that, the above-average governance is not practised adequately in the South African public sector. Eyaa, and Oluka (2011:38) asserts that another cause of non-compliance is lack of professionalism. Many issues may be more important than ethics; however, famous paradox dictates that ethics are more important than any issue that will require ethical decision making (Valentine, 2014:139–140).

## Value for money, competition, transparency and accountability

Office of Government and Commerce (OGC) (2008:16) states that the public sector spends billions a year on the goods and services needed to deliver public services. To achieve value for money for the taxpayer, effectively managed procurements—properly planned and executed—are essential. Given the limited resources available to government, ensuring value for money in procurement is key to ensuring the optimum utilisation of scarce budgetary resources. OGC (2008:19) states that suppliers have been known to operate cartels and restrict competition or drive up prices, and some suppliers and staff have, on occasion, committed fraud. That may include; falsifying invoices; business awarded unfairly in return for bribes or suppliers inflating prices in collusion with staff and/or competitors. Competition is the cornerstone of public sector procurement.

The public availability of disclosed information in the public sector is also important to ensure accountability and reinforcing trust (OECD 2012:5). Official disclosures or verification of an official's financial standing, interest and past practices assist accounting officers in selecting committee members who are above reproach. Legislation allows for precautionary suspension of employees that serves as a safety measure used by affected departments to allow for unhindered investigation, pending the institution of disciplinary procedures (Fourie 2015:42). There is a need for the envisioned public procurement governance framework which will be underpinned by centre led action network, public procurement advisory unit/matrix approach and the total professionalisation of procurement environment.



## CONCLUSION

This article seeks to highlight the manifestations of unethical practices in the procurement environment. Unethical procurement practices are dangerous and ubiquitous, costly and can produce economic and social ills to society. It can impair trade, deter investment, diverting government spending away from public good such as infrastructure development and public works programmes. The focus on the manifestation of unethical procurement practices in the public domain could contribute to the knowledge base towards the development of mechanisms to curb unethical conduct. This study project that leadership and professionals in the procurement environment must not tolerate unethical procurement practices in any form. In addition, a public institution should ensure that performance at all the procurement stages are monitored effectively and contract management enforced without any compromise. This article presented an analysis of component of unethical procurement practices; uncompetitive bids, employees' bids awards, non-compliance with supply chain management legislation, inadequate contract management, ineffective control systems, uncompetitive bidding, acceptance of less than three quotations, using of incorrect preferential point system and thresholds and irregular expenditure. The public sector should guard against the stated unethical manifestation of procurement practices by establishing good governance mechanism.

## REFERENCES

- Auditor General South Africa. 2014. *Consolidated general report on the national, provincial and public entities audit outcomes 2013–14*. Pretoria: Auditor General South Africa.
- Auditor General South Africa. 2015. *Consolidated general report on the national, provincial and public entities audit outcomes 2014–15*. Pretoria: Auditor General South Africa.
- Auditor General South Africa. 2016. *Consolidated general report on the national, provincial and public entities audit outcomes 2015–16*. Pretoria: Auditor General South Africa.
- Ayoyi, I.S. and Mukoswa, O. 2015. Ethical Issues in Public Procurement in Kenya. *International Journal of Scientific and Research Publications*, 5(9).
- Bor, J., Chepkwonmy, J. and Bonuke, R. 2015. Employee Perceived Interference and Professional Ethics on Non-Compliance with Public Procurement Regulations, Evidence from Kenya. *European Journal of Business*, 7(5):96–109.
- Chartered Institute of Procurement and Supply (CIPS). 2012. *Principles and practices of public procurement. Developing evaluation criteria*. California Association of public procurement officials, Inc. www.cappo.org.
- Chigudu, D. 2014. Public procurement in Zimbabwe: issues and challenges. *Journal of Governance and Regulation*, 3(4):21–26.
- Dragos, T.C. 2015 (special issue). The internal control models in Romania. Aspects regarding the internal control on the level of public entities in Romania. Annals of the Constantin Brâncuși" University of Târgu JIU, economy series. *Information society and sustainable development*.

- Durant, R.F. and Durant, J.R.S. 2013. *Debating public administration: management challenges, choices and opportunities*. Boca Raton: CRC Press.
- Eyaa, S and Oluka, P.N. 2011. Explaining non-compliance in public procurement in Uganda. *International Journal of Business and Social Science*, (2)11:35–44.
- Fourie, D.J. 2015. Procurement in the South African public service: a reflection of the ethical and legislative framework. *Public and municipal finance*, 4(2):38–45.
- Institute of Directors of Southern Africa (IoDSA) NPC. 2016. KING IV. Report on Corporate Governance for South Africa 2016.
- Khumalo, J., Nqojela, P. and Njisane, Y. 2011. The impact of corruption on governance and socio-economic rights. DOI/[www.casac.org.za/wp-content/uploads/2011/09](http://www.casac.org.za/wp-content/uploads/2011/09). Retrieved 24/09/2011
- Mawenya, A.S. 2008. South African Institute of International Affairs (SAIIA) Occasional Paper, Preventing corruption in Africa procurement. Analysing key policy and governance issues in Africa and beyond. Johannesburg: SAIIA.
- National Planning Commission. 2013. Our future-Make it work: National Development plan 2030. Pretoria: Government Printers.
- Ngugi, J. K. and Mugo, H.W. 2012. *Internal factors affecting procurement process of supplies in the public sector: A survey of Kenya government ministries*. Journal 5th International Public Procurement Conference was held on August 17<sup>th</sup>.
- OECD. 2012. *Public sector integrity: Providing services efficiently*. Paris: France.
- Office of Government and Commerce (OGC). 2008. An Introduction to Public Procurement. London: OGC.
- Pollitt, C. and Talbot, C. 2004. *Unbundled government: A critical analysis of the global trend to agencies, quangos and contractualisation*. New York (NY): Routledge.
- PwC and Ecorys. 2013. Identifying and reducing corruption in public procurement in the EU Development of a methodology to estimate the direct costs of corruption and other elements for an EU-evaluation mechanism in the area of anti-corruption. Brussels: EU.
- Quinot, G. and Arrowsmith, S. 2013. *Public procurement regulation in Africa*. New York: Cambridge University Press.
- Raga, K. 2008. Public sector procurement: South African ethical and legislative aspects. *African Journal of Public Affairs*, 2(1):109–121.
- Reinvest Institute for Development Research (RINVEST) & Center for International Private Enterprise (CIPE). 2012. Improving transparency and governance of public funds public procurement process in Kosovo. Prishtinë: RIINVEST INSTITUTE.
- Rose-Ackerman, S. and Sóreide, T. 2011. *International handbook on the economics of corruption* (2<sup>nd</sup> vol.). Cheltenham: Edward Elgar.
- Rottig, D., Koufteros, X. and Umphress, E. 2011. Formal Infrastructure and Ethical Decision Making: An Empirical Investigation and Implications for Supply Management. *Decision Sciences*, 42(1):163–204.
- South Africa. 1996. *Constitution of the Republic of South Africa 1996*. (SA.). Pretoria: Government Printers.
- South Africa. 1999. *Public Finance Management Act 1999*. 1 (SA.). Pretoria: Government Printers.
- South Africa. 2015. *2015 Public Sector Supply Chain Management (SCM) Review*. Pretoria: National Treasury.
- Taylor, J.D. and Raga, K. 2010. Preferential procurement: a case study of South Africa. [www.ipppa.org/IPPC4/Proceedings/13ProcurementPreferences/Paper13-6.pdf](http://www.ipppa.org/IPPC4/Proceedings/13ProcurementPreferences/Paper13-6.pdf).

- Tutu, E.O, Kofi, Nyako, K.O, Ameyaw, C. and Ampofo, K.Y. 2014. Conflict of interest and related corrupt practices in public procurement in Ghana. *International Journal of Civil Engineering Construction and Estate Management*. 1(2):1–15.
- United Nations Development Programme (UNDP). 2007. Contract, Asset and Procurement Management User Guide. Retrieved from <http://content.undp.org/go/userguide/cap/procurement/?lang=en#top>
- USAID. 2013. National Procurement Strategy 2013–2016. *Public Procurement Regulatory Authority Government of Pakistan*.
- Valentine, S. (ed.) 2014. Organizational ethics and stakeholder well-being in the business environment. Charlotte, North Caroline: Information Age Publishing (IAP).
- World Bank. 2012. Why Reform Public Procurement? Washington DC: World Bank.
- Zitha H.E and Mathebula N.E. 2015. Ethical conduct of procurement officials and implications on service delivery: a case study of Limpopo provincial treasury. Unethical conduct of procurement officials may also result in service delivery protests and loss of life. *Public and Municipal Finance*, 4(3):16–24.